

1 MORGAN, LEWIS & BOCKIUS LLP
Carrie A. Gonell, Bar No. 257163
2 carrie.gonell@morganlewis.com
Alexander L. Grodan, Bar No. 261374
3 alexander.grodan@morganlewis.com
600 Anton Boulevard
4 Suite 1800
Costa Mesa, CA 92626-7653
5 Tel: +1.714.830.0600
Fax: +1.714.830.0700

6
7 Attorneys for Defendant
PETSMART, INC.

8
9 UNITED STATES DISTRICT COURT
10 EASTERN DISTRICT OF CALIFORNIA
11 FRESNO DIVISION

12
13 WILLIAM L. MILBURN, individually and on
behalf of all current and former similarly
14 situated and aggrieved employees of
DEFENDANTS in the State of California,

15 Plaintiff,

16 vs.

17 PETSMART, INC. and DOES 1 THROUGH
18 50, inclusive,

19 Defendants.

Case No.

**DEFENDANT PETSMART, INC.'S
NOTICE OF REMOVAL**

[28 U.S.C. §§ 1331, 1367, 1441(a)]

Action Filed: October 27, 2016
FAC Filed: March 20, 2018

20
21 **TO THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF**
22 **CALIFORNIA AND TO PLAINTIFF AND HIS ATTORNEYS OF RECORD:**

23 **PLEASE TAKE NOTICE THAT**, pursuant to 28 U.S.C. §§ 1331, 1367, 1441(a),
24 1441(c), and 1446, Defendant PetSmart, Inc. (“Defendant”) hereby removes the above-entitled
25 action from the Superior Court of the State of California in and for the County of Fresno to the
26 United States District Court for the Eastern District of California. This removal is based on the
27 following grounds:

1 **I. JURISDICTION**

2 1. This action is one over which the Court has original jurisdiction under 28 U.S.C.
3 § 1331 and is one which may be removed pursuant to 28 U.S.C. § 1441. Plaintiff William
4 Milburn (“Plaintiff”) alleges violations of and seeks remedies pursuant to the Fair Labor
5 Standards Act (“FLSA”). Defendant PetSmart, Inc. (“Defendant”) therefore may remove this
6 action pursuant to 28 U.S.C. §§ 1441.

7 **II. SUMMARY OF THE COMPLAINT**

8 2. On or about October 27, 2016, Plaintiff William Milburn (“Plaintiff”) filed an
9 unverified putative class action complaint for damages (the “Complaint”) in the Superior Court of
10 the State of California for the County of Fresno, entitled *William L. Milburn, individually and on*
11 *behalf of all other current and former similarly situated and aggrieved employees of*
12 *DEFENDANTS in the State of California v. PetSmart, Inc. and Does 1 through 50, inclusive,*
13 Case No. 16CECG03484. The complaint alleged multiple causes of action under the California
14 Labor Code arising from Plaintiff’s alleged misclassification as exempt from California’s
15 overtime laws and meal and rest break laws. Specifically, Plaintiff alleged causes of action for
16 failure to pay overtime, failure to pay regular and minimum wages, failure to provide meal and
17 rest periods, failure to provide accurate wage statements and records, and failure to timely pay
18 wages both during employment and at separation. He additionally alleged a derivative claim for
19 unfair competition under California Business & Professions Code §§ 17200 *et seq.* Plaintiff
20 further asserted a claim for failure to provide suitable seating under the Private Attorneys General
21 Act of 2004, Lab. Code § 2698 *et seq.* (“PAGA”) as well as claims under PAGA for civil
22 penalties relating to the previously alleged Labor Code violations. Plaintiff sought to maintain his
23 misclassification-derived claims as class claims on behalf of “[a]ll individuals classified as
24 ‘exempt’ employees who worked for PetSmart, Inc. in the State of California in the position of
25 PetsHotel Manager at any time since the four years preceding the filing of this Complaint.”
26 Complaint ¶ 35. Plaintiff sought to bring his representative PAGA claims, including his claims
27 relating to suitable seating, on behalf of “the State of California and on behalf of all other
28 aggrieved employees of Defendants.” *Id.* at ¶ 34.

1 3. On December 20, 2016, Plaintiff served by mail a copy of the complaint and
2 summons to Defendant.

3 4. On January 19, 2017, Defendant answered the Complaint.

4 5. On March 14, 2018, the Fresno County Superior Court granted Plaintiff leave to
5 file a First Amended Complaint (“FAC”) adding a cause of action and seeking relief under the
6 Fair Labor Standards Act (“FLSA”), 29 U.S.C. §§ 207(a) and 216(b), arising from the alleged
7 misclassification set forth in his Complaint. FAC, ¶¶ 4, 56-57, 203-211. The FAC also seeks
8 liquidated damages on behalf of the putative collective action members pursuant to 29 U.S.C.
9 § 216(b). Plaintiff filed the FAC on March 20, 2018 and served a copy of the FAC to Defendant
10 on April 16, 2018.

11 6. On April 18, 2018, Defendant filed an answer to the FAC.

12 7. True and correct copies of the FAC and related documents are attached hereto as
13 **Exhibit A.**

14 8. True and correct copies of Defendant’s Answer to the FAC are attached hereto as
15 **Exhibit B.**

16 9. True and correct copies of all other pleadings, processes, and orders served upon,
17 or by, Defendant in the Superior Court action are attached hereto as **Exhibit C.**

18 **III. TIMELY REMOVAL**

19 10. Defendant has timely removed this action within thirty days of service of the FAC.
20 The FAC was served by mail on April 16, 2018 and Defendant received it on April 18. Because
21 this Notice of Removal is filed within thirty days of service, it is timely under 28 U.S.C.
22 § 1446(b).

23 **IV. A FEDERAL QUESTION IS ALLEGED IN THE FAC**

24 11. Federal question jurisdiction exists under Section 1331 where the FAC asserts a
25 claim “arising under the Constitution, laws, or treaties of the United States.” *See* 28 U.S.C.
26 § 1331; *Ethridge v. Harbor House Rest.*, 861 F.2d 1389, 1393-94 (9th Cir. 1988). “When a
27 plaintiff’s complaint relies on federal law as the source of recovery, it is obvious that the case
28 ‘arises under’ federal law and therefore may be removed to federal court.” *Ethridge*, 861 F.2d at

1 1394. The presence or absence of federal-question jurisdiction is governed by the “well-pleaded”
2 complaint rule, which provides that federal jurisdiction exists “when a federal question is
3 presented on the face of the plaintiff’s properly pleaded complaint.” *Id.* at 1394.

4 12. Here, on the face of his FAC, Plaintiff explicitly alleges violations of and seeks
5 remedies pursuant to the FLSA, including liquidated damages that are not available under
6 California law. FAC, ¶¶ 4, 56-57, 203-211. Defendant therefore may remove this action
7 pursuant to 28 U.S.C. §§ 1441. *Breuer v. Jim’s Concrete of Brevard, Inc.*, 538 U.S. 691, 693-94
8 (2003) (holding that there is “no question” that FLSA provides basis for removal jurisdiction).

9 **V. SUPPLEMENTAL JURISDICTION EXISTS OVER THE STATE LAW CLAIMS**

10 13. Plaintiff’s remaining causes of action are claims over which this Court may
11 properly exercise supplemental jurisdiction pursuant to 28 U.S.C. § 1367(a), because they form
12 part of the same case or controversy as the claims over which this Court would have original
13 jurisdiction.

14 **VI. THE OTHER PREREQUISITES FOR REMOVAL HAVE BEEN SATISFIED**

15 14. Venue is proper in this District, pursuant to 28 U.S.C. §1441(a), because it
16 embraces the county in which this action has been pending since its inception.

17 15. Defendant will promptly serve this Notice of Removal on all parties and will
18 promptly file a copy of this Notice of Removal with the clerk of the state court in which the
19 action is pending, as required under 28 U.S.C. § 1446(d).

20 16. Defendant has sought no similar relief.

21 17. If any question arises as to the propriety of the removal of this action, Defendant
22 requests the opportunity to present a brief and oral argument in support of its position that this
23 case is removable.

24 WHEREFORE, Defendant respectfully requests that this action be removed from the
25 Superior Court of the State of California in and for the County of Fresno to the United States
26 District Court for the Eastern District of California, and that all future proceedings in this matter
27 take place in the United States District Court for the Eastern District of California.

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Dated: April 19, 2018

Respectfully submitted,

MORGAN, LEWIS & BOCKIUS LLP
Carrie A. Gonell
Alexander L. Grodan

By /s/Carrie A. Gonell
Carrie A. Gonell
Attorneys for Defendant
PetSmart, Inc.

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PROOF OF SERVICE

Milburn v. PetSmart, Inc., et al.
Fresno County Superior Court, Case No. 16-CECG-03484

I am a resident of the State of California, County of Orange; I am over the age of eighteen years and not a party to the within action; my business address is 600 Anton Blvd., Suite 1800, Costa Mesa, California 92626.

