

1 GRAHAMHOLLIS APC
Graham S.P. Hollis (SBN 120577)
2 ghollis@grahamhollis.com
Vilmarie Cordero (SBN 268860)
3 vcordero@grahamhollis.com
Monique R. Rodriguez (SBN 304223)
4 mrodriguez@grahamhollis.com
3555 Fifth Avenue, Suite 200
5 San Diego, California 92103
Telephone: 619.692.0800
6 Facsimile: 619.692.0822

7 *Attorneys for Plaintiff Olivia Kirkpatrick*

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
08/20/2020 at 03:04:29 PM
Clerk of the Superior Court
By Jose Hernandez, Deputy Clerk

8
9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF SAN DIEGO**

11 OLIVIA KIRKPATRICK, as an individual, on
12 behalf of herself, and all persons similarly
situated,

13 Plaintiff,

14 v.

15
16 PETCO ANIMAL SUPPLIES STORES,
INC., a California company authorized to do
17 business in the state of California; and DOES
1 through 50 inclusive,

18 Defendants.
19
20
21
22
23
24
25
26
27
28

Case No. 37-2020-00029222-CU-OE-CTL

CLASS & REPRESENTATIVE ACTION

**COMPLAINT FOR DAMAGES,
RESTITUTION, INJUNCTIVE RELIEF
AND PENALTIES:**

- (1) **FAILURE TO PROVIDE LEGALLY
COMPLIANT MEAL PERIODS OR
COMPENSATION IN LIEU
THEREOF
(Labor Code §§ 204, 226.7 and 512);**
- (2) **FAILURE TO PROVIDE LEGALLY
COMPLIANT REST PERIODS OR
COMPENSATION IN LIEU
THEREOF
(Labor Code §§ 204 and 226.7);**
- (3) **FAILURE TO TIMELY PAY
MINIMUM, REGULAR, AND/OR
OVERTIME WAGES
(Labor Code §§ 204, 210, 510, 1194,
1197, 1197.1, 1198 and 1199);**
- (4) **FAILURE TO TIMELY PAY ALL
EARNED COMMISSIONS
(Labor Code §§ 200, 204, and 210);**
- (5) **FAILURE TO MAKE PAYMENT OF
WAGES IN FORM NEGOTIABLE
AND PAYABLE IN CASH
(Labor Code §§ 212, 213 and 225.5);**

- 1 (6) **FAILURE TO MAINTAIN**
2 **ACCURATE RECORDS**
(Labor Code §§ 226, 1174 and 1174.5);
- 3 (7) **FAILURE TO PROVIDE**
4 **EMPLOYMENT AND PERSONNEL**
5 **RECORDS UPON REQUEST**
(Labor Code §§ 226(b), 226(c), 226(f),
6 1198.5 and 1198.5(k));
- 7 (8) **FAILURE TO FURNISH ACCURATE**
8 **ITEMIZED WAGE STATEMENTS**
(Labor Code §§ 226 and 226.3);
- 9 (9) **FAILURE TO TIMELY PAY ALL**
10 **WAGES DUE AND OWED UPON**
11 **SEPARATION OF EMPLOYMENT**
(Labor Code §§ 201-203 and 210);
- 12 (10) **FAILURE TO TIMELY PAY**
13 **EARNED COMMISSIONS UPON**
14 **SEPARATION OF EMPLOYMENT**
(Labor Code §§ 201-203 and 210);
- 15 (11) **UNFAIR COMPETITION LAW**
(Bus. & Prof. Code §§ 17200 *et seq.*); and
- 16 (12) **PRIVATE ATTORNEYS GENERAL**
ACT OF 2004
(Labor Code §§ 2698 *et seq.*).

DEMAND FOR JURY TRIAL

17 Plaintiff Olivia Kirkpatrick (“Plaintiff”) brings this class and representative action on behalf of
18 herself and all persons similarly situated against Defendant Petco Animal Supplies Stores, Inc. and
19 DOES 1 through 50, inclusive (collectively, “Petco” or “Defendants”), on the following grounds:

20 **INTRODUCTION**

21 1. This action is brought by Plaintiff on behalf of herself and all other current or former
22 non-exempt employees who were employed by Petco in the state of California during the relevant time
23 period (referred to herein as “Petco Employees”).

24 2. Plaintiff asserts that during the relevant time period, Petco engaged in a common pattern
25 and practice of wage and hour violations under the California Labor Code (“Labor Code”) and the
26 California Industrial Welfare Commission’s (“IWC”) Wage Order No. 7-2001 to decrease its
27 employment related costs and increase its profits by, among other things:

- a. Failing to provide the opportunity to take legally compliant meal periods or compensation in lieu thereof;
- b. Failing to authorize and permit legally compliant rest periods or compensation in lieu thereof;
- c. Failing to timely compensate for all hours worked, including minimum, regular, overtime wages, and/or earned commissions;
- d. Failing to provide written commission agreements;
- e. Failing to make payment of wages in a form negotiable and payable in cash, on demand, and without discount;
- f. Failing to maintain accurate records;
- g. Failing to provide employment and personnel records upon request;
- h. Failing to furnish accurate itemized wage statements;
- i. Failing to timely pay all wages due and owed, including earned commissions, upon separation of employment, including commission wages;
- j. Failing to maintain and provide a safe and healthful place of employment;
- k. Retaliating against Petco Employees who make good faith complaints regarding their employment rights;
- l. Engaging in unlawful, unfair and/or fraudulent business practices; and
- m. Violating the Private Attorneys General Act of 2004 (“PAGA”).

3. By and through this class and representative action, Plaintiff seeks to recover all available remedies including, but not limited to, damages, restitution, injunctive relief and penalties, as well as reasonable attorneys’ fees and litigation costs, as provided under California law.

4. All allegations in this Complaint are based upon information and belief except those allegations that pertain to Plaintiff named herein and her counsel, which are based upon personal knowledge. Each allegation in this Complaint has evidentiary support or is likely to have evidentiary support after reasonable opportunity for further investigation and formal discovery.

///

///

1 **JURISDICTION AND VENUE**

2 5. This Court has jurisdiction over this action pursuant to California Code of Civil
3 Procedure (“Code of Civil Procedure”) section 410.10. Pursuant to Code of Civil Procedure section
4 382, California Business and Professions Code (“Bus. & Prof. Code”) section 17203, and Labor Code
5 section 2698 *et seq.*, Plaintiff brings this action on behalf of herself, and on behalf of all Petco
6 Employees, as defined herein.

7 6. This Court has personal jurisdiction over Petco because Petco conducts business in the
8 state of California and has caused injuries in the county of San Diego, as well as throughout the state of
9 California, through its acts and omissions, and by its violations of the Labor Code and Bus. & Prof.
10 Code.

11 7. Venue as to Petco is proper in this judicial district pursuant to Code of Civil Procedure
12 section 395(a). Petco transacts business in San Diego County and is otherwise within this Court’s
13 jurisdiction for purposes of service of process. Petco’s headquarters are located in San Diego,
14 California. The unlawful acts alleged herein have a direct effect on Plaintiff and those similarly
15 situated within the county of San Diego and the state of California.

16 8. Pursuant to Rule 3.400 of the California Rules of Court, this case shall be deemed a
17 complex action because it is filed as a class and representative action that involves specialized case
18 management, extensive discovery and evidence, difficult and/or novel issues, and is likely to require
19 extensive post-judgment supervision.

20 **THE PARTIES**

21 **I. PLAINTIFF**

22 9. Plaintiff Olivia Kirkpatrick at all material times mentioned herein:

- 23 a. Was and is a resident of the county of Ventura, California;
- 24 b. Was employed by Petco, most recently, from approximately July of 2019 to
- 25 February 17, 2020 as a pet stylist at Petco’s retail store located in Thousand
- 26 Oaks, California. Plaintiff also worked as a pet stylist at Petco’s retail store
- 27 located in Granada Hills, California in 2016 and from 2014 to 2015 at Petco’s
- 28 retail store located in Porter Ranch, California;

- c. Engaged in work for Petco in the counties of Ventura and Los Angeles;
- d. Was paid an hourly wage on a bi-weekly basis, plus commissions;
- e. Was typically scheduled to work six (6) days per week from about 9:00 a.m. to 6:00 p.m.;
- f. Was often required to work past her scheduled work hours, until approximately 7:30 p.m. to 8:00 p.m.;
- g. Was classified by Petco as a non-exempt employee for purposes of the Labor Code and the IWC Wage Orders;
- h. Was not provided with the opportunity to take legally compliant meal periods or compensation in lieu thereof;
- i. Was not authorized and permitted to take legally compliant rest periods or provided with compensation in lieu thereof;
- j. Was not timely compensated the appropriate minimum, regular, and/or overtime wages for all time worked, including time spent working through meal periods, time shaved by Petco to prevent the payment of overtime compensation;
- k. Was not paid the appropriate rate of overtime wages because her commissions were not factored into her regular rate of pay;
- l. Was not timely paid all earned commissions;
- m. Was not provided with a written commission agreement or a copy thereof;
- n. Was issued her wages via a pay card without her prior authorization;
- o. Was not provided with an itemized wage statement for the funds placed on the pay card;
- p. Incurred multiple fees when using the pay card, including fees for checking the card balance and withdrawing funds from the ATM;
- q. Was not paid wages in a form negotiable and payable in cash;
- r. Contends her employee records were not accurately maintained by Petco;
- s. Did not receive her employment and personnel records upon request;
- t. Was not furnished with accurate itemized wage statements;

- u. Was not timely paid all wages due and payable upon separation of employment, including her earned commissions;
- v. Was regularly the only groomer on-duty and consequently left alone with numerous animals at a time, which posed a threat to her health and safety;
- w. Was unable to access toilet facilities at all times during the workday, thereby suffering negative health consequences;
- x. Was not provided with a safe and healthful place of employment;
- y. Was retaliated against by Petco after making a good-faith complaint about unsafe working conditions, not receiving legally compliant meal and/or rest periods, being unable to use the toilet facilities, and being passed over for a promotion;
- z. Was subject to Petco's unlawful, unfair, and fraudulent business practices;
- aa. Is a member of the class(es) and sub-class(es) defined herein;
- bb. Is an "aggrieved employee" as defined by Labor Code section 2699(c); and
- cc. Complied with all requirements outlined in Labor Code sections 2698 *et seq.*

II. DEFENDANTS

10. Defendant Petco Animal Supplies Stores, Inc. ("Petco Stores") is a California corporation authorized to do business, and actually doing business, in the state of California. Petco Stores owns and operates a nationwide chain of retail stores, including numerous stores throughout California, that specialize in pet supplies and products, training classes, grooming, and other pet-related services. Petco Stores' headquarters are located in San Diego, California.

11. The true names and capacities, whether individual, corporate, subsidiary, partnership, associate, or otherwise of Defendant Does 1 through 50, inclusive, are unknown to Plaintiff, who therefore sues these defendants by such fictitious names pursuant to Code of Civil Procedure section 474. Plaintiff will amend this Complaint, setting forth the true names and capacities of these fictitiously named defendants when their true names are ascertained. Plaintiff is informed and believes, and on that basis alleges, that each of the fictitious defendants have participated in the acts and/or omissions alleged in this Complaint.

1 12. At all times mentioned herein, the acts alleged to have been done and/or caused by the
2 named Defendant is also alleged to have been done and/or caused by the fictitiously named defendants,
3 and by each of their agents and/or employees who acted within the scope of their agency and/or
4 employment.

5 13. At all times mentioned herein, each named Defendant, including each fictitiously
6 named defendant, is believed to have acted individually or as an officer, agent, or employee of the
7 other defendants.

8 14. At all times mentioned herein, each named Defendant, including each fictitiously
9 named defendant, acted as an agent, servant, employee, co-conspirator, alter-ego and/or joint venture
10 of the other defendants, and in doing the things alleged herein acted within the course and scope of
11 such agency, employment, alter-ego and/or in furtherance of the joint venture.

12 15. At all times mentioned herein, the acts and/or omissions of each of the named
13 Defendants, including each fictitiously named defendant, concurrently contributed to the various acts
14 and/or omissions of each and every one of the other defendants, including each fictitiously named
15 defendant, in proximately causing the wrongful conduct, harm, and/or damages alleged herein. Each of
16 the named Defendants, including each fictitiously named defendant, approved of, condoned, and/or
17 otherwise ratified each and every one of the acts and/or omissions complained herein. Each named
18 Defendant, including each fictitiously named defendant, was and is acting with authority of each and
19 every other defendant and/or are acting as agents of each and every other defendant or Doe defendant.

20 16. At all times mentioned herein there was a unity of interest and ownership between each
21 named Defendant, including each fictitiously named defendant, such that all defendants acted as a
22 single employer of Plaintiff and all other Petco Employees.

23 17. At all times mentioned herein, each named Defendant, including each fictitiously
24 named defendant, exercised supervision and control over the working conditions of Plaintiff and all
25 other Petco Employees, including, but not limited to, implementing standard policies and procedures.

26 ///

27 ///

28 ///

FACTUAL ALLEGATIONS

18. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all paragraphs of this Complaint.

19. Plaintiff was employed by Petco, most recently, as a pet stylist from about July of 2019 to February 17, 2020 at Petco's retail store located in Thousand Oaks, California. As a pet stylist, Plaintiff's job duties included, but were not limited to, bathing, styling, and grooming pets, ensuring the safety of animals in her care, and providing excellent customer service. During her employment, Plaintiff was classified by Petco as a non-exempt employee and paid an hourly rate of \$13.00 per hour, in addition to receiving commissions. Plaintiff typically worked six (6) days per week from 9:00 a.m. to 6:00 p.m., but was often required to work past her scheduled work hours until about 7:30 p.m. to 8:00 p.m. Plaintiff was paid on a bi-weekly basis.

20. Plaintiff asserts that Petco has employed, and will continue to employ, several Petco Employees throughout the state of California, including in, but not limited to, the counties of Los Angeles, Ventura and San Diego.

21. Plaintiff alleges that throughout the relevant time period all Petco Employees are categorized as non-exempt employees, earn an hourly wage, and are paid on a bi-weekly basis.

22. Plaintiff alleges that throughout the relevant time period she and other Petco Employees who held the position of pet stylist (i.e. Groomer), performed similar work and/or held similar positions that also earn commissions.

23. Plaintiff further alleges that all Petco Employees, including Plaintiff, regularly work eight (8) or more hours a day and/or forty (40) hours in a week.

24. Plaintiff contends that she and all other Petco Employees were subject to, and those currently employed continue to be subject to, the same and/or similar policies, practices, procedures guidelines and/or culture described herein.

25. Plaintiff further alleges that she and all other Petco Employees have suffered, and those currently employed will continue to suffer, the same and/or similar violations of law described herein.

26. Plaintiff asserts that Petco has a policy, practice, procedure, guideline and/or culture of understaffing its retail stores, including its grooming salons, in order to, among other things, decrease

1 its employment related costs and increase its profits.

2 27. Plaintiff contends that Petco did not, and does not, have a policy, practice, procedure,
3 guideline and/or culture of providing all Petco Employees with the opportunity to take an
4 uninterrupted, thirty (30) minute off-duty meal period before the end of their fifth (5th) hour of work
5 when they worked five (5) or more hours in a day. Similarly, Plaintiff contends that Petco did not, and
6 does not have a policy, practice, procedure, guideline and/or culture of providing all Petco Employees
7 with the opportunity to take a second uninterrupted, thirty (30) minute off-duty meal period when they
8 worked more than ten (10) hours in a day.

9 28. Plaintiff asserts that Petco did not, and does not, have a policy, practice, procedure,
10 guideline and/or culture of obtaining the consent necessary to waive a meal period, when Plaintiff
11 and/or other Petco Employees worked no more than six (6) hours in a day. Plaintiff also asserts that
12 Petco did not, and does not, have a policy, practice, procedure, guideline and/or culture of obtaining
13 the consent necessary to waive a meal period when they worked no more than twelve (12) hours.

14 29. Plaintiff alleges that Petco did not, and does not, have a policy, practice, procedure,
15 guideline and/or culture of paying meal period premiums to Plaintiff and other Petco Employees for all
16 meal periods that do not comply with California law.

17 30. Plaintiff contends, for example, that due in part to Petco's understaffing of its retail
18 stores and overbooking Petco Employees, such as pet stylists, with appointments, Plaintiff and other
19 Petco Employees were regularly directed, pressured, compelled and/or otherwise coerced to work
20 through their meal periods in order to provide customer service and complete other work-related tasks,
21 such as pet grooming services. Plaintiff also contends that on the rare occasion she and other Petco
22 Employees were provided with the opportunity to take a meal period, their meal periods were
23 consistently untimely, interrupted by directives to perform work-related duties like assisting customers,
24 and/or less than thirty (30) minutes due to in part to the lack of coverage available. Moreover, Plaintiff
25 and other Petco Employees were instructed, pressured and/or otherwise compelled by their supervisors
26 to clock out for meal periods and continue working. Plaintiff's and other Petco Employees' time
27 records were also unlawfully altered by their supervisors to reflect that a legally compliant meal period
28 was taken, even though Plaintiff and other Petco Employees were required to work through their meal

1 period and/or were not provided with a timely and/or uninterrupted meal period of at least thirty (30)
2 minutes.

3 31. Plaintiff alleges that she verbally complained to her superiors about not being provided
4 with the opportunity to take uninterrupted, off-duty thirty (30) minute meal periods before the end of
5 her fifth (5th) hour of work during her employment, as a result of being the only pet stylist on-duty
6 during her shifts and being overbooked with appointments.

7 32. Plaintiff asserts that Petco knew or should have known that Plaintiff and other Petco
8 Employees were not provided with the opportunity to take legally compliant meal periods due in large
9 part to Petco's understaffing of its retail stores, Petco's practice of altering employee time records to
10 reflect legally compliant meal periods, and Plaintiff's verbal complaints.

11 33. Plaintiff contends that although she and other Petco Employees were not provided with
12 legally compliant meal periods, she and all other Petco Employees were not compensated for all non-
13 compliant meal periods as provided by California law.

14 34. Plaintiff further alleges that Petco did not, and does not have a policy, practice,
15 procedure, guideline, and/or culture of authorizing and permitting Plaintiff and other Petco Employees
16 to take uninterrupted off-duty rest periods of at least ten (10) minutes for every four (4) hours worked
17 or major fraction thereof.

18 35. Plaintiff contends that Petco did not, and does not have a policy, practice, procedure,
19 guideline and/or culture of paying rest period premiums to Plaintiff and other Petco Employees for all
20 rest periods that do not comply with California law.

21 36. Plaintiff contends that she and other Petco Employees were regularly instructed,
22 directed, pressured, compelled and/or otherwise coerced to work through their rest periods in order to
23 provide customer service, as there were not enough employees to relieve Petco Employees, like
24 Plaintiff, for their rest periods. For instance, Plaintiff was regularly the only pet stylist on-duty during
25 her shifts and was consistently overbooked with grooming appointments, which prevented her from
26 taking rest periods. Plaintiff also contends that she and other Petco Employees regularly received rest
27 periods that were untimely, interrupted by instructions to perform job responsibilities such as providing
28

grooming services, and/or less than ten (10) minutes due to in part to Petco's inadequate staffing of its retail stores and grooming salons.

37. Plaintiff alleges that she verbally complained to her superiors about not being authorized and permitted to take uninterrupted, off-duty ten (10) minute rest periods for every four (4) hours worked during her employment.

38. Plaintiff asserts that Petco knew or should have known that Plaintiff and other Petco Employees were not authorized and permitted to take legally complaint rest periods due to Plaintiff's verbal complaints and because Petco instructed, directed, pressured, compelled and/or otherwise coerced Petco Employees, including Plaintiff, to work through their rest periods.

39. Plaintiff contends that although she and other Petco Employees were not provided with legally compliant rest periods, she and all other Petco Employees were not compensated for all non-compliant rest periods as required by California law.

40. Plaintiff further contends that Petco had, and continues to have a policy, practice, procedure, guideline, and/or culture of not timely compensating her and all other Petco Employees minimum, regular, and/or overtime wages for all time engaged in work on behalf of Petco.

41. Plaintiff contends that due in part to Petco's understaffing of its retail stores, including the grooming salons, she and other Petco Employees were directed, pressured, compelled and/or otherwise coerced to regularly perform their job duties, such as assisting customers and grooming pets, while clocked out for their meal periods. For example, the managers at Petco's retail stores frequently mandated Plaintiff and other Petco Employees to clock out for their meal periods and continue working while clocked out. The managers would also illegally adjust the time records of Petco Employees, including Plaintiff, to reflect that a compliant meal period was taken. Consequently, Petco improperly considered time spent by Petco Employees working through meal periods as non-compensable and failed to provide any remuneration.

42. Plaintiff alleges that Petco had, and continues to have a policy, practice, procedure guideline, and/or culture of shaving the hours worked by Petco Employees, including Plaintiff, to prevent the payment of overtime compensation. As a result, Petco did not timely pay Plaintiff and other Petco Employees all minimum, regular, and/or overtime wages owed to them when Plaintiff and

1 other Petco Employees worked in excess of eight (8) hours a day and/or forty (40) hours in a
2 workweek.

3 43. Plaintiff contends that Petco had, and continues to have a policy, practice, procedure,
4 guideline, and/or culture of not using commissions to calculate the respective rate of pay as necessary
5 for the calculation and payment of overtime wages for Petco Employees who held the position of pet
6 stylist (i.e. Groomer), performed similar work and/or held similar positions, including Plaintiff.

7 44. Plaintiff alleges that, despite being entitled to commissions, Petco did not provide her
8 and other Petco Employees who held the position of pet stylist (i.e. Groomer), performed similar work
9 and/or held similar positions with a written contract outlining the method for calculating and paying
10 commissions. Additionally, Petco Employees who held the position of pet stylist (i.e. Groomer),
11 performed similar work and/or held similar positions, including Plaintiff, were not provided a signed
12 copy of the written documents outlining how commissions were to be computed and paid for all
13 positions worked.

