

COHELAN KHOURY & SINGER

Michael D. Singer (SBN 115301)

msinger@ckslaw.com

Rosemary C. Khoury (SBN 331307)

rkhoury@ckslaw.com

605 C Street, Suite 200

San Diego, CA 92101

Telephone: (619) 595-3001/Facsimile: (619) 595-3000

Attorneys for Plaintiff ALEJANDRO BERNAL
on behalf of himself and all other aggrieved employees

ELECTRONICALLY FILED

Superior Court of California,
County of San Diego

09/28/2021 at 11:08:15 AM

Clerk of the Superior Court
By Elizabeth Reyes, Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

ALEJANDRO BERNAL, on behalf of
himself and all other aggrieved employees,

Plaintiff,

vs.

AEROTEK, INC., a Maryland
Corporation; PETCO ANIMAL
SUPPLIES STORES, INC., a Delaware
Corporation; ALLEGIS GROUP, INC.,
a Maryland Corporation; ALLEGIS
GROUP HOLDINGS, INC., a Maryland
Corporation; and DOES 1 through 10,
inclusive,

Defendants.

CASE NO. 37-2021-00041337-CU-OE-CTL

**COMPLAINT FOR RECOVERY OF
PRIVATE ATTORNEYS GENERAL ACT
("PAGA") CIVIL PENALTIES**

- 1. PAGA CIVIL PENALTIES FOR
FAILURE TO PAY MINIMUM,
REGULAR, AND OVERTIME WAGES**
- 2. PAGA CIVIL PENALTIES FOR
FAILURE TO PROVIDE MEAL
PERIODS**
- 3. PAGA CIVIL PENALTIES FOR
FAILURE TO AUTHORIZE AND
PERMIT PAID REST PERIODS**
- 4. PAGA CIVIL PENALTIES FOR
FAILURE TO PROVIDE ACCURATE
ITEMIZED WAGE STATEMENTS**
- 5. PAGA CIVIL PENALTIES FOR
FAILURE TO TIMELY PAY ALL
WAGES DUE DURING AND UPON
TERMINATION OF EMPLOYMENT**
- 6. PAGA CIVIL PENALTIES FOR
FAILURE TO MAINTAIN ACCURATE
RECORDS**
- 7. PAGA CIVIL PENALTIES FOR
FAILURE TO REIMBURSE BUSINESS
EXPENSES**
- 8. PAGA CIVIL PENALTIES FOR
REQUIRING AN UNLAWFUL
AGREEMENT**

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

9. PAGA CIVIL PENALTIES FOR
FAILURE TO MAINTAIN A
REASONABLY COMFORTABLE
TEMPERATURE
10. PAGA CIVIL PENALTIES FOR
FAILURE TO PAY REPORTING TIME
WAGES

1 Plaintiff ALEJANDRO BERNAL (“Plaintiff”), on behalf of himself and all others
2 aggrieved and as a Representative of the State of California’s Labor and Workforce
3 Development Agency (“LWDA”), hereby alleges as follows:

4 I.

5 **INTRODUCTION**

6 1. Plaintiff brings this proposed PAGA Representative Action against his former
7 employers and Defendants Aerotek, Inc., Petco Animal Supplies Stores, Inc.
8 (“Petco”), Allegis Group, Inc., Allegis Group Holdings, Inc. and DOES 1-10 (collectively,
9 “Defendants”) under the California Labor Code to recover civil penalties arising out of
10 Defendants’ multiple labor code violations as described herein.

11 2. Specifically, during all or a significant part of the applicable limitations period
12 for the time period covered by the Private Attorneys General Act of 2004 (“PAGA”), Labor
13 Code sections 2698, *et seq.*, Plaintiff alleges Defendants did not pay him or other hourly, non-
14 exempt employees all minimum, regular, overtime, and reporting time wages. Defendants also
15 failed to: provide off-duty meal and rest periods or properly-calculated premium wages in lieu
16 thereof; provide compliant wage statements and maintain accurate records; timely pay all wages
17 during and upon termination of employment; reimburse business expenses, including personal
18 cell phone expenses; and maintain a reasonably comfortable temperature in the work
19 environment. Defendants also knowingly required Plaintiff and other aggrieved employees to
20 sign unlawful agreements. Plaintiff seeks to recover penalties for Defendants’ violations of the
21 labor code.

22 3. Plaintiff brings this lawsuit as a PAGA Representative Action on behalf of the
23 state of California, and all “aggrieved employees,” defined as all current and former non-
24 exempt employees of Defendants including, but not limited to, forklift drivers, who during the
25 applicable statute of limitations period, suffered one or more violations of the labor code.
26 Pursuant to Labor Code sections 2698, *et seq.*, Plaintiff seeks to recover civil penalties and
27 reasonable attorney’s fees and costs. Plaintiff, by operation of law, has standing and capacity to
28 sue as a representative of the State of California. Plaintiff mailed written notice of the specific

1 provisions of the Labor Code that Defendants violated, including the facts and theories to
2 support the alleged violations, to the LWDA and to Defendants pursuant to Labor Code section
3 2699.3 on July 19, 2021. A true and correct copy of this Notice is attached as **Exhibit 1**.
4 Defendants did not provide notice of cure and the LWDA did not provide notice of
5 investigation in the 65 days after the mailing of the PAGA notice.

6 **II.**

7 **JURISDICTION AND VENUE**

8 4. Venue as to each Defendant is proper in this judicial district, pursuant to Code of
9 Civil Procedure section 395. Defendants conduct business in the city and county of San Diego
10 in the state of California and each Defendant is within the jurisdiction of this Court for service
11 of process purposes. The unlawful acts alleged have a direct effect on Plaintiff and other
12 aggrieved employees within the State of California and San Diego County. Defendants employ
13 numerous employees in San Diego County and in California generally. There is no federal
14 question at issue for removal under 28 U.S.C. section 1331, as the issues herein are based solely
15 on California statutes and law, including the Labor Code, IWC Wage Orders, Code of Civil
16 Procedure.

17 5. Plaintiff is also informed and believes that his individual PAGA claims do not
18 arise to the necessary amount in controversy to implicate traditional jurisdiction under 28
19 U.S.C. section 1332(a) or jurisdiction under the CAFA. Further, PAGA civil penalty actions are
20 not subject to federal jurisdiction.

21 **III.**

22 **THE PARTIES**

23 6. Plaintiff ALEJANDRO BERNAL is a former non-exempt hourly employee of
24 Defendants. Plaintiff was employed by Defendants as a forklift driver at the Petco warehouse in
25 Mira Loma, California from approximately November 4, 2020 through February 24, 2021.
26 Defendant Aerotek, Inc. is listed as the employer on Plaintiff's and other aggrieved employees
27 wage statements. Defendant Allegis Group is listed on Plaintiff's and other aggrieved
28 employees' Code of Conduct Acknowledgement forms and Direct Deposit Authorization forms.

1 7. Plaintiff alleges that all other non-exempt hourly employees in the State of
2 California worked under Defendants’ policies and as a result, suffered the same violations of
3 the California Labor Code as alleged herein.

4 8. Plaintiff is an “aggrieved employee” because he was employed by the alleged
5 violators and had one or more of the alleged violations committed against him and therefore is
6 properly suited to represent the interests of all other current and former non-exempt employees
7 of Defendants.

8 9. Pursuant to Cal Labor Code section 2698, *et seq.*, Plaintiff seeks to represent all
9 other aggrieved employees as described herein during the applicable PAGA limitations period
10 (which is defined as any time from one year and 65 days prior to the commencement of this
11 action until the commencement of trial in the matter). The applicable limitations period is
12 referred to herein as “the PAGA Period.”

13 10. Plaintiff is informed and alleges Defendants warehouse and sell pets and animal
14 supplies and provide pet grooming services in California, including in San Diego County.

15 11. Pursuant to California Labor Code sections 558 and 558.1, Defendants are
16 employers of Plaintiff, and/or a person acting on behalf of Plaintiff’s employer, who violated, or
17 caused to be violated, any provision regulating minimum wages or hours and days of work in
18 the applicable Industrial Welfare Commission order, as well as California Labor Code sections
19 203, 226, 226.7, 1193.6, 1194 and 2802, and as such, are liable for such violations pursuant to
20 California Labor Code sections 558 and 558.1.