On April 19, 2018, I served on the interested parties in this action the within document(s) entitled:

DEFENDANT PETSMART, INC.'S NOTICE OF REMOVAL

BY MAIL: (C.C.P. § 1013(a)) - by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Costa Mesa, California addressed as set forth below. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

GRAHAM HOLLIS APC Graham S.P. Hollis, Esq. Geoff La Val, Esq. 3555 Fifth Avenue San Diego, CA 92103 Tel: 619.692.0800 Fax: 619.692.0822 ghollis@grahamhollis.com glaval@grahamhollis.com	<i>Attorneys for Plaintiff WILLIAM L. MILBURN</i>
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STATE: I declare under penalty of perjury, under the laws of the State of California, that the above is true and correct.

FEDERAL: I declare that I am employed in the office of a member of the Bar of this Court at whose direction this service was made.

Executed on April 19, 2018, at Costa Mesa, California.



Patricia Martin

CIVIL COVER SHEET

Case 1:18-cv-00535-DAD-SKO Document 1-1 Filed 04/19/18 Page 1 of 3

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

William L. Milburn

(b) County of Residence of First Listed Plaintiff Fresno (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Graham S.P. Hollis, Esq. / Geoff La Val, Esq. (GRAHAM HOLLIS APC) 3555 Fifth Ave., San Diego, CA 92103 / Tel: 619-692-0800 ghollis@grahamhollis.com; glaval@grahamhollis.com

DEFENDANTS

PetSmart, Inc.

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known) Carrie A. Gonell / Alexander Grodan (MORGAN, LEWIS & BOCKIUS) 600 Anton Blvd., Suite 1800, Costa Mesa, CA 92626 Tel: 714-830.0600 / cgonell@morganlewis.com

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories and checkboxes.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District (specify), 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 29 U.S.C. Section 201, et seq.

Brief description of cause: Putative class and collective action alleging misclassification as exempt under the FLSA.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: X Yes [] No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 04/19/2018 SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

Case 1:18-cv-00535-DAD-SKO Document 1-1 Filed 04/19/18 Page 2 of 3
INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved,)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

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PROOF OF SERVICE

Milburn v. PetSmart, Inc., et al.
Fresno County Superior Court, Case No. 16-CECG-03484

I am a resident of the State of California, County of Orange; I am over the age of eighteen years and not a party to the within action; my business address is 600 Anton Blvd., Suite 1800, Costa Mesa, California 92626.

On April 19, 2018, I served on the interested parties in this action the within document(s) entitled:

CIVIL CASE COVER SHEET

BY MAIL: (C.C.P. § 1013(a)) - by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Costa Mesa, California addressed as set forth below. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

GRAHAM HOLLIS APC Graham S.P. Hollis, Esq. Geoff La Val, Esq. 3555 Fifth Avenue San Diego, CA 92103 Tel: 619.692.0800 Fax: 619.692.0822 ghollis@grahamhollis.com glaval@grahamhollis.com	<i>Attorneys for Plaintiff WILLIAM L. MILBURN</i>
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STATE: I declare under penalty of perjury, under the laws of the State of California, that the above is true and correct.

FEDERAL: I declare that I am employed in the office of a member of the Bar of this Court at whose direction this service was made.

Executed on April 19, 2018, at Costa Mesa, California.



Patricia Martin

Exhibit “A”

1 GRAHAMHOLLIS APC
2 Graham S.P. Hollis (SBN 120577)
3 ghollis@grahamhollis.com
4 Geoff La Val (SBN 279987)
5 glaval@grahamhollis.com
3555 Fifth Avenue, Suite 200
San Diego, California 92103
Telephone: 619.692.0800
Facsimile: 619.692.0822

E-FILED
3/20/2018 2:47 PM
FRESNO COUNTY SUPERIOR COURT
By: S. Lopez, Deputy

6 Attorneys for Plaintiff WILLIAM L. MILBURN

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF FRESNO, CENTRAL DISTRICT

10 WILLIAM L. MILBURN, individually and on
11 behalf of all other current and former similarly
12 situated and aggrieved employees of
DEFENDANTS in the State of California,

13 Plaintiff,

14 v.

15 PETSMART, INC. and DOES 1 THROUGH
16 50, inclusive,

17 Defendants.

Case No.: 16CECG03484

Unlimited Civil - Amount Demanded
Exceeds \$25,000.00

**FIRST AMENDED CLASS ACTION [Cal. Code
Civ. Proc. § 382];
PAGA REPRESENTATIVE ACTION
[Lab. Code § 2698 *et seq.*]; and COLLECTIVE
ACTION [29 U.S.C. §216(b)] COMPLAINT**

1. Failure to Pay Overtime Wages (Lab. Code §§ 510, 1194, 1198 and IWC Wage Order 5-2001 § 3);
2. Failure to Pay Regular and Minimum Wages (Lab. Code §§ 1197, 1194, 1198 and IWC Wage Order 5-2001 § 4);
3. Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512, 1198 and IWC Wage Order 5-2001 § 11);
4. Failure to Provide Rest Periods (Lab. Code §§ 226.7, 1198 and IWC Wage Order 5-2001 § 12);
5. Failure to Provide and Maintain Accurate Itemized Wage Statements (Lab. Code § 226);
6. Failure to Pay Wages Due During Employment (Lab. Code §§ 204(a), 1198 and IWC Wage Order 5-2001 § 4);
7. Failure to Pay Wages Due Upon Separation of Employment (Lab. Code §§ 201, 202, 203);
8. Failure to Reimburse Necessary Business Expenses (Labor Code §2802);
9. Failure to Maintain Accurate Records (Lab. Code § 1174);
10. Violation of Business & Professions Code §§ 17200 *et seq.*;
11. Private Attorneys General Act (PAGA) Claim for Civil Penalties (Lab. Code § 2698, *et seq.*);

GRAHAMHOLLIS APC
3555 FIFTH AVENUE, SUITE 200
SAN DIEGO, CALIFORNIA 92103

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GRAHAM HOLLIS APC
3555 FIFTH AVENUE SUITE 200
SAN DIEGO, CALIFORNIA 92103

- 12. PAGA Claim for Failure to Provide Suitable Seats (Lab. Code §§ 1198, 2698 *et seq.*, and IWC Wage Order 7-2001 § 14); and
- 13. Violation of the Fair Labor Standards Act (“FLSA”) (29 U.S.C. §§ 207, 211(c), 216(b)).

- DEMAND FOR JURY TRIAL -

1 Plaintiff WILLIAM L. MILBURN (“Plaintiff”), individually and on behalf of himself and all other
2 similarly situated and aggrieved employees of PETSMART, INC. (“PetSmart”) alleges as follows:

3 **I. INTRODUCTION**

4 1. Plaintiff is a former employee of PetSmart. Plaintiff began employment with PetSmart in
5 April 2012 as a Pets Product Manager and was classified by PetSmart as a “non-exempt” employee for
6 purposes of California’s wage and hour laws. Plaintiff later worked as a PetsHotel Manager. At various
7 times throughout Plaintiff’s employment with PetSmart as a PetsHotel Manager, Plaintiff was classified
8 as an “exempt” employee for purposes of California’s wage and hour laws. Plaintiff’s employment with
9 PetSmart ended in November 2015.

10 2. Plaintiff brings this action, pursuant to California Code of Civil Procedure § 382 on behalf
11 of a Class of employees currently and formerly employed by PetSmart in the State of California. For at
12 least three (3) years prior to filing this action and through the present, Plaintiff is informed and believes
13 that PetSmart has violated the California Labor Code and applicable Industrial Welfare Commission
14 (“IWC”) Wage Order in the manners alleged here. For at least four (4) years prior to filing this action and
15 through the present, Plaintiff is informed and believes that PetSmart has violated California Business &
16 Professions Code §17200, *et seq.* in the manners alleged herein.

17 3. Plaintiff brings this action, pursuant to the PAGA as a representative action on behalf of
18 all other aggrieved employees of PetSmart who were employed by PetSmart in the State of California as
19 in its PetsHotel locations. Plaintiff duly exhausted all administrative notice requirements pursuant to the
20 PAGA via his August 19, 2016 correspondence to the California Labor and Workforce Development
21 Agency (“LWDA”) providing notice of his intent to bring a representative action for recovery of penalties
22 under the PAGA. PAGA permits an aggrieved employee to bring a lawsuit for civil penalties for California
23 Labor Code violations committed against himself or herself and other current and former employees, to
24 address an employer’s violations of the California Labor Code. The 60-day PAGA exhaustion period
25 expired on October 18, 2016.

26 ///

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GRAHAM HOLLIS APC
3555 FIFTH AVENUE SUITE 200
SAN DIEGO, CALIFORNIA 92103

GRAHAM HOLLIS APC
3555 FIFTH AVENUE SUITE 200
SAN DIEGO, CALIFORNIA 92103

1 4. Plaintiff brings this action as a Collective Action pursuant to the Fair Labor Standards Act
2 of 1938, as amended (“FLSA”), 29 U.S.C. 201, *et seq.*, for violations of 29 U.S.C. sections 207, 211(c),
3 and seeks unpaid compensation for all hours worked, liquidated damages, and attorney’s fees and costs
4 pursuant to 29 U.S.C. section 216(b).