14 45. Plaintiff further alleges that she and other Petco Employees who held the position of pet
15 stylist (i.e. Groomer), performed similar work and/or held similar positions were not timely paid all
16 earned commissions.

17 46. Plaintiff asserts that Petco had, and continues to have a policy, practice, procedure,
18 guideline and/or culture of failing to pay Plaintiff and other Petco Employees their wages in a form
19 negotiable and payable in cash, on demand, and without discount. For example, Plaintiff and other
20 Petco Employees were issued their wages on a pay card without their prior authorization. Moreover,
21 Petco Employees, including Plaintiff, incurred various fees when using the pay card, such as fees for
22 withdrawing money from the ATM and checking the card balance.

23 47. Plaintiff contends that Petco had, and continues to have a policy, practice, procedure,
24 guideline, and/or culture of failing to maintain accurate employment records for Petco Employees,
25 including Plaintiff. For instance, Plaintiff attests that due to Petco's unlawful practice of shaving time
26 worked by Petco Employees to avoid paying overtime wages, Petco's failure to record the proper
27 beginning and end of each work period, and Petco's failure to record the total hours of compensable
28 time worked by Petco Employees, such as time spent working during meal periods, Petco knowingly

1 and intentionally failed to maintain accurate employee and/or payroll records as required by California
2 law.

3 48. Plaintiff further asserts that Petco had, and continues to have a policy, practice,
4 procedure, guideline, and/or culture of failing to provide Petco Employees, including Plaintiff, with a
5 copy of their payroll records within twenty-one (21) days of their request, as mandated by Labor Code
6 section 226(c), and a copy of all other employment records within the thirty (30) day time frame
7 prescribed by Labor Code section 1198.5. For instance, Plaintiff requested a copy of her personnel and
8 time records in writing on February 26, 2020, April 3, 2020 and again on May 5, 2020, but she has not
9 yet received a copy of her personnel and time records from Petco as required by California law.

10 49. Petco has ignored Plaintiff's multiple attempts to obtain her employment and personnel
11 records, including a copy of a signed arbitration agreement. Plaintiff does not recall signing an
12 arbitration agreement. Due to Petco's refusal to produce Plaintiff's employment and personnel records,
13 including a copy of any arbitration agreement, Petco should be precluded from enforcing any
14 arbitration agreement, should one exist.

15 50. Plaintiff alleges that Petco had, and continues to have, a policy, practice, procedure,
16 guideline, and/or culture of furnishing wage statements to Petco Employees that do not accurately
17 reflect the items required by Labor Code section 226(a) including, but not limited to, all gross wages
18 earned, total hours worked by the employees, all deductions, all net wages earned, all commissions
19 earned, and all applicable hourly rates. For example, the wage statements furnished by Petco to Petco
20 Employees did not properly reflect the actual number of hours worked and/or the various rates of pay,
21 including overtime, and the gross and net wages earned. Petco also failed to include the applicable rate
22 of pay and the total hours of compensable time worked including, but not limited to, time spent
23 working while clocked out during meal periods and/or the time improperly reduced by Petco to
24 preclude payment of overtime wages.

25 51. Plaintiff contends that Petco had, and continues to have, a policy, practice, procedure,
26 guideline and/or culture of failing to timely pay all wages due and owing upon termination and/or
27 separation of employment. For instance, despite being terminated on February 17, 2020, Petco did not
28 furnish Plaintiff with her final wages until February 19, 2020. Plaintiff's final wages were issued via a

1 pay card without Plaintiff's authorization and did not include all wages due and owed, all commissions
2 earned, and the necessary waiting time penalties. Plaintiff was also not provided with an itemized wage
3 statement for the final wages placed on the pay card, as required by Labor Code section 203(a).

4 52. Plaintiff also asserts that as a result of Petco's failure to timely and appropriately
5 compensate Petco Employees, including Plaintiff, Petco willfully failed to timely pay all wages due
6 and owed to Plaintiff and other former Petco Employees who separated from their employment during
7 the relevant statutory period.

8 53. Plaintiff further alleges that as a result of Petco's failure to timely and appropriately pay
9 all earned commissions to Petco Employees who held the position of pet stylist (i.e. Groomer),
10 performed similar work and/or held similar positions, such as Plaintiff, Petco willfully failed to timely
11 pay all earned commissions to those individuals who separated from their employment during the
12 relevant time period.

13 54. Plaintiff further alleges that Petco has a policy, practice, procedure, guideline, and/or
14 culture of failing to pay the appropriate waiting time penalties to Petco Employees as provided under
15 California law.

16 55. Plaintiff alleges that Petco had, and continues to have, a policy, practice, procedure,
17 guideline, and/or culture of failing to furnish Petco Employees, including Plaintiff, with a safe and
18 healthful place of employment. For example, Plaintiff alleges that she was regularly the only pet stylist
19 on-duty during her shifts, and as a result was left alone with several animals at a time, creating a threat
20 to her health and safety in the workplace. Moreover, Plaintiff and other Petco Employees were unable
21 to access the toilet facilities at all times during their shifts due to Petco's policy, practice, procedure,
22 guideline, and/or culture of understaffing its retail stores and requiring Petco Employees, including
23 Plaintiff, to only use the toilet facilities with the permission of a manager and/or during rest periods.
24 Plaintiff contends that she experienced adverse medical consequences during her employment,
25 including urinary tract infections, due to Petco's improper and unlawful restriction of toilet facility
26 usage.

27 56. Plaintiff contends that Petco had, and continues to have a policy, practice, procedure,
28 guideline, and/or culture of retaliating against Petco Employees, such as Plaintiff, who make good faith

1 complaints regarding their employment rights. For instance, Plaintiff was terminated from her
2 employment after making a good-faith complaint to her manager about unsafe working conditions as a
3 result of being left alone with multiple animals; not regularly receiving legally compliant meal and/or
4 rest periods because she was overbooked with appointments; her inability to use the toilet facilities;
5 and not receiving a promotion.

6 57. On April 7, 2020, Plaintiff submitted written notice to the California Labor and
7 Workforce Development Agency (“LWDA”) and Petco informing them of Petco’s alleged violations
8 of the Labor Code under the PAGA (codified in Labor Code sections 2698 *et seq.*), including the facts
9 and theories to support each violation. A true and correct copy of the April 7, 2020, written notice is
10 attached hereto as **Exhibit 1** and is incorporated herein by reference. Plaintiff submitted an amended
11 written notice to the LWDA and Petco on July 27, 2020, informing them of Petco’s additional alleged
12 violations of the Labor Code under the PAGA, including the facts and theories to support each
13 violation. A true and correct copy of the July 27, 2020 amended written notice is attached hereto as
14 **Exhibit 2** and is incorporated herein by reference.

15 58. The LWDA had 65 days to provide notice of whether it intended to investigate the
16 alleged violations. To date, the LWDA has not provided notice of whether it intends to investigate the
17 alleged violations of the Labor Code. Pursuant to the PAGA, Plaintiff has the right to pursue, and does
18 so pursue, the asserted claims in a representative action in her representative capacity on behalf of
19 herself, all other Petco Employees, the general public and the state of California as permitted by Labor
20 Code section 2699.3.

21 59. Plaintiff further believes that additional violations may be discovered and therefore
22 reserves her right to allege additional violations of the law as investigation and discovery warrants. In
23 the event Plaintiff discovers additional violations, Plaintiff will seek to amend the operative complaint
24 as necessary.

25 **CLASS DEFINITIONS**

26 60. Plaintiff seeks to represent the following Classes, which are defined as:

27 **The Non-Exempt Class**

28 All current or former non-exempt employees of Defendants in California
during the period commencing on the date that is within four years prior

to the filing of this Complaint through and including the last date of trial (hereinafter the “Class Period”). To the extent that California Rules of Court, Appendix I, Emergency Rule 9 and/or equitable tolling operates to toll the claims by the class against Defendants, the time period should be adjusted accordingly.

The Groomer Class

All current or former non-exempt employees of Defendants in California who worked as a Pet Stylist (i.e. Groomer) and/or who performed similar work and/or held similar positions at any time during the period commencing on the date that is within four years prior to the filing of this Complaint through and including the last date of trial (hereinafter the “Class Period”). To the extent that California Rules of Court, Appendix I, Emergency Rule 9 and/or equitable tolling operates to toll the claims by the class against Defendants, the time period should be adjusted accordingly.

61. Plaintiff also seeks to represent the following Sub-classes, which are defined as:

The Non-Exempt Waiting Time Penalties Sub-class

All current or former non-exempt employees of Defendants in California during the period commencing on the date that is within three years prior to the filing of this Complaint through and including the last date of trial. To the extent that California Rules of Court, Appendix I, Emergency Rule 9 and/or equitable tolling operates to toll the claims by the sub-class against Defendants, the time period should be adjusted accordingly.

The Groomer Waiting Time Penalties Sub-class

All current or former non-exempt employees of Defendant in California who worked as a Pet Stylist (i.e. Groomer) and/or who performed similar work and/or held similar positions during the period commencing on the date that is within three years prior to the filing of this Complaint through and including the last date of trial. To the extent that California Rules of Court, Appendix I, Emergency Rule 9 and/or equitable tolling operates to toll the claims by the sub-class against Defendants, the time period should be adjusted accordingly.

62. Members of each class and/or sub-class are all “employees” as the term is used in the Labor Code and the IWC Wage Orders regulating wages, hours, and working conditions in the state of California.

63. A more precise definition of the classes and/or sub-classes may be determined after further investigation and discovery. Plaintiff reserves her right to redefine the class and/or create sub-classes at any time prior to the court’s order on Plaintiff’s Motion for Class Certification as provided by law. (Cal. Rules Ct., R. 3.765(b).)

CLASS ALLEGATIONS

64. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all paragraphs of this Complaint.

1 65. Plaintiff brings this action on behalf of herself and on behalf of all persons within the
2 class(es) defined herein.

3 66. This class action meets the statutory prerequisites for the maintenance of a class action,
4 as set forth in Code of Civil Procedure section 382 and California Civil Code (“Civil Code”) section
5 1781, in that:

- 6 a. The persons who comprise the class(es) are so numerous that the joinder of all
7 such persons is impracticable and the disposition of their claims as a class will
8 benefit the parties and the Court;
- 9 b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that
10 are raised in this Complaint are common to the class(es) and will apply
11 uniformly to every member of the class, and as a practical matter, be dispositive
12 of the interests of the other members not party to the adjudication;
- 13 c. The parties opposing the class(es) have acted or have refused to act on grounds
14 generally applicable to the class, thereby making final injunctive relief or
15 declaratory relief appropriate with respect to the class as a whole; and
- 16 d. Common questions of law and fact exist as to the members of the class(es) and
17 predominate over any question affecting only individual members, and a class
18 action is superior to other available methods for the fair and efficient
19 adjudication of the controversy, including consideration of:
 - 20 i. The interests of class members in individually controlling the
21 prosecution or defense of separate actions;
 - 22 ii. The extent and nature of any litigation concerning the controversy
23 already commenced by or against members of the class;
 - 24 iii. The desirability or undesirability of concentrating the litigation of the
25 claims in this particular forum; and
 - 26 iv. The likely difficulties in the managing a class action.

27 67. The Court should permit this action to be maintained as a class action pursuant to Code
28 of Civil Procedure 382 and Civil Code section 1781 because:

- 1 a. Questions of law and fact common to the class(es) are substantially similar and
2 predominate over any questions affecting only individual members;
3 b. A class action is superior to any other available method for the fair and efficient
4 adjudication of class members' claims;
5 c. The members of the class are so numerous that it is impractical to bring all class
6 members before the Court;
7 d. Plaintiff's claims are typical of the claims of the class(es);
8 e. Class members will not be able to obtain effective and economic legal redress
9 unless the action is maintained as a class action;
10 f. There is a community of interest in obtaining appropriate legal and equitable
11 relief for the common law and statutory violations and other improprieties
12 alleged, and in obtaining adequate compensation for the damages that
13 Defendants' actions have inflicted upon the class;
14 g. Plaintiff can fairly and adequately protect the interests of the class;
15 h. There is a community of interest in ensuring that the combined assets and
16 available insurance of Defendants are sufficient to adequately compensate the
17 members of the class for the injuries sustained; and
18 i. Defendants have acted or refused to act on grounds generally applicable to the
19 class, thereby making final injunctive relief appropriate with respect to the class
20 as a whole.

21 **CAUSES OF ACTION**

22 **FIRST CAUSE OF ACTION**

23 **(By Plaintiff Individually and Behalf of the Classes Against Defendant and Does 1-50)**

24 **FAILURE TO PROVIDE LEGALLY COMPLIANT MEAL PERIODS**

25 **OR COMPENSATION IN LIEU THEREOF**

26 **[Labor Code §§ 204, 226.7, 512, and the "Meal Periods" Section of IWC Wage Order No. 7-2001]**

27 68. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all
28 paragraphs of this Complaint.

1 69. Labor Code section 512(a) mandates, “[a]n employer may not employ an employee for
2 a work period of more than five hours per day without providing the employee with a meal period of
3 not less than 30 minutes” and “[a]n employer may not employ an employee for a work period of more
4 than 10 hours per day without providing the employee with a second meal period of not less than 30
5 minutes.”

6 70. The “Meal Periods” section of IWC Wage Order No. 7-2001 provides, in pertinent part,
7 “[n]o employer shall employ any person for a work period of more than
8 five (5) hours without a meal period of not less than 30 minutes, except
9 that when a work period of not more than six (6) hours will complete the
day’s work the meal period may be waived by mutual consent of the
employer and the employee.”

10 Furthermore, “[i]f an employer fails to provide an employee a meal period in accordance with the
11 applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the
12 employee’s regular rate of compensation for each workday that the meal period is not provided.”

13 71. The “Meal Periods” section of IWC Wage Order No. 7-2001 also states,
14 “[u]nless the employee is relieved of all duty during a 30 minute meal
15 period, the meal period shall be considered an ‘on duty’ meal period and
16 counted as time worked. An ‘on duty’ meal period shall be permitted only
17 when the nature of the work prevents an employee from being relieved of
all duty and when by written agreement between the parties an on-the-job
meal period is agreed to. The written agreement shall state that the employee
may, in writing, revoke the agreement at any time.”

18 72. Labor Code section 226.7(b) states, “[a]n employer shall not require an employee to
19 work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable
20 regulation, standard, or order of the Industrial Welfare Commission...” Labor Code section 226.7(c)
21 further provides,

22 “[i]f an employer fails to provide an employee a meal or rest or recovery
23 period in accordance with a state law... the employer shall pay the
24 employee one additional hour of pay at the employee’s regular rate of
compensation for each workday that the meal or rest or recovery period is
not provided.”

25 73. A meal period generally comports with the requirements under California law if the
26 employee (1) has at least 30 minutes uninterrupted, (2) is free to leave the premises, and (3) is relieved
27 of all duty for the entire period. (See *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th
28 1004, 1036 [citing DLSE Opn. Letter No. 1996.07.12 (July 12, 1996) p. 1].) Additionally, “an

1 employer may not undermine formal policy of providing meal breaks by pressuring employees to
2 perform their duties in ways that omit breaks.” (*Id.* at 1040 [citations omitted].)

3 74. Plaintiff contends that Petco did not, and does not have a policy, practice, procedure,
4 guideline and/or culture of providing all Petco Employees with the opportunity to take an
5 uninterrupted, thirty (30) minute off-duty meal period before the end of their fifth (5th) hour of work
6 when they worked five (5) or more hours, and a second (2nd) uninterrupted, thirty (30) minute off-duty
7 meal period when they worked more than ten (10) hours in a day.

8 75. Plaintiff asserts that Petco does not, and did not, have a policy, practice, procedure,
9 guideline and/or culture of obtaining the consent necessary to waive a meal period.

10 76. Plaintiff alleges that she and other Petco Employees did not typically receive legally
11 compliant meal periods due to Petco’s policy, practice, procedure, guideline and/or culture of severely
12 understaffing its retail stores and/or grooming salons, failing to provide adequate coverage for its
13 employees, overbooking Petco Employees with appointments, and directing, pressuring and/or
14 coercing Petco Employees to prioritize customer service and other work duties over taking legally
15 compliant meal periods. As a result, Plaintiff and other Petco Employees were regularly required to
16 work through their meal periods, experienced late and interrupted meal periods, and/or were not
17 provided with any meal periods at all.

18 77. Plaintiff asserts that Petco knew or should have known that Petco Employees were not
19 provided with legally compliant meal periods, as Petco regularly understaffed its retail stores; directed,
20 pressured and/or coerced Petco Employees, including Plaintiff, to clock out for their meal periods but
21 mandated them to continue working; and unlawfully altered Plaintiff’s and other Petco Employees’
22 time records to show that compliant meal periods were taken when, in fact, Petco Employees received
23 meal periods that were less than thirty (30) minutes and/or not free from work duties.

24 78. Furthermore, Plaintiff made a verbal complaint to Petco regarding her inability to take
25 uninterrupted, off-duty thirty (30) minute meal periods before the end of her fifth (5th) hour of work as
26 a result of Petco overbooking Plaintiff with appointments.

27 79. Petco also failed to pay the premium wage required by California law to Plaintiff and
28 other Petco Employees for all non-compliant meal periods.

80. Petco's unlawful conduct caused Plaintiff and other Petco Employees to suffer, and current Petco Employees will continue to suffer, damages in an amount which is presently unknown, but which exceeds the jurisdictional limits of this Court and which will be ascertained according to proof at trial.

81. Pursuant to Labor Code section 226.7(c) and IWC Order No. 7-2001, Plaintiff and other Petco Employees are entitled to, and seek to recover the full amount of unpaid premium wages for non-compliant meal periods.

82. Pursuant to Labor Code section 218.6, Plaintiff and other Petco Employees are entitled to, and seek to recover prejudgment interest on the amount of premium wages owed.

83. Plaintiff, on behalf of herself and other Petco Employees, is entitled to, and seeks recovery of reasonable attorneys' fees and costs as permitted by Labor Code section 218.5 and Code of Civil Procedure section 1021.5.

84. Plaintiff, on behalf of herself and other Petco Employees, requests further relief as described in the below prayer.

SECOND CAUSE OF ACTION

(By Plaintiff Individually and Behalf of the Classes Against Defendant and Does 1-50)

FAILURE TO PROVIDE LEGALLY COMPLIANT REST PERIODS

OR COMPENSATION IN LIEU THEREOF

[Labor Code §§ 204, 226.7 and the “Rest Periods” Section of IWC Wage Order No. 7-2001]

85. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all paragraphs of this Complaint.

86. The “Rest Periods” section of IWC Wage Order No. 7-2001 states,

“[e]very employer shall authorize and permit employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.”

87. Unless an employer relieves its employees of any and all work-related duties and also relinquishes all control over how its employees spent their time during rest periods, the employer has

1 not authorized and permitted lawful off-duty rest periods. (*Augustus v. ABM Security Services, Inc.*
2 (2016) 2 Cal.5th 267, 269.)

3 88. The “Rest Periods” section of IWC Wage Order No. 7-2001 further provides, “[i]f an
4 employer fails to provide an employee a rest period in accordance with the applicable provisions of
5 this order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of
6 compensation for each workday that the rest period is not provided.”

7 89. Labor Code section 226.7(b) states, “[a]n employer shall not require an employee to
8 work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable
9 regulation, standard, or order of the Industrial Welfare Commission...” Labor Code section 226.7(c)
10 further provides,

11 “[i]f an employer fails to provide an employee a meal or rest or recovery
12 period in accordance with a state law... the employer shall pay the
13 employee one additional hour of pay at the employee’s regular rate of
14 compensation for each workday that the meal or rest or recovery period is
15 not provided.”

16 90. Petco, as described herein, had, and continues to have a policy, practice, procedure,
17 guideline and/or culture of severely understaffing its retail stores, including the grooming salons,
18 failing to provide adequate coverage for its employees, overbooking Plaintiff and other Petco
19 Employees who held the position of pet stylist (i.e. Groomer), performed similar work and/or held
20 similar positions with appointments, and requiring Petco Employees to prioritize customer service and
21 other work duties over taking legally compliant rest periods.

22 91. Plaintiff alleges Petco did not, and does not, have a policy, practice, procedure,
23 guideline and/or culture of authorizing and permitting Plaintiff and other Petco Employees to take
24 timely, uninterrupted, off-duty rest periods that were at least ten (10) minutes in length for every four
25 (4) hours worked.

26 92. Plaintiff further contends that she and other Petco Employees were regularly instructed,
27 directed, pressured, compelled and/or otherwise coerced by Petco to engage in work during their rest
28 periods to provide customer service and complete work duties, including, but not limited to, pet
grooming services. As a result, Plaintiff and other Petco Employees rarely, if ever, received legally
compliant rest periods.

93. Plaintiff believes that Petco knew or should have known that Petco Employees were not provided with legally compliant rest periods, as Petco regularly understaffed its stores; only scheduled one pet stylist to be on-duty during a given shift; and overbooked Plaintiff and other Petco Employees with grooming appointments, which prevented them from taking rest periods. Moreover, Plaintiff made a verbal complaint to Petco about receiving non-compliant rest periods.

94. Petco failed to pay Plaintiff and other Petco Employees the premium wage required by California law for all non-compliant rest periods.

95. Due to Petco's unlawful conduct, Plaintiff and other Petco Employees have suffered, and will continue to suffer, damages in an amount which is presently unknown, but which exceeds the jurisdictional limits of this Court and which will be ascertained according to proof at trial.

96. According to Labor Code section 226.7(c) and IWC Wage Order No. 7-2001, Plaintiff and other Petco Employees are entitled to, and seek to recover the full amount of unpaid premium wages for non-compliant rest periods.

97. Pursuant to Labor Code section 218.6, Plaintiff and other Petco Employees are entitled to, and seek to recover prejudgment interest on the amount of premium wages owed.

98. Plaintiff, on behalf of herself and other Petco Employees, is entitled to, and seeks to recover reasonable attorneys' fees and costs as provided by Labor Code section 218.5 and Code of Civil Procedure section 1021.5.