21 12. During the PAGA Period, Defendants did, and do, transact and conduct business
22 in the state of California, including, but not limited to, within the jurisdiction of the Court.
23 During the PAGA Period, Defendants, and each of them, were Plaintiff’s and aggrieved
24 employees’ employers for purposes of the California wage and hour laws at issue in this action.

25 13. Plaintiff is unaware of the true names, capacities, relationships, and extent of
26 participation in the conduct alleged of Defendants sued as DOES 1 through 10, but is informed
27 and believes, and based on that alleges, DOE Defendants are legally responsible for the
28 wrongful conduct alleged, and sues these Defendants by such fictitious names. Plaintiff will

1 amend this complaint when their true names and capabilities are ascertained.

2 14. Plaintiff is informed and believes and, based thereon alleges, that each
3 Defendant, directly or indirectly, or through agents or other persons, employed Plaintiff and
4 other aggrieved employees, and exercised control over their wages, hours, and working
5 conditions.

6 15. Plaintiff seeks to recover civil penalties against the Defendants under California
7 Labor Code sections 2810-2810.3 for “client employer” and “labor contractor” liability for
8 failure to pay wages.

9 16. Here, Aerotek, Inc. provided employees to Petco and other entities. Plaintiff
10 contends that Petco entered into a contract for labor with Aerotek, Inc. and that each knew or
11 should have known that the contract for labor did not include funds sufficient to allow Aerotek,
12 Inc. to comply with all applicable state, federal and local laws governing the labor and services.

13 17. Because of this knowing failure to enter into a contract allocating sufficient
14 funds, Plaintiff and other aggrieved employees suffered injuries from the resulting violations of
15 the labor code, unpaid wages, costs of business expenses, interest, attorney’s fees and costs.
16 Aerotek, Inc.’s clients are liable for the injuries suffered by Plaintiff and aggrieved employees,
17 in addition to the resulting penalties afforded by 2699, *et seq.*

18 18. Plaintiff further contends that Petco was a “client employer” and Aerotek, Inc.
19 was the “labor contractor” under the applicable statutes. All work was directed and controlled
20 by all of the employers. Each of the employers had the authority and power to control the day
21 and hours of work and to hire and fire Plaintiff and aggrieved employees. Each of the
22 employers also created and implemented the practices and policies which caused the labor code
23 violations described herein.

24 19. During Plaintiff’s tenure with the client employer and labor contractor, wages
25 were not paid, including minimum, regular, and overtime wages, reporting time wages, and
26 meal and rest period premiums as set forth herein. Because Petco is a “client employer”, they
27 are liable along with Aerotek, Inc. for all sums payable to an employee or the state based upon
28 the failure to pay wages including civil penalties owed to the state of California for violations of

1 the Labor Code.

2 IV.

3 **GENERAL ALLEGATIONS**

4 20. During the PAGA Period, Plaintiff and other aggrieved employees were
5 employed by Defendants and each of them, including DOE Defendants, within the state of
6 California.

7 21. During the PAGA Period, Plaintiff and other aggrieved employees of Defendants
8 worked under the same policies, practices, and procedures relating to their employment,
9 including those governing wage statements, recordkeeping, payment of wages, expense
10 reimbursements, and provision of rest and meal periods applicable to Defendants' facilities.

11 22. The California Labor Code and applicable IWC Wage Order and portions of the
12 California Code of Regulations provide that all persons employed in the State of California
13 shall be (1) presumed to be an hourly or non-exempt employee, and (2) that all "hours worked"
14 and subject to the control of the employer, whether exercised or not, are to be paid at least the
15 minimum wage as determined by the State of California, and for overtime wages at either 1.5
16 times the regular rate of pay when "hours worked" exceeds 8 hours in a single day or shift, or
17 over 40 hours in a 168-total hour workweek, or 2.0 times the regular rate of pay when "hours
18 worked" exceeds 12 hours in a single day or shift or for the first 8 hours on the seventh
19 consecutive day in a workweek.

20 23. Plaintiff and each aggrieved employee were non-exempt employees covered
21 under one or more IWC Wage Orders ("Wage Orders"), and Labor Code section 510, and/or
22 other applicable wage orders, regulations, and statutes, and each aggrieved employee was not
23 subject to an exemption for executive, administrative, professional employees, or any other
24 exemption, which imposed an obligation on the part of the Defendants to pay Plaintiff and each
25 aggrieved employee lawful minimum and overtime compensation, as well as to provide
26 statutory meal and rest periods.

27 24. Plaintiff and each aggrieved employee worked in excess of the maximum regular
28 rate hours set by the IWC in the above Wage Orders, regulations, or statutes, and are therefore

1 entitled to appropriate overtime compensation at time and a half (1½) rate of their regular pay,
2 and when applicable, double-time rates as set forth by the above Wage Orders, regulations,
3 and/or statutes.

4 25. Upon information and belief, Plaintiff and other aggrieved employees worked in
5 non-exempt, hourly positions, and during the PAGA Period, each was subject to the
6 Defendants' compensation policies that resulted in underpayment of all minimum, regular, and
7 overtime wages owed.

8 26. During the PAGA Period, Defendants failed to pay Plaintiff and other aggrieved
9 employees all minimum, regular, and overtime wages they were owed for all time worked or
10 subject to Defendants' control.

11 27. For instance, Defendants required Plaintiff and other aggrieved employees to
12 wait in line for, and undergo, COVID screenings before entering the warehouse but did not
13 compensate all applicable minimum and overtime wages for employees for this time spent
14 under the direction and control of Defendants.

15 28. Defendants also required Plaintiff and other aggrieved employees to self-report
16 their hours worked either on paper or electronically following the completion of their
17 workweek, no later than the following Monday at 10:00 a.m. but did not compensate employees
18 for this time spent working at the applicable minimum and overtime wage rates.

19 29. Additionally, Defendants required Plaintiff and other aggrieved employees to
20 complete trainings but did not pay them all required wages, including minimum and applicable
21 overtime wages, for this time worked. For example, Plaintiff was required by Defendants to
22 complete a 2-hour recertification course as a forklift driver, but was not paid for the time he
23 spent on this course. Plaintiff believes other aggrieved employees were also not paid for time
24 spent on Defendants-required courses. Defendants also failed to pay Plaintiff and other
25 aggrieved employees for attending orientation, including but not limited to all the time they
26 spent reading and filling out onboarding paperwork and employment policies at the outset of
27 their employment.

28 ///

1 30. During the PAGA Period, Defendants subjected Plaintiff and all aggrieved
2 employees to policies and practices which failed to provide compliant meal periods or
3 correctly-calculated premium wages in lieu thereof. Plaintiff and other aggrieved employees
4 were not provided an opportunity for each shift to take a thirty-minute, uninterrupted, off-duty
5 meal period before the end of the fifth hour of work. When meal periods were provided, they
6 were often late, short, interrupted or entirely missed. Further, Plaintiff and other aggrieved
7 employees were not provided an opportunity to take a second uninterrupted, off-duty, thirty-
8 minute meal period on shifts lasting more than ten hours before the end of the tenth hour of
9 work.

10 31. During the PAGA Period, Defendants subjected Plaintiff and all aggrieved
11 employees to policies and practices which failed to authorize and permit compliant paid rest
12 periods or correctly-calculated premium wages in lieu thereof. Plaintiff and other aggrieved
13 employees were also not authorized or permitted to take all off-duty rest periods of at least 10
14 minutes to which they were entitled.

15 32. Defendants did not pay one hour of wages at a regular rate of pay for all days on
16 which there was a non-compliant meal or rest period, as required by Labor Code section 226.7.

17 33. During the PAGA Period, Defendants did not provide accurate itemized wage
18 statements containing all required categories of information to Plaintiff and other aggrieved
19 employees. For example, Defendants did not provide a hard copy of the wage statements, nor
20 did they provide employees any opportunity to print their own wage statements. Defendants did
21 not have printers that employees could use to print these wage statements. Additionally,
22 because of the Defendants' failure to pay all wages and provide all meal and rest periods and
23 associated premium wages, the wage statements issued by Defendants did not contain the
24 correct amount of gross wages earned, net wages earned, total hours worked, nor all applicable
25 hourly rates of pay and all hours worked at each rate.