5 5. PetSmart is a Delaware Corporation doing business in the State of California and is a
6 nationwide pet supply retailer and is the largest specialty retailer of pet services. PetSmart provides pet
7 supplies and offers pet training, pet grooming, and pet adoption services.

8 6. At all relevant times, Defendants were Plaintiff’s employer or persons acting on behalf of
9 Plaintiff’s employer, within the meaning of California Labor Code § 558, who violated or caused to be
10 violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating hours and
11 days of work in any order of the Industrial Welfare Commission and, as such, is subject to penalties for
12 each underpaid employee as set forth in Labor Code §§ 558 and 1197.1.

13 7. Defendants have engaged in a systematic pattern of wage and hour abuse towards Plaintiff
14 and other current and former employees by denying them specific rights afforded to them under California
15 law, including the California Labor Code and rules promulgated by the Industrial Welfare Commission
16 (IWC) Wage Orders. For example, Defendants failed to compensate Plaintiff for all hours worked; failed
17 to provide suitable seats; failed to provide meal periods or pay compensation in lieu thereof; failed to
18 provide rest breaks; and failed to pay minimum and overtime wages. By engaging in these and other acts,
19 Defendants have not complied with California laws.

20 8. Plaintiff brings this civil action seeking injunctive and monetary relief against Defendants,
21 on behalf of himself and all other aggrieved and similarly situated current and former PetsHotel
22 employees, who were employed by Defendants in the State of California to recover, among other things,
23 unpaid wages and benefits, interest, attorneys’ fees, penalties, costs and expenses pursuant to California
24 Labor Code §§ 201, 202, 203, 204(a), 218.5, 218.6, 223, 226, 226.3, 226.7, 510, 512, 558, 1174, 1194,
25 1197, 1197.1, 1198, 2698, *et seq.*, and 2802. Further, Plaintiff brings this lawsuit seeking restitution and
26 monetary relief against Defendants on behalf of himself individually and on behalf of all similarly situated
27 employees to recover unpaid wages, penalties, liquidated damage, and attorney’s fees and costs pursuant
28 to 29 U.S.C. section 216(b). Plaintiff reserves the right to name additional class representatives.

II. PARTIES, JURISDICTION, AND VENUE

9. Plaintiff is and, at all relevant times, was a resident of Fresno, California located in Fresno County and was employed by PetSmart at the Fresno location.

10. Defendants' conduct, as herein alleged, occurred in the County of Fresno, California and various counties throughout the State of California. Plaintiff is informed and believes and thereon alleges that Defendants are, and at all relevant times, were authorized to do business and doing business in the State of California, and were Plaintiff's employers as defined in, and subject to, the applicable IWC Wage Order. Plaintiff is also informed and believes, and thereon alleges, that Defendants were Plaintiff's employers as defined in, and subject to, the FLSA.

11. The true names and capacities of the Defendants named as Does 1 through 50, inclusive, are presently unknown to Plaintiff. Plaintiff will amend this Complaint, setting forth the true names and capacities of these fictitious Defendants when they are ascertained. Plaintiff is informed and believes and on that basis alleges that each of the fictitious Defendants has participated in the acts alleged in this Complaint.

12. Plaintiff is an "aggrieved employee" within the meaning of Labor Code § 2699(c) because he was employed by Defendants and suffered one or more of the violations committed by Defendants.

13. This Court has jurisdiction over Plaintiff's and the represented employees' claims for failure to pay overtime wages under Labor Code §§ 510 and 1194.

14. This Court has jurisdiction over Plaintiff's and the represented employees' claims for failure to pay minimum wages under Labor Code §§ 1194 and 1197.

15. This Court has jurisdiction over Plaintiff's and the represented employees' claims for meal period and rest period violations under Labor Code §§ 226.7 and 218.

16. This Court has jurisdiction over Plaintiff's and the represented employees' claims for failure to furnish timely and accurate itemized wage statements under Labor Code § 226.

17. This Court has jurisdiction over Plaintiff's and the represented employees' claims for failure to maintain accurate records under Labor Code § 1174.

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1 18. This Court has jurisdiction over Plaintiff's and the represented employees' claims for
2 failure to pay all wages due during and upon separation of employment under Labor Code §§ 201, 202,
3 and 204.

4 19. This Court has jurisdiction over Plaintiff's and the represented employees' claims for
5 injunctive relief, specific enforcement of penalties, restitution of unpaid wages and other ill-gotten benefits
6 arising from Defendant's unlawful and/or unfair business practices under Business & Professions Code
7 §§ 17202 and 17203.

8 20. Venue as to each Defendant is proper in this Court, pursuant to Code of Civil Procedure §
9 395(a). Defendants maintain offices, transact business, and/or have an agent in Fresno County and
10 Defendants are otherwise within this Court's jurisdiction for purposes of service of process. The unlawful
11 acts alleged herein arose in Fresno County and have a direct effect on Plaintiff and those aggrieved and
12 similarly situated employees within the State of California and within Fresno County. Defendants employ
13 Class Members in Fresno County and throughout the State of California.

14 **III. GENERAL ALLEGATIONS**

15 21. California's Labor Code and Industrial Welfare Commission Wage Order 5-2001 require
16 employers to, among other things, provide compliant meal and rest periods, pay each employee wages for
17 all hours worked within the time prescribed by law, furnish each employee with accurate itemized wage
18 statements, maintain accurate records, pay minimum, regular, and overtime wages due and owing, and
19 provide each employee with suitable seats when the nature of the work reasonably permits the use of seats.

20 22. The Fair Labor Standards Act requires an employer to, among other things, pay an
21 employee compensation for his employment in excess of forty hours in a workweek at a rate not less than
22 one and one-half times the regular rate at which the employee is employed.

23 23. Plaintiff commenced his employment with Defendants in April 2012. Plaintiff worked for
24 PetSmart both as an exempt and non-exempt employee at PetSmart's Fresno, California store and was
25 subjected to PetSmart's employment practices during the course of his employment. At various times
26 during his employment with PetSmart, Plaintiff was classified by Defendants as an "exempt" employee,
27 ineligible for protections and rights afforded by the California Labor Code. Plaintiff alleges that PetSmart
28 misclassified him and other PetsHotel Managers as "exempt" when in fact Plaintiff and other PetsHotel

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1 Managers should have been classified as “non-exempt” employees entitled to the full protections of both
2 the California Labor Code and the applicable IWC Wage Order. On April 13, 2015, Defendants
3 reclassified Plaintiff and, on information and belief, other PetsHotel Managers from “exempt” to “non-
4 exempt” and changed Plaintiff’s and all other PetsHotel Manager’s job titles from “PetsHotel Manager”
5 to “PetsHotel Leader”. However, subsequent to the reclassification, PetSmart did not change any of the
6 job duties of the PetsHotel Manager job position and Plaintiff and, on information and belief, other
7 PetsHotel Managers/Leaders continued to perform the same job and duties as when they were classified
8 as “exempt”. While Plaintiff was classified as “exempt”, Defendants did not pay Plaintiff and, on
9 information and belief, other PetsHotel Managers/Leaders, all minimum and overtime wages owed and
10 did not provide Plaintiff and, on information and belief, other PetsHotel Managers/Leaders, with meal and
11 rest periods in accordance with the requirements of the California Labor Code and the applicable IWC
12 Order §§ 11 and 12.

13 24. Labor Code § 1198 provides, in pertinent part, that “the maximum hours of work and the
14 standard conditions of labor fixed by the commission shall be the maximum hours of work and the
15 standard conditions of labor for employees.” The applicable IWC Wage Order § 14 provides, “All
16 working employees shall be provided with suitable seats when the nature of the work reasonably permits
17 the use of seats.” Violations of the standard conditions of labor provided in the applicable IWC Wage
18 Order are unlawful under Labor Code § 1198.

19 25. Although the nature of Plaintiff’s work reasonably permitted the use of seats, Defendants
20 failed to provide Plaintiff and, on information and belief, other aggrieved employees, specifically those
21 who were employed as PetsHotel Managers, PetsHotel Leaders, Assistant PetsHotel Managers, Assistant
22 PetsHotel Leaders, Store Leaders and/or Seniors, and Overnight PetCare Specialists and/or Guest Services
23 Associates, with suitable seats. The “nature of the work” refers to an employee’s task performed at any
24 given location for which a right to a suitable seat is claimed, rather than a “holistic” consideration of the
25 entire range of an employee’s duties anywhere on the jobsite during a complete shift. The determination
26 of whether the nature of the work “reasonably permits” the use of a seat is a question to be determined
27 objectively based on the totality of the circumstances.” *Kilby v. CVS Pharmacy, Inc.* 63 Cal.4th 1 (April
28 4, 2016).