99. Plaintiff, on behalf of herself and other Petco Employees, requests further relief as described in the below prayer.

THIRD CAUSE OF ACTION

(By Plaintiff Individually and Behalf of the Classes Against Defendant and Does 1-50)

FAILURE TO TIMELY PAY MINIMUM, REGULAR, AND/OR OVERTIME WAGES

[Labor Code §§ 204, 210, 510, 1194, 1197, 1197.1, 1198, 1199, and the “Minimum Wages” and “Hours and Days of Work” Sections of IWC Wage Order No. 7-2001]

100. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all paragraphs of this Complaint.

1 101. Labor Code section 204 establishes an employee’s fundamental right in the state of
2 California to be paid wages in a timely manner for their work. Labor Code section 204(a) states in
3 pertinent part, “[a]ll wages...earned by any person in any employment are due and payable twice
4 during each calendar month, on days designated in advance by the employer as the regular paydays.”
5 Furthermore, Labor Code section 204(b)(1) states, “all wages earned for labor in excess of the normal
6 work period shall be paid no later than the payday for the next regular payroll period.”

7 102. Labor Code section 1197 states, “[t]he minimum wage for employees fixed by the
8 commission is the minimum wage to be paid to employees, and the payment of a less wage than the
9 minimum so fixed is unlawful.”

10 103. Labor Code section 1197.1 further provides,

11 “[a]ny employer or other person acting either individually or as an officer,
12 agent, or employee of another person, who pays or causes to be paid to any
13 employee a wage less than the minimum fixed by an applicable state or local
14 law or by an order of the commission shall be subject to a civil penalty,
restitution of wages, liquidated damages payable to the employee, and any
applicable penalties imposed pursuant to Section 203...”

15 104. California law does not permit an employer to pay “less than the applicable minimum
16 wage for all hours worked in the payroll period, whether the remunerations is measured by time, piece,
17 commission, or otherwise.” (*Gonzalez v. Downtown LA Motors, LP* (2013) 215 Cal.App.4th 36, 44.)

18 105. Labor Code section 1198 mandates,

19 “[t]he maximum hours of work and the standard conditions of labor fixed
20 by the commission shall be the maximum hours of work and the standard
21 conditions of labor for employees. The employment of any employee for
longer hours than those fixed by the order or under conditions of labor
prohibited by the order is unlawful.”

22 Labor Code section 1199 imposes “a fine of not less than one hundred dollars (\$100)” for any
23 employer who violates the provisions set forth in Labor Code section 1198.

24 106. The “Minimum Wages” section of IWC Wage Order No. 7-2001 also states that,
25 “[e]very employer shall pay to each employee, on the established payday for the period involved, not
26 less than the applicable minimum wage for all hours worked in the payroll period, whether the
remuneration is measured by time, piece, commission, or otherwise.”

27 107. Codifying the right to overtime compensation, Labor Code section 510 provides,
28

1 “[e]ight hours of labor constitutes a day’s work. Any work in excess of eight
2 hours in one workday and any work in excess of 40 hours in any one
3 workweek and the first eight hours worked on the seventh day of work in
4 any one workweek shall be compensated at the rate of no less than one and
5 one-half times the regular rate of pay for an employee. Any work in excess
6 of 12 hours in one day shall be compensated at the rate of no less than twice
7 the regular rate of pay for an employee. In addition, any work in excess of
8 eight hours on any seventh day of a workweek shall be compensated at the
9 rate of no less than twice the regular rate of pay of an employee.”

10 108. The “Hours and Days of Work” and “Minimum Wages” sections of the IWC Wage
11 Order No. 7-2001 mandate the same requirements as Labor Code section 510.

12 109. An employee may not waive his or her right to overtime compensation and any
13 agreement by the employee to accept less than the statutorily required rate is unenforceable as a matter
14 of law. (*Early v. Superior Court* (2000) 79 Cal.App.4th 1420, 1430.)

15 110. Labor Code section 210 provides that, “every person who fails to pay the wages of an
16 employee as provided in Section...204...shall be subject to a civil penalty” of \$100 for an initial
17 violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation.”

18 111. Labor Code section 1194(a) mandates,

19 “...any employee receiving less than the legal minimum wage or the legal
20 overtime compensation applicable to the employee is entitled to recover
21 in a civil action the unpaid balance of the full amount of this minimum
22 wage or overtime compensation, including interest thereon, reasonable
23 attorney’s fees, and costs of suit.”

24 Liquidated damages in an amount equal to the minimum wages unlawfully unpaid and interest thereon
25 are provided for under Labor Code section 1194.2.

26 112. Plaintiff alleges that Petco had, and continues to have a policy, practice, procedure,
27 guideline, and/or culture of not timely compensating Plaintiff and other Petco Employees minimum,
28 regular, and/or overtime wages for all the time spent working for and under the control of Petco. For
example, Plaintiff and other Petco Employees were regularly directed, pressured, compelled, and/or
otherwise coerced to perform work duties, such as assisting customers, while clocked out during their
meal periods. Moreover, Petco unlawfully altered Plaintiff’s and other Petco Employees’ time records
to reflect a legally compliant meal period was taken, thereby preventing Petco Employees from
receiving compensation for the time they spent working through their meal periods.

113. Plaintiff further alleges that Petco had, and continues to have a policy, practice,

1 procedure, guideline, and/or culture of unlawfully shaving the time worked by Petco Employees,
2 including Plaintiff, to preclude the payment of overtime compensation. As a result, Petco did not
3 timely pay Plaintiff and other Petco Employees all minimum, regular, and overtime wages when they
4 worked in excess of eight (8) hours in a day and/or forty (40) hours in a workweek.

5 114. Additionally, Plaintiff asserts that Petco had, and continues to have, a policy, practice,
6 procedure, guideline and/or culture of failing to consider commissions, other non-discretionary
7 bonuses or performance pay, when calculating each Groomer Class Member's respective overtime rate
8 of pay. Consequently, Petco failed to timely pay Plaintiff and all other members of the Groomer Class
9 the appropriate overtime wages owed to them.

10 115. By virtue of Petco's unlawful failure to compensate Plaintiff and other Petco Employees
11 for their time worked, Petco Employees have suffered, and will continue to suffer, damages in amounts
12 which are presently unknown, but which exceed the jurisdictional limits of this Court and which will
13 be ascertained according to proof at trial.

14 116. Having received less than the legal minimum wage and/or applicable rate of overtime
15 compensation, Plaintiff and other Petco Employees are entitled to, and now seek to recover, all wages
16 and penalties owed, including penalties available under Labor Code sections 210 and 558, as well as
17 interest and reasonable attorneys' fees and costs pursuant to Labor Code sections 218.5 and 1194 and
18 Code of Civil Procedure section 1021.5.

19 117. Plaintiff, on behalf of herself and other Petco Employees, requests further relief as
20 described in the below prayer.

21 **FOURTH CAUSE OF ACTION**

22 **(By Plaintiff Individually and Behalf of the Groomer Class Against Defendant and Does 1-50)**

23 **FAILURE TO TIMELY PAY ALL EARNED COMMISSIONS**

24 **[Labor Code §§ 200, 204, and 210 and the "Minimum Wages" Section of IWC Wage Order No. 7-2001]**

25 118. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all
26 paragraphs of this Complaint.

27 119. Labor Code section 200(a) defines "wages" to include "all amounts for labor performed
28 by employees...whether the amount is fixed or ascertained by the standard of time...commission basis,

1 or other method of calculation.” The term “labor” is further defined in subsection (b) to include “labor,
2 work, or service whether rendered or performed under contract, subcontract, partnership...or other
3 agreement if the labor...is performed personally by the person demanding payment.”

4 120. Labor Code section 204(a) states, in pertinent part, “[a]ll wages...earned by any person
5 in any employment are due and payable twice during each calendar month, on days designated in
6 advance by the employer as the regular paydays.” Furthermore, Labor Code section 204(b)(1) states,
7 “all wages earned for labor in excess of the normal work period shall be paid no later than the payday
8 for the next regular payroll period.”

9 121. The “Minimum Wages” section of IWC Wage Order No. 7-2001 also states that
10 “[e]very employer shall pay to each employee, on the established payday for the period involved, not
11 less than the applicable minimum wage for all hours worked in the payroll period, whether the
12 remuneration is measured by time, piece, commission, or otherwise.”

13 122. Labor Code section 210 mandates that, “... every person who fails to pay the wages of
14 an employee as provided in Sections...204...shall be subject to a civil penalty” of \$100 for an initial
15 violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation.

16 123. Plaintiff alleges that Petco had, and continues to have, a policy, practice, procedure,
17 guideline and/or culture of failing to timely and appropriately compensate members of the Groomer
18 Class, including Plaintiff, all commissions earned for selling products and/or services. Accordingly,
19 Petco violated Labor Code sections 200, 204, and 210.

20 124. As a result of Petco’s unlawful failure to timely pay Plaintiff and other Groomers all
21 commission wages, Groomers have suffered, and will continue to suffer, damages in amounts which
22 are presently unknown, but which exceed the jurisdictional limits of this Court and which will be
23 ascertained according to proof at trial.

24 125. Plaintiff and other members of the Groomer Class are entitled to, and now seek to
25 recover, all wages and penalties owed, including penalties available under Labor Code section 210, as
26 well as interest and reasonable attorneys’ fees and costs pursuant to Labor Code section 218.5 and
27 Code of Civil Procedure section 1021.5.

1 126. Plaintiff, on behalf of herself and other members of the Groomer Class, requests further
2 relief as described in the below prayer.

3 **FIFTH CAUSE OF ACTION**

4 **(By Plaintiff Individually and Behalf of the Classes Against Defendant and Does 1-50)**

5 **FAILURE TO MAKE PAYMENT OF WAGES IN FORM NEGOTIABLE**

6 **AND PAYABLE IN CASH**

7 **[Labor Code §§ 212, 213 and 225.5]**

8 127. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all
9 paragraphs of this Complaint.

10 128. Labor Code section 212 mandates,

11 “[n]o person, or agent or officer thereof, shall issue in payment of wages
12 due, or to become due, or as an advance on wages to be earned: (1) Any
13 order, check, draft, note, memorandum, or other acknowledgment of
indebtedness, unless it is negotiable and payable in cash, on demand,
without discount, at some established place of business in the state ...”

14 129. Labor Code section 213 further provides,

15 “[n]othing contained in Section 212 shall: ...(d) Prohibit an employer
16 from depositing wages due or to become due or an advance on wages to
17 be earned in an account in any bank, savings and loan association, or credit
union of the employee’s choice with a place of business located in this
state, provided that the employee has voluntarily authorized that deposit.”

18 130. An employee must be fully informed of payroll debit card program and agree to
19 participate in the alternative method of compensation. (See *Holak v. Kmart Corp.* (E.D. Cal. Dec. 11,
20 2012) 2020 U.S. Dist. LEXIS 176331, *17; DLSE Opn. Letter No. 2008.07.07 (July 7, 2008) p. 7.)

21 131. Labor Code section 225.5 imposes a civil penalty of \$100 for each initial violation and
22 \$200 plus 25% of the amount unlawfully withheld for a subsequent violation for any “...person who
23 unlawfully withholds wages due any employee in violation of Section ...212.”

24 132. Plaintiff contends that Petco did not, and does not have a policy, practice, procedure,
25 guideline and/or culture of paying Plaintiff and other Petco Employees their wages in a form
26 negotiable and payable in cash, on demand, and without discount. Instead, Petco issued wages,
27 including their last payment, to Petco Employees, including Plaintiff, via a pay card without their prior
28 authorization.

1 133. Plaintiff and other Petco Employees incurred various fees as a result of using the pay
2 card, including fees when withdrawing card funds from ATMs and checking the card balance.

3 134. Due to Plaintiff's unlawful conduct described herein, Plaintiff and other Petco
4 Employees have suffered, and will continue to suffer, damages in an amount which is presently
5 unknown, but which exceeds the jurisdictional limits of this Court and will be ascertained according to
6 proof at trial.

7 135. Plaintiff, on behalf of herself and other Petco Employees, is entitled to, and seeks to
8 recover all wages and penalties owed, including penalties available under Labor Code section 225.5, as
9 well as reasonable attorneys' fees and costs as provided by Labor Code section 218.5 and Code of
10 Civil Procedure section 1021.5.

11 136. Plaintiff, on behalf of herself and other Petco Employees, requests further relief as
12 described in the below prayer.

13 **SIXTH CAUSE OF ACTION**

14 **(By Plaintiff Individually and Behalf of the Classes Against Defendant and Does 1-50)**

15 **FAILURE TO MAINTAIN ACCURATE RECORDS**

16 **[Labor Code §§ 226, 1174, 1174.5, and the "Records" Section of IWC Wage Order No. 7-2001]**

17 137. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all
18 paragraphs of this Complaint.

19 138. Pursuant to Labor Code section 226(a), an employer must keep a copy of the wage
20 statements furnished and the record of deductions on file for at least three years.

21 139. Labor Code section 1174(d) further mandates, in pertinent part, "[e]very person
22 employing labor in this state shall... [k]eep, at a central location in the state or at the plants or
23 establishments at which employees are employed, payroll records showing the hours worked daily by
24 and the wages paid to, ..., employees employed at the respective plants or establishments."

25 140. The "Records" section of IWC Wage Order No. 7-2001 states that every employer shall
26 keep accurate information with respect to each one of its employees, including time records showing
27 when the employee begins and ends each work period, meal periods, total daily hours worked, total
28 wages paid each payroll period, and total hours worked in the payroll period and applicable rates of

1 pay.

2 141. Labor Code section 226(b) states that employers, “shall afford current and former
3 employees the right to inspect or receive a copy of records pertaining to their employment, upon
4 reasonable request to the employer.” Labor Code section 226(c) further provides,

5 “[a]n employer who receives a written or oral request to inspect or receive
6 a copy of records pursuant to subdivision (b) pertaining to a current or
7 former employee shall comply with the request as soon as practicable, but
no later than 21 calendar days from the date of the request. A violation of
this subdivision is an infraction.”

8 142. Labor Code section 1174.5 imposes a civil penalty of \$500 for an employer’s failure to
9 maintain accurate and complete records. This civil penalty is in addition to the civil penalty of \$100
10 per pay period, per aggrieved employee that would be imposed pursuant to Labor Code section 2699
11 for a violation of Labor Code section 1174(d).

12 143. Labor Code section 226.7(e)(1) further provides,

13 “[a]n employee suffering injury as a result of a knowing and intentional
14 failure by an employer to comply with subdivision (a) [of Labor Code §
226] is entitled to recover the greater of all actual damages or fifty dollars
15 (\$50) for the initial pay period in which a violation occurs and one hundred
16 dollars (\$100) per employee for each violation in a subsequent pay period,
not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is
entitled to an award of costs and reasonable attorney’s fees.”

17 144. Plaintiff alleges that Petco, as described herein, had, and continues to have a policy,
18 practice, procedure, guideline, and/or culture of intentionally and willfully failing to maintain accurate
19 payroll and/or employee records that properly show the total number of hours worked, the proper
20 beginning and end of each work period, the beginning and end of each meal period, all earned
21 commissions, and all wages earned and paid to Plaintiff and other Petco Employees.

22 145. Plaintiff and other Petco Employees have suffered, and continue to suffer, injuries and
23 damages as a consequence of Petco’s deliberate failure to maintain accurate records as required by the
24 Labor Code. Specifically, Plaintiff and other Petco Employees were denied their legal right and
25 protected interest in having accurate and complete payroll records available to them.

26 146. Plaintiff and other Petco Employees are entitled to, and seek damages, as outlined in
27 Labor Code section 226.7(e)(1).

28 147. Plaintiff, on behalf of herself and other Petco Employees, is entitled to, and seeks to

1 recover reasonable attorneys' fees and costs as provided by Code of Civil Procedure section 1021.5.

2 148. Plaintiff, on behalf of herself and other Petco Employees, requests further relief as
3 described in the below prayer.

4 **SEVENTH CAUSE OF ACTION**

5 **(By Plaintiff Individually and Behalf of the Classes Against Defendant and Does 1-50)**

6 **FAILURE TO PROVIDE EMPLOYMENT AND PERSONNEL RECORDS UPON REQUEST**

7 **[Labor Code §§ 226(b), 226(c), 226(f), 1198.5 and 1198.5(k)]**

8 149. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all
9 paragraphs of this Complaint.

10 150. Labor Code section 226(b) mandates that employers, "shall afford current and former
11 employees the right to inspect or receive a copy of records pertaining to their employment, upon
12 reasonable request to the employer."

13 151. Labor Code section 226(c) further provides,

14 "[a]n employer who receives a written or oral request to inspect or receive
15 a copy of records pursuant to subdivision (b) pertaining to a current or
16 former employee shall comply with the request as soon as practicable, but
no later than 21 calendar days from the date of the request. A violation of
this subdivision is an infraction."

17 152. Labor Code section 1198.5 grants every current and former employee the right to
18 receive a copy of the personnel records that the employer maintains. Labor Code section 1198.5
19 mandates that the contents of the personnel records be available for inspection within, but no later than
20 30 days from the date the employer receives the written request.

21 153. Labor Code section 226(f) imposes a penalty on employers for violations of Labor Code
22 section 226(c). Labor Code section 226(f) states that "[a] failure by an employer to permit a current or
23 former employee to inspect or receive a copy of records within the time set forth in subdivision (c)
24 entitles the current or former employee or the Labor Commissioner to recover a seven-hundred-fifty-
25 dollar (\$750) penalty from the employer."

26 154. An employer who fails to provide a copy of the records requested is also subject to a
27 penalty of \$750 as outlined in Labor Code § 1198.5(k), which states,
28

1 “[i]f an employer fails to permit a current or former employee, or his or her
2 representative, to inspect or copy personnel records within the times
3 specified in this section, or times agreed to by mutual agreement as provided
4 in this section, the current or former employee or the Labor Commissioner
5 may recover a penalty of seven hundred fifty dollars (\$750) from the
6 employer.”

7 155. Plaintiff alleges that Petco has a policy, practice, procedure, guideline and/or culture of
8 failing to provide her and other Petco Employees with a copy of their employment and personnel
9 records upon request in the time frame prescribed by California law. For instance, Plaintiff sent a
10 written request to Petco to obtain and/or inspect her personnel file and employment records on
11 February 26, 2020. After failing to receive a response from Petco on April 3, 2020, Plaintiff sent a
12 second written request to Petco. After not receiving a response to either of her requests, Plaintiff sent a
13 third written request to Petco on May 5, 2020. Plaintiff has not yet received a copy of her personnel
14 and payroll records, despite requesting a copy of these records from Petco, in writing, more than thirty
15 (30) days ago. Accordingly, Petco has violated Labor Code sections 226(b) and (c) and Labor Code
16 section 1198.5.

17 156. Plaintiff and other Petco Employees have suffered, and continue to suffer, injuries and
18 damages as a consequence of Petco’s deliberate failure to provide employment and personnel records
19 upon request within the time frame required by the Labor Code. Specifically, Plaintiff and other Petco
20 Employees were denied their legal right and protected interest in obtaining and/or inspecting their
21 personnel and employment records.

22 157. Plaintiff and other Petco Employees are entitled to, and seek to recover, penalties
23 pursuant to Labor Code sections 226(f) and 1198.5(k) for violations of Labor Code sections 226(c) and
24 1198.5.

25 158. Plaintiff, on behalf of herself and other Petco Employees, is entitled to, and seeks to
26 recover reasonable attorneys’ fees and costs as provided by Code of Civil Procedure section 1021.5.

27 159. Plaintiff, on behalf of herself and other Petco Employees, requests further relief as
28 described in the below prayer.

///

///

///

1 **EIGHTH CAUSE OF ACTION**

2 **(By Plaintiff Individually and Behalf of the Classes Against Defendant and Does 1-50)**

3 **FAILURE TO FURNISH ACCURATE ITEMIZED WAGE STATEMENTS**

4 **[Labor Code §§ 226 and 226.3, and the “Records” Section of IWC Wage Order No. 7-2001]**

5 160. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all
6 paragraphs of this Complaint.

7 161. Labor Code section 226(a) states, in pertinent part, that every employer shall provide an
8 accurate, itemized wage statement in writing with respect to each of its employees showing: “(1) gross
9 wages earned, (2) total hours worked by the employee, ..., (5) net wages earned, ..., and (9) all
10 applicable hourly rates in effect during the pay period and the corresponding number of hours worked
11 at each hourly rate by the employee.”

12 162. Labor Code section 226(e)(1) further provides,

13 “[a]n employee suffering injury as a result of knowing and intentional
14 failure by an employer to comply with subdivision (a) is entitled to recover
15 the greater of all actual damages or fifty dollars (\$50) for the initial pay
16 period in which a violation occurs and one hundred dollars (\$100) per
employee for each violation in a subsequent pay period, not to exceed an
aggregate penalty of four thousand (\$4,000), and is entitled to an award of
costs and reasonable attorneys’ fees.”

17 163. Labor Code section 226.3 imposes an additional civil penalty on the employer of
18 \$250.00 per employee per violation of Labor Code section 226(a) in an initial citation and \$1,000 per
19 employee for each violation in a subsequent citation.

20 164. According to Labor Code section 266(h), “an employee may also bring an action for
21 injunctive relief to ensure compliance with this section and is entitled to an award of costs and
22 reasonable attorneys’ fees.”

23 165. Petco’s policies, practices, procedures, guidelines and/or culture of inadequately
24 compensating Petco Employees resulted in wage statements that were not properly reflective of all
25 gross wages earned, all deductions, all net wages earned, all commissions earned, and/or all applicable
26 hourly rates and the corresponding number of hours worked at each hourly rate. Additionally, because
27 Petco improperly reduced the hours worked by Petco Employees to preclude the payment of overtime
28 wages and did not permit Petco Employees to record their actual time worked, including, but not

1 limited to, time spent working through meal periods, the total regular and overtime hours worked are
2 inaccurately listed on the wage statements. As a result, Plaintiff and other Petco Employees were
3 unable to readily ascertain from their wage statements whether they were properly compensated.