26 34. During the PAGA Period, Defendants also failed to record and maintain records
27 reflecting the total hours worked daily, and the beginning and ending times of each work
28 period, including when the employees began and ended each meal period.

1 35. During the PAGA Period, Defendants failed to reimburse Plaintiff and other
2 aggrieved employees for business-related expenses. For instance, Defendants required Plaintiff
3 and other aggrieved employees to download an application on their personal cell phones to
4 access their hours worked and paystubs. Plaintiff and other aggrieved employees did not have
5 another option for accessing this information. Defendants did not reimburse expenses associated
6 with downloading the application and checking this information.

7 36. During the PAGA Period, Defendants required Plaintiff and other aggrieved
8 employees to agree in writing to terms they knew were unlawful, including terms purporting to
9 broadly assign rights to inventions to the Defendants, to unlawfully restrict their rights to seek
10 gainful employment, to waive their right to initiate representative actions, and to unlawfully
11 agree to shift the worker's compensation duties/liabilities.

12 37. For example, Defendants required Plaintiff and other aggrieved employees to
13 agree in writing to a policy entitled "Ownership of Work Product" which required these
14 employees to "disclose and assign full and absolute right, title, and interest to the Client of any
15 and all inventions, improvements and discoveries made by you of any kind or nature
16 whatsoever during the tenure of this agreement," in violation of Labor Code sections 432.5 and
17 2870.

18 38. Defendants also required Plaintiff and other aggrieved employees to illegally
19 assign worker's compensation claims solely to Aerotek, Inc. instead of to the Petco and other
20 client employers. The Employment Agreement that Defendants required aggrieved employees
21 to sign purports to assign all liability for workers' compensation to Aerotek, Inc. and as a result,
22 Aerotek, Inc. violated Section 2810.3(c) by purporting to unlawfully shift legal duties and
23 liability from Petco to Aerotek, Inc. Defendants further required Plaintiff and other aggrieved
24 employees to agree to pay attorneys' fees in the event that Aerotek, Inc. prevailed in any
25 employment-related dispute, in violation of law.

26 39. During the PAGA Period, Defendants further maintained a regular practice of
27 failing to pay separated employees all wages owed within the time requirements of Labor Code
28 sections 201- 202 because they did not pay all wages earned as set forth herein. Defendants also

1 did not pay a day's wages for every day final pay was not paid through the date final wages
2 were paid, as required by Labor Code section 203. Plaintiff is informed and believes that
3 Defendants have no policy and/or practice to comply with Labor Code sections 201, 202, and
4 203 as to all separated employees in California by timely paying final wages and paying waiting
5 time penalty wages when failing to timely pay final wages.

6 40. During the PAGA Period, Defendants failed to maintain a reasonably
7 comfortable temperature in the warehouse in which Plaintiff and other aggrieved employees
8 worked. Defendants had no heating or air conditioning system to regulate the temperature in the
9 warehouse. When Plaintiff worked for Defendants, the warehouse was very cold and the toilet
10 and resting rooms were kept at a temperature lower than 68°. On information and belief, due to
11 the lack of air conditioning system in the warehouse, in the summer months the temperature
12 was uncomfortably hot and exceeded the temperatures required by law.

13 41. During the PAGA Period, Defendants had a policy and practice of failing to pay
14 reporting time pay to Plaintiff and other aggrieved employees when they reported to work as
15 required but were not furnished at least half of their usual or scheduled day's work with a
16 minimum of at least two hours but no more than four hours of pay. For instance, on February
17 24, 2021, Plaintiff showed up to work as scheduled but was nearly immediately told he was
18 terminated and was sent home. Plaintiff was not paid any reporting time pay.

19 42. Plaintiff further alleges, based on personal experience and observations, that the
20 violations of the Labor Code described herein were suffered by other aggrieved employees of
21 Defendants.

22 V.

23 **CAUSES OF ACTION**

24 **FIRST CAUSE OF ACTION**

25 **PAGA Civil Penalties for Failure to Pay Minimum, Regular, and**
26 **Overtime Wages**
27 **(Labor Code §§ 510, 1197, 1197.1 and 1198 and the "Minimum Wages" and "Overtime**
28 **Wages" sections of the applicable IWC Wage Order(s))**
(On Behalf of Plaintiff and each Aggrieved Employee Against All Defendants)

43. Plaintiff incorporates the preceding paragraphs of this Complaint.

1 44. Labor Code section 1197 provides: “The minimum wage for employees fixed by
2 the commission or by any applicable state or local law, is the minimum wage to be paid to
3 employees, and the payment of a lower wage than the minimum so fixed is unlawful.”

4 45. Labor Code section 1198 provides: “The maximum hours of work and the
5 standard conditions of labor fixed by the commission shall be the maximum hours of work and
6 the standard conditions of labor for employees. The employment of any employee for longer
7 hours than those fixed by the order or under conditions of labor prohibited by the order is
8 unlawful.”

9 46. Labor Code section 510, states in pertinent part: “Any work in excess of eight
10 hours in one workday and any work in excess of 40 hours in any one workweek and the first
11 eight hours worked on the seventh day of work in any one workweek shall be compensated at
12 the rate of no less than one and one-half times the regular rate of pay for an employee. Any
13 work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the
14 regular rate of pay for an employee. In addition, any work in excess of eight hours on any
15 seventh day of a workweek shall be compensated at the rate of no less than twice the regular
16 rate of pay of an employee.”

17 47. Labor Code section 2699(a) provides: “Notwithstanding any other provision of
18 law, any provision of this code that provides for a civil penalty to be assessed and collected by
19 the Labor and Workforce Development Agency or any of its departments, divisions,
20 commissions, boards, agencies, or employees, for a violation of this code, may, as an
21 alternative, be recovered through a civil action brought by an aggrieved employee on behalf of
22 himself or herself and other current or former employees pursuant to the procedures specified in
23 Section 2699.3.”

24 48. Labor Code section 2699(f) states: “For all provisions of this code except those
25 for which a civil penalty is specifically provided, there is established a civil penalty for a
26 violation of these provisions, as follows... (2) If, at the time of the alleged violation, the person
27 employs one or more employees, the civil penalty is one hundred dollars (\$100) for each
28 aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for

each aggrieved employee per pay period for each subsequent violation.”

49. Labor Code section 1197.1(a) provides for civil penalties for an employer’s or other person acting on its behalf’s failure to pay at least minimum wage of \$100 for any initial violation and \$250 for each subsequent violation per underpaid employee.

50. As set forth herein, during the PAGA Period, Defendants did not pay employees all minimum, regular, and overtime wages for all applicable hours worked.

51. Defendants violated Labor Code sections 510, 1197, and 1198 as well as the “Hours and Days of Work” and “Minimum Wages” and “Overtime Wages” sections of the applicable Wage Order. As a result, Plaintiff is entitled to recover civil penalties pursuant to Labor Code sections 558(a)(1)-(2), 1197.1, and 2699(a) or, in the alternative, section 2699(f)(2), attorney’s fees, expenses, and costs of suit.

52. Plaintiff, as a representative of the general public, will and does seek to recover any and all penalties for each and every violation, in an amount according to proof, as to those penalties available pursuant to the PAGA. Funds recovered will be distributed in accordance with the PAGA, with 75% of penalties recovered provided to the LWDA on behalf of the State of California.

SECOND CAUSE OF ACTION

PAGA Civil Penalties for Failure to Provide Meal Periods (Labor Code §§ 226.7, 512, 558, and 1198 and the “Meal Periods” section of the applicable IWC Wage Order(s)) (On Behalf of Plaintiff and each Aggrieved Employee Against All Defendants)

53. Plaintiff incorporates the preceding paragraphs of this Complaint.

54. Labor Code section 226.7 provides in pertinent part:

(b) An 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, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.

(c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, 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.

1 55. Labor Code section 512(a) provides in pertinent part:

2 An employer may not employ an employee for a work period of more than
3 five hours per day without providing the employee with a meal period of
4 not less than 30 minutes, except that if the total work period per day of the
5 employee is no more than six hours, the meal period may be waived by
6 mutual consent of both the employer and employee. An employer may not
7 employ an employee for a work period of more than 10 hours per day
8 without providing the employee with a second meal period of not less than
9 30 minutes, except that if the total hours worked is no more than 12 hours,
10 the second meal period may be waived by mutual consent of the employer
11 and the employee only if the first meal period was not waived.

