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Assigned for all purposes:

Judge Lon F. Hurwitz

Dept. CX103

Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ORANGE

MICHAEL LEWIS, on behalf of the State of
California, as a private attorney general,

Plaintiff,

vs.

PETCO ANIMAL SUPPLIES STORES,
INC., a Corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No. 30-2023-01321144-CU-OE-CXC

**FIRST AMENDED REPRESENTATIVE
ACTION COMPLAINT FOR:**

1. Civil Penalties Pursuant to Labor Code
§ 2699, *et seq.* for violations of Labor
Code §§ 201, 202, 203, 204 *et seq.*, 210,
221, 226(a), 226.7, 227.3, 246, 510, 512,
558(a)(1)(2), 1194, 1197, 1197.1, 1198,
2802, California Code of Regulations,
Title 8, Section 11040, Subdivision 5(A)-
(B), California Code of Regulations, Title
8, Section 1 1070(14) (Failure to Provide
Seating), and the applicable Wage
Order(s).

1 Plaintiff Michael Lewis ("PLAINTIFF"), on behalf of the people of the State of
2 California and as an "aggrieved employee" acting as a private attorney general under the Labor
3 Code Private Attorney General Act of 2004, § 2699, *et seq.* ("PAGA") only, alleges on
4 information and belief, except for his own acts and knowledge which are based on personal
5 knowledge, the following:

6 **INTRODUCTION**

7 1. PLAINTIFF brings this action against Defendant Petco Animal Supplies Stores,
8 Inc. (referred to as "DEFENDANT") seeking only to recover PAGA civil penalties for himself,
9 and on behalf of all current and former aggrieved employees that worked for DEFENDANT.
10 PLAINTIFF does **not seek to recover anything other than penalties as permitted by**
11 **California Labor Code § 2699**. To the extent that statutory violations are mentioned for wage
12 violations, PLAINTIFF does not seek underlying general and/or special damages for those
13 violations, but simply the civil penalties permitted by California Labor Code § 2699.

14 2. California has enacted the PAGA to permit an individual to bring an action on
15 behalf of himself and on behalf of others for PAGA penalties *only*, which is the precise and sole
16 nature of this action.

17 3. Accordingly, PLAINTIFF seeks to obtain all applicable relief for
18 DEFENDANT's violations under PAGA and solely for the relief as permitted by PAGA – that
19 is, penalties and any other relief the Court deems proper pursuant to the PAGA. Nothing in this
20 complaint should be construed as attempting to obtain any relief that would not be available in
21 a PAGA-only action.

22 **THE PARTIES**

24 4. DEFENDANT is a Corporation that at all relevant times mentioned herein
25 conducted and continues to conduct substantial business in the state of California.

26 5. DEFENDANT is an American pet retailer that sells pet food, products, and
27 services, as well as certain types of live small animals.

28 6. PLAINTIFF was employed by DEFENDANT in California from February 22,

2022 to November 28, 2022 and was at all times classified by DEFENDANT as a non-exempt employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and payment of minimum and overtime wages due for all time worked.

7. PLAINTIFF, and such persons that may be added from time to time who satisfy the requirements and exhaust the administrative procedures under the Private Attorney General Act, brings this Representative Action on behalf of the State of California with respect to himself and all individuals who are or previously were employed by DEFENDANT in California, including any employees staffed with DEFENDANT by a third party, and classified as non-exempt employees ("AGGRIEVED EMPLOYEES") during the time period of February 13, 2022 until a date as determined by the Court (the "PAGA PERIOD")

8. PLAINTIFF, on behalf of himself and all AGGRIEVED EMPLOYEES presently or formerly employed by DEFENDANT during the PAGA PERIOD, brings this representative action pursuant to Labor Code § 2699, *et seq.* seeking fixed civil penalties for DEFENDANT's violation of California Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 221, 226(a), 226.7, 227.3, 246, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 11070(14) (Failure to Provide Seating), and the applicable Wage Order(s). Based upon the foregoing, PLAINTIFF and all AGGRIEVED EMPLOYEES are aggrieved employees within the meaning of Labor Code § 2699, *et seq.*

9. The true names and capacities, whether individual, corporate, subsidiary, partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently unknown to PLAINTIFF who therefore sues these Defendants by such fictitious names pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege the true names and capacities of Does 1 through 50, inclusive, when they are ascertained. PLAINTIFF is informed and believes, and based upon that information and belief alleges, that the Defendants named in this Complaint, including DOES 1 through 50, inclusive, are responsible in some manner for one or more of the events and happenings that proximately caused the injuries and damages hereinafter alleged.