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1 26. Defendants did not provide Plaintiff and, on information and belief, other PetsHotel
2 Managers/Leaders, meal periods compliant under California law, during the timeframe when Plaintiff and
3 other PetsHotel Managers were misclassified by Defendants as “exempt.” Due to the demands of the job
4 and the job requirements, Plaintiff was unable to take off-duty and uninterrupted meal periods.
5 Furthermore, because Plaintiff and, on information and belief, other PetsHotel Managers/Leaders were
6 classified as “exempt” Defendants did not provide meal periods to be taken by Plaintiff and other
7 PetsHotel Managers. Furthermore, even after they were reclassified to “non-exempt,” although Plaintiff
8 and, on information and belief, other PetsHotel Managers/Leaders worked shifts in excess of 10 hours,
9 Defendants did not provide a second meal period to be taken by Plaintiff and other PetsHotel
10 Managers/Leaders on shifts of more than 10 hours as required by Labor Code § 512.

11 27. Defendants did not provide Plaintiff and, on information and belief, other PetsHotel
12 Managers/Leaders with rest periods compliant under California law, during the timeframe when Plaintiff
13 and other PetsHotel Managers/Leaders were classified as “exempt.” Due to the demands of the job and
14 the job requirements, Plaintiff was unable to take duty-free rest periods. Furthermore, because Plaintiff
15 and, on information and belief, other PetsHotel Managers/Leaders were classified as “exempt”,
16 Defendants did not provide or authorize and permit rest periods to be taken by Plaintiff and other PetsHotel
17 Managers/Leaders.

18 28. Plaintiff and, on information and belief, other PetsHotel Managers/Leaders have not been
19 paid any meal or rest break premium wages as a result of Defendants’ failure to provide meal or rest
20 periods pursuant to Labor Code § 226.7.

21 29. Plaintiff and other PetsHotel Managers/Leaders regularly worked over 8 hours per day and
22 over 40 hours per week, but Defendants failed to pay them all minimum and overtime wages owed, in
23 violation of Labor Code sections 510, 1198, and 29 U.S.C. sections 206 and 207. Defendants failed to pay
24 Plaintiff and, on information and belief, other PetsHotel Managers/Leaders all minimum and overtime
25 wages due and owed because Plaintiff and, on information and belief, other PetsHotel Managers/Leaders
26 were required to work prior to their scheduled shift start time. However, because Plaintiff and, on
27 information and belief, other PetsHotel Managers/Leaders were classified as “exempt”, Defendants did
28 not pay Plaintiff and, on information and belief, other PetsHotel Managers/Leaders any minimum or

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1 overtime wages for the work performed prior to the scheduled shift start times and for work performed
2 after the end of the scheduled shift, which was required by Defendants to be performed as part of the job
3 duties of the PetsHotel Manager/Leader.

4 30. Defendants failed to pay Plaintiff and other PetsHotel Managers/Leaders for all wages due
5 during employment, in violation of Labor Code § 204. Defendants did not properly compensate for
6 minimum wages, regular wages, overtime wages, and meal and rest period premium wages.

7 31. Defendants failed to provide Plaintiff and other PetsHotel Managers/Leaders with accurate
8 itemized wage statements because Plaintiff was not compensated by Defendants for all hours worked and
9 for all compensation due.

10 32. Defendants failed to provide Plaintiff and other PetsHotel Managers/Leaders with all
11 wages due and owing at the time of termination of employment because Plaintiff was not properly
12 compensated by Defendants for all hours worked including overtime hours and for meal and rest period
13 violations.

14 33. Defendants failed to maintain accurate records because Defendants failed to record all
15 hours worked by Plaintiff and other PetsHotel Managers/Leaders, including failing to record meal periods
16 and work performed by Plaintiff off-the-clock prior to and after the end of his scheduled shift. As a result,
17 records maintained by Defendants as to Plaintiff and other PetsHotel Managers/Leaders are incomplete
18 and inaccurate, and fail to comply with the requirements of Labor Code § 1174 and 29 U.S.C. section
19 211(c).

20 34. Defendants failed to reimburse Plaintiff and, on information and belief, other PetsHotel
21 Managers/Leaders for all necessary expenditures or losses incurred in direct consequence of their duties
22 of employment. On information and belief, as a condition of their employment and part of their job duties,
23 Plaintiff and other PetsHotel Managers/Leaders were required to use their personal cell phone in the
24 performance of their work duties and respond to work calls throughout their shifts; however, Plaintiff and
25 other PetsHotel Managers/Leaders were not reimbursed for these expenses.

26 35. Defendants have engaged in unfair business practices in California and willingly and
27 knowingly have practice, employed, and utilized the employment patterns and practices alleged in this
28 complaint in violation of Business & Professions Code § 17200 *et seq.*

1 **IV. EXHAUSTION OF ADMINISTRATIVE NOTICE REQUIREMENT OF THE PRIVATE**
2 **ATTORNEYS GENERAL ACT OF 2004**

3 36. On August 19, 2016, pursuant to Labor Code § 2698, *et seq.*, Plaintiff served, via email to
4 the LWDA and via certified mail to PetSmart, Inc., correspondence detailing his claims for wage/hour
5 violations and penalties. The 60-day PAGA exhaustion period expired on October 18, 2016. Plaintiff has
6 therefore satisfied the procedural notice prerequisite to pursue penalties against Defendants pursuant to
7 the PAGA.

8 37. Plaintiff intends to seek penalties in a representative capacity as a private attorney general
9 on behalf of the State of California and on behalf of all other aggrieved employees of Defendants.

10 **V. CLASS ACTION DESIGNATION**

11 38. Causes of Action One through Ten are appropriately suited for a Class Action because
12 Plaintiff brings these Causes of Action on behalf of himself and all other similarly-situated employees as
13 a Class Action pursuant to Code of Civil Procedure § 382. The Classes that Plaintiff seeks to represent are
14 defined as follows:

- 15 • All individuals employed by PetSmart, Inc. in an exempt “PetsHotel Manager”
16 position in the State of California at any time from and after October 27, 2012
17 through April 13, 2015 (“PetsHotel Manager Class”); and
- 18 • All individuals employed by PetSmart, Inc. in a non-exempt “PetsHotel Leader”
19 position at any time from and after April 13, 2015. (“PetsHotel Leader Class”)

20 39. Plaintiff also brings this action on behalf of himself and other former employees of
21 PetSmart, Inc. pursuant to California Code of Civil Procedure § 382. The Waiting Time Penalty Subclass
22 Plaintiff seeks to represent is defined as follows:

- 23 • All members of the PetsHotel Manager Class and the PetsHotel Leader Class whose
24 employment with PetSmart, Inc. ended at any time from and after October 27, 2013.
25 (“Waiting Time Penalty Subclass”).

26 40. Plaintiff reserves the right under Rule 3.765(b), California Rules of Court, to modify the
27 descriptions of the Class and Subclass with greater specificity or further division into subclasses or
28 limitation to particular issues.

41. As to Causes of Action One through Ten, Plaintiff seeks to recover on behalf of the Class
and Subclass all remedies available to the extent permitted by law including, but not limited to, wages,

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1 damages, penalties, liquidated damages, interest, attorneys’ fees, costs, other monies due and owing and
2 injunctive relief.

3 42. Causes of Action One through Ten are appropriately suited for a class action pursuant to
4 Section 382 of the California Code of Civil Procedure because the following requirements are met:

5 i. Numerosity. The potential Class and Subclass as defined are significant in size because
6 Plaintiff is informed and believes and thereon alleges that at all relevant times
7 Defendants employed numerous similarly-situated current and former employees as
8 PetsHotel Managers who were subject to Defendants’ uniform and common wage and
9 hour practices and unlawful employment practices alleged herein. Based on the size of
10 the potential Class and Subclass, joinder of all employees individually would be
11 impractical.

12 ii. Commonality. This action involves questions of law and fact common to the potential
13 Class and Subclass because the action involves Defendants’ systematic course of illegal
14 conduct with respect to violating the California Labor Code and IWC Wage Order 5-
15 2001 and implementing company-wide policies uniformly applied to all members
16 within each Class and Subclass as defined above. These questions include, but are not
17 limited to:

18 (a) Whether Defendants misclassified PetsHotel Manager Class members as
19 “exempt” prior to April 13, 2015, when in fact Plaintiff and PetsHotel Manager
20 Class members should have been classified as “non-exempt”, entitled to the full
21 protections of both the California Labor Code and the applicable IWC Wage
22 Order;

23 (b) Whether Defendants failed to provide members of the PetsHotel Manager Class
24 and the PetsHotel Leader Class with meal periods compliant with Labor Code
25 § 512 and § 11 of IWC Wage Order 5-2001;

26 (c) Whether Defendants failed to provide members of the PetsHotel Manager Class
27 and the PetsHotel Leader Class with rest periods compliant with Labor Code §
28 226.7 and § 12 of IWC Wage Order 5-2001;

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- 1 (d) Whether Defendants failed to pay additional wages to members of the PetsHotel
2 Manager Class and the PetsHotel Leader Class when they were not provided
3 with required meal and rest periods;
- 4 (e) Whether Defendants failed to reimburse members of the PetsHotel Manager
5 Class and the PetsHotel Leader Class for business expenses incurred in direct
6 consequence of the discharge of their duties of employment because they were
7 required to use their cell phone for work related duties, for which Defendants
8 provided no reimbursement;
- 9 (f) Whether Defendants failed to pay members of the PetsHotel Manager Class and
10 the PetsHotel Leader Class all overtime wages for all hours or fractions of an
11 hour worked and under the control of Defendants over eight hours in one day
12 or forty hours in one week;
- 13 (f) Whether Defendants failed to pay members of the PetsHotel Manager Class
14 and the PetsHotel Leader Class all regular and minimum wages for all hours or
15 fraction of an hour worked and under the control of Defendants;
- 16 (g) Whether Defendants failed to properly and accurately record and maintain
17 records of all hours worked and wages earned by members of the PetsHotel
18 Manager Class and the PetsHotel Leader Class;
- 19 (h) Whether Defendants failed to provide members of the PetsHotel Manager Class
20 and the PetsHotel Leader Class with accurate itemized wage statements
21 showing, among other things, the correct number of hours worked, wages
22 earned, and all applicable hourly rates and the corresponding number of hours
23 at each rate;
- 24 (i) Whether Defendants failed to timely pay members of the PetsHotel Manager
25 Class and the PetsHotel Leader Class wages earned and owed during their
26 employment; and
- 27 (j) Whether Defendants failed to timely pay Waiting Time Penalty Subclass
28 members for all final wages owed and earned upon separation of employment.