12 56. “Unless the employee is relieved of all duty during a 30-minute meal period, the
13 meal period shall be considered an ‘on duty’ meal period and counted as time worked. An ‘on
14 duty’ meal period shall be permitted only when the nature of the work prevents an employee
15 from being relieved of all duty and when by written agreement between the parties an on-the-
16 job paid meal period is agreed to. The written agreement shall state that the employee may, in
17 writing, revoke the agreement at any time.” § 11(C) of the applicable IWC Wage Order(s).

18 57. “In all places of employment where employees are required to eat on the
19 premises, a suitable place for that purpose shall be designated.” § 11(E) of the applicable IWC
20 Wage Order(s).

21 58. Labor Code sections 2699(a) and 2699(f) provide for assessment and collection
22 of civil penalties for violations of the labor code, to be recovered through a civil action brought
23 by an aggrieved employee on behalf of himself or herself and other current or former
24 employees pursuant to the procedures specified in Section 2699.3.

25 59. Plaintiff and other aggrieved employees were not provided all meal periods as
26 required by law nor paid a correctly-calculated meal period premium for each day they were not
27 provided a compliant meal period.

28 60. Defendants’ conduct violates Labor Code sections 226.7, 512, and 1198, as well
as the “Meal Periods” section of the applicable IWC wage Order(s). As a result, Plaintiff is
entitled to recover civil penalties pursuant to Labor Code sections 558(a)(1)-(2) and 2699(a) or,
in the alternative, section 2699(f)(2), attorney’s fees, expenses, and costs of suit.

///

61. Plaintiff, as a representative of the general public, will and does seek to recover any and all penalties for each and every violation, in an amount according to proof, as to those penalties available pursuant to the PAGA. Funds recovered will be distributed in accordance with the PAGA, with 75% of penalties recovered provided to the LWDA on behalf of the State of California.

THIRD CAUSE OF ACTION

**PAGA Civil Penalties for Failure to Authorize and Permit Paid Rest Periods
(Labor Code §§ 226.7 and 1198, and the “Rest Periods” section of the applicable IWC
Wage Order(s))
(On Behalf of Plaintiff and each Aggrieved Employee Against All Defendants)**

62. Plaintiff incorporates the preceding paragraphs of this Complaint.

63. “Every employer shall authorize and permit all 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. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 1/2) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.” § 12(A) of the applicable IWC Wage Order(s).

64. “If 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.” § 12(B) of the applicable IWC Wage Order(s).

65. Labor Code sections 2699(a) and 2699(f) provide for assessment and collection of civil penalties for violations of the labor code, to be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Section 2699.3.

66. Defendants failed to authorize and permit all paid rest periods as required by law. Plaintiff and other aggrieved employees were not paid a correctly-calculated rest period premium for each day they were not authorized and permitted to take a compliant rest period.

67. Defendants violated Labor Code sections 226.7 and 1198 as well as the “Rest Periods” section of the applicable IWC Wage Order(s). As a result, Plaintiff is entitled to recover civil penalties pursuant to Labor Code section 2699(a) or, in the alternative, section 2699(f)(2), attorney’s fees, expenses, and costs of suit.

68. Plaintiff, as a representative of the general public, will and does seek to recover any and all penalties for each and every violation, in an amount according to proof, as to those penalties available pursuant to the PAGA. Funds recovered will be distributed in accordance with the PAGA, with 75% of penalties recovered provided to the LWDA on behalf of the State of California.

FOURTH CAUSE OF ACTION
PAGA Civil Penalties for Failure to Provide Accurate
Itemized Wage Statements
(Labor Code § 226)
(On Behalf of Plaintiff and each Aggrieved Employee Against All Defendants)

69. Plaintiff incorporates the preceding paragraphs of this Complaint.

70. Labor Code section 226(a) states in pertinent part: “An employer, semimonthly or at the time of each payment of wages, shall furnish to his or her employee, either as a detachable part of the check, draft, or voucher paying the employee’s wages, or separately if wages are paid by personal check or cash, an accurate itemized statement in writing showing”:

(1) gross wages earned; (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission; (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; (4) All deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item; (5) net wages earned; (6) the inclusive dates of the period for which the employee is paid; (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; (8) the name and address of the legal entity that is the employer; and (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. “The

1 deductions made from payment of wages shall be recorded in ink or other indelible form,
2 properly dated, showing the month, day, and year, and a copy of the statement and the record of
3 the deductions shall be kept on file by the employer for at least three years at the place of
4 employment or at a central location within the State of California.”

5 71. Labor Code sections 2699(a) and 2699(f) provide for assessment and collection
6 of civil penalties for violations of the labor code, to be recovered through a civil action brought
7 by an aggrieved employee on behalf of himself or herself and other current or former
8 employees pursuant to the procedures specified in Section 2699.3.

9 72. Labor Code section 226.3 provides for civil penalties for violations of the Labor
10 Code section 226. The civil penalty is \$250 for the initial violation and \$1,000 for each
11 subsequent violation.

12 73. Defendants have knowingly and intentionally failed to comply with Labor Code
13 section 226(a) on each and every wage statement provided to Plaintiff and other aggrieved
14 employees, by failing to provide these wage statements and by failing to provide accurate
15 information in each of the required categories, including the correct amount of gross wages
16 earned, net wages earned, total hours worked, and all applicable hourly rates of pay and all
17 hours worked at each rate.

18 74. As set forth herein, Defendants violated Labor Code section 226. As a result,
19 Plaintiff is entitled to recover civil penalties pursuant to Labor Code sections 226.3 and 2699(a)
20 or, in the alternative, section 2699(f)(2), attorney’s fees, expenses, and costs of suit.

21 75. Plaintiff, as a representative of the general public, will and does seek to recover
22 any and all penalties for each and every violation, in an amount according to proof, as to those
23 penalties available pursuant to the PAGA. Funds recovered will be distributed in accordance
24 with the PAGA, with 75% of penalties recovered provided to the LWDA on behalf of the State
25 of California.

26 ///

27 ///

28 ///

FIFTH CAUSE OF ACTION

**PAGA Civil Penalties for Failure to Timely Pay All Wages Due During and Upon
Termination of Employment
(Labor Code §§ 201-203 and 204 and the “Minimum Wages” section of the applicable
IWC Wage Order(s))
(On Behalf of Plaintiff and each Aggrieved Employee Against All Defendants)**

76. Plaintiff incorporates the preceding paragraphs of this Complaint.

77. An employer who discharges an employee must pay all compensation due and to that employee immediately upon discharge. Labor Code § 201. An employer must pay all compensation due to an employee who quits within 72 hours. Labor Code § 202. If an employer willfully fails to timely pay such wages the employer must, as a penalty, continue to pay the subject employee’s wages until paid or until an action is commenced, but the penalty cannot exceed 30 days’ wages. Labor Code § 203.

78. Labor Code section 204(a) states, in pertinent part: “All 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.” Section 204(d) states: “The requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.” The “Minimum Wages” Section of the applicable Wage Order(s) further states “every 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.”

79. Labor Code section 210(a) provides: “(a) In addition to, *and entirely independent and apart from*, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 204.11, 205, 205.5, and 1197.5, shall be subject to a civil penalty as follows: (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee. (2) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.” [Emphasis added.]

///

80. Labor Code sections 2699(a) and 2699(f) provide for assessment and collection of civil penalties for violations of the labor code, to be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Section 2699.3.

81. As set forth herein, Defendants failed to pay all wages and penalties owed to Plaintiff and other aggrieved employees within the timelines required by Cal. Labor Code sections 201-203 and 204. Defendants further failed to pay all waiting time penalties as required by Labor Code section 203.

82. As a result, Defendants willfully violated the Labor Code and are liable to Plaintiff and other aggrieved employees for penalties as required by Labor Code sections 210, and 2699(a) or, in the alternative, section 2699(f)(2), and recoverable in an amount according to proof.

83. Plaintiff, as a representative of the general public, will and does seek to recover any and all penalties for each and every violation, in an amount according to proof, as to those penalties available pursuant to the PAGA. Funds recovered will be distributed in accordance with the PAGA, with 75% of penalties recovered provided to the LWDA on behalf of the State of California.