10. The agents, servants and/or employees of the Defendants and each of them acting on behalf of the Defendants acted within the course and scope of his, her or its authority as the agent, servant and/or employee of the Defendants, and personally participated in the conduct alleged herein on behalf of the Defendants with respect to the conduct alleged herein. Consequently, the acts of each Defendant are legally attributable to the other Defendants and all Defendants are jointly and severally liable to PLAINTIFF and all the AGGRIEVED EMPLOYEES, for the loss sustained as a proximate result of the conduct of the Defendants' agents, servants and/or employees.

THE CONDUCT

11. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was required to pay PLAINTIFF and the AGGRIEVED EMPLOYEES for all their time worked, meaning the time during which an employee is subject to the control of an employer, including all the time the employee is suffered or permitted to work. DEFENDANT requires PLAINTIFF and the AGGRIEVED EMPLOYEES to work without paying them for all the time they are under DEFENDANT's control. Among other things, DEFENDANT requires PLAINTIFF to work while clocked out during what is supposed to be PLAINTIFF's off-duty meal break. PLAINTIFF was from time to time interrupted by work assignments while clocked out for what should have been PLAINTIFF's off-duty meal break. DEFENDANT, as a matter of established company policy and procedure, administers a uniform practice of rounding the actual time worked and recorded by PLAINTIFF and the AGGRIEVED EMPLOYEES, always to the benefit of DEFENDANT, so that during the course of their employment, PLAINTIFF and the AGGRIEVED EMPLOYEES are paid less than they would have been paid had they been paid for actual recorded time rather than "rounded" time. Additionally, DEFENDANT engages in the practice of requiring PLAINTIFF and the AGGRIEVED EMPLOYEES to perform work off the clock in that DEFENDANT, as a condition of employment, required these employees to submit to mandatory temperature checks and symptom questionnaires for COVID-19 screening prior to clocking into DEFENDANT's timekeeping system for the workday. As a

1 result, PLAINTIFF and the AGGRIEVED EMPLOYEES forfeit minimum wage, overtime
2 wage compensation, and off-duty meal breaks by working without their time being correctly
3 recorded and without compensation at the applicable rates. DEFENDANT's policy and practice
4 not to pay PLAINTIFF and the AGGRIEVED EMPLOYEES for all time worked, is evidenced
5 by DEFENDANT's business records.

6 12. State law provides that employees must be paid overtime and meal and rest break
7 premiums at one-and-one-half times their "regular rate of pay." PLAINTIFF and the
8 AGGRIEVED EMPLOYEES are compensated at an hourly rate plus incentive pay that is tied
9 to specific elements of an employee's performance.

10 13. The second component of PLAINTIFF's and the AGGRIEVED EMPLOYEES'
11 compensation is DEFENDANT's non-discretionary incentive program that paid PLAINTIFF
12 and the AGGRIEVED EMPLOYEES incentive wages based on their performance for
13 DEFENDANT. The non-discretionary incentive program provided all employees paid on an
14 hourly basis with incentive compensation when the employees met the various performance
15 goals set by DEFENDANT. However, when calculating the regular rate of pay in order to pay
16 overtime and meal and rest break premiums to PLAINTIFF and the AGGRIEVED
17 EMPLOYEES, DEFENDANT failed to include the incentive compensation as part of the
18 employees' "regular rate of pay" for purposes of calculating overtime pay and meal and rest
19 break premium pay. Management and supervisors described the incentive program to potential
20 and new employees as part of the compensation package. As a matter of law, the incentive
21 compensation received by PLAINTIFF and the AGGRIEVED EMPLOYEES must be included
22 in the "regular rate of pay." The failure to do so has resulted in a underpayment of overtime
23 compensation and meal and rest break premiums to PLAINTIFF and the AGGRIEVED
24 EMPLOYEES by DEFENDANT.