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1 iii. Typicality. Plaintiff’s claims are typical of the claims of the Classes and Subclass
2 because Plaintiff was subjected to the same violations of his rights under California law
3 and seeks the same type of damages, restitution, and other relief on the same theories
4 and legal grounds as those of the members of the Classes and Subclass he seeks to
5 represent. Plaintiff is a member of the Classes and Subclass he seeks to represent.

6 iv. Adequacy of Representation. Plaintiff is able to fairly and adequately represent the
7 interests of all members of the Classes and Subclass because it is in his best interest to
8 prosecute the claims alleged herein to obtain full compensation due to them for all back
9 pay, benefits and other relief afforded under the Labor Code and IWC Wage Orders.
10 Plaintiff’s interests are not in conflict with those of the members of the putative Classes.
11 Plaintiff’s counsel are competent and experienced in litigating employment law class
12 actions and other complex litigation matters, including wage and hour cases such as
13 this case.

14 v. Superiority of Class Action. Class treatment is appropriate because a class action is
15 superior to other available means for the fair and efficient adjudication of these claims.
16 Each putative class member has been damaged and is entitled to recover by reason of
17 Defendants’ illegal policies and practices as alleged herein. Class action treatment will
18 allow those similarly situated persons to litigate their claims in the manner that is most
19 efficient and economical for the parties and the judicial system.

20 **VI. PRIVATE ATTORNEYS GENERAL ACT OF 2004 DESIGNATION**

21 43. Causes of Action Eleven and Twelve are appropriately suited for a Labor Code Private
22 Attorneys General Act of 2004 (“PAGA”) representative action because:

23 44. This action involves allegations of violations of provisions of the California Labor Code
24 that provide for a civil penalty to be assessed and collected by the LWDA or any departments, divisions,
25 commissions, boards, agencies or employees, or for which a penalty is provided for under Labor Code
26 section 2699(f).

27 45. Plaintiff is an “aggrieved employee” because he was employed by the alleged violator and
28 had one or more of the alleged violations committed against him.

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1 46. Plaintiff intends to seek PAGA penalties in a representative capacity on behalf of all
2 aggrieved employees who were employed as PetsHotel Managers and PetsHotel Leaders by Defendants
3 and against whom one or more of the alleged violations were committed and on behalf of the State of
4 California.

5 47. Pursuant to Labor Code section 2698 *et seq.*, Plaintiff has exhausted his administrative
6 remedies and notice requirements by serving via email, the LWDA, and via certified mail, Defendants,
7 with notification of his claims for wage and hour violations and penalties. Plaintiff sent this letter on
8 August 19, 2016. On October 18, 2016, the 60-day period for the LWDA to provide notice to Plaintiff of
9 its intent to investigate Plaintiff's allegations expired. Therefore, Plaintiff has satisfied and exhausted the
10 procedural notice requirement to pursue penalties against Defendants pursuant to Labor Code section 2698
11 *et seq.* on behalf of himself and all other aggrieved PetsHotel Managers and PetsHotel Leaders employed
12 by Defendants, and the State of California.

13 48. Plaintiff therefore satisfied the procedural notice requirement pursuant to Labor Code
14 section 2699.3 to pursue penalties pursuant to Labor Code section 2698 *et seq.* Plaintiff intends to seek
15 recovery of wages and penalties on behalf of himself and all other aggrieved PetsHotel Managers and
16 PetsHotel Leaders, pursuant to the California Labor Code in a representative capacity on behalf of the
17 State of California as a Private Attorney General.

18 49. Plaintiff has filed this action pursuant to Labor Code sections 2698 and 2699(a) and (f), on
19 behalf of himself and all other current and former aggrieved PetsHotel Managers and PetsHotel Leaders
20 of Defendants to recover penalties. Said penalties include unpaid/underpaid wages which are to be paid
21 to the affected employees pursuant to Labor Code sections 558 and 1197.1, as well as *Thurman v.*
22 *Bayshore Transit Management, Inc.*, 203 Cal. App. 4th 1112 (2012).

23 **VII. FAIR LABOR STANDARDS ACT COLLECTIVE ACTION DESIGNATION**

24 50. Plaintiff brings his Thirteenth cause of action on a collective basis pursuant to the Fair
25 Labor Standards Act. For this claim, Plaintiff seeks to represent all other current and former employees of
26 PetSmart, Inc., who were employed in an exempt or non-exempt PetsHotel Manager or PetsHotel Leader
27 position in the State of California at any time from and after [3 years prior to Filing], and who were not
28 paid in accordance with 29 U.S.C. section 207.

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1 51. Pursuant to 29 U.S.C. section 256(a), Plaintiff's written consent is attached hereto as
2 Exhibit A and filed concurrently herewith. Therefore, the Collective Action shall be considered to be
3 commenced as to Plaintiff from the day of the filing of this Complaint.

4 52. Defendants violated 29 U.S.C. section 207 by willfully failing to pay Plaintiff and other
5 exempt or non-exempt PetsHotel Managers or PetsHotel Leaders for work performed in excess of forty
6 (40) hours per week.

7 53. Defendants also violated 29 U.S.C. section 211(c) by failing to keep accurate records. At
8 all relevant times, Defendants did not make, keep, preserve, or furnish accurate records of the actual total
9 hours worked by such employees and pay rates owed to such employees as required for non-exempt
10 employees because Plaintiff and other exempt or non-exempt PetsHotel Managers or PetsHotel Leaders
11 were misclassified as exempt and regularly worked more than forty (40) hours per week.

12 54. Plaintiff is similarly situated with members of the Collective Action because:

- 13 1. Plaintiff and members of the Collective Action were employed by
- 14 Defendants in the same or similar job positions;
- 15 2. Plaintiff and members of the Collective Action were subject to the same
- 16 policies and procedures of Defendants;
- 17 3. Plaintiff and members of the Collective Action were not compensated for
- 18 all hours they worked, as required by the FLSA;
- 19 4. Defendants knowingly and willfully violated provisions of the FLSA by not
- 20 paying Plaintiff and members of the Collective Action all wages that they
- 21 were owed;
- 22 5. As a result of the Defendants' policies and practices of withholding
- 23 compensation for all hours worked, including overtime compensation,
- 24 Plaintiff and members of the Collective Action have been similarly
- 25 damaged in that they have not received all of their earned wages to date.

26 55. This action is maintainable as an "opt-in" Collective Action pursuant to 29 U.S.C. section
27 216(b) as to claims for unpaid wages, liquidated damages, and attorney's fees and costs under the FLSA.

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1 56. Defendants willfully violated the FLSA overtime wage and recording regulations by
2 purposefully misclassifying Plaintiff and other members of the Collective Action as exempt employees,
3 which resulted in Defendants failing to pay Plaintiff and other members of the Collective Action all
4 overtime wages earned and owed for all hours worked in excess of forty in one workweek and by failing
5 to maintain accurate records.

6 57. All members of the Collective Action during the relevant time period (the period of time
7 beginning three years prior to the filing of this First Amended Complaint) should be given notice and be
8 allowed to give their consent to “opt-in” to the Collective Action pursuant to 29 U.S.C. section 216(b).

9 **VIII. CAUSES OF ACTION**

10 **FIRST CAUSE OF ACTION**

11 **FAILURE TO PAY OVERTIME WAGES**

12 (Violation of Labor Code §§ 510, 1194, 1198 and the “Hours and Days of Work” Section of IWC Wage
Order 5-2001).

13 (Alleged by Plaintiff individually and on behalf of the PetsHotel Manager Class and the PetsHotel
Leader Class Against Defendant)

14 58. Plaintiff re-alleges and hereby incorporates by reference each and every allegation set forth
15 above.

16 59. Labor Code section 510 provides in pertinent part: “Eight hours of labor constitutes a day’s
17 work. Any work in excess of 8 hours in one workday and any work in excess of 40 hours in any one
18 workweek and the first eight hours worked on the seventh day of work in any one workweek shall be
19 compensated at the rate of no less than one and one-half times the regular rate of pay for an employee.
20 Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the
21 regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of
22 a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.”