SIXTH CAUSE OF ACTION

**PAGA Civil Penalties for Failure to Maintain Accurate Records
(Labor Code §§ 1174 and 1198 and the “Records” section of the applicable IWC
Wage Order(s))
(On Behalf of Plaintiff and each Aggrieved Employee Against All Defendants)**

84. Plaintiff incorporates the preceding paragraphs of this Complaint.

85. Labor Code section 1174(d) requires each employee to “[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, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments.”

///

86. The “Records” section of the applicable IWC wage order requires each employer to maintain “[t]ime records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded.”

87. Labor Code section 1174.5 imposes a \$500 civil penalty for any failure to maintain records required by Section 1174(d).

88. Labor Code sections 2699(a) and 2699(f) provide for assessment and collection of civil penalties for violations of the labor code, to be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Section 2699.3.

89. Defendants failed to maintain all records as required by law, including but not limited to the total hours worked daily, and the beginning and ending times of each work period, including when the employees began and ended each meal period.

90. As a result, Defendants willfully violated the Labor Code and are liable to Plaintiff, and other aggrieved employees, for penalties as required by Labor Code sections 1174.5 and 2699(a) or, in the alternative, section 2699(f)(2), and recoverable in an amount according to proof, attorney’s fees, expenses, and costs of suit.

91. Plaintiff, as a representative of the general public, will and does seek to recover any and all penalties for each and every violation, in an amount according to proof, as to those penalties available pursuant to the PAGA. Funds recovered will be distributed in accordance with the PAGA, with 75% of penalties recovered provided to the LWDA on behalf of the State of California.

SEVENTH CAUSE OF ACTION

PAGA Civil Penalties for Failure to Reimburse Business Expenses (Labor Code §§ 2802 and 2804 and the “Cash Shortage and Breakage” section of the applicable IWC Wage Order(s)) (On Behalf of Plaintiff and each Aggrieved Employee Against All Defendants)

92. Plaintiff incorporates the preceding paragraphs of this Complaint.

93. An employer must reimburse its employees for their reasonably necessary business-related expenses. Labor Code § 2802. This right to reimbursement cannot be waived.

1 Labor Code § 2804.

2 94. Labor Code sections 2699(a) and 2699(f) provide for assessment and collection
3 of civil penalties for violations of the labor code, to be recovered through a civil action brought
4 by an aggrieved employee on behalf of himself or herself and other current or former
5 employees pursuant to the procedures specified in Section 2699.3.

6 95. Defendants failed to reimburse Plaintiff and other aggrieved employees for all
7 reasonably necessary business-related expenses incurred in the course of their work for
8 Defendants, including personal cell phone expenses.

9 96. As a result, Defendants willfully violated the Labor Code and are liable to
10 Plaintiff, and other aggrieved employees, for penalties as required by Labor Code section
11 2699(a) or, in the alternative, section 2699(f)(2), and recoverable in an amount according to
12 proof.

13 97. Plaintiff, as a representative of the general public, will and does seek to recover
14 any and all penalties for each and every violation, in an amount according to proof, as to those
15 penalties available pursuant to the PAGA. Funds recovered will be distributed in accordance
16 with the PAGA, with 75% of penalties recovered provided to the LWDA on behalf of the State
17 of California.

18 **EIGHTH CAUSE OF ACTION**

19 **PAGA Civil Penalties for Requiring an Unlawful Agreement**
20 **(Labor Code § 432.5)**

21 **(On Behalf of Plaintiff and each Aggrieved Employee Against All Defendants)**

22 98. Plaintiff incorporates the preceding paragraphs of this Complaint.

23 99. It is illegal for an employer to require an employee to agree in writing to any
24 term that the employer knows is illegal. Labor Code § 432.5.

25 100. "No employer shall make any deduction from the wage or require any
26 reimbursement from an employee for any cash shortage, breakage, or loss of equipment, unless
27 it can be shown that the shortage, breakage, or loss is caused by a dishonest or willful act, or by
28 the gross negligence of the employee." § 8 of the applicable IWC Wage Order(s).

///

101. Labor Code sections 2699(a) and 2699(f) provide for assessment and collection of civil penalties for violations of the labor code, to be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Section 2699.3.

102. As set forth herein, Defendants knowingly required Plaintiff and other aggrieved employees to sign unlawful agreements.

103. As a result, Defendants willfully violated section 432.5 of the Labor Code and are liable to Plaintiff, and other aggrieved employees, for penalties as required by Labor Code section 2699(a) or, in the alternative, section 2699(f)(2), and recoverable in an amount according to proof.

104. Plaintiff, as a representative of the general public, will and does seek to recover any and all penalties for each and every violation, in an amount according to proof, as to those penalties available pursuant to the PAGA. Funds recovered will be distributed in accordance with the PAGA, with 75% of penalties recovered provided to the LWDA on behalf of the State of California.

NINTH CAUSE OF ACTION

PAGA Civil Penalties for Failure to Maintain a Reasonably Comfortable Temperature (Labor Code § 1198 and the “Temperature” section of applicable IWC Wage Order(s)) (On Behalf of Plaintiff and each Aggrieved Employee Against All Defendants)

105. Plaintiff incorporates the preceding paragraphs of this Complaint.

106. Labor Code section 1198 provides in pertinent part: “[T]he standard conditions of labor fixed by the commission shall be the...standard conditions of labor for employees. The employment of any employee ... under conditions of labor prohibited by the order is unlawful.”

107. The “Temperature” section of IWC Wage Orders 1 through 13 provides in pertinent part: “(A) The temperature maintained in each work area shall provide reasonable comfort consistent with industry-wide standards for the nature of the process and the work performed. (B) If excessive heat or humidity is created by the work process, the employer shall take all feasible means to reduce such excessive heat or humidity to a degree providing reasonable comfort. Where the nature of the employment requires a temperature of less than 60°

1 F., a heated room shall be provided to which employees may retire for warmth, and such room
2 shall be maintained at not less than 68°. (C) A temperature of not less than 68° shall be
3 maintained in the toilet rooms, resting rooms, and change rooms during hours of use.”

4 108. The “Temperature” section of the applicable Wage Order provides: “The
5 temperature maintained in each interior work area shall provide reasonable comfort consistent
6 with industry-wide standards for the nature of the process and the work performed. This section
7 shall not exceed regulations promulgated by the Occupational Safety and Health Standards
8 Board.”

9 109. Labor Code sections 2699(a) and 2699(f) provide for assessment and collection
10 of civil penalties for violations of the labor code, to be recovered through a civil action brought
11 by an aggrieved employee on behalf of himself or herself and other current or former
12 employees pursuant to the procedures specified in Section 2699.3.

13 110. Defendants failed to maintain a reasonably comfortable temperature for Plaintiff
14 and other aggrieved employees in the workplace.

15 111. As a result, Defendants willfully violated section 1198 of the Labor Code and the
16 “Temperature” section of applicable IWC Wage Order(s) and are liable to Plaintiff, and other
17 aggrieved employees, for penalties as required by Labor Code section 2699(a) or, in the
18 alternative, section 2699(f)(2), and recoverable in an amount according to proof.

19 112. Plaintiff, as a representative of the general public, will and does seek to recover
20 any and all penalties for each and every violation, in an amount according to proof, as to those
21 penalties available pursuant to the PAGA. Funds recovered will be distributed in accordance
22 with the PAGA, with 75% of penalties recovered provided to the LWDA on behalf of the State
23 of California.

24 **TENTH CAUSE OF ACTION**

25 **PAGA Civil Penalties for Failure to Pay Reporting Time Wages**
26 **(Labor Code § 1198 and the “Reporting Time Pay” section of applicable IWC Wage**
27 **Order(s))**
28 **(On Behalf of Plaintiff and each Aggrieved Employee Against All Defendants)**

113. Plaintiff incorporates the preceding paragraphs of this Complaint.

1 114. Labor Code section 1198 provides: “The maximum hours of work and the
2 standard conditions of labor fixed by the commission shall be the maximum hours of work and
3 the standard conditions of labor for employees. The employment of any employee for longer
4 hours than those fixed by the order or under conditions of labor prohibited by the order is
5 unlawful.” Labor Code § 1198

6 115. The “Reporting Time Pay” Section of the applicable Wage Order(s) provide:
7 “Each workday an employee is required to report for work and does report, but is not put to
8 work or is furnished less than half said employee’s usual or scheduled day’s work, the
9 employee shall be paid for half the usual or scheduled day’s work, but in no event for less than
10 two (2) hours nor more than four (4) hours, at the employee’s regular rate of pay, which shall
11 not be less than the minimum wage.”