4 166. Plaintiff further alleges that Petco had, and continues to have, a policy, practice,
5 procedure, guideline and/or culture of failing to issue Petco Employees with accurate itemized wage
6 statements for funds placed on their pay cards. For example, Plaintiff did not receive an itemized wage
7 statement for her final paycheck placed on a pay card, as required by California law.

8 167. Pursuant to California law, Plaintiff and other Petco Employees have suffered injury
9 resulting from Petco's knowing and intentional failure to furnish accurate itemized wage statements.

10 168. Plaintiff, on behalf of herself and other Petco Employees, is entitled to, and seeks to
11 recover, liquidated damages as provided by Labor Code section 226(e).

12 169. Plaintiff and other Petco Employees are entitled to, and seek to recover, civil penalties
13 pursuant to Labor Code section 226.3 for violations of Labor Code section 226(a).

14 170. Furthermore, pursuant to Labor Code section 226(h), Plaintiff and other Petco
15 Employees are entitled to, and therefore seek injunctive relief in order to ensure that Petco complies
16 with Labor Code section 266.

17 171. Plaintiff and other Petco Employees are further entitled to, and seek to recover
18 reasonable attorneys' fees and costs as provided under Labor Code section 266(h) and Code of Civil
19 Procedure section 1021.5.

20 172. Plaintiff, on behalf of herself and other Petco Employees, requests further relief as
21 described in the below prayer.

22 **NINTH CAUSE OF ACTION**

23 **(By Plaintiff Individually and Behalf of the Classes Against Defendant and Does 1-50)**

24 **FAILURE TO TIMELY PAY ALL WAGES DUE AND OWED**

25 **UPON SEPARATION OF EMPLOYMENT**

26 **[Labor Code §§ 201-203 and 210]**

27 173. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all
28 paragraphs of this Complaint.

1 174. Labor Code section 200(a) defines “wages” to include “all amounts for labor performed
2 by employees...whether the amount is fixed or ascertained by the standard of time...commission basis,
3 or other method of calculation.” The term “labor” is further defined in subsection (b) to include “labor,
4 work, or service whether rendered or performed under contract, subcontract, partnership...or other
5 agreement if the labor...is performed personally by the person demanding payment.”

6 175. Labor Code section 201 states, in pertinent part, “[i]f an employer discharges an
7 employee, the wages earned and unpaid at the time of discharge are due and payable immediately.”

8 176. Labor Code section 202 further mandates,

9 “[i]f an employee not having a written contract for a definite period quits
10 his or her employment, his or her wages shall become due and payable not
11 later than 72 hours thereafter, unless the employee has given 72 hours
12 previous notice of his or her intention to quit, in which case the employee
13 is entitled to his or her wages at the time of quitting.”

14 177. Labor Code section 203(a) provides, in pertinent part,

15 “[i]f an employer willfully fails to pay, without abatement or reduction, in
16 accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any
17 wages of an employee who is discharged or who quits, the wages of the
18 employee shall continue as a penalty from the due date thereof at the same
19 rate until paid or until an action therefore is commenced; but the wages
20 shall not continue for more than 30 days.”

21 178. Labor Code section 210 provides that, “every person who fails to pay the wages of an
22 employee as provided in Sections 201.3...shall be subject to a civil penalty” of \$100 for an initial
23 violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation.

24 179. Petco had, and continues to have, a policy, practice, procedure, guideline and/or culture
25 of failing to timely pay all wages due and owing upon termination and/or separation of employment.
26 For instance, despite being terminated on February 17, 2020, Petco did not immediately pay Plaintiff
27 her final wages, but instead furnished Plaintiff with her final paycheck via a pay card on February 19,
28 2020. Plaintiff did not receive an itemized wage statement for the final wages placed on the pay card in
violation of Labor Code section 203(a).

180. Plaintiff further contends that due to Petco’s failure to timely and appropriately
compensate Petco Employees, including Plaintiff, Petco willfully failed to timely pay all wages due

1 and owed to Plaintiff and other former Petco Employees who separated from their employment during
2 the relevant statutory period.

3 181. Plaintiff also alleges that Petco had, and continues to have, a policy, practice, procedure,
4 guideline, and/or culture of failing to pay the appropriate waiting time penalties to Petco Employees as
5 provided under California law.

6 182. Petco knowingly failed to timely and appropriately compensate Plaintiff and other Petco
7 Employees for all minimum, regular, and overtime wages and meal and/or rest period premium wages,
8 as described herein.

9 183. Although Petco no longer employs a number of Petco Employees, including Plaintiff,
10 Petco has yet to pay all wages owed to former Petco Employees, including Plaintiff, as required under
11 California law, as well as the required waiting time penalties.

12 184. As a consequence of Petco's willful and deliberate refusal to render such wages,
13 Plaintiff and other former Petco Employees are entitled to, and thus seek a maximum of thirty (30)
14 days' wages at their daily rate of pay as a waiting time penalty, pursuant to Labor Code section 203.

15 185. Plaintiff, on behalf of herself and other Petco Employees, is also entitled to, and seeks
16 to recover reasonable attorneys' fees and costs as permitted by Labor Code section 218.5 and Code of
17 Civil Procedure section 1021.5.

18 186. Plaintiff, on behalf of herself and other Petco Employees, requests further relief as
19 described in the below prayer.

20 **TENTH CAUSE OF ACTION**

21 **(By Plaintiff Individually and Behalf of the Groomer Class Against Defendant and Does 1-50)**

22 **FAILURE TO TIMELY PAY ALL EARNED COMMISSIONS UPON SEPARATION OF**
23 **EMPLOYMENT**

24 **[Labor Code §§ 201-203 and 210]**

25 187. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all
26 paragraphs of this Complaint.

27 188. Labor Code section 200(a) defines "wages" to include "all amounts for labor performed
28 by employees...whether the amount is fixed or ascertained by the standard of time...commission basis,

1 or other method of calculation.” The term “labor” is further defined in subsection (b) to include “labor,
2 work, or service whether rendered or performed under contract, subcontract, partnership...or other
3 agreement if the labor...is performed personally by the person demanding payment.”

4 189. Labor Code section 201 states, in pertinent part, “[i]f an employer discharges an
5 employee, the wages earned and unpaid at the time of discharge are due and payable immediately.”

6 190. Labor Code section 202 further mandates,

7 “[i]f an employee not having a written contract for a definite period quits
8 his or her employment, his or her wages shall become due and payable not
9 later than 72 hours thereafter, unless the employee has given 72 hours
previous notice of his or her intention to quit, in which case the employee
is entitled to his or her wages at the time of quitting.”

10 191. Labor Code section 203(a) provides, in pertinent part,

11 “[i]f an employer willfully fails to pay, without abatement or reduction, in
12 accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any
13 wages of an employee who is discharged or who quits, the wages of the
14 employee shall continue as a penalty from the due date thereof at the same
rate until paid or until an action therefore is commenced; but the wages
shall not continue for more than 30 days.”

15 192. Labor Code section 210 mandates that, “... every person who fails to pay the wages of
16 an employee as provided in Sections...204...shall be subject to a civil penalty” of \$100 for an initial
violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation.

17 193. Plaintiff contends that Petco had, and continues to have, a policy, practice, procedure,
18 guideline and/or culture of failing to timely pay Plaintiff and other members of the Groomer Class their
19 final earned commissions that were due and owing upon separation of employment. For example,
20 despite being terminated by Petco, Plaintiff has not yet been paid her final earned commissions.

21 194. Due to Petco’s unlawful and deliberate refusal to timely pay earned commissions due
22 and owing upon separation of employment, Plaintiff and other former Groomers are entitled to, and
23 thus seek a maximum of thirty (30) days’ wages at their daily rate of pay as a waiting time penalty,
24 pursuant to Labor Code section 203.

25 195. Plaintiff, on behalf of herself and other members of the Groomer Class, is also entitled
26 to, and now seeks to recover all penalties owed, including penalties available under Labor Code
27
28

1 section 210, as well as interest and reasonable attorneys’ fees and costs as permitted by Labor Code
2 section 218.5 and Code of Civil Procedure section 1021.5.

3 196. Plaintiff, on behalf of herself and other members of the Groomer Class, requests further
4 relief as described in the below prayer.

5 **ELEVENTH CAUSE OF ACTION**

6 **(By Plaintiff Individually and Behalf of the Classes Against Defendant and Does 1-50)**

7 **UNFAIR COMPETITION LAW**

8 **[Bus. & Prof. Code §§ 17200 *et seq.*]**

9 197. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all
10 paragraphs of this Complaint.

11 198. As codified in Bus & Prof. Code sections 17200 *et seq.*, California’s Unfair
12 Competition Law (“UCL”) broadly prohibits “any unlawful, unfair or fraudulent business act or
13 practice.”

14 199. A cause of action may be brought under the UCL if a practice violates some other law.
15 The “unlawful” prong of the UCL effectively deems a violation of the underlying law a per se
16 violation of Bus. & Prof. Code sections 17200 *et seq.* (*Cel-Tech Commc’ns, Inc. v. Los Angeles*
17 *Cellular Tel. Co.* (1999) 20 Cal.4th 163, 180.) Virtually any law or regulation – federal or state,
18 statutory, or common law – can serve as a predicate for a section 17200 “unlawful” violation.
19 (*Farmers Ins. Exch. v. Superior Court* (1992) 2 Cal.4th 377, 383.)

20 200. The “unfair” prong of the UCL does not require a practice to be specifically proscribed
21 by any law. (*Korea Supply Co. v. Lockheed Martin Corp.* (2003) 20 Cal.4th 1134, 1143 [internal
22 citations omitted].) Pursuant to the California Supreme Court, the “unfair standard” is intentionally
23 broad to give maximum discretion to courts in prohibiting new schemes to defraud. (*Cel-Tech*
24 *Commc’ns, Inc., supra*, 20 Cal.4th at 180-81.)

25 201. Under the UCL, a “fraudulent” business act or practice is one where “members of the
26 public are likely to be deceived.” (*Blakemore v. Superior Court* (2005) 129 Cal. App. 4th 36, 49.) A
27 showing of actual deception, reasonable reliance, or damages is not required. (*Ibid.*) The fraudulent
28 prong may be used to attack the deceptive manner in which otherwise lawful contract terms are

presented to an individual. (*Boschma v. Home Loan Ctr., Inc.* (2011) 198 Cal.App.4th 230, 253.) As such, even a true statement may be unlawful under section 17200 if it is “couched in such a manner that is likely to mislead or deceive..., such as by failing to disclose other relevant information.” (*Ibid.*)

202. As discussed herein, Petco’s business practices violate all three prongs of California’s UCL.

Unlawful

203. As described herein, Petco violated the Labor Code by, among other things, refusing to properly compensate Petco Employees for all time worked. Failing to compensate employees for all time worked is a clear violation of California law, and thus a per se violation of the UCL. (*Cel-Tech Commc’ns, Inc., supra*, 20 Cal.4th at 180.) Additionally, Petco violated Labor Code § 2751 by failing to provide members of the Groomer Class, including Plaintiff, with written commission agreements. Petco further failed to compensate Petco Employees premium wages for non-compliant meal and rest periods as provided by California law. Petco’s failure to pay wages in a form negotiable and payable in cash, failure to timely pay wages owed upon termination, failure to furnish accurate itemized wage statements, and failure to maintain accurate records for Petco Employees are also violations of California law. Therefore, Petco has clearly engaged in unlawful business practices pursuant to Bus. & Prof. Code sections 17200 *et seq.*

Unfair

204. Petco’s practices of not permitting Petco Employees to accurately record time worked, unlawfully deducting hours worked by Petco Employees to avoid paying overtime wages, and forcing Petco Employees to clock out for their meal periods and continue working are inherently unfair because Petco knowingly prevents Petco Employees from receiving adequate compensation for all time worked, in violation of California’s policy of prompt payment of wages.

205. Petco’s policy, practice, procedure, guideline and/or culture of failing to provide duty-free meal and rest periods to Petco Employees constitutes an unfair practice because Petco knowingly strips Petco Employees of the rights afforded to them by the Labor Code.

206. Petco also violates the unfair prong of the UCL by failing to pay premium wages to Petco Employees for non-compliant meal and rest periods.

207. Petco's practice of issuing wages to Petco Employees via pay cards is inherently unfair because Petco Employees, including Plaintiff, did not authorize their wages to be paid on a pay card and they incurred multiple fees when using the pay card.

208. Petco's practice of failing to provide Petco Employees with their payroll, personnel and/or employment records upon request is a violation of the unfair prong of the UCL because Petco knowingly denies Petco Employees their legal right and protected interest in having payroll, personnel and/or employment records available to them for inspection. Similarly, failing to provide written agreements explaining how commissions are computed and paid to Plaintiff and members of the Groomer class is unfair because it does not permit members of the Groomer Class to be adequately informed of when, for example, the commission accrues, how the commission is calculated, and when the commission is payable.

209. Petco's practice of improperly restricting Plaintiff's and other Petco Employees' access to toilet facilities during the workday constitutes an unfair practice because Petco knowingly strips Petco Employees of their right to have a safe and healthful place of employment.

210. Petco's retaliation and wrongful adverse employment action taken against Plaintiff because she made a good-faith complaint about unsafe working conditions, not receiving legally compliant meal and rest periods, and not receiving a promotion violates the unfair prong of the UCL because Petco knowingly prevented Plaintiff from exercising her protected rights under the Labor Code.

211. Additionally, Petco's failure to pay Plaintiff and other members of the Groomer Class their final earned commission violates the unfair prong of the UCL because Petco knowingly deprived Groomers, including Plaintiff, of timely compensation of their final earned commissions, in violation of California law.

Fraudulent

212. Petco's practice of shaving the hours worked by Petco Employees to preclude the payment of overtime compensation constitutes a fraudulent business practice as it knowingly and intentionally causes Petco Employees to not timely receive all minimum, regular, and overtime wages owed to them, as mandated by California law.

1 213. Petco's practice of editing Petco Employees' time records to reflect that a compliant
2 meal period was taken, when in fact, Petco Employees were forced by Petco to clock out for their meal
3 periods and continue working, also constitutes a fraudulent business practice because Petco knowingly
4 and intentionally prevented Petco Employees from receiving compensation for all time they spent
5 working for and under the control of Petco.

6 214. Petco's failure to consider commissions when calculating each Groomer Class
7 Member's respective overtime rate of pay constitutes a fraudulent business practice as it knowingly
8 and intentionally causes retail employees to not receive appropriate compensation for hours worked in
9 excess of eight (8) each day and/or forty (40) each workweek.

10 215. Petco's practice of providing Plaintiff and other Petco Employees with inaccurate wage
11 statements constitutes a fraudulent business practice as Plaintiff and other Petco Employees are likely
12 to be, and actually are deceived, as to whether they were paid for all time worked.

13 216. Petco's practice of failing to maintain and/or provide accurate employee and/or payroll
14 records upon request is also a fraudulent business practice as the inaccuracies intentionally misled
15 Petco Employees as to their total hours worked, wages and commissions earned, and signed
16 agreements.

17 217. As a direct and proximate result of Petco's unlawful, unfair and fraudulent business
18 practices, Plaintiff and other Petco Employees have suffered injury-in-fact and have lost wages
19 rightfully owed to them.

20 218. Through its unlawful, unfair and fraudulent conduct, Petco has been unjustly enriched
21 by receiving and continuing to receive benefits and profits at the expense of its Petco Employees.
22 Therefore, pursuant to Bus. & Prof. Code sections 17200 *et seq.*, Petco should be enjoined from this
23 activity and made to disgorge all ill-gotten gains and restore Plaintiff and other Petco Employees the
24 wages wrongfully withheld from them.

25 219. Moreover, the unlawful, unfair and fraudulent conduct alleged herein has continued,
26 and there is no indication that Petco will refrain from such activity in the future, especially as Petco
27 knowingly deters the accurate reporting of time worked. Plaintiff believes and alleges that if Petco is
28 not enjoined from the conduct described herein, Petco will continue to violate California law at the

1 expense of its Petco Employees. Accordingly, Plaintiff requests that the court issue a preliminary and
2 permanent injunction against Petco.

3 220. Plaintiff, on behalf of herself and other Petco Employees, requests further relief as
4 described in the below prayer.

5 **TWELFTH CAUSE OF ACTION**

6 **(By Plaintiff in her Representative Capacity Against Defendant and Does 1-50)**

7 **PRIVATE ATTORNEYS GENERAL ACT OF 2004**

8 **[Labor Code §§ 2698 *et seq.*]**

9 221. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all
10 paragraphs of this Complaint.

11 222. Pursuant to the PAGA, any provision of the Labor Code allowing for a civil penalty to
12 be assessed and collected by the LWDA, or any of its departments, divisions, commissions, boards,
13 agencies, or employees, for a violation of the Labor Code, may be recovered through a civil action
14 brought by an aggrieved employee on behalf of himself or herself and other current or former
15 employees pursuant to the procedures specified in Labor Code section 2699.3.

16 223. All civil penalties recovered are in addition to any other relief provided for under the
17 Labor Code and must be allocated seventy-five percent (75%) to the LWDA and twenty-five percent
18 (25%) to the aggrieved employees pursuant to Labor Code section 2699(i).

19 224. Pursuant to *Arias v. Superior Court* (2009) 46 Cal.4th 969, 975, claims brought under
20 the PAGA are not subject to the requirements for class certification.

21 225. During all, or a portion of, the one-year and sixty-five day period before Plaintiff filed
22 notice of her claims with the LWDA, Petco was Plaintiff's and all other Petco Employee's employer or
23 person(s) acting on behalf of Plaintiff's employer either individually or as an officer, agent, or
24 employee of another person, within the meaning of Labor Code section 1197.1, who paid or caused to
25 be paid to any employee a wage less than the minimum fixed by California state law, and as such, is
26 subject to civil penalties for each underpaid employee, as well as liquidated damages pursuant to Labor
27 Code section 1194.2, and any applicable penalties imposed by Labor Code section 203.

1 226. Plaintiff is an “aggrieved employee” under PAGA, as she was employed by the alleged
2 violator, Petco, within the past year and suffered one or more violations of the Labor Code, and
3 therefore is properly suited to represent the interests of other Petco Employees.

4 227. Plaintiff alleges that all other Petco Employees are also “aggrieved employees” under
5 the PAGA because they were employed by Petco and have experienced one or more of the alleged
6 violations outlined herein.

7 228. Plaintiff has complied with the notice requirements outlined in Labor Code section
8 2699.3 and therefore exhausted her administrative remedies. On April 7, 2020, Plaintiff submitted
9 notice to the LWDA and Petco informing them of Petco’s alleged Labor Code violations pursuant to
10 PAGA. (Exhibit 1.) Plaintiff submitted an amended written notice to the LWDA and Petco on July 27,
11 2020, informing them of Petco’s additional alleged violations of the Labor Code under the PAGA,
12 including the facts and theories to support each violation. (Exhibit 2).

13 229. Under the statute, the LWDA had 65 days to provide notice of whether it intended to
14 investigate the alleged violations. To date, the LWDA has not provided notice of whether it intends to
15 investigate the alleged violations. Plaintiff thus has the right to pursue, and does pursue, her claims
16 under PAGA in a representative capacity pursuant to Labor Code sections 2699 and 2699.3.

17 230. As set forth herein, Petco has committed, and continues to commit, numerous violations
18 for which the Labor Code and IWC Wage Order No. 7-2001 entitles Plaintiff in her representative
19 capacity, to recover civil penalties, on behalf of herself and all other Petco Employees and the general
20 public, as well as attorneys’ fees and costs, against Petco for the alleged violations of the Labor Code,
21 described herein.

22 231. Plaintiff, in her representative capacity, on behalf of herself and all other Petco
23 Employees, is entitled to and thus seeks to recover civil penalties through a representative action based
24 on Petco’s violations of the following Labor Code and/or IWC Wage Order provisions:

- 25 a. Failure to provide the opportunity to take legally compliant meal periods or
26 compensation in lieu thereof in violation of Labor Code sections 204, 226.7, 512
27 and the “Meal Periods” section of IWC Wage Order No. 7-2001;
28

- 1 b. Failure to authorize and permit legally compliant rest periods or compensation
2 in lieu thereof in violation of Labor Code sections 204, 226.7 and the “Rest
3 Periods” section of IWC Wage Order No. 7-2001;
4 c. Failure to timely pay minimum, regular, and/or overtime wages in violation of
5 Labor Code sections 204, 210, 510, 1194, 1197, 1197.1, 1198, 1199 and the
6 “Minimum Wages” and “Hours and Days of Work” sections of IWC Wage
7 Order No. 7-2001;
8 d. Failure to timely pay earned commissions in violation of Labor Code sections
9 200, 204, 210 and the “Minimum Wages” section of IWC Wage Order No. 7-
10 2001;
11 e. Failure to provide written commission agreements in violation of Labor Code
12 section 2571;
13 f. Failure to make payment of wages in a form negotiable and payable in cash, on
14 demand, and without discount in violation of Labor Code sections 212, 213, and
15 225.5;
16 g. Failure to maintain accurate records in violation of Labor Code sections 226,
17 1174, 1174.5 and the “Records” section of IWC Wage Order No. 7-2001;
18 h. Failure to provide employment and personnel records upon request in violation
19 of Labor Code sections 226(b), 226(c), 226(f), 1198 and 1198.5(k);
20 i. Failure to furnish accurate itemized wage statements in violation of Labor Code
21 sections 226, 226.3, and the “Records” section of IWC Wage Order No. 7-2001;
22 j. Failure to timely pay all wages due and owed upon separation of employment, in
23 violation of Labor Code sections 201-203 and 210;
24 k. Failure to timely pay earned commissions upon separation of employment in
25 violation of Labor Code sections 201-203 and 210;
26 l. Failure to maintain a safe and healthful place of employment for employees in
27 violation of Labor Code sections 6311 and 6400 *et seq.*; and
28

1 m. Engaging in retaliation against employees who exercised their rights to complain
2 about unsafe working conditions, not receiving meal and/or rest periods, and/or
3 being passed up for promotions in violation of Labor Code sections 98.6,
4 1102.5, and 6310.