23 60. Labor Code section 1194 states in pertinent part: “Notwithstanding any agreement to work
24 for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime
25 compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the
26 full amount of this minimum wage or overtime compensation, including interest thereon, reasonable
27 attorneys’ fees, and costs of suit.”

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

5 62. Until approximately April 13, 2015, Plaintiff and members of the PetsHotel Manager Class
6 were misclassified by Defendants as “exempt” employees regardless of the fact that the job duties
7 performed by Plaintiff and members of the PetsHotel Manager Class as a PetsHotel Manager for PetSmart
8 were non-managerial in nature. Plaintiff and members of the PetsHotel Manager Class were not primarily
9 engaged in administrative duties. Furthermore, Plaintiff and members of the PetsHotel Manager Class
10 did not primarily engage in work directly related to management policies or general business operations
11 of PetSmart. As a result, Plaintiff and members of the PetsHotel Manager Class should have been
12 classified as “non-exempt” employees, entitled to the full protections of the Labor Code and the applicable
13 IWC Wage Order, and entitled to receive overtime wages for work in excess of 8 hours in one workday
14 and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh
15 day of work in any one workweek at the rate of no less than one and one-half times the regular rate of pay
16 for an employee.

17 63. In addition, Plaintiff and members of the PetsHotel Manager Class and PetsHotel Leader
18 Class were suffered and permitted to work for Defendants prior to their scheduled shift start time and after
19 the end of their shift and worked in excess of 8 hours in one workday and/or 40 hours in one workweek.
20 As part of the job of a PetsHotel Manager/Leader, Plaintiff and members of the PetsHotel Manager Class
21 and PetsHotel Leader Class were required to open the PetSmart store in the morning prior to the store’s
22 business hours. Additionally, Plaintiff and members of the PetsHotel Manager Class and PetsHotel Leader
23 Class were required to complete all duties for the day after his shift ended before leaving the store.

24 64. As a result of Defendants’ policy and practice of failing to pay overtime compensation
25 during the period of time when Plaintiff and other PetsHotel Managers were misclassified as “exempt”,
26 and thereafter, Plaintiff and members of the PetsHotel Manager Class and PetsHotel Leader Class were
27 damaged in that they have not received wages due them pursuant to California wage and hour laws.

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1 65. Defendants have made it difficult to account with precision for the unpaid overtime worked
2 by their PetsHotel Managers/Leaders, because they did not make, keep, preserve, or furnish accurate
3 records of the actual total hours worked by such employees and pay rates owed to such employees as
4 required for non-exempt employees by Labor Code §§ 226, 1174(d) and Wage Order No. 5-2001.
5 Defendants’ failure to keep accurate records of hours worked by Plaintiff and members of the PetsHotel
6 Manager Class and PetsHotel Leader Class served their policy of unlawfully denying overtime
7 compensation to persons employed as PetsHotel Managers/Leaders.

8 66. As a result of the unlawful acts of Defendants, Plaintiff and members of the PetsHotel
9 Manager Class and PetsHotel Leader Class were deprived of overtime compensation in amounts to be
10 determined at trial, and are entitled to recovery of such amounts pursuant to Labor Code § 1194, attorneys’
11 fees, costs and other compensation.

12 67. Plaintiff requests relief as described below.

13 **SECOND CAUSE OF ACTION**

14 **FAILURE TO PAY REGULAR AND MINIMUM WAGES**

15 (Violation of Labor Code §§ 1194, 1197, 1198 and the “Minimum Wages” Section of IWC Wage Order
16 5-2001)

17 (Alleged by Plaintiff individually and on behalf of the PetsHotel Manager Class and the
18 PetsHotel Leader Class Against Defendant)

19 68. Plaintiff re-alleges and hereby incorporates by reference each and every allegation set forth
20 above.

21 69. Labor Code section 1197 states: “The minimum wage for employees fixed by the
22 commission is the minimum wage to be paid to employees, and the payment of a less wage than minimum
23 wage so fixed is unlawful.”

24 70. Labor Code section 1197.1 states: “Any employer or other person acting either individually
25 or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a
26 wage less than the minimum fixed by an order of the commission shall be subject to a civil penalty,
27 restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed
28 pursuant to Section 203. For any initial violation that is intentionally committed, one hundred dollars
(\$100) for each underpaid employee for each pay period for which the employee is underpaid. For each
subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid

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1 employee for each pay period for which the employee is underpaid regardless of whether the initial
2 violation is intentionally committed.”

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

7 72. IWC Wage Order 5-2001 section 4 provides that an employer may not pay employees less
8 than the applicable minimum wage for all hours worked.

9 73. Until approximately April 2015, Plaintiff and members of the PetsHotel Manager Class
10 were misclassified by Defendants as “exempt” employees regardless of the fact that the job duties
11 performed by Plaintiff and members of the PetsHotel Manager Class as a PetsHotel Manager for PetSmart
12 were non-managerial in nature. Plaintiff and members of the PetsHotel Manager Class were not primarily
13 engaged in administrative duties. Furthermore, Plaintiff and members of the PetsHotel Manager Class
14 did not primarily engage in work directly related to management policies or general business operations
15 of PetSmart. As a result, Plaintiff and members of the PetsHotel Manager Class should have been
16 classified as “non-exempt” employees, entitled to the full protections of the Labor Code and the applicable
17 IWC Wage Order, and entitled to receive minimum wage for all hours worked.

18 74. In addition, Plaintiff and members of the PetsHotel Manager Class and the PetsHotel
19 Leader Class were suffered and permitted to work for Defendants prior to their scheduled shift start time
20 and after the end of their shift. As part of the job of a PetsHotel Manager/Leader, Plaintiff and members
21 of the PetsHotel Manager Class and the PetsHotel Leader Class were required to open the PetSmart store
22 in the morning prior to the store’s business hours. Additionally, Plaintiff and members of the PetsHotel
23 Manager Class and the PetsHotel Leader Class were required to complete all duties for the day after their
24 shift ended before leaving the store. Through Defendants’ conduct, but not limited to, requiring Plaintiff
25 and members of the PetsHotel Manager Class and the PetsHotel Leader Class to work prior to and after
26 their scheduled shift start and end times, Defendants violated Labor Code §§ 1197 and 1198 and the
27 applicable IWC Wage Order when they paid Plaintiff and members of the PetsHotel Manager Class and
28 the PetsHotel Leader Class less than minimum wages from their failure to pay wages for all hours worked.

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1 75. Labor Code section 1194 states: “Notwithstanding any agreement to work for a lesser
2 wage, any employee receiving less than the legal minimum wage or the legal overtime compensation
3 applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of
4 his minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees and
5 costs of suit.”

6 76. Labor Code section 1194.2 states: “In any action under Section 98, 1193.6, 1194, or 1197.1
7 to recover wages because of the payment of a wage less than the minimum wage fixed by an order of the
8 commission or by statute, an employee shall be entitled to recover liquidated damages in an amount equal
9 to the wages unlawfully unpaid and interest thereon.”

10 77. At all material times, Defendants were and/or are Plaintiff’s and/or members of the
11 PetsHotel Manager Class and the PetsHotel Leader Class’ employers and/or persons acting on behalf of
12 Defendants within the meaning of Labor Code section 558, who violated or caused to be violated, a section
13 of Part 2, Chapter 1, of the California Labor Code or any provision regulating hours and days of work in
14 any Order of the Industrial Welfare Commission and, as such, are subject to penalties for each underpaid
15 employee as set forth in Labor Code section 558 including the payment of the underpaid wages to affected
16 employees.

17 78. At all material times, Defendants were and/or are Plaintiff’s and/or other members of the
18 PetsHotel Manager Class and the PetsHotel Leader Class’ employers and/or persons acting on behalf of
19 Defendants within the meaning of Labor Code section 1197.1, who paid or caused to be paid to any
20 employee a wage less than the minimum fixed by an applicable state or local law, or by an order of the
21 commission, and who are subject to penalties for each underpaid employee as set forth in Labor Code
22 section 1197.1 including the payment of the underpaid wages to affected employees.

23 79. As a direct result of Defendants’ violations alleged herein, Plaintiff and members of the
24 PetsHotel Manager Class and the PetsHotel Leader Class have suffered and continue to suffer, substantial
25 losses related to the use and enjoyment of such wages, including lost interest on such monies and expenses
26 and attorney’s fees in seeking to compel Defendants to fully perform their obligations under state law, all
27 to their respective damage in amounts according to proof at trial and within the jurisdictional limitations
28 of this Court.

1 80. Plaintiff seeks to recover in a civil action the unpaid balance of the full amount of the
2 unpaid wages resulting from Defendants’ minimum wage violations including interest thereon, reasonable
3 attorney’s fees and costs of suit, penalties, and liquidated damages to the fullest extent permissible
4 including those permitted pursuant to Labor Code sections 218.6, 558, 1194, 1194.2, 1197.1 and Code of
5 Civil Procedure section 1021.5.