12 116. Labor Code sections 2699(a) and 2699(f) provide for assessment and collection
13 of civil penalties for violations of the labor code, to be recovered through a civil action brought
14 by an aggrieved employee on behalf of himself or herself and other current or former
15 employees pursuant to the procedures specified in Section 2699.3.

16 117. Defendants failed to pay reporting time pay to Plaintiffs and other aggrieved
17 employees when they reported to work but were sent home without being furnished at least half
18 of their usual or scheduled day’s work.

19 118. As a result, Defendants willfully violated section 1198 of the Labor Code and the
20 “Reporting Time Pay” section of applicable IWC Wage Order(s) and are liable to Plaintiff, and
21 other aggrieved employees, for penalties as required by Labor Code section 2699(a) or, in the
22 alternative, section 2699(f)(2), and recoverable in an amount according to proof.

23 119. Plaintiff, as a representative of the general public, will and does seek to recover
24 any and all penalties for each and every violation, in an amount according to proof, as to those
25 penalties available pursuant to the PAGA. Funds recovered will be distributed in accordance
26 with the PAGA, with 75% of penalties recovered provided to the LWDA on behalf of the State
27 of California.

28 ///

VII.

PRAYER FOR RELIEF

Plaintiff, on behalf of himself and all other aggrieved employees and as a Representative of the Labor and Workforce Development Agency, prays for judgment as follows:

a. For maintenance of this claim as a Representative Action under the PAGA, and providing Plaintiff and his counsel with all enforcement capability as if this action has been instituted by the Department of Labor Standards enforcement (“DLSE”);

b. For recovery of civil penalties as permitted by Labor Code sections 2699.3, 1197.1, and 558(a)(1)-(2), in an amount according to proof;

c. For recovery of civil penalties as permitted by Labor Code section 226.3, for failing to provide accurate itemized wage statements, in an amount to be assessed and according to proof;

d. For recovery of civil penalties as permitted by Labor Code sections 210, for failing to pay wages timely during employment;

e. For recovery of civil penalties as permitted by Labor Code section 1174 and 1174.5 for failing to maintain records;

f. For recovery of civil penalties pursuant to Labor Code section 2699(f)(2), to the extent that Section 2699(a) does not apply and/or where a statutory civil penalty is not provided, for failing to comply with Labor Code sections 201-203, 204, 226, 226.7, 432.5, 510, 512, 1174, 1197, 1197.1, 1198, 2802, and 2804.

g. For Pre-Judgment and Post-Judgment interest, to the extent permitted by law as to any restitution recovery;

h. For Attorneys’ fees and costs of suit, including expert fees and fees pursuant to the California Labor Code, the PAGA, and all other applicable state laws;

i. For injunctive relief; and

///

///

///

1 j. Such other legal equitable relief as this Court deems necessary, just, equitable
2 and proper.

3 COHELAN KHOURY & SINGER

4
5 Dated: September 28, 2021

By: 

Michael D. Singer, Esq.

Rosemary C. Khoury, Esq.

Counsel for Plaintiff ALEJANDRO BERNAL, on behalf
of himself and all other aggrieved employees

EXHIBIT 1

COHELAN KHOURY & SINGER

A PARTNERSHIP OF PROFESSIONAL LAW CORPORATIONS

TIMOTHY D. COHELAN, APLC*
ISAM C. KHOURY, APC
DIANA M. KHOURY, APC
MICHAEL D. SINGER, APLC•

(*Also admitted in the District of Columbia)
(•Also admitted in Colorado)

ATTORNEYS AT LAW

605 "C" STREET, SUITE 200
SAN DIEGO, CALIFORNIA 92101-5305

Telephone: (619) 595-3001

Facsimile: (619) 595-3000

www.ckslaw.com

JEFF GERACI
J. JASON HILL†
KRISTINA DE LA ROSA
ROSEMARY C. KHOURY

(† Also admitted in Illinois)

July 19, 2021

NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO CALIFORNIA LABOR CODE SECTIONS 2698, *et seq.*

NOTICE VIA ONLINE SUBMISSION

California Labor and Workforce Development Agency

<https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html>

Via Certified U.S. Mail with Return Receipt

Aerotek, Inc.
7301 Parkway Drive
Hanover, MD 21076

Aerotek, Inc.
c/o CSC Lawyers Incorporating Service
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833

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

Petco Animal Supplies, Inc.
c/o CSC Lawyers Incorporating Service
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833

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

Petco Animal Supplies Stores, Inc.
c/o CSC Lawyers Incorporating Service
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833

Petco Animal Supplies-Mira Loma
Distribution Center
4345 Parkhurst St.
Mira Loma, CA 91752

Allegis Group, Inc.
7301 Parkway Drive
Hanover, MD 21076

Allegis Group, Inc.
c/o CSC Lawyers Incorporating Service
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833

Allegis Group Holdings, Inc.
7301 Parkway Drive
Hanover, MD 21076

Allegis Group Holdings, Inc.
c/o CSC Lawyers Incorporating Service
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833

Re: Notice by Alejandro Bernal, on behalf of himself and all other aggrieved employees of Aerotek, Inc. and/or Petco Animal Supplies-Mira Loma, as an individual and as a proposed Representative of the State of California

CA Labor & Workforce Development Agency
Aerotek, Inc., et al.
Re: Alejandro Bernal
July 19, 2021
Page 2

Dear PAGA Administrator:

Alejandro Bernal (“Claimant”) intends to bring a Private Attorneys General Act (“PAGA”) action against Aerotek, Inc., Petco Animal Supplies, Inc., Petco Animal Supplies Stores, Inc., Allegis Group, Inc., Allegis Group Holdings, Inc. and/or Petco Animal Supplies-Mira Loma (“Employer(s)”) on behalf of all other aggrieved employees. In this notice, “aggrieved employees” means all non-exempt California employees subject to the policies and practices described below, including, but not limited to, Forklift Drivers. This letter also serves as notice to Employer(s) pursuant to Cal. Labor Code section 2810.3(d).

Claimant and other aggrieved employees were subject to the same policies and practices alleged herein which impermissibly denied aggrieved employees their rights pursuant to the California Labor Code and caused violation of the Labor Code as set forth below.

Factual Statement

Claimant worked as a forklift driver for Employer(s) from approximately November 4, 2020 through February 24, 2021. Claimant worked at a Petco Animal Supplies warehouse in Mira Loma, California. Aerotek, Inc. is listed as the employer on Claimant’s and other aggrieved employees wage statements. Allegis Group is listed on Claimant’s and other aggrieved employees’ Code of Conduct Acknowledgement forms and Direct Deposit Authorization forms. Employer(s) were joint employers.

Employer(s) failed to maintain a reasonably comfortable temperature in the warehouse in which Claimant and other aggrieved employees worked. Employer(s) had no heating or air conditioning system to regulate the temperature in the warehouse. When Claimant worked for Employer(s), the warehouse was very cold and the toilet and resting rooms were kept at a temperature lower than 68°. On information and belief, due to the lack of air conditioning system in the warehouse, in the summer months the temperature was uncomfortably hot and exceeded the temperatures required by law.

Employer(s) had a policy and practice of failing to pay reporting time pay to Claimant and other aggrieved employees when they reported to work as required but were furnished less than half of their usual or scheduled day’s work. On February 24, 2021, Claimant showed up to work as scheduled but was nearly immediately told he was terminated and was sent home. Claimant was not paid reporting time pay.

Employer(s) had a policy and practice of failing to pay Claimant and other aggrieved employees for all hours worked or subject the Employer(s)’ control. Employer(s) required Claimant and other aggrieved employees to wait in line for, and undergo, COVID screenings before entering the warehouse but did not compensate employees for this time. Employer(s) also required Claimant and other aggrieved employees to self-report their hours worked either on paper or electronically following the completion of their workweek, no later than the following Monday at 10:00 a.m. but did not compensate employees for this time. Additionally, Employer(s) required Claimant and other aggrieved employees to complete trainings but did not pay them all required wages, including minimum and applicable overtime wages, for this time

worked. For example, Claimant was required by Employer(s) to complete a 2-hour recertification course as a forklift driver, but was not paid for the time he spent on this course. Claimant believes other aggrieved employees were also not paid for time spent on Employer(s)-required courses. Employer(s) also failed to pay Claimant and other aggrieved employees for time they spent reading and filling out onboarding paperwork at the outset of their employment.