5 232. Labor Code section 98.6(a)(3) imposes a civil penalty, not to exceed \$10,000, per
6 employee for each violation of Labor Code section 98.6. Therefore, Plaintiff and other Petco
7 Employees are entitled to and seek the described civil penalty.

8 233. Labor Code section 210 provides that any person who fails to pay wages as provided in
9 Labor Code sections 201.3, 204, 204(b), 204.1, 204.2, 205, 205.5 and 1197.5 shall be subject to a civil
10 penalty of \$100 for any initial violation for each failure to pay each employee and for each subsequent
11 violation, or any willful or intentional violation \$200 for each failure to pay each employee, plus 25%
12 if the amount unlawfully withheld, in addition to any other penalty. Therefore, Plaintiff and other Petco
13 Employees are entitled to and do seek such civil penalties.

14 234. Labor Code section 225.5 provides that, "...every person who unlawfully withholds
15 wages due any employee in violation of Section 212... shall be subject to a civil penalty" of \$100 for
16 each initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation.
17 Therefore, Plaintiff and other Petco Employees are entitled to and do seek such civil penalties.

18 235. For violations of Labor Code section 226(c), Labor Code section 226(f) permits current
19 or former employees, or the Labor Commissioner, to recover a \$750 penalty from the employer.
20 Therefore, Plaintiff and other Petco Employees are entitled to and do seek the described civil penalty.

21 236. Labor Code section 226.3 imposes a civil penalty of \$250 per employee per violation in
22 an initial citation and \$1,000 per employee for each violation in a subsequent citation for violations of
23 Labor Code section 226(a). Therefore, Plaintiff and other Petco Employees are entitled to and do seek
24 the described civil penalties.

25 237. For violations of Labor Code sections 510 and 512, in addition to any other recovery
26 provided by law, Labor Code section 558 imposes a civil penalty of \$50 per pay period for each
27 underpaid employee for the initial violation and \$100 per pay period for each underpaid employee for
28 each subsequent violation of any section of Labor Code Division 2, Part 2, Chapter 1, or any provision

1 regulating hours and days of work in any order of the IWC. Therefore, Plaintiff and other Petco
2 Employees are entitled to and do seek such civil penalties.

3 238. Labor Code section 1102.5(f) imposes “a civil penalty not exceeding ten thousand
4 dollars (\$10,000) for each violation” of Labor Code section 1102.5 on any employer that is a
5 corporation or limited liability company. This civil penalty is in addition to any other penalty.
6 Therefore, Plaintiff and other Petco Employees are entitled to and do seek such civil penalties.

7 239. Labor Code section 1174.5 imposes a civil penalty of \$500 for an employer’s failure to
8 maintain accurate and complete records. This civil penalty is in addition to the civil penalty of \$100
9 per pay period, per employee that would be imposed pursuant to Labor Code section 2699(f) for a
10 violation of Labor Code section 1174(d). Therefore, Plaintiff and other Petco Employees are entitled to
11 and seek the described civil penalties.

12 240. Labor Code section 1197.1 imposes upon Petco, for each initial violation of wage and
13 hour laws, a penalty of \$100.00 for each underpaid employee for each pay period for which the
14 employee is underpaid and \$250 for each subsequent violation for the same offense for each underpaid
15 employee for each pay period for which the employee is underpaid. This amount shall be in addition
16 to an amount sufficient to recover underpaid wages and liquidated damages pursuant to Labor Code
17 section 1194.2, which states: “[i]n any action under Section 98, 1193.6, 1194, or 1197.1 to recover
18 wages because of the payment of a wage less than the minimum wage fixed by an order of the
19 commission or by statute, an employee shall be entitled to recover liquidated damages in an amount
20 equal to the wages unlawfully unpaid and interest thereon.” Therefore, Plaintiff and other Petco
21 Employees are entitled to and seek the described civil penalties.

22 241. For violations of Labor Code section 1198.5, Labor Code section 1198.5(k) permit
23 current or former employees, or the Labor Commissioner, to recover a \$750 penalty from the
24 employer. Therefore, Plaintiff and other Petco Employees are entitled to and do seek the described
25 civil penalty.

26 242. Labor Code section 2699(f) imposes a civil penalty of \$100 per pay period, per
27 employee for the initial violation, and \$200 per pay period, per employee for each subsequent violation
28 for all Labor Code provisions for which a civil penalty is not specifically provided, including Labor

Code sections 98.6, 201, 202, 203, 204, 212, 213(d), 226(a), 226.7, 510, 512, 1102.5, 1174(c) and (d), 1194, 1197, 1197.1, 1198, 1199, 2751, 6310 and 6311. Plaintiff and other Petco Employees are entitled to, and therefore seek the above described civil penalty.

243. Labor Code section 2699(g)(1) provides that an employee who prevails in a civil action brought pursuant to PAGA shall be entitled to an award of reasonable attorneys' fees and costs. As such, Plaintiff, in her representative capacity on behalf of herself and all other Petco Employees, is entitled to, and therefore seeks attorneys' fees and costs.

244. Plaintiff, in her representative capacity on behalf of herself and all other Petco Employees, is entitled to and seeks recovery of reasonable attorneys' fees as provided by Labor Code section 218.5 and Code of Civil Procedure section 1021.5.

245. Plaintiff, in her representative capacity on behalf of herself and all other Petco Employees, requests further relief as described in the below prayer.

PRAYER FOR RELIEF

Plaintiff prays for judgement against Defendants in favor of the class and representative action as follows:

- a. For an order determining that this action may be maintained as a class action with the named Plaintiff as the class representative;
- b. For the attorneys appearing on the above caption to be named class counsel;
- c. For all wages and benefits due to Plaintiff and all other Petco Employees pursuant to California law;
- d. For all minimum and regular wages, overtime compensation and/or earned commissions owed pursuant to Labor Code sections 510, 1194, 1197.1, and/or other applicable law;
- e. For premium wages pursuant to Labor Code section 226.7 and/or other applicable law;
- f. For waiting time penalties pursuant to Labor Code section 203, and/or other applicable law;
- g. For damages, pursuant to Labor Code section 226 and/or other applicable law;

- 1 h. For all liquidated damages, pursuant to Labor Code sections 226(e), 1194.4(a),
2 1197.1, and/or other applicable law;
- 3 i. For any and all penalties available for the Labor Code violations alleged herein,
4 including penalties under Labor Code sections 210, 226.3, 558, 1174.5, 1197.1,
5 1198.5, 1199, 2699(f) and/or other applicable law;
- 6 j. For an order determining that Plaintiff is entitled to recover a civil penalty of \$100
7 for each aggrieved employee per pay period for the initial violation and \$200 for
8 each aggrieved employee per pay period for each subsequent violation as provided
9 in Labor Code § 2699(f);
- 10 k. For a declaratory judgment that Defendants violated Labor Code sections 98.6,
11 201, 202, 203, 212, 213, 225.5, 226, 226.7, 510, 512, 1102.5, 1197, 1198, 6310,
12 and 6311 as well as the “Hours and Days of Work,” “Minimum Wages,”
13 “Records,” “Meal Periods,” and “Rest Periods” sections of the Wage Order of the
14 Industrial Welfare Commission;
- 15 l. For injunctive relief, pursuant to Labor Code section 266(h) and Bus. & Prof.
16 Code section 17203, and/or other applicable law;
- 17 m. For restitution for Defendants’ unfair, unlawful, and fraudulent business
18 practices;
- 19 n. For reasonable attorneys’ fees and costs of suit pursuant to Labor Code sections
20 218.5, 226(h), 226(e)(1), 1193.6, 1194, and 2699(g), Code of Civil Procedure
21 section 1021.5, the “common fund” theory, the “substantial benefit” theory and/or
22 other applicable law, theory or doctrine;
- 23 o. For pre- and post- judgment interest as provided by California law;
- 24 p. For appropriate equitable relief pursuant to California law; and
- 25 q. For any other relief, the Court may deem as just and proper.

26 ///

27 ///

28 ///

1 **DEMAND FOR JURY TRIAL**

2 Plaintiff hereby demands a jury trial on issues triable to a jury.

3
4 Dated: August 20, 2020

GRAHAMHOLLIS APC

5
6 By: Monique R. Rodriguez
7 Graham S.P. Hollis
8 Vilmarie Cordero
9 Monique R. Rodriguez
10 *Attorneys for Plaintiff Olivia Kirkpatrick*
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT 1

April 7, 2020

Attorneys at Law

3555 Fifth Avenue Suite 200
San Diego, California 92103
619.692.0800 voice
619.692.0822 fax

www.grahamhollis.com

Monique R. Rodriguez
mrodriguez@grahamhollis.com
619.546.4373 direct

VIA ONLINE ELECTRONIC FILING

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

California Division of Occupational Health and Safety
1515 Clay Street, Suite 1901
Oakland, CA 94612

CERTIFIED MAIL (RETURN RECEIPT)

Petco Animal Supplies Stores, Inc.
10850 Via Frontera
San Diego, CA 92127

Petco Animal Supplies Stores, Inc.
c/o Corporation Service Company Which Will Do
Business in California as CSC – Lawyers Incorporating
Service,
Agent for Service of Process
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833

Re: Olivia Kirkpatrick's Wage and Hour Claims Against Petco Animal Supplies Stores, Inc.

Dear California Labor and Workforce Development Agency, California Division of Occupational Health and Safety, and Petco Animal Supplies Stores, Inc.:

Please be advised that Olivia Kirkpatrick ("Claimant") has retained our firm to represent her for various claims against Petco Animal Supplies Stores, Inc. (the "Company").

Please be advised that this letter shall serve as Claimant's written notice to the California Labor and Workforce Development Agency ("LWDA"), the California Division of Occupational Health and Safety, and the Company of the alleged California Labor Code ("Labor Code") violations Claimant claims that the Company committed against her and all other current or former employees of the Company in California during the relevant statutory period. Claimant provides this notice, which includes the facts and theories to support the Labor Code violations alleged herein, in accordance with the Private Attorneys General Act of 2004 (codified in Labor Code §§ 2698 *et seq.*, "PAGA"), Labor Code § 2699.3.

Graham S.P. Hollis

Vilmarie Cordero

Nathan Reese

Hali Anderson

David Lin

Erick Dos Santos

Alex Kuner

Monique Rodriguez

April 7, 2020
Page 2

Pursuant to Labor Code § 2699(a), and by way of this letter, Claimant intends to represent herself and all other current or former non-exempt employees in California who performed work for the Company during the relevant time period (referred to herein as the “Petco Employees”). All Petco Employees, including Claimant, are believed to have suffered at least one of the wage and hour violations described herein. Claimant therefore contends that she and all other Petco Employees are “aggrieved employees” as defined by the PAGA.

FACTUAL BACKGROUND

Petco Animal Supplies Stores, Inc. is a nationwide chain of retail stores that specializes in pet supplies and products, grooming, training classes, and other pet-related services. Petco Animal Supplies Stores, Inc. is incorporated in the state of Delaware and has its headquarters located in San Diego, California.

The Company employed Claimant, most recently, as a pet stylist from approximately July of 2019 to February 17, 2020 at its Thousand Oaks, California retail location. As a pet stylist, Claimant’s job duties consisted of bathing, styling, and grooming pets, ensuring the safety of animals in her care, and providing excellent customer service, among other things. At all relevant times, Claimant was classified as a non-exempt employee and was paid an hourly rate of \$13.00 per hour, in addition to receiving commissions. During her employment with the Company, Claimant typically worked 6 days per week from 9:00 a.m. to 6:00 p.m. Claimant often worked past her scheduled shift, until about 7:30 p.m. to 8:00 p.m. On February 17, 2020, Claimant was wrongfully terminated in retaliation for her complaints about unsafe working conditions and being overbooked with appointments, which was preventing her from taking legally compliant meal and rest periods. The Company also employed other Petco Employees throughout the state of California at its various retail stores during the relevant statutory period.

Claimant alleges that the Company denied Claimant and other Petco Employees in California specific rights afforded to them under the Labor Code and the applicable Industrial Welfare Commission (“IWC”) Wage Order. Specifically, the Company failed to provide Claimant and other Petco Employees with legally compliant meal and/or rest periods or pay them meal and/or rest period premiums, failed to timely pay all minimum, regular, and overtime wages owed, failed to pay wages in a form negotiable and payable in cash, failed to maintain accurate records, failed to issue accurate itemized wage statements, failed to timely pay all wages due upon separation of employment, and failed to maintain a safe and healthful place of employment. Upon information and belief, all policies, practices, guidelines, and/or procedures of the Company applicable to Claimant were also applicable to all other Petco Employees.

The Company did not provide Claimant and other Petco Employees with 30-minute, off-duty meal periods before the start of their sixth hour of work and/or did not authorize and permit them to take legally compliant off-duty 10-minute rest periods for every four hours worked or major fraction thereof. This was largely due to the Company’s severe understaffing and lack of coverage at its various retail stores, including in its grooming salons. Claimant and other Petco Employees were regularly required to work through their meal and/or rest periods, and/or were not provided with meal and/or rest periods at all. For example, Claimant was usually the only pet stylist on-duty during her shifts and was regularly overbooked with grooming appointments, resulting in her inability to take any meal and/or rest periods. Furthermore, general managers frequently required Claimant and, on information and belief, other Petco

April 7, 2020
Page 3

Employees to clock out for their meal periods but mandated them to continue working. The general managers also unlawfully altered Claimant's and other Petco Employees' time records to reflect that a compliant meal period was taken. As a result of the Company's illegal policies, procedures, and practices, Claimant and other Petco Employees were regularly required to work through their meal and/or rest periods, take on-duty meal and/or rest periods, and/or were not provided with a meal and/or rest period at all. Claimant and, on information and belief, other Petco Employees did not sign a meal period waiver or an on-duty meal agreement at any point during their employment.

Although Claimant and other Petco Employees did not receive legally compliant meal and/or rest periods, the Company did not consistently pay Claimant and, on information and belief, other Petco Employees the additional one hour of pay at the employee's regular rate of pay as required under Labor Code § 226.7 and the applicable IWC Wage Order. Therefore, the Company owes Claimant and, on information and belief, other Petco Employees a meal and/or rest period premium for each work day that Claimant and other Petco Employees were not provided with a compliant meal and/or rest period.

Furthermore, Claimant and, on information and belief, other Petco Employees were not timely paid all minimum, regular, and overtime wages because the Company failed to pay them for the time they spent working through their meal and/or rest periods. The Company improperly considered the work Claimant and other Petco Employees performed during their meal and/or rest periods as non-compensable time and failed to provide any remuneration. Additionally, the Company regularly shaved the time of Petco Employees, including Claimant, to preclude the payment of overtime compensation. As a result of being required to work off-the-clock during meal and/or rest periods and the shaving of overtime hours, the Company did not timely pay Claimant and, on information and belief, other Petco Employees minimum, regular, and overtime wages when Claimant and other Petco Employees worked in excess of 8-hours a day and/or 40-hours a workweek.

The Company also failed to pay Claimant, and on information and belief, other Petco Employees' wages in a form negotiable and payable in cash by issuing wages via a pay card without their prior authorization. Claimant and other Petco Employees incurred multiple fees when using the pay card, including, but not limited to, fees for checking the card balance and withdrawing money from the ATM.

As a direct result of the Company's illegal policies, procedures, guidelines, and practices, like those described herein, the Company failed to maintain accurate records reflecting all of Claimant's and other Petco Employees' actual time worked and actual wages earned and paid, among other things, in violation of California law. Furthermore, despite requesting a copy of personnel and time records in writing as permitted by law, Claimant has yet to receive a copy of her personnel and time records. The Company has violated California law by failing to maintain records and provide a copy of payroll records in the 21-day time frame proscribed by Labor Code § 226(c) and a copy of all other records within 30 days as mandated by Labor Code § 1198.5.

The wage statements issued by the Company to Petco Employees, including Claimant, also did not include the correct total regular and/or overtime hours worked, the correct amount of gross and/or net wages earned, and/or all applicable hourly rates and the corresponding number of hours worked at each hourly rate, among other things, as required under Labor Code § 226.

April 7, 2020
Page 4

Furthermore, the Company failed to timely pay Claimant and, on information and belief, other Petco Employees all wages due and payable upon separation of employment, including minimum, regular, and overtime wages for all overtime hours worked and meal and/or rest period premium wages, as required pursuant to Labor Code §§ 201, 202 and 204, in part due to aforementioned Labor Code violations. For instance, despite being terminated by the Company, Claimant was not immediately paid her final wages. Instead the Company issued Claimant a pay card, without her authorization, approximately 2 to 3 days following her termination. Claimant further contends that she was not paid all wages owed or any waiting time penalties. Claimant also alleges that she was not provided with a wage statement for the funds placed on the pay card as required by Labor Code § 203(a).

Additionally, Claimant alleges that the Company failed to provide her and other Petco Employees with a safe and healthful place of employment. For example, Claimant contends that she was often the only groomer on-duty and as a result was regularly left alone with numerous animals (i.e. dogs and cats) at a time. Claimant also contends that she experienced negative health conditions (e.g. urinary tract infections) as a result of not being able to access the toilet facilities during her employment due to the Company's policy and/or practice of understaffing its retail stores, specifically the grooming salon.

The Company also engaged in retaliation against Claimant. Claimant made a good-faith complaint about unsafe working conditions as a result of one groomer working with multiple dogs; being overbooked with appointments, which prevented her from taking legally compliant meal and/or rest periods and/or using the toilet facilities; and being passed up for a promotion. In response to this good-faith complaint, Claimant's manager removed her from the schedule, cancelled upcoming appointments, and terminated her employment. The Company, therefore, took adverse employment action against Claimant in violation of Labor Code §§ 98.6, 1102.5 and 6310.

Due to the foregoing Labor Code violations, the Company denied Claimant and other Petco Employees certain rights afforded them under the California Labor Code and IWC Wage Orders. Claimant makes these claims against the Company on behalf of herself and all other current or former non-exempt employees of the Company in California.

Since Claimant's investigation is ongoing, Claimant reserves her right to assert any and all related facts, claims and/or theories discovered after the sending of this letter on behalf of herself and the current or former Petco Employees against the Company and/or other persons that may be discovered after the sending of this letter. Such other persons include, but are not limited to, those persons who have acted as an agent, subsidiary, servant, employee, co-conspirator, alter-ego, and/or joint venture of the Company, as well as those persons who caused and/or concurrently contributed to the various acts and/or admissions of each and every one of the others, including the Company, in proximately causing the wrongful conduct, harm, and/or damages alleged herein or otherwise participated in or ratified any or all of the acts and/or omissions complained of herein, and those who were acting within the authority and/or scope of the Company.

///

April 7, 2020
Page 5

**FAILURE TO PROVIDE LEGALLY COMPLIANT MEAL AND/OR REST PERIODS
OR COMPENSATION IN LIEU THEREOF**

(Labor Code §§ 204, 226.7, and 512, and the “Meal Periods” and
“Rest Periods” sections of the Applicable Wage Order)

Labor Code § 226.7(b) states, “[a]n employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission...” Labor Code § 226.7(c) states, “[i]f an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law... the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each workday that the meal or rest or recovery period is not provided.”

Labor Code § 512(a) states,

“[a]n employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes” and “[a]n employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes.”

The “Meal Periods” section of the applicable IWC Wage Order states,

“[n]o employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day’s work the meal period may be waived by mutual consent of the employer and the employee.”

The “Meal Periods” section of the applicable IWC Wage Order further states,

“[a]n employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of employer and employee only if the first meal period was not waived.”

Furthermore, “[i]f an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the meal period is not provided.”

The “Meal Periods” section of the applicable IWC Wage Order also states,

April 7, 2020
Page 6

“[u]nless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an ‘on duty’ meal period and counted as time worked. An ‘on duty’ meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.”

The “Rest Periods” section of the Applicable IWC Wage Order states,

“[e]very employer shall authorize and permit employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.”

Furthermore, “[i]f an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the rest period is not provided.”

Premium wages under Labor Code § 226.7 are wages that are due payable in accordance with the Labor Code § 204. *Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1103-1114.

As set forth above, the Company failed to provide Claimant and, on information and belief, other Petco Employees with the opportunity to take uninterrupted, off-duty meal periods of at least 30-minutes before the start of their sixth hour of work and/or did not authorize and permit Claimant and, on information and belief, other Petco Employees to take legally compliant rest periods, as required by California law. Claimant contends that the Company has a policy and practice of unlawfully alternating Petco Employee records to reflect compliant meal periods. Consequently, Claimant and other Petco Employees are entitled to receive one-hour of premium wages for each day a compliant meal period was not provided and/or one-hour of premium wages for each day a compliant rest period was not authorized and permitted. Claimant will pursue all available remedies for the Company’s violations on behalf of herself and other current or former Petco Employees to the extent allowed by law.

FAILURE TO PAY MINIMUM, REGULAR, AND OVERTIME WAGES

(Labor Code §§ 204, 210, 510, 1194, 1197, 1197.1, 1198, and 1199, and the “Minimum Wages” and “Hours and Days of Work” sections of the Applicable IWC Wage Order)

Labor Code § 1197 states, “[t]he minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.”

Labor Code § 1197.1 provides that,

April 7, 2020
Page 7

“[a]ny employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law or by an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to Section 203...”

Labor Code § 1198 states, “[t]he maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Labor Code § 1199 imposes “a fine of not less than one hundred dollars (\$100)” for any employer who violates the provisions set forth in Labor Code § 1198.

Labor Code § 510 states,

“[e]ight hours of labor constitutes a day’s work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.”

The “Hours and Days of Work” and “Minimum Wages” sections of the Applicable Wage Order mandates the same requirements as Labor Code § 510.