6 81. Plaintiff requests relief as described below.

7 **THIRD CAUSE OF ACTION**

8 **FAILURE TO PROVIDE MEAL PERIODS**

9 (Violation of Labor Code §§ 226.7, 512, 1198 and the “Meal Period” Section of IWC Wage Order 5-
2001)

10 (Alleged by Plaintiff individually and on behalf of the PetsHotel Manager Class and the
11 PetsHotel Leader Class Against Defendant)

12 82. Plaintiff re-alleges and hereby incorporates by reference each and every allegation set forth
13 above.

14 83. Labor Code section 226.7(a) provides: “No employer shall require any employee to work
15 during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.”

16 84. Labor Code section 512(a) provides: “An employer may not employ an employee for a
17 work period of more than five hours per day without providing the employee with a meal period of not
18 less than 30 minutes, except that if the total work period per day of the employee is no more than six
19 hours, the meal period may be waived by mutual consent of both the employer and employee. An employer
20 may not employ an employee for a work period of more than 10 hours per day without providing the
21 employee with a second meal period of not less than 30 minutes.”

22 85. Labor Code section 1198 states: “The maximum hours of work and the standard conditions
23 of labor fixed by the commission shall be the maximum hours of work and the standard conditions of
24 labor for employees. The employment of any employee for longer hours than those fixed by the order or
25 under conditions of labor prohibited by the order is unlawful.”

26 86. IWC Wage Order 5-2001 section 11 provides, in part, that no employer shall employ any
27 person for a work period of more than five (5) hours without a meal period of not less than 30 minutes,
28 except that when a work period of not more than six (6) hours will complete the day’s work the meal

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1 period may be waived by mutual consent of the employer and the employee. Subsection B provides that
2 an employer may not employ an employee for a work period of more than ten (10) hours per day without
3 providing the employee with a second meal period of not less than 30 minutes, except that if the total
4 hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the
5 employer and the employee only if the first meal period was not waived. Subsection D of IWC Wage
6 Order 5-2001 section 11 further provides that if an employer fails to provide an employee a meal period
7 in accordance with the applicable provisions of this order, the employer shall pay the employee one (1)
8 hour of pay at the employee's regular rate of compensation for each workday that the meal period is not
9 provided.

10 87. At all material times, Defendants were and/or are Plaintiff's and members of the PetsHotel
11 Manager Class and the PetsHotel Leader Class' employers or persons acting on behalf of their employer,
12 within the meaning of California Labor Code section 558, who violated or caused to be violated, a section
13 of Part 2, Chapter 1 of the California Labor Code or any provision regulating hours and days of work in
14 any Order of the Industrial Welfare Commission and, as such, are subject to penalties for each underpaid
15 employee as set forth in Labor Code section 558 including the payment of the underpaid wages to affected
16 employees.

17 88. Plaintiff and members of the PetsHotel Manager Class and the PetsHotel Leader Class
18 regularly worked in excess of five (5) and at times ten (10) hours a day without being provided at least 30
19 minute meal periods in which they were relieved of all duties, as required by Labor Code sections 226.7(a)
20 and 512(a) and IWC Wage Order 5-2001 section 11.

21 89. Until April 13, 2015, Plaintiff and members of the PetsHotel Manager Class were
22 misclassified by Defendants as "exempt" employees regardless of the fact that the job duties performed
23 by Plaintiff and members of the PetsHotel Manager Class as a PetsHotel Manager for PetSmart were non-
24 managerial in nature. Plaintiff and members of the PetsHotel Manager Class were not primarily engaged
25 in administrative duties. Furthermore, Plaintiff and members of the PetsHotel Manager Class did not
26 primarily engage in work directly related to management policies or general business operations of
27 PetSmart. As a result, Plaintiff and members of the PetsHotel Manager Class should have been classified
28 as "non-exempt" employees, entitled to the full protections of the Labor Code and the applicable IWC

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1 Wage Order, and entitled to receive meal periods in compliance with California law, including a second
2 meal period during shifts in excess of 10 hours.

3 90. Plaintiff and members of the PetsHotel Manager Class and the PetsHotel Leader Class
4 worked shifts in excess of 6 hours in one workday as well as shifts in excess of 10 hours in one workday
5 and were entitled to receive meal periods in compliance with California law, however Defendants failed
6 to provide them compliant meal periods.

7 91. Because Defendants failed to provide proper meal periods, they are liable to Plaintiff and
8 members of the PetsHotel Manager Class and the PetsHotel Leader Class for one hour of additional
9 premium pay at the regular rate of compensation for each workday that the proper meal periods were not
10 provided, pursuant to Labor Code section 226.7(c) and IWC Wage Order 5-2001 section 11(D).

11 92. As a direct result of Defendants' violations alleged herein, Plaintiff and members of the
12 PetsHotel Manager Class and the PetsHotel Leader Class have suffered and continue to suffer substantial
13 losses related to the use and enjoyment of such wages, including lost interest on such monies and expenses
14 and attorney's fees in seeking to compel Defendants to fully perform their obligation under state law, all
15 to their respective damage in amounts according to proof at trial and within the jurisdictional limitations
16 of this Court.

17 93. Plaintiff seeks to recover in a civil action the unpaid balance of the full amount of the
18 unpaid wages resulting from Defendants' meal period violations including interest thereon, reasonable
19 attorney's fees and costs of suit, and penalties to the fullest extent permissible including those permitted
20 pursuant to Labor Code sections 226.7, 512, 558, and Code of Civil Procedure section 1021.5.

21 94. Plaintiff requests relief as described below.

22 **FOURTH CAUSE OF ACTION**

23 **FAILURE TO PROVIDE REST PERIODS**

24 (Violation of Labor Code §§ 226.7, 1198 and the "Rest Periods" Section of IWC Wage Order 5-2001)
25 (Alleged by Plaintiff individually and on behalf of the PetsHotel Manager Class and the
26 PetsHotel Leader Class Against Defendant)

26 95. Plaintiff re-alleges and hereby incorporates by reference each and every allegation set forth
27 above.

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

5 97. IWC Wage Order 5-2001 section 12(a) states that every employer shall authorize and
6 permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work
7 period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten
8 (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be
9 authorized for employees whose total daily work time is less than three and one-half (3 ½) hours.
10 Authorized rest period time shall be counted as hours worked, for which there shall be no deduction from
11 wages.

12 98. Labor Code sections 226.7(c) and IWC Wage Order 5-2001 section 12(b) states that if an
13 employer fails to provide an employee a rest period in accordance with the applicable provisions of this
14 Order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of
15 compensation for each work day that the rest period is not provided.

16 99. Until April 13, 2015, Plaintiff and members of the PetsHotel Manager Class were
17 misclassified by Defendants as “exempt” employees regardless of the fact that the job duties performed
18 by Plaintiff and members of the PetsHotel Manager Class as a PetsHotel Manager for PetSmart were non-
19 managerial in nature. Plaintiff and members of the PetsHotel Manager Class were not primarily engaged
20 in administrative duties. Furthermore, Plaintiff and members of the PetsHotel Manager Class did not
21 primarily engage in work directly related to management policies or general business operations of
22 PetSmart. As a result, Plaintiff and members of the PetsHotel Manager Class should have been classified
23 as “non-exempt” employees, entitled to the full protections of the Labor Code and the applicable IWC
24 Wage Order, and entitled to receive rest periods in compliance with California law, including a third rest
25 period during shifts in excess of 10 hours.

26 100. Plaintiff and members of the PetsHotel Manager Class and the PetsHotel Leader Class
27 worked shifts in excess of 3.5 hours in one workday as well as shifts in excess of 10 hours in one workday
28 and were entitled to receive rest periods in compliance with California law, however, Defendants did not

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1 provide them compliant rest periods.

2 101. Pursuant to Labor Code section 226.7(b) and the applicable IWC Wage Order, Defendants
3 shall pay Plaintiff and members of the PetsHotel Manager Class and the PetsHotel Leader Class one
4 additional hour of pay at the employee's regular rate of compensation for each day that the rest period is
5 not authorized and permitted.

6 102. Through Defendants' conduct during the applicable statutory period, including the conduct
7 alleged herein, Defendants violated Labor Code sections 226.7 and 1198 and the IWC Wage Order when
8 they failed to authorize and permit full 10-minute, uninterrupted, duty-free rest periods for every four
9 hours worked (or major fraction thereof), including during work periods in excess of three and a half
10 consecutive hours, to Plaintiff and members of the PetsHotel Manager Class and the PetsHotel Leader
11 Class.

12 103. Defendants failed to pay Plaintiff and members of the PetsHotel Manager Class and the
13 PetsHotel Leader Class rest period premium wages under Labor Code section 226.7.

14 104. At all material times, Defendants were and/or are Plaintiff's and members of the PetsHotel
15 Manager Class and the PetsHotel Leader Class' employers or persons acting on behalf of their employer,
16 within the meaning of California Labor Code section 558, who violated or caused to be violated, a section
17 of Part 2, Chapter 1 of the California Labor Code or any provision regulating hours and days of work in
18 any Order of the Industrial Welfare Commission and, as such, are subject to penalties for each underpaid
19 employee as set forth in Labor Code section 558 including the payment of the underpaid wages to affected
20 employees.