Employer(s) subjected all aggrieved employees to policies and practices which failed to provide compliant meal and rest periods. Claimant and other aggrieved employees were not provided an opportunity for each shift to take a timely, thirty-minute, uninterrupted, off-duty meal period before the end of the fifth hour of work. When meal periods were provided, they were often late, short, or interrupted. Further, Claimant and other aggrieved employees were not provided an opportunity to take a second uninterrupted, off-duty, thirty-minute meal period on shifts lasting more than ten hours before the end of the tenth hour of work. Claimant and other aggrieved employees were also not authorized or permitted to take all off-duty rest periods of at least 10 minutes to which they were entitled. Employer(s) did not pay one hour of wages at a regular rate of pay for all days on which there was a non-compliant meal or rest period, as required by Labor Code section 226.7.

Employer(s) did not provide accurate itemized wage statements containing all required categories of information in paper form to Claimant and other aggrieved employees. Employers did not provide accurate itemized wage statements in writing as required by law. For example, Employers did not provide a hard copy of the wage statements, nor did they provide employees any opportunity to print their own wage statements. Employer(s) did not have printers that employees could use to print these wage statements. Additionally, because of the Employer(s)'s failure to pay all wages and provide all meal and rest periods and associated premium wages, the wage statements issued by Employer(s) did not contain the correct amount of gross wages earned, net wages earned, total hours worked, nor all applicable hourly rates of pay and all hours worked at each rate.

Furthermore, Employer(s) failed to record (and maintain records) reflecting the total hours worked daily, and the beginning and ending times of each work period, including when the employees began and ended each meal period.

Employer(s) further maintained a regular practice of failing to pay separated employees all wages owed within the time requirements of Labor Code sections 201- 202 because it did not pay all wages earned due to rounding as set forth herein. Employer(s) also did not pay a day's wages for every day final pay was not paid through the date final wages were paid, as required by Labor Code section 203. Claimant is informed and believes that Employer(s) has no policy and/or practice to comply with Labor Code sections 201, 202, and 203 as to all separated employees in California by timely paying final wages and paying waiting time penalty wages when failing to timely pay final wages.

Employer(s) did not reimburse Claimant and other aggrieved employees for any business expenses. For instance, Employer(s) required Claimant and other aggrieved employees to download an application to access their hours worked and paystubs. Claimant and other aggrieved employees did not have another option for accessing this information. Employer(s) did

not reimburse expenses associated with downloading the application and checking this information.

Employer(s) further required Claimant and other aggrieved employees to agree in writing to terms they knew were unlawful, including terms purporting to broadly assign rights to inventions to the Employers, to unlawfully restrict their rights to seek gainful employment, to waive their right to initiate representative actions, and to agree to shift the worker's compensation duties/liabilities required of Petco Animal Supplies, Inc. to Allegis Group, Inc. and/or Aerotek, Inc. For example, Employer(s) required Claimant and other aggrieved employees to agree in writing to a policy entitled "Ownership of Work Product" which required these employees to "disclose and assign full and absolute right, title, and interest to the Client of any and all inventions, improvements and discoveries made by you of any kind or nature whatsoever during the tenure of this agreement," in violation of Labor Code sections 432.5 and 2870. Employer(s) also required Claimant and other aggrieved employees to illegally assign worker's compensation claims solely to Aerotek, Inc. instead of to the Petco Animal Supplies, Inc. and other client employers. Employer(s) further required Claimant and other aggrieved employees to agree to pay attorneys' fees in the event that Aerotek, Inc. prevailed in any employment-related dispute, in violation of law.

Claimant further alleges, based on personal experience and observations, that the violations of the Labor Code described herein were suffered by other aggrieved employees of Employer(s).

Summarizing the claims on behalf of Mr. Bernal and all other aggrieved employees of Employer(s), Employer(s) failed to:

1. Maintain a reasonably comfortable temperature;
2. Provide minimum, regular, and overtime wages;
3. Pay reporting time pay;
4. Provide meal periods;
5. Authorize and permit rest periods;
6. Provide compliant wage statements;
7. Maintain accurate records;
8. Follow the law by requiring Claimant and other aggrieved employees to agree in writing to terms Employer(s) knew were unlawful.
9. Timely pay all wages owed during and at separation from employment; and
10. Reimburse business-related expenses.

TEMPERATURE

(Labor Code § 1198; § 13 or 15 of applicable IWC Wage Order(s))

Section 15 of IWC Wage Orders 1 through 13 provides in pertinent part: “(A) The temperature maintained in each work area shall provide reasonable comfort consistent with industry-wide standards for the nature of the process and the work performed. (B) If excessive heat or humidity is created by the work process, the employer shall take all feasible means to reduce such excessive heat or humidity to a degree providing reasonable comfort. Where the nature of the employment requires a temperature of less than 60° F., a heated room shall be provided to which employees may retire for warmth, and such room shall be maintained at not less than 68°. (C) A temperature of not less than 68° shall be maintained in the toilet rooms, resting rooms, and change rooms during hours of use.”

Section 13 of Wage Order 16 provides: “The temperature maintained in each interior work area shall provide reasonable comfort consistent with industry-wide standards for the nature of the process and the work performed. This section shall not exceed regulations promulgated by the Occupational Safety and Health Standards Board.”

Employer(s) failed to maintain a reasonably comfortable temperature in the warehouse in which Claimant and other aggrieved employees worked and in the toilet rooms.

MINIMUM, REGULAR, AND OVERTIME WAGES

(Labor Code §§ 218.5, 510, and 1194, 1197, 1197.1, 1198 and the “Minimum Wages” and “Hours and Days of Work” Sections of the Applicable Wage Order)

Several sections of the California Labor Code require employers to pay at least minimum wage for all hours worked, overtime wages for hours worked over eight per day or forty per week, and double time wages for hours over twelve per day. Overtime wages must be paid at one-and-one half times the employees’ regular rate.

Employer(s) failed to pay all minimum, regular, and overtime wages to Claimant and other aggrieved employees.

REPORTING TIME WAGES

(Labor Code § 1198 and the “Reporting Time Pay” Section of the applicable Wage Order)

“The 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 § 1198

The “Reporting Time Pay” Section of the applicable Wage Order provides: “Each workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee’s usual or scheduled day’s work, the employee shall be paid for half the usual or scheduled day’s work, but in no event for less than two (2) hours nor

more than four (4) hours, at the employee's regular rate of pay, which shall not be less than the minimum wage."

Employer(s) failed to pay reporting time pay to Claimant and other aggrieved employees when they reported to work but were sent home without being furnished at least half of their usual or scheduled day's work.

MEAL AND REST PERIODS AND PREMIUM WAGES

(Labor Code §§ 226.7, 512(a), and 1198, and the "Meal Periods" and "Rest Periods" Sections of the Applicable Wage Order)

Employers must provide employees a 30-minute, uninterrupted meal period after no more than five hours of work and a second such meal period after no more than 10 hours work. Labor Code § 512; *Brinker Restaurant Corp. v. Superior Court*, 53 Cal. 4th 1004, 1049 (2012). If meal breaks are missed, late, short, or interrupted, the employer is liable for an hour of pay at the employee's regular rate ("premium wages"). Labor Code § 226.7. Likewise, employers must authorize and permit a 10-minute, uninterrupted rest period for every 4 hours, or major fraction thereof, that an employee works; if the rest period is too short, interrupted, or not authorized and permitted, the employer is liable for an hour of pay at the employee's regular rate ("premium wages"). Labor Code § 226.7.

Because of Employer(s)'s policies and practices, Claimant and other aggrieved employees did not receive compliant meal and rest periods, including second meal periods and third rest periods where applicable. Premium wages were not paid for non-compliant breaks.

WAGE STATEMENTS

(Labor Code §§ 246(i), 226(a), 226.3, 1198)

California employers are required to provide itemized wage statements showing, among other things, "gross wages earned," "total hours worked by the employee," "net wages earned," and "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(a)(1), (2), (5), (9).