25 14. As a result of their rigorous work schedules, PLAINTIFF and the AGGRIEVED
26 EMPLOYEES were from time to time unable to take thirty (30) minute off duty meal breaks
27 and were not fully relieved of duty for their meal periods. PLAINTIFF and the AGGRIEVED
28 EMPLOYEES were required from time to time to perform work as ordered by DEFENDANT

1 for more than five (5) hours during some shifts without receiving a meal break. Further,
2 DEFENDANT from time to time fails to provide PLAINTIFF and AGGRIEVED
3 EMPLOYEES with a second off-duty meal period for some workdays in which these employees
4 were required by DEFENDANT to work ten (10) hours of work. DEFENDANT also engaged
5 in the practice of rounding the meal period times to avoid paying penalties to PLAINTIFF and
6 the AGGRIEVED EMPLOYEES. PLAINTIFF and the AGGRIEVED EMPLOYEES therefore
7 forfeit meal breaks without additional compensation and in accordance with DEFENDANT's
8 corporate policy and practice.

9 15. During the PAGA PERIOD, PLAINTIFF and the AGGRIEVED EMPLOYEES
10 were also required from time to time to work in excess of four (4) hours without being provided
11 ten (10) minute rest periods. Further, these employees were denied their first rest periods of at
12 least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours from time to
13 time, a first and second rest period of at least ten (10) minutes for some shifts worked of
14 between six (6) and eight (8) hours from time to time, and a first, second and third rest period
15 of at least ten (10) minutes for some shifts worked of ten (10) hours or more from time to time.
16 PLAINTIFF and the AGGRIEVED EMPLOYEES were also not provided with one hour wages
17 in lieu thereof. Additionally, the applicable California Wage Order requires employers to
18 provide employees with off-duty rest periods, which the California Supreme Court defined as
19 time during which an employee is relieved from all work related duties and free from employer
20 control. In so doing, the Court held that the requirement under California law that employers
21 authorize and permit all employees to take rest period means that employers must relieve
22 employees of all duties and relinquish control over how employees spend their time which
23 includes control over the locations where employees may take their rest period. Employers
24 cannot impose controls that prohibit an employee from taking a brief walk - five minutes out,
25 five minutes back. Here, DEFENDANT's policy restricted PLAINTIFF and the AGGRIEVED
26 EMPLOYEES from unconstrained walks and is unlawful based on DEFENDANT's rule which
27 states PLAINTIFF and the AGGRIEVED EMPLOYEES cannot leave the work premises during
28 their rest period.

1 16. During the PAGA PERIOD, DEFENDANT fails to accurately record and pay
2 PLAINTIFF and the AGGRIEVED EMPLOYEES for the actual amount of time these
3 employees worked. Pursuant to the Industrial Welfare Commission Wage Orders,
4 DEFENDANT was required to pay PLAINTIFF and the AGGRIEVED EMPLOYEES for all
5 time worked, meaning the time during which an employee was subject to the control of an
6 employer, including all the time the employee was permitted or suffered to permit this work.
7 DEFENDANT required these employees to work off the clock without paying them for all the
8 time they were under DEFENDANT's control. As such, DEFENDANT knew or should have
9 known that PLAINTIFF and the AGGRIEVED EMPLOYEES were under compensated for all
10 time worked. As a result, PLAINTIFF and the AGGRIEVED EMPLOYEES forfeited time
11 worked by working without their time being accurately recorded and without compensation at
12 the applicable minimum wage and overtime wage rates. To the extent that the time worked off
13 the clock does not qualify for overtime premium payment, DEFENDANT fails to pay minimum
14 wages for the time worked off-the-clock in violation of Cal. Lab. Code §§ 1194, 1197, and
15 1197.1.

16 17. From time to time, DEFENDANT also fails to provide PLAINTIFF and the
17 AGGRIEVED EMPLOYEES with complete and accurate wage statements which failed to
18 show, among other things, the correct gross and net wages earned. Cal. Lab. Code § 226
19 provides that every employer shall furnish each of his or her employees with an accurate
20 itemized wage statement in writing showing, among other things, gross wages earned and all
21 applicable hourly rates in effect during the pay period and the corresponding amount of time
22 worked at each hourly rate. PLAINTIFF and the AGGRIEVED EMPLOYEES were paid on
23 an hourly basis. As such, the wage statements should reflect all applicable hourly rates during
24 the pay period and the total hours worked, and the applicable pay period in which the wages
25 were earned pursuant to California Labor Code Section 226(a). The wage statements
26 DEFENDANT provided to PLAINTIFF and the AGGRIEVED EMPLOYEES failed to identify
27 such information. More specifically, the wage statements failed to identify the accurate total
28 hours worked each pay period. When the hours shown on the wage statements were added up,