Labor Code § 204(a) states in pertinent part, “[a]ll wages...earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays.” Furthermore, Labor Code § 204(b)(1) states, “all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period.”

Labor Code § 210 provides that, “every person who fails to pay the wages of an employee as provided in Section...204...shall be subject to a civil penalty” of \$100 for an initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation.” The “Minimum Wages” section of the applicable IWC Wage Order also states that “[e]very employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise.”

Labor Code § 1194(a) states, “...any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid

April 7, 2020
Page 8

balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit." Liquidated damages in an amount equal to the minimum wages unlawfully unpaid and interest thereon are provided for under Labor Code § 1194.2.

As set forth above, the Company required Claimant and, on information and belief, other Petco Employees to work off-the-clock during rest and/or meal periods without compensation. In addition, general managers unlawfully altered Claimant's and other Petco Employees' time records to reflect that compliant meal periods were taken and/or that Petco Employees, including Claimant, did not work as many hours as they actually did. The Company thus failed to timely pay Claimant and, on information and belief, other Petco Employees all minimum, regular, and overtime wages, as required by law. Claimant will pursue all available remedies for the Company's violations on behalf of herself and other current or former Petco Employees to the extent allowed by law.

**FAILURE TO MAKE PAYMENT OF WAGES IN FORM NEGOTIABLE AND
PAYABLE IN CASH**

(Labor Code §§ 212, 213 and 225.5)

Labor Code § 212 states,

“[n]o person, or agent or officer thereof, shall issue in payment of wages due, or to become due, or as an advance on wages to be earned: (1) Any order, check, draft, note, memorandum, or other acknowledgment of indebtedness, unless it is negotiable and payable in cash, on demand, without discount, at some established place of business in the state ...”

Labor Code § 213 provides,

“[n]othing contained in Section 212 shall: ... (d) Prohibit an employer from depositing wages due or to become due or an advance on wages to be earned in an account in any bank, savings and loan association, or credit union of the employee's choice with a place of business located in this state, provided that the employee has voluntarily authorized that deposit.”

An employee must be fully informed of payroll debit card program and agree to participate in the alternative method of compensation. *Holak v. Kmart Corp.* (E.D. Cal. Dec. 11, 2012) 2020 U.S. Dist. LEXIS 176331, *17; DLSE Opinion Letter 2008.07.07 (July 7, 2008).

Labor Code § 225.5 imposes a civil penalty of \$100 for each initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation for any “...person who unlawfully withholds wages due any employee in violation of Section ...212.”

As set forth above, by paying Claimant and other Petco Employees their wages via a pay card without their prior authorization, which resulted in various fees. The Company failed to make payment of wages

April 7, 2020
Page 9

in a form negotiable and payable in cash, on demand, and without discount. Claimant will pursue all available remedies for the Company's violations on behalf of herself and other current or former Petco Employees to the extent allowed by law.

FAILURE TO MAINTAIN ACCURATE RECORDS

(Labor Code §§ 226, 1174, 1174.5, and 1198.5 and the "Records" section of the Applicable IWC Wage Order)

Labor Code § 1174 states, "[e]very person employing labor in this state shall... [k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, ..., employees employed at the respective plants or establishments." See also Labor Code § 226(a).

The "Records" section of the Applicable Wage Order states that every employer shall keep accurate information with respect to each one of its employees, including time records showing when the employee begins and ends each work period, meal periods, total daily hours worked, total wages paid each payroll period, and total hours worked in the payroll period and applicable rates of pay.

Labor Code § 226(b) mandates that employers, "shall afford current and former employees the right to inspect or receive a copy of records pertaining to their employment, upon reasonable request to the employer." Labor Code § 226(c) further provides,

"[a]n employer who receives a written or oral request to inspect or receive a copy of records pursuant to subdivision (b) pertaining to a current or former employee shall comply with the request as soon as practicable, but no later than 21 calendar days from the date of the request. A violation of this subdivision is an infraction."

Labor Code § 1174.5 imposes a civil penalty of \$500 for an employer's failure to maintain accurate and complete records. This civil penalty is in addition to the civil penalty of \$100 per pay period, per aggrieved employee that would be imposed pursuant to Labor Code § 2699 for a violation of Labor Code § 1174(d).

Labor Code § 226(e)(1) provides,

"[a]n employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) [of Labor Code § 226] is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees."

April 7, 2020
Page 10

Labor Code §§ 226(f) and 1198.5(k) impose a civil penalty on employers for violations of Labor Code § 226(c). Labor Code § 226(f) states that “[a] failure by an employer to permit a current or former employee to inspect or receive a copy of records within the time set forth in subdivision (c) entitles the current or former employee or the Labor Commissioner to recover a seven-hundred-fifty-dollar (\$750) penalty from the employer.” Labor Code § 1198.5 further mandates,

“[i]f an employer 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, or times agreed to by mutual agreement as provided 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.”

Labor Code § 1198.5 grants every current and former employee the right to receive a copy of the personnel records that the employer maintains. Labor Code § 1198.5 mandates that the contents of the personnel records be available for inspection within, but no later than 30 days from the date the employer receives the written request. An employer who fails to provide a copy of the records requested is subject to a penalty of \$750. Labor Code § 1198.5(k).

As set forth above, the Company violated these requirements by failing to accurately record employee hours actually worked including, but not limited to, the Company’s failure to record the proper beginning and end of each work period, the meal periods, the total hours worked during the pay period, the applicable rates of pay, and the wages earned and paid, among other things. Moreover, Claimant has not yet received a copy of her personnel and time records, despite requesting a copy of these records in writing as permitted by California law. Thus, the Company has violated Labor Code §§ 226(b) and (c) and Labor Code § 1198.5 by failing to provide Claimant with a copy of her personnel and time records within the proscribed time frame. Claimant will pursue all available remedies for the Company’s violations on behalf of herself and other current or former Petco Employees to the extent allowed by law.

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS
(Labor Code §§ 226 and 226.3, and the “Records” section of the Applicable IWC Wage Order)

Labor Code § 226(a) states in pertinent part that every employer shall provide an accurate, itemized wage statement in writing with respect to each of its employees showing: “(1) gross wages earned, (2) total hours worked by the employee, ..., (5) net wages earned, ..., and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.”

Labor Code § 226(e) imposes a penalty of the greater of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of \$4,000, and entitles an employee to an award of costs and reasonable attorney’s fees. Labor Code § 226.3 imposes an additional civil penalty on the employer of \$250.00 per employee per violation of Labor Code § 226(a) in an initial citation and \$1,000 per employee for each violation in a subsequent citation.

April 7, 2020
Page 11

As set forth above, the Company failed to provide Claimant and other Petco Employees with accurate itemized wage statements that comply with the requirements of the Labor Code because the wage statements issued did not, among other things, include the correct total regular and/or overtime hours worked, the correct amount of gross and/or net wages earned, and/or all applicable hourly rates and the corresponding number of hours worked at each hourly rate. Claimant also did not receive a wage statement with her final pay card. Claimant will pursue all available remedies for the Company's violations on behalf of herself and other current or former Petco Employees to the extent allowed by law.

FAILURE TO TIMELY PAY ALL WAGES OWED UPON SEPARATION OF EMPLOYMENT

(Labor Code §§ 201, 202, 203, and 210)

Labor Code § 201 states, in pertinent part, "[i]f an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately." Labor Code § 202 provides,

"[i]f an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting."

Labor Code § 203(a) states, in pertinent part,

"[i]f an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced; but the wages shall not continue for more than 30 days."

Labor Code § 210 mandates that, "... every person who fails to pay the wages of an employee as provided in Sections 201.3...shall be subject to a civil penalty" of \$100 for an initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation.

As set forth above, the Company violated these Labor Code sections by not timely paying to Claimant and other Petco employees all minimum, regular, and overtime wages and/or meal and/or rest period premium wages within the required time upon separation of their employment. Claimant did not receive her final wages until approximately 2 to 3 days after her termination. Claimant's final wages were issued on a pay card, without her authorization, and did not include waiting time penalties. Claimant also did not receive a wage statement with her final pay card. As a result of the Company's failure to comply with the aforementioned Labor Code provisions, the Company owes waiting time penalties to Claimant and other Petco employees, which it has not yet paid. Claimant will pursue all available remedies for the Company's violations on behalf of herself and other current or former Petco Employees to the extent allowed by law.

April 7, 2020
Page 12

FAILURE TO MAINTAIN A SAFE AND HEALTHFUL PLACE OF EMPLOYMENT

(Labor Code §§ 6311 and 6400 *et seq.*)

Labor Code §§ 6400 and 6404 establish the obligation of an employer to furnish its employees with a place of employment that is safe and healthful. Labor Code § 6401 provides that,

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

See also Labor Code § 6403 (prohibiting an employer from failing or neglecting to perform its obligations under Labor Code § 6401).

An employer is required to correct any unsafe and/or unhealthy condition in a timely manner and is further prohibited from permitting or requiring an employee to go or be in a place of employment that is not safe and healthful. Labor Code §§ 6401.7(b) and 6402.

Claimant alleges that the Company failed to maintain a safe and healthful place of employment for Petco Employees, including herself. For instance, Claimant contends that she was often the only groomer on-duty and as a result was regularly left alone with numerous animals (i.e. dogs and cats) at a time.

Additionally, California law requires that employers provide separate toilet facilities for each sex. C.C.R., Tit. 8, § 3364. The number of facilities required is determined by the number of employees. *Id.* Toilet facilities are required to be kept clean, maintained in good working order and to be accessible to the employees at all times. *Ibid.* Hand washing facilities must also be provided and maintained in good working order. C.C.R., Tit. 8, § 3366. Critically, the California Division of Labor Standard Enforcement’s Policies and Interpretations Manual explains that mandated rest periods should not be confused with or limited to breaks taken by employees to use toilet facilities. The DLSE explains on its website that “the 10-minute rest period is not designed to be exclusively for use of toilet facilities as evidenced by the fact that the Industrial Welfare Commission requires suitable resting facilities be in an area ‘separate from toilet rooms’.” See https://www.dir.ca.gov/dlse/FAQ_RestPeriods.htm.

Claimant contends that the Company has a policy, procedure, guideline, procedure and/or culture of only permitting Petco Employees to use the toilet facilities with the permission of a manager or during rest periods, largely as a result of its understaffing of its retail stores. In fact, Claimant alleges that during her employment she experienced adverse medical consequences (e.g. urinary tract infections) as a result of being unable to use the toilet facilities during the work day. The Company therefore improperly restricts the use of toilet facilities in violation of California law.

April 7, 2020
Page 13

The Company has failed to provide maintain a safe and healthful place of employment for Petco Employees, including Claimant. Claimant will pursue all available remedies for the Company's violations on behalf of herself and other current or former Petco Employees to the extent allowed by law.

RETALIATION

(Labor Code §§ 98.6, 1102.5 and 6310)

Labor Code § 98.6(a) mandates,

“[a] person shall not discharge an employee or in any manner discriminate, retaliate, or take any adverse action against any employee or applicant for employment because the employee or applicant engaged in any conduct delineated in this chapter, including the conduct described in subdivision (k) of Section 96, and Chapter 5 (commencing with Section 1101) of Part 3 of Division 2, or because the employee or applicant for employment has filed a bona fide complaint or claim or instituted or caused to be instituted any proceeding under or relating to his or her rights that are under the jurisdiction of the Labor Commissioner, made a written or oral complaint that he or she is owed unpaid wages, or because the employee has initiated any action or notice pursuant to Section 2699, or has testified or is about to testify in a proceeding pursuant to that section, or because of the exercise by the employee or applicant for employment on behalf of himself, herself, or others of any rights afforded him or her.”

Labor Code § 98.6(a)(3) further provides that, “[i]n addition to other remedies available, an employer who violates this section is liable for a civil penalty not exceeding ten thousand dollars (\$10,000) per employee for each violation of this section, to be awarded to the employee or employees who suffered the violation.”

Labor Code § 1102.5(b) states,

“[a]n 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 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

April 7, 2020
Page 14

rule or regulation, regardless of whether disclosing the information is part of the employee's job duties."

In addition to other penalties, "an employer that is a corporation or limited liability company is liable for a civil penalty not exceeding ten thousand dollars (\$10,000) for each violation" of Labor Code § 1102.5(b).

Labor Code § 6310(a) provides, in pertinent part,

"[n]o person shall discharge or in any manner discriminate against any employee because the employee has done any of the following: (1) Made any oral or written complaint to the division, other governmental agencies having statutory responsibility for or assisting the division with reference to employee safety or health, his or her employer, or his or her representative. (2) Instituted or caused to be instituted any proceeding under or relating to his or her rights or has testified or is about to testify in the proceeding or because of the exercise by the employee on behalf of himself, herself, or others of any rights afforded him or her. . . ."

Labor Code § 6310(b) further states,

"[a]ny employee who is discharged . . . because the employee has made a bona fide oral or written complaint to the division, other governmental agencies having statutory responsibility for or assisting the division with reference to employee safety or health, his or her employer, or his or her representative, of . . . work practices, in his or her employment or place of employment . . . shall be entitled to reinstatement and reimbursement for lost wages and work benefits caused by the acts of the employer. Any employer who willfully refuses to rehire, promote, or otherwise restore an employee or former employee who has been determined to be eligible for rehiring or promotion by a grievance procedure, arbitration, or hearing authorized by law, is guilty of a misdemeanor."

As set forth above, the Company engaged in retaliation against Claimant and wrongfully took adverse employment action against her in violation of Labor Code §§ 1102.5 and 6310.

CIVIL PENALTIES FOR VIOLATION OF THE LABOR CODE AND IWC WAGE ORDERS
(Labor Code §§ 98.6(b)(3), 210, 225.5, 226(f), 226.3, 558, 558.1, 1102.5(e), 1174.1, 1197.1, 1198.5, 2699(f), 6317, and 6342)

Labor Code § 98.6(b)(3) states an employer who violates Labor Code § 98.6 is liable for a civil penalty not exceeding \$10,000 per employee for each violation of this section. The civil penalty is to be awarded to the individuals who were improperly discharged.

April 7, 2020
Page 15

Labor Code § 210 provides that any person who fails to pay wages as provided in sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5 and 1197.5 shall be subject to a civil penalty of \$100 for any initial violation for each failure to pay each employee and for each subsequent violation, or any willful or intentional violation \$200 for each failure to pay each employee, plus 25 % if the amount unlawfully withheld, in addition to any other penalty.

Labor Code § 225.5 provides that, "...every person who unlawfully withholds wages due any employee in violation of Section...223 shall be subject to a civil penalty" of \$100 for each initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation.

For violations of Labor Code § 226(c), Labor Code §§ 226(f) and 1198.5 permit the current or former employee, or the Labor Commissioner, to recover a \$750 penalty from the employer.

For violations of Labor Code § 226(a), Labor Code § 226.3 imposes a civil penalty of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation.

Labor Code § 558 subjects any employer or any person acting on behalf of an employer who violates Labor Code Part 2, Chapter 1, of the Labor Code (Labor Code §§ 500-558) or any provision regulating the hours and days of work in any IWC Wage Order to a civil penalty as follows: "[f]or any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid. For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid."

Labor Code § 558.1(a) states that,

"[a]ny employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wage or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation."

Pursuant to Labor Code § 558.1(b), Labor Code § 558.1(a) is applicable to the owners, officers, directors, or managing agents of the employer.

Labor Code § 1102.5(e) imposes "a civil penalty not exceeding ten thousand dollars (\$10,000) for each violation" of Labor Code § 1102.5(b) on any employer that is a corporation or limited liability company.

For violations of Labor Code § 1174 subdivisions (b), (c), and (d), Labor Code § 1174.5 imposes a civil penalty of \$500.

Similarly, Labor Code § 1197.1 subjects any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by an order of the commission to a civil

April 7, 2020
Page 16

penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to § 203 as follows:

“(1) For any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to § 1194.2, and any applicable penalties imposed pursuant to § 203. (2) For each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to § 1194.2, and any applicable penalties imposed pursuant to § 203. (3) Wages, liquidated damages, and any applicable penalties imposed pursuant to § 203, recovered pursuant to this section shall be paid to the affected employee.”

Labor Code § 2699(f) imposes a civil penalty of \$100 per pay period, per employee for the initial violation and \$200 per pay period, per employee for each subsequent violation for all Labor Code provisions for which a civil penalty is not specifically provided, including, but not limited to, Labor Code §§ 98.6, 201, 202, 203, 204, 210, 223, 222.5, 226(a), 226.7, 510, 512, 1102.5, 1174(c), 1174(d), 1194, 1197, 1197.1, 1198, 6310, 6311, 6399.7 and relevant IWC Wage Orders.

For violations of Labor Code §§ 6400 *et seq.*, Labor Code § 6317 permits California Division of Occupational Health and Safety to impose civil penalties against employers as specified in § 6423, which states the following:

“[e]very employer and every officer, management official, or supervisor having direction, management, control, or custody of any employment, place of employment, or of any other employee, who . . . (1) [k]nowingly or negligently violates any standard, order, or special order, or any provision of this division, or of any part thereof in. . . [i]s punishable by . . . a fine not to exceed five thousand dollars (\$5,000).”

Furthermore, employers that repeatedly violate “any standard, order, or special order, or provision of this division, or any part thereof in, or authorized by, this part, which repeated violation creates a real and apparent hazard to employees” are subject to “a fine not exceeding fifteen thousand dollars (\$15,000). . . . If the defendant is a corporation or a limited liability company, the fine may not exceed one hundred fifty thousand dollars (\$150,000).” Labor Code § 6423(d).

As set forth above, the Company violated the Labor Code and the applicable IWC Wage Order by failing to timely pay Claimant and Petco Employees all regular, minimum, and overtime wages, and meal and rest period premium wages, as required under the Labor and the applicable sections of the relevant IWC

April 7, 2020
Page 17

Wage Order. As a result, the Company is liable for civil penalties under the Labor Code and Claimant will pursue all available remedies, including but not limited to those stated herein, for the Company's violations on behalf of herself and other current or former Petco Employees to the extent allowed by law.

ATTORNEY'S FEES, COSTS, INTEREST, LIQUIDATED DAMAGES AND PENALTIES

(Labor Code §§ 210, 218.5, 218.6, 225.5, 226(e), 558, 1194, 1194.2, 1197.1, and 2698, *et seq.*)

Labor Code §§ 210, 218.5, 218.6, 225.5, 226(e), 558, 1194, 1194.2, 1197.1, and 2698, *et seq.*, among others, give employees the right to recover in a civil action the full amount of damages, liquidated damages and penalties, including interest thereon, as well as reasonable attorney's fees and costs.

Pursuant to Labor Code § 2699(i) an aggrieved employee is entitled to collect 25% of the penalty assessment. Under Labor Code § 2699(g)(1) an aggrieved employees, such as Claimant, is entitled to an award of reasonable attorney's fees and costs. Accordingly, the Company is liable for these items. Claimant has already incurred actual damages, costs and attorney's fees and he will continue to incur such as a result of the Company's unlawful actions. Claimant will pursue all available remedies, including but not limited to those provided by the PAGA, on behalf of herself and other Petco Employees to the extent permitted by law for the violations of law described herein and those later discovered.

CONCLUSION

Based on the foregoing, the Company has violated the Labor Code and relevant IWC Wage Order and thereby deprived Claimant and other Petco Employees of the rights and protections afforded to them. Claimant has satisfied the prerequisites of the PAGA to serve as a representative of all current or former non-exempt employees of the Company in California, the general public, and the state of California in order to enforce California labor laws and to seek civil penalties for the provisions set forth herein, as well as those which may be later discovered.

Accordingly, if the California agencies decline to intervene or act within time prescribed by the Labor Code, Claimant may elect to initiate and/or amend a civil action, on behalf of herself and all other current or former non-exempt employees of the Company in California as permitted by the PAGA.

Sincerely,

Monique R. Rodriguez

Monique R. Rodriguez

EXHIBIT 2

July 27, 2020

Attorneys at Law

3555 Fifth Avenue Suite 200
San Diego, California 92103
619.692.0800 voice
619.692.0822 fax

www.grahamhollis.com

Monique R. Rodriguez
mrodriguez@grahamhollis.com
619.546.4373 direct

VIA ONLINE ELECTRONIC FILING

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

California Division of Occupational Health and Safety
1515 Clay Street, Suite 1901
Oakland, CA 94612

CERTIFIED MAIL (RETURN RECEIPT)

Petco Animal Supplies Stores, Inc.
10850 Via Frontera
San Diego, CA 92127

Petco Animal Supplies Stores, Inc.
c/o Corporation Service Company Which Will Do
Business in California as CSC – Lawyers Incorporating
Service, Agent for Service of Process
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833

Re: **Amendment to Olivia Kirkpatrick's Wage and Hour Claims Against
Petco Animal Supplies Stores, Inc.
LWDA Case No.: LWDA-CM-782128-20**

Dear California Labor and Workforce Development Agency, California Division of Occupational Health and Safety, and Petco Animal Supplies Stores, Inc.:

This letter shall serve as Olivia Kirkpatrick's ("Claimant's") amended written notice to the California Labor and Workforce Development Agency ("LWDA"), California Division of Occupational Health and Safety ("Cal/OSHA") and her former employer Petco Animal Supplies Stores, Inc. ("the Company") of the following amendments to Claimant's initial written notice: to clarify Claimant's intent to represent two classes of employees; the addition of a claim for unpaid commissions; the addition of a claim for failure to provide commission agreements; the addition of a claim for failure to provide employment records upon request; and additional facts to support the claim for failure to timely pay minimum, regular, and/or overtime wages. Claimant provides this amended notice in accordance with the Private Attorneys General Act of 2004 (codified in Labor Code §§ 2698 *et seq.*, "PAGA"), Labor Code § 2699.3.