Employer(s) did not provide accurate itemized wage statements containing all required categories of information to Claimant and other aggrieved employees. For instance, because Employer(s) failed to record all hours employees actually worked, the wage statements Employer(s) provided did not show the correct number of hours worked, gross and net wages earned, and all hourly rates in effect each pay period and the number of hours worked at each rate. Employer(s) also failed to pay, and include in wage statements, earned meal and rest period premiums.

ACCURATE RECORDS

(Labor Code §§ 1174 and 1198 and the
“Records” Section of the Applicable Wage Order)

An employer must maintain payroll records showing hours worked daily by, and wages paid to, its employees, in accordance with rules established by the Industrial Welfare Commission. Labor Code §1174. The “Records” Section of the applicable Wage Order provides that an employer must also maintain time records showing when each work period, and meal period, begins and ends.

Employer(s) did not maintain accurate time and pay records as to Claimant and other aggrieved employees. For instance, Employer(s) failed to maintain payroll records showing the hours worked daily by Claimant and other aggrieved employees.

WAGES DUE DURING EMPLOYMENT AND UPON SEPARATION

(Labor Code §§ 201-204)

An employer must pay “[a]ll wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2... twice during each calendar month, on days designated in advance by the employer as the regular paydays.” Labor § 204.

An employer must pay all wages due to involuntarily terminated employees at the time of termination, or within 72 hours to employees voluntarily terminating. Labor Code §§ 201-202. If an employer willfully fails to timely pay all final wages, the wages continue at the same rate for up to 30 days, until paid. Labor Code § 203.

“[I]f an employee of a temporary services employer is assigned to work for a client, that employee’s wages are due and payable no less frequently than weekly, regardless of when the assignment ends, and wages for work performed during any calendar week shall be due and payable not later than the regular payday of the following calendar week...If an employee of a temporary services employer is assigned to work for a client and is discharged by the temporary services employer or leasing employer, wages are due and payable as provided in Section 201...If an employee of a temporary services employer is assigned to work for a client and quits his or her employment with the temporary services employer, wages are due and payable as provided in Section 202... A temporary services employer who violates this section shall be subject to the civil penalties provided for in Section 203, and to any other penalties available at law.” Labor Code § 201.3.

As a result of its failure to pay all wages earned as required by Sections 201, 201.3, 202, and 204, as described above, Employer(s) failed to pay all final wages due to Claimant and other aggrieved employees, requiring Employer(s) to pay waiting time penalties pursuant to Section 203.

EXPENSE REIMBURSEMENT
(Labor Code §§ 2802 and 2804)

An employer must reimburse its employees for reasonably necessary business-related expenses. Labor Code § 2802. This right to reimbursement cannot be waived. Labor Code § 28024.

Employer(s) failed to reimburse Claimant and other aggrieved employees for their reasonably necessary business-related expenses, including cell phone expenses and any mileage, fax, and computer expenses associated with needing to print out wage statements off the Employer(s)' premises.

UNLAWFUL AGREEMENTS
(Labor Code §§ 432.5 and 2870)

Labor Code section 432.5 states: "No employer, agent, manager, superintendent, or officer thereof, shall require any employee or applicant for employment to agree in writing, to any term or condition, which is known by such employer, or agent, manager, superintendent, or officer thereof to be prohibited by law."

Labor Code section 2870 states: "(a) Any provision in an employment agreement which provides that an employee shall assign, or offer to assign, any of his or her rights in an invention to his or her employer shall not apply to an invention that the employee developed entirely on his or her own time without using the employer's equipment, supplies, facilities, or trade secret information except for those inventions that either:

- (1) Relate at the time of conception or reduction to practice of the invention to the employer's business, or actual or demonstrably anticipated research or development of the employer; or
 - (2) Result from any work performed by the employee for the employer.
- (b) To the extent a provision in an employment agreement purports to require an employee to assign an invention otherwise excluded from being required to be assigned under subdivision (a), the provision is against the public policy of this state and is unenforceable."

Employer(s) required Claimant and other aggrieved employees to agree in writing to a policy entitled "Ownership of Work Product" which required these employees to "disclose and assign full and absolute right, title, and interest to the Client of any and all inventions, improvements and discoveries made by you of any kind or nature whatsoever during the tenure of this agreement," in violation of Labor Code sections 432.5 and 2870.

JOINT EMPLOYER LIABILITY
(Cal. Lab. Code §§ 2810 and 2810.3)

Claimant also seeks recovery civil penalties against the Employer(s) under California Labor Code sections 2810-2810.3 for “client employer” and “labor contractor” liability for failure to pay wages.

Here, Aerotek, Inc. provided employees to Petco Animal Supplies, Inc. and other entities. Claimant contends that Petco Animal Supplies, Inc. entered into a contract for labor with Aerotek, Inc. and that each knew or should have known that the contract for labor did not include funds sufficient to allow Aerotek, Inc. to comply with all applicable state, federal and local laws governing the labor and services.

Because of this knowing failure to enter into a contract allocating sufficient funds, Claimant and other aggrieved employees suffered injuries from the resulting violations of the labor code, unpaid wages, costs of business expenses, interest, attorney’s fees and costs. Aerotek, Inc.’s clients are liable for the injuries suffered by Claimant and aggrieved employees, in addition to the resulting penalties afforded by 2699 et seq. The names of all Aerotek, Inc.’s clients are currently unknown to Claimant. Claimant reserves the right to amend this PAGA notice once he has learned the names of the clients.

Claimant further contends that Petco Animal Supplies, Inc. and was a “client employer” and Aerotek, Inc. was the “labor contractor” under the applicable statutes. All work was directed and controlled by all of the employers. Each of the employers had the authority and power to control the day and hours of work and to hire and fire Claimant and aggrieved employees. Each of the employers also created and implemented the practices and policies which caused the labor code violations described herein. During Claimant’s tenure with the client employer and labor contractor, wages were not paid, including minimum, regular, and overtime wages and meal and rest period premiums as set forth herein.

The Employment Agreement that the Employer required aggrieved employees to sign purports to assign all liability for workers’ compensation to Aerotek, Inc. and as a result, Aerotek, Inc. violated Section 2810.3(c) by purporting to unlawfully shift legal duties and liability from Petco Animal Supplies, Inc. to Aerotek, Inc.

Because Petco Animal Supplies, Inc. is a “client employer”, they are liable along with Aerotek, Inc. for unpaid wages, including all sums payable to an employee or the state based upon the failure to pay wages.

ATTORNEY’S FEES, COSTS, INTEREST AND PENALTIES
(Labor Code Sections 218.6, 226(e), 558, 1194, 1194.2, 2699, *et seq.*, and 2802)

Labor Code sections 218.6, 226(e), 558, 1194, 1194.2, and 2699, *et seq.* give employees the right to recover in a civil action the unpaid balance of the full amount of minimum wages, regular wages, overtime compensation, reimbursements, damages, liquidated damages and penalties, including interest thereon, reasonable attorney’s fees, and costs of suit.

CA Labor & Workforce Development Agency
Aerotek, Inc., et al.
Re: Alejandro Bernal
July 19, 2021
Page 10

Pursuant to Labor Code section 2699, *et seq.*, aggrieved employees are entitled to collect 25% of the penalty assessment and 100% of the underpaid wages. Accordingly, Employer(s) are liable for these items in addition to the unpaid wages and reimbursements. Claimant has already incurred in actual damages, costs and attorney's fees and will continue to incur costs as a result of Employer's unlawful actions.

CONCLUSION

Claimant requests the Labor and Workforce Development Agency ("LWDA") initiate enforcement for the violations described above against Employer(s). If the LWDA does not pursue enforcement, Claimant will pursue claims for statutory penalties and seek all remedies available for Employer(s)'s violations of the Labor Code and applicable Industrial Welfare Commission Wage Order(s), including all available penalties set forth in Labor Code section 2699(f).

Very truly yours,
COHELAN KHOURY & SINGER



Rosemary C. Khoury, Esq.

cc:

Via Email Only

Sahag Majarian, Esq.

Garen Majarian, Esq.

Majarian Law Group, APC

18250 Ventura Blvd.

Tarzana, CA 91356

sahagii@aol.com

garen@majarianlawgroup.com