1 they did not equal the actual total hours worked during the pay period in violation of Cal. Lab.
2 Code 226(a)(2). Aside, from the violations listed above in this paragraph, DEFENDANT fails
3 to issue to PLAINTIFF an itemized wage statement that lists all the requirements under
4 California Labor Code 226 *et seq.* As a result, DEFENDANT from time to time provided
5 PLAINTIFF and the AGGRIEVED EMPLOYEES with wage statements which violated Cal.
6 Lab. Code § 226.

7 18. Cal. Lab. Code § 204(d) provides, the requirements of this section shall be
8 deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the
9 wages are paid not more than seven (7) calendar days following the close of the payroll period.
10 Cal. Lab. Code § 210 provides:

11 [I]n addition to, and entirely independent and apart from, any other penalty provided in
12 this article, every person who fails to pay the wages of each employee as provided in
13 Sections. . . .204. . .shall be subject to a civil penalty as follows: (1) For any initial
14 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.

15 19. DEFENDANT from time to time fails to pay PLAINTIFF and the AGGRIEVED
16 EMPLOYEES within seven (7) days of the close of the payroll period in accordance with Cal.
17 Lab. Code § 204(d).

18 20. DEFENDANT underpays sick pay wages to PLAINTIFF and the AGGRIEVED
19 EMPLOYEES by failing to pay such wages at the regular rate of pay in violation of Cal. Lab.
20 Code Section 246. Specifically, PLAINTIFF and other non-exempt employees earn non-
21 discretionary remuneration, including, but not limited to, incentives, shift differential pay, and
22 bonuses. Rather than pay sick pay at the regular rate of pay, DEFENDANT underpays sick pay
23 to PLAINTIFF and the AGGRIEVED EMPLOYEES at their base rates of pay.

24 21. Cal. Lab. Code Section 246(1)(2) requires that paid sick time for nonexempt
25 employees be calculated by dividing the employee's total wages, not including overtime
26 premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days
27 of employment.

28 22. DEFENDANT violated Cal. Lab. Code Section 246 by failing to pay sick pay at

1 the regular rate of pay. PLAINTIFF and the AGGRIEVED EMPLOYEES routinely earned non-
2 discretionary incentive wages which increased their regular rate of pay. However, when sick
3 pay was paid, it was paid at the base rate of pay for PLAINTIFF and the AGGRIEVED
4 EMPLOYEES, as opposed to the correct, higher regular rate of pay, as required under Cal. Lab.
5 Code Section 246.

6 23. As a pattern and practice, DEFENDANT regularly failed to pay PLAINTIFF and
7 the AGGRIEVED EMPLOYEES their correct wages and accordingly owe waiting time
8 penalties pursuant to Cal. Lab. Code Section 203. Further, PLAINTIFF is informed and believes
9 and based thereon alleges that such failure to pay sick pay at regular rate was willful, such that
10 the AGGRIEVED EMPLOYEES whose employment has separated are entitled to waiting time
11 penalties pursuant to Cal. Lab. Code Sections 201-203.

12 24. Pursuant to Cal. Lab. Code Section 221, "It shall be unlawful for any employer
13 to collect or receive from an employee any part of wages theretofore paid by said employer to
14 said employee." DEFENDANT fails to pay all compensation due to PLAINTIFF and the
15 AGGRIEVED EMPLOYEES, made unlawful deductions from compensation payable to
16 PLAINTIFF and the AGGRIEVED EMPLOYEES, fails to disclose all aspects of the deductions
17 from compensation payable to PLAINTIFF and the AGGRIEVED EMPLOYEES, and thereby
18 fails to pay these employees all wages due at each applicable pay period and upon termination.