Pursuant to Labor Code § 2699(a), and by way of this letter, Claimant intends to represent herself and all other current or former non-exempt employees in California

Graham S.P. Hollis
Vilmarie Cordero
Nathan Reese
Hali Anderson
David Lin
Erick Dos Santos
Alex Kuner
Monique Rodriguez

July 27, 2020
Page 2

who performed work for the Company in California during the relevant time period (“Petco Employees”) and herself and all other current or former non-exempt employees in California who performed work for the Company as a Pet Stylist (i.e. Groomer) and/or who performed similar work and/or held similar positions during the relevant time period (the “Groomers”).

The original written notice is attached hereto as **Exhibit A** (“Original Notice”) and incorporated herein by reference. The claims in the Original Notice are asserted on behalf of Claimant, all other Petco Employees and all other Groomers. The Original Notice was sent to Claimant’s former employer, Petco Animal Supplies Stores, Inc., via certified mail on April 7, 2020. The Original Notice was filed online with the LWDA on April 7, 2020. Since the date of the Original Notice, Claimant has become aware of additional information and amends the Original Notice, incorporated herein by reference, to add the following:

ADDITIONAL FACTS AND THEORIES

While employed as a pet stylist in the grooming department of the Company’s retail store, Claimant was entitled to earn commissions. However, Claimant alleges that the Company has a policy, practice, procedure and/or guideline of failing to timely pay Claimant and other Groomers their earned commissions. Moreover, Defendant has not yet paid Claimant and, on information and belief, other Groomers their final earned commissions that were due and owing upon separation of employment. Specifically, Claimant has yet to be paid her final earned commissions despite being terminated by the Company.

Claimant further alleges that the Company has a policy, practice, procedure and/or guideline of failing to provide Groomers, including Claimant, with a written agreement outlining the method by which the Company calculates and pays commissions. Moreover, the Company failed to furnish Claimant and other Groomers with a signed copy of the written documents outlining the Company’s method for calculating and paying commissions. Accordingly, the Company has violated Labor Code § 2751.

Lastly, Claimant contends that the Company has a policy, practice, procedure and/or guideline of failing to provide employment and personnel records to Petco Employees upon request in the time frame prescribed by California law. For instance, Claimant sent a written request to the Company to obtain and/or inspect her personnel file and employment records on February 26, 2020. After not receiving a response from the Company on April 3, 2020, Claimant sent a second written request to the Company. After failing to receive a response to either of her requests, Claimant sent a third written request to the Company on May 5, 2020. Despite Claimant’s multiple requests for her personnel file and employment records, the Company has not yet provided the requested documents to Claimant in violation of Labor Code §§ 226(b), 226(c) and 1198.5.

The facts, claims and legal theories contained herein are based on the information available at the time of this writing. Since Claimant’s investigation is ongoing, Claimant reserves the right to assert any and all related facts, claims and/or theories discovered after the sending of this letter on behalf of herself and the current or former non-exempt employees of the Company in California, including Petco Employees and Groomers, against the Company and/or any other persons that may be discovered after the sending of this letter and/or the Original Notice by amending this letter or by including applicable causes of action in a

July 27, 2020
Page 3

civil action. Such other persons include, but are not limited to, those persons who have acted as an agent, subsidiary, servant, employee, co-conspirator, alter-ego, and/or joint venture of the Company, as well as those persons who caused and/or concurrently contributed to the various acts and/or admissions of each and every one of the others, including the Company, in proximately causing the wrongful conduct, harm, and/or damages alleged herein or otherwise participated in or ratified any or all of the acts and/or omissions complained of herein, and those who were acting within the authority and/or scope of the Company. Claimant reserves the right to revise these facts and/or add any new claims by amending this letter and/or by adding claims to her civil complaint.

FAILURE TO TIMELY PAY EARNED COMMISSIONS

(Labor Code §§ 200, 204, 210 and the “Minimum Wages” section of IWC Wage Order No. 7-2001)

Labor Code § 200(a) defines “wages” to include “all amounts for labor performed by employees...whether the amount is fixed or ascertained by the standard of time...commission basis, or other method of calculation.” The term “labor” is further defined in subsection (b) to include “labor, work, or service whether rendered or performed under contract, subcontract, partnership...or other agreement if the labor...is performed personally by the person demanding payment.”

Labor Code § 204(a) states in pertinent part, “[a]ll wages...earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays.” Furthermore, Labor Code § 204(b)(1) states, “all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period.”

The “Minimum Wages” section of IWC Wage Order No. 7-2001 also states that “[e]very employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise.”

Labor Code § 210 mandates that, “... every person who fails to pay the wages of an employee as provided in Sections...204...shall be subject to a civil penalty” of \$100 for an initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation.

As set forth above, Claimant asserts that the Company has a policy, practice, procedure and/or guideline of not timely paying earned commissions to Claimant and other Groomers in violation of California law. Claimant will pursue all available remedies for the Company’s violations on behalf of herself and other Groomers to the extent allowed by law.

///

///

///

July 27, 2020
Page 4

FAILURE TO PAY COMMISSIONS UPON SEPARATION OF EMPLOYMENT

(Labor Code §§ 201-203 and 210)

Labor Code § 200(a) defines “wages” to include “all amounts for labor performed by employees...whether the amount is fixed or ascertained by the standard of time...commission basis, or other method of calculation.” The term “labor” is further defined in subsection (b) to include “labor, work, or service whether rendered or performed under contract, subcontract, partnership...or other agreement if the labor...is performed personally by the person demanding payment.”

Labor Code § 201 states, in pertinent part, “[i]f an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.”

Labor Code § 202 further mandates,

“[i]f an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.”

Labor Code § 203(a) provides, in pertinent part,

“[i]f an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced; but the wages shall not continue for more than 30 days.”

Labor Code § 210 provides that, “every person who fails to pay the wages of an employee as provided in Sections 201.3...shall be subject to a civil penalty” of \$100 for an initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation.

As set forth above, the Company violated these sections of the Labor Code by failing to pay Claimant and, on information and belief, other Groomers with their final earned commissions that were due and owing upon separation of employment. Claimant will pursue all available remedies for the Company’s violations on behalf of herself and other Groomers to the extent allowed by law.

///

///

///

July 27, 2020
Page 5

FAILURE TO PROVIDE WRITTEN COMMISSION AGREEMENTS

(Labor Code § 2751)

Labor Code § 2751(a) provides,

“[w]henever an employer enters into a contract of employment with an employee for services to be rendered within this state and the contemplated method of payment of the employee involves commissions, the contract shall be in writing and shall set forth the method by which the commissions shall be computed and paid.”

Labor Code § 2751(b) further requires “the employer [to] give a signed copy of the contract to every employee who is a party thereof, and... obtain a signed receipt for the contract from each employee.”

As set forth above, the Company failed to provide Groomers, including Claimant, with a written contract outlining the method for computing and paying commissions and/or a signed copy of the Company’s commission plan, in violation of Labor Code § 2751. Claimant will pursue all available remedies for the Company’s violations on behalf of herself and other Groomers to the extent allowed by law.

FAILURE TO PROVIDE EMPLOYMENT AND PERSONNEL RECORDS UPON REQUEST

(Labor Code §§ 226(b), 226(c), 226(f), 1198.5 and 1198.5(k))

Labor Code § 226(b) mandates that employers, “shall afford current and former employees the right to inspect or receive a copy of records pertaining to their employment, upon reasonable request to the employer.” Labor Code § 226(c) further provides,

“[a]n employer who receives a written or oral request to inspect or receive a copy of records pursuant to subdivision (b) pertaining to a current or former employee shall comply with the request as soon as practicable, but no later than 21 calendar days from the date of the request. A violation of this subdivision is an infraction.”

Labor Code § 226(f) imposes a civil penalty on employers for violations of Labor Code § 226(c). Labor Code § 226(f) states that “[a] failure by an employer to permit a current or former employee to inspect or receive a copy of records within the time set forth in subdivision (c) entitles the current or former employee or the Labor Commissioner to recover a seven-hundred-fifty-dollar (\$750) penalty from the employer.”

Labor Code § 1198.5 grants every current and former employee the right to receive a copy of the personnel records that the employer maintains. Labor Code § 1198.5 mandates that the contents of the personnel records be available for inspection within, but no later than, 30 days from the date the employer receives the written request. An employer who fails to provide a copy of the records requested is subject to a penalty of \$750 as outlined in Labor Code § 1198.5(k), which states,

July 27, 2020

Page 6

“[i]f an employer 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, or times agreed to by mutual agreement as provided 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.”

As set forth above, the Company violated these requirements by failing to provide Claimant with a copy of her personnel and employment records, despite Claimant requesting a copy of these records in writing as permitted by California law. Thus, the Company has violated Labor Code §§ 226(b) and (c) and Labor Code § 1198.5 by failing to provide Claimant with a copy of her personnel and employment records within the prescribed time frame. Claimant will pursue all available remedies for the Company’s violations on behalf of herself and other Petco Employees to the extent allowed by law.

FAILURE TO TIMELY PAY MINIMUM, REGULAR AND/OR OVERTIME WAGES

(Labor Code §§ 204, 210, 510, 1194, 1197, 1197.1, 1198 and 1199, and the “Minimum Wages” and “Hours and Days of Work” sections of IWC Wage Order No. 7-2001)

Claimant incorporates by reference the facts asserted in the Original Notice. Claimant also asserts that as a policy, practice, procedure and/or guideline, the Company does not use commissions, other non-discretionary bonuses or performance pay or shift differentials to calculate the Groomers’ respective rate of pay as is necessary for an accurate calculation and payment of overtime wages. The Company therefore failed to timely pay Claimant, and on information and belief, all other Groomers the appropriate overtime wages.

Claimant will pursue all available remedies for the Company’s violations on behalf of herself, all other Petco Employees, and all other Groomers to the extent permitted by law.

CONCLUSION

Based on the claims, facts and theories in this letter and the Original Notice, the Company has violated the Labor Code and relevant IWC Wage Order and thereby deprived Claimant and other current or former non-exempt employees of the Company in California, including, but not limited to, Petco Employees and Groomers, of the rights and protections afforded to them. Claimant has satisfied the prerequisites to serve as a representative of all current or former non-exempt employees of the Company in California, including Petco Employees and Groomers, in order to enforce California labor laws and to seek civil penalties for the provisions set forth herein and in the Original Notice, as well as those which may be later discovered.

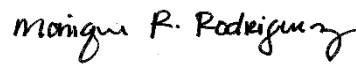
///

///

July 27, 2020
Page 7

Accordingly, if the LWDA declines to intervene or act within time prescribed by the Labor Code, Claimant may elect to initiate and/or amend a civil action, on behalf of herself and all other current or former non-exempt employees of the Company in California, including Petco Employees and Groomers as permitted by the PAGA.

Sincerely,



Monique R. Rodriguez

Enclosure: Exhibit A – Letter to the LWDA, dated April 7, 2020 (“Original Notice”).

EXHIBIT A

April 7, 2020

Attorneys at Law

3555 Fifth Avenue Suite 200
San Diego, California 92103
619.692.0800 voice
619.692.0822 fax

www.grahamhollis.com

Monique R. Rodriguez
mrodriguez@grahamhollis.com
619.546.4373 direct

VIA ONLINE ELECTRONIC FILING

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

California Division of Occupational Health and Safety
1515 Clay Street, Suite 1901
Oakland, CA 94612

CERTIFIED MAIL (RETURN RECEIPT)

Petco Animal Supplies Stores, Inc.
10850 Via Frontera
San Diego, CA 92127

Petco Animal Supplies Stores, Inc.
c/o Corporation Service Company Which Will Do
Business in California as CSC – Lawyers Incorporating
Service,
Agent for Service of Process
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833

Re: Olivia Kirkpatrick's Wage and Hour Claims Against Petco Animal Supplies Stores, Inc.

Dear California Labor and Workforce Development Agency, California Division of Occupational Health and Safety, and Petco Animal Supplies Stores, Inc.:

Please be advised that Olivia Kirkpatrick ("Claimant") has retained our firm to represent her for various claims against Petco Animal Supplies Stores, Inc. (the "Company").

Please be advised that this letter shall serve as Claimant's written notice to the California Labor and Workforce Development Agency ("LWDA"), the California Division of Occupational Health and Safety, and the Company of the alleged California Labor Code ("Labor Code") violations Claimant claims that the Company committed against her and all other current or former employees of the Company in California during the relevant statutory period. Claimant provides this notice, which includes the facts and theories to support the Labor Code violations alleged herein, in accordance with the Private Attorneys General Act of 2004 (codified in Labor Code §§ 2698 *et seq.*, "PAGA"), Labor Code § 2699.3.

Graham S.P. Hollis

Vilmarie Cordero

Nathan Reese

Hali Anderson

David Lin

Erick Dos Santos

Alex Kuner

Monique Rodriguez

April 7, 2020
Page 2

Pursuant to Labor Code § 2699(a), and by way of this letter, Claimant intends to represent herself and all other current or former non-exempt employees in California who performed work for the Company during the relevant time period (referred to herein as the “Petco Employees”). All Petco Employees, including Claimant, are believed to have suffered at least one of the wage and hour violations described herein. Claimant therefore contends that she and all other Petco Employees are “aggrieved employees” as defined by the PAGA.

FACTUAL BACKGROUND

Petco Animal Supplies Stores, Inc. is a nationwide chain of retail stores that specializes in pet supplies and products, grooming, training classes, and other pet-related services. Petco Animal Supplies Stores, Inc. is incorporated in the state of Delaware and has its headquarters located in San Diego, California.

The Company employed Claimant, most recently, as a pet stylist from approximately July of 2019 to February 17, 2020 at its Thousand Oaks, California retail location. As a pet stylist, Claimant’s job duties consisted of bathing, styling, and grooming pets, ensuring the safety of animals in her care, and providing excellent customer service, among other things. At all relevant times, Claimant was classified as a non-exempt employee and was paid an hourly rate of \$13.00 per hour, in addition to receiving commissions. During her employment with the Company, Claimant typically worked 6 days per week from 9:00 a.m. to 6:00 p.m. Claimant often worked past her scheduled shift, until about 7:30 p.m. to 8:00 p.m. On February 17, 2020, Claimant was wrongfully terminated in retaliation for her complaints about unsafe working conditions and being overbooked with appointments, which was preventing her from taking legally compliant meal and rest periods. The Company also employed other Petco Employees throughout the state of California at its various retail stores during the relevant statutory period.

Claimant alleges that the Company denied Claimant and other Petco Employees in California specific rights afforded to them under the Labor Code and the applicable Industrial Welfare Commission (“IWC”) Wage Order. Specifically, the Company failed to provide Claimant and other Petco Employees with legally compliant meal and/or rest periods or pay them meal and/or rest period premiums, failed to timely pay all minimum, regular, and overtime wages owed, failed to pay wages in a form negotiable and payable in cash, failed to maintain accurate records, failed to issue accurate itemized wage statements, failed to timely pay all wages due upon separation of employment, and failed to maintain a safe and healthful place of employment. Upon information and belief, all policies, practices, guidelines, and/or procedures of the Company applicable to Claimant were also applicable to all other Petco Employees.

The Company did not provide Claimant and other Petco Employees with 30-minute, off-duty meal periods before the start of their sixth hour of work and/or did not authorize and permit them to take legally compliant off-duty 10-minute rest periods for every four hours worked or major fraction thereof. This was largely due to the Company’s severe understaffing and lack of coverage at its various retail stores, including in its grooming salons. Claimant and other Petco Employees were regularly required to work through their meal and/or rest periods, and/or were not provided with meal and/or rest periods at all. For example, Claimant was usually the only pet stylist on-duty during her shifts and was regularly overbooked with grooming appointments, resulting in her inability to take any meal and/or rest periods. Furthermore, general managers frequently required Claimant and, on information and belief, other Petco

April 7, 2020
Page 3

Employees to clock out for their meal periods but mandated them to continue working. The general managers also unlawfully altered Claimant's and other Petco Employees' time records to reflect that a compliant meal period was taken. As a result of the Company's illegal policies, procedures, and practices, Claimant and other Petco Employees were regularly required to work through their meal and/or rest periods, take on-duty meal and/or rest periods, and/or were not provided with a meal and/or rest period at all. Claimant and, on information and belief, other Petco Employees did not sign a meal period waiver or an on-duty meal agreement at any point during their employment.

Although Claimant and other Petco Employees did not receive legally compliant meal and/or rest periods, the Company did not consistently pay Claimant and, on information and belief, other Petco Employees the additional one hour of pay at the employee's regular rate of pay as required under Labor Code § 226.7 and the applicable IWC Wage Order. Therefore, the Company owes Claimant and, on information and belief, other Petco Employees a meal and/or rest period premium for each work day that Claimant and other Petco Employees were not provided with a compliant meal and/or rest period.

Furthermore, Claimant and, on information and belief, other Petco Employees were not timely paid all minimum, regular, and overtime wages because the Company failed to pay them for the time they spent working through their meal and/or rest periods. The Company improperly considered the work Claimant and other Petco Employees performed during their meal and/or rest periods as non-compensable time and failed to provide any remuneration. Additionally, the Company regularly shaved the time of Petco Employees, including Claimant, to preclude the payment of overtime compensation. As a result of being required to work off-the-clock during meal and/or rest periods and the shaving of overtime hours, the Company did not timely pay Claimant and, on information and belief, other Petco Employees minimum, regular, and overtime wages when Claimant and other Petco Employees worked in excess of 8-hours a day and/or 40-hours a workweek.

The Company also failed to pay Claimant, and on information and belief, other Petco Employees' wages in a form negotiable and payable in cash by issuing wages via a pay card without their prior authorization. Claimant and other Petco Employees incurred multiple fees when using the pay card, including, but not limited to, fees for checking the card balance and withdrawing money from the ATM.

As a direct result of the Company's illegal policies, procedures, guidelines, and practices, like those described herein, the Company failed to maintain accurate records reflecting all of Claimant's and other Petco Employees' actual time worked and actual wages earned and paid, among other things, in violation of California law. Furthermore, despite requesting a copy of personnel and time records in writing as permitted by law, Claimant has yet to receive a copy of her personnel and time records. The Company has violated California law by failing to maintain records and provide a copy of payroll records in the 21-day time frame proscribed by Labor Code § 226(c) and a copy of all other records within 30 days as mandated by Labor Code § 1198.5.

The wage statements issued by the Company to Petco Employees, including Claimant, also did not include the correct total regular and/or overtime hours worked, the correct amount of gross and/or net wages earned, and/or all applicable hourly rates and the corresponding number of hours worked at each hourly rate, among other things, as required under Labor Code § 226.

April 7, 2020
Page 4

Furthermore, the Company failed to timely pay Claimant and, on information and belief, other Petco Employees all wages due and payable upon separation of employment, including minimum, regular, and overtime wages for all overtime hours worked and meal and/or rest period premium wages, as required pursuant to Labor Code §§ 201, 202 and 204, in part due to aforementioned Labor Code violations. For instance, despite being terminated by the Company, Claimant was not immediately paid her final wages. Instead the Company issued Claimant a pay card, without her authorization, approximately 2 to 3 days following her termination. Claimant further contends that she was not paid all wages owed or any waiting time penalties. Claimant also alleges that she was not provided with a wage statement for the funds placed on the pay card as required by Labor Code § 203(a).

Additionally, Claimant alleges that the Company failed to provide her and other Petco Employees with a safe and healthful place of employment. For example, Claimant contends that she was often the only groomer on-duty and as a result was regularly left alone with numerous animals (i.e. dogs and cats) at a time. Claimant also contends that she experienced negative health conditions (e.g. urinary tract infections) as a result of not being able to access the toilet facilities during her employment due to the Company's policy and/or practice of understaffing its retail stores, specifically the grooming salon.

The Company also engaged in retaliation against Claimant. Claimant made a good-faith complaint about unsafe working conditions as a result of one groomer working with multiple dogs; being overbooked with appointments, which prevented her from taking legally compliant meal and/or rest periods and/or using the toilet facilities; and being passed up for a promotion. In response to this good-faith complaint, Claimant's manager removed her from the schedule, cancelled upcoming appointments, and terminated her employment. The Company, therefore, took adverse employment action against Claimant in violation of Labor Code §§ 98.6, 1102.5 and 6310.

Due to the foregoing Labor Code violations, the Company denied Claimant and other Petco Employees certain rights afforded them under the California Labor Code and IWC Wage Orders. Claimant makes these claims against the Company on behalf of herself and all other current or former non-exempt employees of the Company in California.

Since Claimant's investigation is ongoing, Claimant reserves her right to assert any and all related facts, claims and/or theories discovered after the sending of this letter on behalf of herself and the current or former Petco Employees against the Company and/or other persons that may be discovered after the sending of this letter. Such other persons include, but are not limited to, those persons who have acted as an agent, subsidiary, servant, employee, co-conspirator, alter-ego, and/or joint venture of the Company, as well as those persons who caused and/or concurrently contributed to the various acts and/or admissions of each and every one of the others, including the Company, in proximately causing the wrongful conduct, harm, and/or damages alleged herein or otherwise participated in or ratified any or all of the acts and/or omissions complained of herein, and those who were acting within the authority and/or scope of the Company.

///

April 7, 2020
Page 5

**FAILURE TO PROVIDE LEGALLY COMPLIANT MEAL AND/OR REST PERIODS
OR COMPENSATION IN LIEU THEREOF**

(Labor Code §§ 204, 226.7, and 512, and the “Meal Periods” and
“Rest Periods” sections of the Applicable Wage Order)

Labor Code § 226.7(b) states, “[a]n employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission...” Labor Code § 226.7(c) states, “[i]f an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law... the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each workday that the meal or rest or recovery period is not provided.”

Labor Code § 512(a) states,

“[a]n employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes” and “[a]n employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes.”

The “Meal Periods” section of the applicable IWC Wage Order states,

“[n]o employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day’s work the meal period may be waived by mutual consent of the employer and the employee.”

The “Meal Periods” section of the applicable IWC Wage Order further states,

“[a]n employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of employer and employee only if the first meal period was not waived.”

Furthermore, “[i]f an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the meal period is not provided.”

The “Meal Periods” section of the applicable IWC Wage Order also states,

April 7, 2020
Page 6

“[u]nless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an ‘on duty’ meal period and counted as time worked. An ‘on duty’ meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.”

The “Rest Periods” section of the Applicable IWC Wage Order states,

“[e]very employer shall authorize and permit employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.”

Furthermore, “[i]f an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the rest period is not provided.”

Premium wages under Labor Code § 226.7 are wages that are due payable in accordance with the Labor Code § 204. *Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1103-1114.

As set forth above, the Company failed to provide Claimant and, on information and belief, other Petco Employees with the opportunity to take uninterrupted, off-duty meal periods of at least 30-minutes before the start of their sixth hour of work and/or did not authorize and permit Claimant and, on information and belief, other Petco Employees to take legally compliant rest periods, as required by California law. Claimant contends that the Company has a policy and practice of unlawfully alternating Petco Employee records to reflect compliant meal periods. Consequently, Claimant and other Petco Employees are entitled to receive one-hour of premium wages for each day a compliant meal period was not provided and/or one-hour of premium wages for each day a compliant rest period was not authorized and permitted. Claimant will pursue all available remedies for the Company’s violations on behalf of herself and other current or former Petco Employees to the extent allowed by law.

FAILURE TO PAY MINIMUM, REGULAR, AND OVERTIME WAGES

(Labor Code §§ 204, 210, 510, 1194, 1197, 1197.1, 1198, and 1199, and the “Minimum Wages” and “Hours and Days of Work” sections of the Applicable IWC Wage Order)

Labor Code § 1197 states, “[t]he minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.”

Labor Code § 1197.1 provides that,

April 7, 2020
Page 7

“[a]ny employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law or by an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to Section 203...”

Labor Code § 1198 states, “[t]he maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Labor Code § 1199 imposes “a fine of not less than one hundred dollars (\$100)” for any employer who violates the provisions set forth in Labor Code § 1198.

Labor Code § 510 states,

“[e]ight hours of labor constitutes a day’s work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.”

The “Hours and Days of Work” and “Minimum Wages” sections of the Applicable Wage Order mandates the same requirements as Labor Code § 510.

Labor Code § 204(a) states in pertinent part, “[a]ll wages...earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays.” Furthermore, Labor Code § 204(b)(1) states, “all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period.”

Labor Code § 210 provides that, “every person who fails to pay the wages of an employee as provided in Section...204...shall be subject to a civil penalty” of \$100 for an initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation.” The “Minimum Wages” section of the applicable IWC Wage Order also states that “[e]very employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise.”

Labor Code § 1194(a) states, “...any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid

April 7, 2020
Page 8

balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit." Liquidated damages in an amount equal to the minimum wages unlawfully unpaid and interest thereon are provided for under Labor Code § 1194.2.

As set forth above, the Company required Claimant and, on information and belief, other Petco Employees to work off-the-clock during rest and/or meal periods without compensation. In addition, general managers unlawfully altered Claimant's and other Petco Employees' time records to reflect that compliant meal periods were taken and/or that Petco Employees, including Claimant, did not work as many hours as they actually did. The Company thus failed to timely pay Claimant and, on information and belief, other Petco Employees all minimum, regular, and overtime wages, as required by law. Claimant will pursue all available remedies for the Company's violations on behalf of herself and other current or former Petco Employees to the extent allowed by law.

**FAILURE TO MAKE PAYMENT OF WAGES IN FORM NEGOTIABLE AND
PAYABLE IN CASH**

(Labor Code §§ 212, 213 and 225.5)

Labor Code § 212 states,

“[n]o person, or agent or officer thereof, shall issue in payment of wages due, or to become due, or as an advance on wages to be earned: (1) Any order, check, draft, note, memorandum, or other acknowledgment of indebtedness, unless it is negotiable and payable in cash, on demand, without discount, at some established place of business in the state ...”

Labor Code § 213 provides,

“[n]othing contained in Section 212 shall: ... (d) Prohibit an employer from depositing wages due or to become due or an advance on wages to be earned in an account in any bank, savings and loan association, or credit union of the employee's choice with a place of business located in this state, provided that the employee has voluntarily authorized that deposit.”

An employee must be fully informed of payroll debit card program and agree to participate in the alternative method of compensation. *Holak v. Kmart Corp.* (E.D. Cal. Dec. 11, 2012) 2020 U.S. Dist. LEXIS 176331, *17; DLSE Opinion Letter 2008.07.07 (July 7, 2008).

Labor Code § 225.5 imposes a civil penalty of \$100 for each initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation for any “...person who unlawfully withholds wages due any employee in violation of Section ...212.”

As set forth above, by paying Claimant and other Petco Employees their wages via a pay card without their prior authorization, which resulted in various fees. The Company failed to make payment of wages

April 7, 2020
Page 9

in a form negotiable and payable in cash, on demand, and without discount. Claimant will pursue all available remedies for the Company's violations on behalf of herself and other current or former Petco Employees to the extent allowed by law.

FAILURE TO MAINTAIN ACCURATE RECORDS

(Labor Code §§ 226, 1174, 1174.5, and 1198.5 and the "Records" section of the Applicable IWC Wage Order)

Labor Code § 1174 states, "[e]very person employing labor in this state shall... [k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, ..., employees employed at the respective plants or establishments." See also Labor Code § 226(a).

The "Records" section of the Applicable Wage Order states that every employer shall keep accurate information with respect to each one of its employees, including time records showing when the employee begins and ends each work period, meal periods, total daily hours worked, total wages paid each payroll period, and total hours worked in the payroll period and applicable rates of pay.

Labor Code § 226(b) mandates that employers, "shall afford current and former employees the right to inspect or receive a copy of records pertaining to their employment, upon reasonable request to the employer." Labor Code § 226(c) further provides,

"[a]n employer who receives a written or oral request to inspect or receive a copy of records pursuant to subdivision (b) pertaining to a current or former employee shall comply with the request as soon as practicable, but no later than 21 calendar days from the date of the request. A violation of this subdivision is an infraction."

Labor Code § 1174.5 imposes a civil penalty of \$500 for an employer's failure to maintain accurate and complete records. This civil penalty is in addition to the civil penalty of \$100 per pay period, per aggrieved employee that would be imposed pursuant to Labor Code § 2699 for a violation of Labor Code § 1174(d).

Labor Code § 226(e)(1) provides,

"[a]n employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) [of Labor Code § 226] is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees."

April 7, 2020
Page 10

Labor Code §§ 226(f) and 1198.5(k) impose a civil penalty on employers for violations of Labor Code § 226(c). Labor Code § 226(f) states that “[a] failure by an employer to permit a current or former employee to inspect or receive a copy of records within the time set forth in subdivision (c) entitles the current or former employee or the Labor Commissioner to recover a seven-hundred-fifty-dollar (\$750) penalty from the employer.” Labor Code § 1198.5 further mandates,

“[i]f an employer 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, or times agreed to by mutual agreement as provided 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.”

Labor Code § 1198.5 grants every current and former employee the right to receive a copy of the personnel records that the employer maintains. Labor Code § 1198.5 mandates that the contents of the personnel records be available for inspection within, but no later than 30 days from the date the employer receives the written request. An employer who fails to provide a copy of the records requested is subject to a penalty of \$750. Labor Code § 1198.5(k).

As set forth above, the Company violated these requirements by failing to accurately record employee hours actually worked including, but not limited to, the Company’s failure to record the proper beginning and end of each work period, the meal periods, the total hours worked during the pay period, the applicable rates of pay, and the wages earned and paid, among other things. Moreover, Claimant has not yet received a copy of her personnel and time records, despite requesting a copy of these records in writing as permitted by California law. Thus, the Company has violated Labor Code §§ 226(b) and (c) and Labor Code § 1198.5 by failing to provide Claimant with a copy of her personnel and time records within the proscribed time frame. Claimant will pursue all available remedies for the Company’s violations on behalf of herself and other current or former Petco Employees to the extent allowed by law.

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS
(Labor Code §§ 226 and 226.3, and the “Records” section of the Applicable IWC Wage Order)

Labor Code § 226(a) states in pertinent part that every employer shall provide an accurate, itemized wage statement in writing with respect to each of its employees showing: “(1) gross wages earned, (2) total hours worked by the employee, ..., (5) net wages earned, ..., and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.”

Labor Code § 226(e) imposes a penalty of the greater of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of \$4,000, and entitles an employee to an award of costs and reasonable attorney’s fees. Labor Code § 226.3 imposes an additional civil penalty on the employer of \$250.00 per employee per violation of Labor Code § 226(a) in an initial citation and \$1,000 per employee for each violation in a subsequent citation.

April 7, 2020
Page 11

As set forth above, the Company failed to provide Claimant and other Petco Employees with accurate itemized wage statements that comply with the requirements of the Labor Code because the wage statements issued did not, among other things, include the correct total regular and/or overtime hours worked, the correct amount of gross and/or net wages earned, and/or all applicable hourly rates and the corresponding number of hours worked at each hourly rate. Claimant also did not receive a wage statement with her final pay card. Claimant will pursue all available remedies for the Company's violations on behalf of herself and other current or former Petco Employees to the extent allowed by law.

FAILURE TO TIMELY PAY ALL WAGES OWED UPON SEPARATION OF EMPLOYMENT

(Labor Code §§ 201, 202, 203, and 210)

Labor Code § 201 states, in pertinent part, "[i]f an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately." Labor Code § 202 provides,

"[i]f an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting."

Labor Code § 203(a) states, in pertinent part,

"[i]f an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced; but the wages shall not continue for more than 30 days."

Labor Code § 210 mandates that, "... every person who fails to pay the wages of an employee as provided in Sections 201.3...shall be subject to a civil penalty" of \$100 for an initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation.

As set forth above, the Company violated these Labor Code sections by not timely paying to Claimant and other Petco employees all minimum, regular, and overtime wages and/or meal and/or rest period premium wages within the required time upon separation of their employment. Claimant did not receive her final wages until approximately 2 to 3 days after her termination. Claimant's final wages were issued on a pay card, without her authorization, and did not include waiting time penalties. Claimant also did not receive a wage statement with her final pay card. As a result of the Company's failure to comply with the aforementioned Labor Code provisions, the Company owes waiting time penalties to Claimant and other Petco employees, which it has not yet paid. Claimant will pursue all available remedies for the Company's violations on behalf of herself and other current or former Petco Employees to the extent allowed by law.

April 7, 2020
Page 12

FAILURE TO MAINTAIN A SAFE AND HEALTHFUL PLACE OF EMPLOYMENT

(Labor Code §§ 6311 and 6400 *et seq.*)

Labor Code §§ 6400 and 6404 establish the obligation of an employer to furnish its employees with a place of employment that is safe and healthful. Labor Code § 6401 provides that,

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

See also Labor Code § 6403 (prohibiting an employer from failing or neglecting to perform its obligations under Labor Code § 6401).

An employer is required to correct any unsafe and/or unhealthy condition in a timely manner and is further prohibited from permitting or requiring an employee to go or be in a place of employment that is not safe and healthful. Labor Code §§ 6401.7(b) and 6402.

Claimant alleges that the Company failed to maintain a safe and healthful place of employment for Petco Employees, including herself. For instance, Claimant contends that she was often the only groomer on-duty and as a result was regularly left alone with numerous animals (i.e. dogs and cats) at a time.

Additionally, California law requires that employers provide separate toilet facilities for each sex. C.C.R., Tit. 8, § 3364. The number of facilities required is determined by the number of employees. *Id.* Toilet facilities are required to be kept clean, maintained in good working order and to be accessible to the employees at all times. *Ibid.* Hand washing facilities must also be provided and maintained in good working order. C.C.R., Tit. 8, § 3366. Critically, the California Division of Labor Standard Enforcement’s Policies and Interpretations Manual explains that mandated rest periods should not be confused with or limited to breaks taken by employees to use toilet facilities. The DLSE explains on its website that “the 10-minute rest period is not designed to be exclusively for use of toilet facilities as evidenced by the fact that the Industrial Welfare Commission requires suitable resting facilities be in an area ‘separate from toilet rooms’.” See https://www.dir.ca.gov/dlse/FAQ_RestPeriods.htm.

Claimant contends that the Company has a policy, procedure, guideline, procedure and/or culture of only permitting Petco Employees to use the toilet facilities with the permission of a manager or during rest periods, largely as a result of its understaffing of its retail stores. In fact, Claimant alleges that during her employment she experienced adverse medical consequences (e.g. urinary tract infections) as a result of being unable to use the toilet facilities during the work day. The Company therefore improperly restricts the use of toilet facilities in violation of California law.

April 7, 2020
Page 13

The Company has failed to provide maintain a safe and healthful place of employment for Petco Employees, including Claimant. Claimant will pursue all available remedies for the Company's violations on behalf of herself and other current or former Petco Employees to the extent allowed by law.

RETALIATION

(Labor Code §§ 98.6, 1102.5 and 6310)

Labor Code § 98.6(a) mandates,

“[a] person shall not discharge an employee or in any manner discriminate, retaliate, or take any adverse action against any employee or applicant for employment because the employee or applicant engaged in any conduct delineated in this chapter, including the conduct described in subdivision (k) of Section 96, and Chapter 5 (commencing with Section 1101) of Part 3 of Division 2, or because the employee or applicant for employment has filed a bona fide complaint or claim or instituted or caused to be instituted any proceeding under or relating to his or her rights that are under the jurisdiction of the Labor Commissioner, made a written or oral complaint that he or she is owed unpaid wages, or because the employee has initiated any action or notice pursuant to Section 2699, or has testified or is about to testify in a proceeding pursuant to that section, or because of the exercise by the employee or applicant for employment on behalf of himself, herself, or others of any rights afforded him or her.”

Labor Code § 98.6(a)(3) further provides that, “[i]n addition to other remedies available, an employer who violates this section is liable for a civil penalty not exceeding ten thousand dollars (\$10,000) per employee for each violation of this section, to be awarded to the employee or employees who suffered the violation.”

Labor Code § 1102.5(b) states,

“[a]n 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 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

April 7, 2020
Page 14

rule or regulation, regardless of whether disclosing the information is part of the employee's job duties.”

In addition to other penalties, “an employer that is a corporation or limited liability company is liable for a civil penalty not exceeding ten thousand dollars (\$10,000) for each violation” of Labor Code § 1102.5(b).

Labor Code § 6310(a) provides, in pertinent part,

“[n]o person shall discharge or in any manner discriminate against any employee because the employee has done any of the following: (1) Made any oral or written complaint to the division, other governmental agencies having statutory responsibility for or assisting the division with reference to employee safety or health, his or her employer, or his or her representative. (2) Instituted or caused to be instituted any proceeding under or relating to his or her rights or has testified or is about to testify in the proceeding or because of the exercise by the employee on behalf of himself, herself, or others of any rights afforded him or her. . . .”

Labor Code § 6310(b) further states,

“[a]ny employee who is discharged . . . because the employee has made a bona fide oral or written complaint to the division, other governmental agencies having statutory responsibility for or assisting the division with reference to employee safety or health, his or her employer, or his or her representative, of . . . work practices, in his or her employment or place of employment . . . shall be entitled to reinstatement and reimbursement for lost wages and work benefits caused by the acts of the employer. Any employer who willfully refuses to rehire, promote, or otherwise restore an employee or former employee who has been determined to be eligible for rehiring or promotion by a grievance procedure, arbitration, or hearing authorized by law, is guilty of a misdemeanor.”

As set forth above, the Company engaged in retaliation against Claimant and wrongfully took adverse employment action against her in violation of Labor Code §§ 1102.5 and 6310.

CIVIL PENALTIES FOR VIOLATION OF THE LABOR CODE AND IWC WAGE ORDERS
(Labor Code §§ 98.6(b)(3), 210, 225.5, 226(f), 226.3, 558, 558.1, 1102.5(e), 1174.1, 1197.1, 1198.5, 2699(f), 6317, and 6342)

Labor Code § 98.6(b)(3) states an employer who violates Labor Code § 98.6 is liable for a civil penalty not exceeding \$10,000 per employee for each violation of this section. The civil penalty is to be awarded to the individuals who were improperly discharged.

April 7, 2020
Page 15

Labor Code § 210 provides that any person who fails to pay wages as provided in sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5 and 1197.5 shall be subject to a civil penalty of \$100 for any initial violation for each failure to pay each employee and for each subsequent violation, or any willful or intentional violation \$200 for each failure to pay each employee, plus 25 % if the amount unlawfully withheld, in addition to any other penalty.

Labor Code § 225.5 provides that, "...every person who unlawfully withholds wages due any employee in violation of Section...223 shall be subject to a civil penalty" of \$100 for each initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation.

For violations of Labor Code § 226(c), Labor Code §§ 226(f) and 1198.5 permit the current or former employee, or the Labor Commissioner, to recover a \$750 penalty from the employer.

For violations of Labor Code § 226(a), Labor Code § 226.3 imposes a civil penalty of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation.

Labor Code § 558 subjects any employer or any person acting on behalf of an employer who violates Labor Code Part 2, Chapter 1, of the Labor Code (Labor Code §§ 500-558) or any provision regulating the hours and days of work in any IWC Wage Order to a civil penalty as follows: "[f]or any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid. For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid."

Labor Code § 558.1(a) states that,

"[a]ny employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wage or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation."

Pursuant to Labor Code § 558.1(b), Labor Code § 558.1(a) is applicable to the owners, officers, directors, or managing agents of the employer.

Labor Code § 1102.5(e) imposes "a civil penalty not exceeding ten thousand dollars (\$10,000) for each violation" of Labor Code § 1102.5(b) on any employer that is a corporation or limited liability company.

For violations of Labor Code § 1174 subdivisions (b), (c), and (d), Labor Code § 1174.5 imposes a civil penalty of \$500.

Similarly, Labor Code § 1197.1 subjects any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by an order of the commission to a civil

April 7, 2020
Page 16

penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to § 203 as follows:

“(1) For any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to § 1194.2, and any applicable penalties imposed pursuant to § 203. (2) For each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to § 1194.2, and any applicable penalties imposed pursuant to § 203. (3) Wages, liquidated damages, and any applicable penalties imposed pursuant to § 203, recovered pursuant to this section shall be paid to the affected employee.”

Labor Code § 2699(f) imposes a civil penalty of \$100 per pay period, per employee for the initial violation and \$200 per pay period, per employee for each subsequent violation for all Labor Code provisions for which a civil penalty is not specifically provided, including, but not limited to, Labor Code §§ 98.6, 201, 202, 203, 204, 210, 223, 222.5, 226(a), 226.7, 510, 512, 1102.5, 1174(c), 1174(d), 1194, 1197, 1197.1, 1198, 6310, 6311, 6399.7 and relevant IWC Wage Orders.

For violations of Labor Code §§ 6400 *et seq.*, Labor Code § 6317 permits California Division of Occupational Health and Safety to impose civil penalties against employers as specified in § 6423, which states the following:

“[e]very employer and every officer, management official, or supervisor having direction, management, control, or custody of any employment, place of employment, or of any other employee, who . . . (1) [k]nowingly or negligently violates any standard, order, or special order, or any provision of this division, or of any part thereof in. . . [i]s punishable by . . . a fine not to exceed five thousand dollars (\$5,000).”

Furthermore, employers that repeatedly violate “any standard, order, or special order, or provision of this division, or any part thereof in, or authorized by, this part, which repeated violation creates a real and apparent hazard to employees” are subject to “a fine not exceeding fifteen thousand dollars (\$15,000). . . . If the defendant is a corporation or a limited liability company, the fine may not exceed one hundred fifty thousand dollars (\$150,000).” Labor Code § 6423(d).

As set forth above, the Company violated the Labor Code and the applicable IWC Wage Order by failing to timely pay Claimant and Petco Employees all regular, minimum, and overtime wages, and meal and rest period premium wages, as required under the Labor and the applicable sections of the relevant IWC

April 7, 2020
Page 17

Wage Order. As a result, the Company is liable for civil penalties under the Labor Code and Claimant will pursue all available remedies, including but not limited to those stated herein, for the Company's violations on behalf of herself and other current or former Petco Employees to the extent allowed by law.

ATTORNEY'S FEES, COSTS, INTEREST, LIQUIDATED DAMAGES AND PENALTIES

(Labor Code §§ 210, 218.5, 218.6, 225.5, 226(e), 558, 1194, 1194.2, 1197.1, and 2698, *et seq.*)

Labor Code §§ 210, 218.5, 218.6, 225.5, 226(e), 558, 1194, 1194.2, 1197.1, and 2698, *et seq.*, among others, give employees the right to recover in a civil action the full amount of damages, liquidated damages and penalties, including interest thereon, as well as reasonable attorney's fees and costs.

Pursuant to Labor Code § 2699(i) an aggrieved employee is entitled to collect 25% of the penalty assessment. Under Labor Code § 2699(g)(1) an aggrieved employees, such as Claimant, is entitled to an award of reasonable attorney's fees and costs. Accordingly, the Company is liable for these items. Claimant has already incurred actual damages, costs and attorney's fees and he will continue to incur such as a result of the Company's unlawful actions. Claimant will pursue all available remedies, including but not limited to those provided by the PAGA, on behalf of herself and other Petco Employees to the extent permitted by law for the violations of law described herein and those later discovered.

CONCLUSION

Based on the foregoing, the Company has violated the Labor Code and relevant IWC Wage Order and thereby deprived Claimant and other Petco Employees of the rights and protections afforded to them. Claimant has satisfied the prerequisites of the PAGA to serve as a representative of all current or former non-exempt employees of the Company in California, the general public, and the state of California in order to enforce California labor laws and to seek civil penalties for the provisions set forth herein, as well as those which may be later discovered.

Accordingly, if the California agencies decline to intervene or act within time prescribed by the Labor Code, Claimant may elect to initiate and/or amend a civil action, on behalf of herself and all other current or former non-exempt employees of the Company in California as permitted by the PAGA.

Sincerely,

Monique R. Rodriguez

Monique R. Rodriguez