19 25. DEFENDANT intentionally and knowingly fails to reimburse and indemnify
20 PLAINTIFF and the AGGRIEVED EMPLOYEES for required business expenses incurred by
21 the PLAINTIFF and the AGGRIEVED EMPLOYEES in direct consequence of discharging
22 their duties on behalf of DEFENDANT. Under California Labor Code Section 2802, employers
23 are required to indemnify employees for all expenses incurred in the course and scope of their
24 employment. Cal. Lab. Code § 2802 expressly states that "an employer shall indemnify his or
25 her employee for all necessary expenditures or losses incurred by the employee in direct
26 consequence of the discharge of his or her duties, or of his or her obedience to the directions of
27 the employer, even though unlawful, unless the employee, at the time of obeying the directions,
28 believed them to be unlawful."

1 26. In the course of their employment PLAINTIFF and the AGGRIEVED
2 EMPLOYEES as a business expense, were required by DEFENDANT to use their own personal
3 cellular phones as a result of and in furtherance of their job duties as employees for
4 DEFENDANT but are not reimbursed or indemnified by DEFENDANT for the cost associated
5 with the use of their personal cellular phones for DEFENDANT's benefit. Specifically,
6 PLAINTIFF and the AGGRIEVED EMPLOYEES were required by DEFENDANT to use their
7 personal cellular phones to perform work functions for DEFENDANT. As a result, in the
8 course of their employment with DEFENDANT, PLAINTIFF and the AGGRIEVED
9 EMPLOYEES incurred unreimbursed business expenses which included, but were not limited
10 to, costs related to the use of their personal cellular phones all on behalf of and for the benefit
11 of DEFENDANT.

12 27. In violation of the applicable sections of the California Labor Code and the
13 requirements of the applicable Industrial Welfare Commission ("IWC") Wage Order,
14 DEFENDANT as a matter of company policy, practice and procedure, intentionally, knowingly
15 and systematically failed to provide PLAINTIFF and the other AGGRIEVED EMPLOYEES
16 suitable seating when the nature of these employees' work reasonably permitted sitting.

17 28. DEFENDANT knew or should have known that PLAINTIFF and other
18 AGGRIEVED EMPLOYEES were entitled to suitable seating and/or were entitled to sit when
19 it did not interfere with the performance of their duties, and that DEFENDANT did not provide
20 suitable seating and/or did not allow them to sit when it did not interfere with the performance
21 of their duties.

22 29. By reason of this conduct applicable to PLAINTIFF and all AGGRIEVED
23 EMPLOYEES, DEFENDANT violated California Labor Code Section 1198 and Wage Order
24 4-2001, Section 14 by failing to provide suitable seats. PLAINTIFF seeks penalties on behalf
25 of PLAINTIFF and other AGGRIEVED EMPLOYEES as provided herein. Providing suitable
26 seating is the DEFENDANT's burden. As a result of DEFENDANT's intentional disregard of
27 the obligation to meet this burden, DEFENDANT violated the California Labor Code and
28 regulations promulgated thereunder as herein alleged.

1 30. All of the conduct and violations alleged herein occurred during the PAGA
2 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect
3 PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations that
4 affected the AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.* 2018
5 AJDAR 12157 (Certified for Publication 12/19/18).

6
7 **JURISDICTION AND VENUE**

8 31. This Court has jurisdiction over this Action pursuant to California Code of Civil
9 Procedure, Section 410.10.

10 32. Venue is proper in this Court pursuant to California Code of Civil Procedure,
11 Sections 395.5 and 393, because DEFENDANT operates in locations across California,
12 employs AGGRIEVED EMPLOYEES across California, including in this County, and
13 committed the wrongful conduct herein alleged in this County against AGGRIEVED
14 EMPLOYEES.

15 **FIRST CAUSE OF ACTION**

16 **For Violation of the Private Attorneys General Act**

17 **[Cal. Lab. Code §§ 2698, *et seq.*]**

18 **(By PLAINTIFF and Against All Defendants)**

19 33. PLAINTIFF realleges and incorporates by this reference, as though fully set forth
20 herein, the prior paragraphs of this Complaint.

21 34. PAGA is a mechanism by which the State of California itself can enforce state
22 labor laws through the employee suing under the PAGA who do so as the proxy or agent of the
23 state's labor law enforcement agencies. An action to recover civil penalties under PAGA is
24 fundamentally a law enforcement action designed to protect the public and not to benefit private
25 parties. The purpose of the PAGA is not to recover damages or restitution, but to create a
26 means of "deputizing" citizens as private attorneys general to enforce the Labor Code. In
27 enacting PAGA, the California Legislature specified that "it was ... in the public interest to
28 allow aggrieved employees, acting as private attorneys general to recover civil penalties for

1 Labor Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly, PAGA claims cannot be
2 subject to arbitration.

3 35. PLAINTIFF, and such persons that may be added from time to time who satisfy
4 the requirements and exhaust the administrative procedures under the Private Attorney General
5 Act, brings this Representative Action on behalf of the State of California with respect to
6 himself and all individuals who are or previously were employed by DEFENDANT in
7 California, including any employees staffed with DEFENDANT by a third party, and classified
8 as non-exempt employees ("AGGRIEVED EMPLOYEES") during the time period of February
9 13, 2022 until a date as determined by the Court (the "PAGA PERIOD").

10 36. On February 13, 2023, PLAINTIFF gave written notice by electronic mail to the
11 Labor and Workforce Development Agency (the "Agency") and by certified mail to the
12 employer of the specific provisions of this code alleged to have been violated as required by
13 Labor Code § 2699.3. See **Exhibit #1**, attached hereto and incorporated by this reference herein
14 (*PAGA Notice only without draft complaint*). The statutory waiting period for PLAINTIFF to
15 add these allegations to the Complaint has expired. As a result, pursuant to Section 2699.3,
16 PLAINTIFF may now commence a representative civil action under PAGA pursuant to Section
17 2699 as the proxy of the State of California with respect to all AGGRIEVED EMPLOYEES as
18 herein defined.

19 37. The policies, acts and practices heretofore described were and are an unlawful
20 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the
21 AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly record
22 and provide legally required meal and rest periods, (c) failed to pay minimum wages, (d) failed
23 to pay overtime wages and sick pay wages, (e) failed to reimburse employees for required
24 expenses, and (f) failed to provide suitable seating, all in violation of the applicable Labor Code
25 sections listed in Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 221, 226(a), 226.7, 227.3, 246,
26 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title
27 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1
28 1070(14) (Failure to Provide Seating), and the applicable Wage Order(s), and thereby gives rise

1 to civil penalties as a result of such conduct.¹ PLAINTIFF hereby seeks recovery of only civil
2 penalties as prescribed by the Labor Code Private Attorney General Act of 2004 as the
3 representative of the State of California for the illegal conduct perpetrated on PLAINTIFF and
4 the AGGRIEVED EMPLOYEES.

5
6 **PRAYER FOR RELIEF**

7 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and
8 severally, as follows:

9 1. On behalf of the State of California and with respect to all AGGRIEVED
10 EMPLOYEES:

11 A) Recovery of civil penalties as prescribed by the Labor Code Private
12 Attorneys General Act of 2004; and,

13 B) An award of attorneys' fees and cost of suit, as allowable under the
14 law, including, but not limited to, pursuant to Labor Code §2699.

15 Dated: July 5, 2023 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW
16 LLP

17
18 By: /s/ Nicholas J. De Blouw
19 Norman B. Blumenthal
20 Kyle R. Nordrehaug
21 Nicholas J. De Blouw
22 *Attorneys for Plaintiff*
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27
28 ¹Plaintiff specifically excludes and/or does not allege any claims under California Labor
Code §558(a)(3).

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EXHIBIT 1

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

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WRITERS EXT:
1004

February 13, 2023
CA2854

VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT

Labor and Workforce Development Agency
Online Filing

Petco Animal Supplies Stores, Inc.
Certified Mail #70222410000247762011
CSC - Lawyers Incorporating Service
Becky Degeorge
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833

Re: Notice Of Violations Of California Labor Code Sections §§ 201, 202, 203, 204 *et seq.*, 210, 221, 226(a), 226.7, 227.3, 246 *et seq.*, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), California Code of Regulations, Title 8, Section 1 1070(15) (Temperature)v Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant To California Labor Code Section 2699.5.

Dear Sir/Madam:

“Aggrieved Employees” refers to all individuals who are or previously were employed by Petco Animal Supplies Stores, Inc. in California, including any employees staffed with Petco Animal Supplies Stores, Inc. by a third party, and classified as non-exempt employees during the time period of February 13, 2022 until a date as determined by the Court. Our offices represent Plaintiff Michael Lewis (“Plaintiff”) and other Aggrieved Employees in a lawsuit against Petco Animal Supplies Stores, Inc. (“Defendant”). Plaintiff was employed by Defendant in California as a non-exempt employee from February of 2022 to November of 2022 and entitled to the legally required meal and rest breaks and payment for all time worked under Defendant’s control. Defendant, however, unlawfully failed to record and pay Plaintiff and other Aggrieved Employees for, including but not limited to, all of their time worked, including minimum and overtime wages, for all of their missed meal and rest breaks, and for all of their time spent working off the clock. Moreover, when Defendant required Plaintiff and Aggrieved Employees to report for work, but “furnished less than half said employee’s usual or scheduled day’s work,” Defendant violated Cal. Code Regs., tit. 8 § 11040, subd. 5(A) by failing to pay Plaintiff and Aggrieved Employees for at least two (2) hours’ worth of work at their regular rate of pay. In addition, when Defendant required Plaintiff and Aggrieved Employees to respond to and engage in additional work, this resulted in a second reporting for work in a single workday, and Defendant failed to pay these employees reporting time pay as required by Cal. Code Regs., tit. 8, § 11040, subd. 5(B).

Further, Defendant failed to advise Plaintiff and the other Aggrieved Employees of their right to take separately and hourly paid duty-free ten (10) minute rest periods. *See Vaquero v. Stoneledge Furniture, LLC*, 9 Cal. App. 5th 98, 110 (2017). Additionally, pursuant to Labor Code § 204 *et seq.*, Defendant failed to timely provide Plaintiff and other Aggrieved Employees with their wages. Plaintiff further contends that Defendant failed to provide accurate wage statements to her, and other Aggrieved Employees, in violation of California Labor Code section 226(a). Specifically, PLAINTIFF and the AGGRIEVED EMPLOYEES were paid on an hourly basis. As such, the wage statements should reflect all applicable hourly rates during the pay period and the total hours worked, and the applicable pay period in which the wages were earned pursuant to California Labor Code Section 226(a). The wage statements Defendant provided to PLAINTIFF and the AGGRIEVED EMPLOYEES failed to identify such information. More specifically, the wage statements failed to identify the accurate total hours worked each pay period in violation of Cal. Lab. Code Section 226(a)(2). Additionally, Plaintiff contends that Defendant failed to comply with Industrial Wage Order 7(A)(3) in that Defendant failed to keep time records showing when Plaintiff began and ended each shift and meal period. Plaintiff and other Aggrieved Employees perform tasks that reasonably permit sitting, and a seat would not interfere with their performance of any of their tasks that may require them to stand. Defendant failed to provide Plaintiff and other Aggrieved Employees with suitable seats. Defendant further fails to regulate the internal temperature of their warehouses, except for the offices of managers. Plaintiff and other Aggrieved Employees, therefore, are required to work in extreme temperatures, both too hot and too cold, depending on the season, without relief. Defendant fails to maintain temperatures within its warehouses that provide reasonable comfort for Plaintiff and Aggrieved Employees that is consistent with industry-wide standards for the nature of the process and the work performed. Said conduct, in addition to the foregoing, as well as the conduct alleged in the incorporated Complaint, violates Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 221, 226(a), 226.7, 227.3, 246, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), California Code of Regulations, Title 8, Section 1 1070(15) (Temperature), Violation of the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

A true and correct copy of the Complaint by Plaintiff against Defendant, which (i) identifies the alleged violations, (ii) details the facts and theories which support the alleged violations, (iii) details the specific work performed by Plaintiff, (iii) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiff, and (iv) sets forth the illegal practices used by Defendant, is attached hereto. This information provides notice to the Labor and Workforce Development Agency of the facts and theories supporting the alleged violations for the agency's reference. Plaintiff therefore incorporates the allegations of the attached Complaint into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask.

This notice is provided to enable Plaintiff to proceed with the Complaint against Defendant as authorized by California Labor Code section 2699, *et seq.* The lawsuit consists of other Aggrieved Employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Statute of 2004 on behalf of Plaintiff and all Aggrieved Employees.

Your earliest response to this notice is appreciated. If you have any questions of

concerns, please do not hesitate to contact me at the above number and address.

Respectfully,

/s/ Nicholas J. De Blouw

Nicholas J. De Blouw, Esq.