21 105. As a direct result of Defendants' violations alleged herein, Plaintiff and members of the
22 PetsHotel Manager Class and the PetsHotel Leader Class have suffered and continue to suffer substantial
23 losses related to the use and enjoyment of such wages, including lost interest on such monies and expenses
24 and attorney's fees in seeking to compel Defendants to fully perform their obligation under state law, all
25 to their respective damage in amounts according to proof at trial and within the jurisdictional limitations
26 of this Court.

27 106. Plaintiff seeks to recover in a civil action the unpaid balance of the full amount of the
28 unpaid wages resulting from Defendants' rest period violations including interest thereon, reasonable

1 attorney’s fees and costs of suit, and penalties to the fullest extent permissible including those permitted
2 pursuant to Labor Code sections 226.7, 558, and Code of Civil Procedure section 1021.5.

3 107. Plaintiff requests relief as described below.

4 **FIFTH CAUSE OF ACTION**

5 **FAILURE TO PROVIDE AND MAINTAIN ACCURATE ITEMIZED WAGE STATEMENTS**

6 (Violation of Labor Code § 226 and the “Records” Section of IWC Wage Order 5-2001)

7 (Alleged by Plaintiff individually and on behalf of the PetsHotel Manager Class and the
8 PetsHotel Leader Class Against Defendant)

9 108. Plaintiff re-alleges and hereby incorporates by reference each and every allegation set forth
10 above.

11 109. Labor Code section 226(a) states in pertinent part: “Every employer shall, semimonthly or
12 at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of
13 the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal
14 check or cash, an accurate itemized statement in writing showing”:

- 15 (1) Gross wages earned;
- 16 (2) Total hours worked by the employee, except for an employee whose compensation is solely
17 based on a salary and who is exempt from payment of overtime under subdivision (a) of
18 Section 515 or any applicable order of the Industrial Welfare Commission;
- 19 (3) The number of piece-rate units earned and any applicable piece-rate if the employee is paid
20 on a piece-rate basis;
- 21 (4) All deductions, provided that all deductions made on written orders of the employee may
22 be aggregated and shown as one item;
- 23 (5) Net wages earned;
- 24 (6) The inclusive dates of the pay period for which the employee is paid;
- 25 (7) The name of the employee and only the last four digits of his or her social security number
26 or an employee identification number other than a social security number;
- 27 (8) The name and address of the legal entity that is the employer; and
- 28 (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...

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1 The 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.

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

9 111. IWC Wage Order 5-2001 section 7(A) states in relevant part that the employer shall keep
10 accurate information regarding, “(4) Total wages paid each payroll period, including value of board,
11 lodging, other compensation actually furnished to the employee; (5) Total hours worked in the payroll
12 period and applicable hourly rates of pay.”

13 112. Through Defendants’ conduct during the applicable statutory period including, but not
14 limited to, the conduct alleged herein, including that alleged on information and belief, Defendants failed
15 to provide accurate wage statements including, but not limited to, the recording of all hours worked, all
16 wages earned, and the applicable rates of pay for the hours worked.

17 113. Plaintiff and members of the PetsHotel Manager Class and the PetsHotel Leader Class
18 suffered injuries as a result of Defendants’ intentional and knowing failure to provide to Plaintiff and
19 members of the Classes accurate itemized wage statements and maintain the writings required by Labor
20 Code section 226(a). Defendants’ failure to provide and maintain accurate statements left Plaintiff and
21 members of the PetsHotel Manager Class and the PetsHotel Leader Class without the ability to know,
22 understand and question the hours worked and wages earned and due. As a direct result, Plaintiff and
23 members of the PetsHotel Manager Class and the PetsHotel Leader Class have suffered and continue to
24 suffer substantial injuries, losses and actual damages related to Defendants’ violations, including lost
25 wages, lost interest on such wages, and expenses and attorney’s fees in seeking to compel Defendants to
26 fully perform their obligations.

27 114. Labor Code section 226(e) states: “An employee suffering injury as a result of a knowing
28 and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of

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1 all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one
2 hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an
3 aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable
4 attorney's fees.”

5 115. Labor Code section 226(h) states “An employee may also bring an action for injunctive
6 relief to ensure compliance with this section, and is entitled to an award of costs and reasonable attorney's
7 fees.”

8 116. Labor Code section 226.3 states, in part, “Any employer who violates subdivision (a) of
9 section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per
10 employee per violation in an internal citation and one thousand dollars (\$1,000) per employee for each
11 violation in a subsequent citation, for which the employer fails to keep the records required in subdivision
12 (a) of Section 226. The civil penalties provided for in this section are in addition to any other penalty
13 provided by law.

14 117. As a direct result of Defendants’ violations alleged herein, Plaintiff and members of the
15 PetsHotel Manager Class and the PetsHotel Leader Class have suffered and continue to suffer injury
16 including substantial losses related to the use and enjoyment of such wages, lost interest on such monies
17 and expenses and attorney’s fees in seeking to compel Defendants to fully perform their obligations under
18 state law, all to their respective damage in amounts according to proof at trial and within the jurisdictional
19 limitations of this Court.

20 118. Plaintiff seeks to recover in a civil action all remedies including damages, unpaid wages,
21 penalties, attorney’s fees and costs, and injunctive relief to the fullest extent permissible including those
22 permitted pursuant to Labor Code sections 226(e) and (h), 226.3, and Code of Civil Procedure section
23 1021.5.

24 119. Plaintiff requests relief as described below.

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SIXTH CAUSE OF ACTION

FAILURE TO TIMELY PAY WAGES DUE DURING EMPLOYMENT

(Violation of Labor Code §§ 204(a), 1198 and the “Minimum Wages” Section of IWC Wage Order 5-2001)

(Alleged by Plaintiff individually and on behalf of the PetsHotel Manager Class and the PetsHotel Leader Class Against Defendant)

120. Plaintiff re-alleges and hereby incorporates by reference each and every allegation set forth above.

121. Plaintiff and members of the PetsHotel Manager Class and the PetsHotel Leader Class Against Defendant are/were employees of Defendants in California within the meaning of the Labor Code and the applicable IWC Wage Order.

122. 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.”

123. Labor Code section 210 states in pertinent part: “(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, 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.

124. Labor Code section 1198 states: “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.”

125. IWC Wage Order 5-2001 section 4(B) 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, whether the remuneration is measured by time, piece, commission or otherwise.”

126. Through Defendants’ conduct during the applicable statutory period including, but not limited to, the conduct alleged herein, including that alleged on information and belief, Defendants failed

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1 to pay Plaintiff and members of the PetsHotel Manager Class and the PetsHotel Leader Class: (i) all wages
2 due and owing and (ii) all wages due and owing by the time set forth pursuant to Labor Code section
3 204(a) and IWC Wage Order 5-2001 section 4(B) including, but not limited to, not paying all regular,
4 minimum and overtime wages, and meal and rest premium wages.

5 127. As a direct result of Defendants’ violations alleged herein, Plaintiff and members of the
6 PetsHotel Manager Class and the PetsHotel Leader Class have suffered and continue to suffer substantial
7 losses related to the use and enjoyment of such wages, including lost interest on such monies and expenses
8 and attorney’s fees in seeking to compel Defendants to fully perform their obligations under state law, all
9 to their respective damage in amounts according to proof at trial and within the jurisdictional limitations
10 of this Court.

11 128. Plaintiff seeks to recover in a civil action all remedies including unpaid wages, attorney’s
12 fees and costs, penalties and interest to the fullest extent permissible including those permitted pursuant
13 to Labor Code sections 210, 218.5, 218.6, 226.7, 1198, and Code of Civil Procedure section 1021.5.

14 129. Plaintiff requests relief as described below.

15 **SEVENTH CAUSE OF ACTION**

16 **FAILURE TO PAY WAGES DUE UPON SEPARATION OF EMPLOYMENT**

17 (Violation of Labor Code §§ 201(a), 202(a), and 203(a))

18 (Alleged by Plaintiff individually and on behalf of the Waiting Time Penalties Subclass)

19 130. Plaintiff re-alleges and hereby incorporates by reference each and every allegation set forth
20 above.

21 131. Prior to April 13, 2015, Plaintiff and members of the PetsHotel Manager Class were
22 misclassified by Defendants as “exempt”, when in fact they should have been classified as “non-exempt”
23 employees of Defendants within the meaning of the Labor Code and the applicable IWC Wage Order.
24 Defendants reclassified Plaintiff and members of the PetsHotel Manager Class to “non-exempt”
25 employees on April 13, 2015, but at all times during the statutory period, Plaintiff and members of the
26 PetsHotel Manager Class and should have been treated as “non-exempt” employees within the meaning
27 of the Labor Code and the applicable IWC Wage Order, entitled to the full protections of both the Labor
28 Code and the applicable IWC Wage Order.

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1 132. Labor Code section 201(a) states: “If an employer discharges an employee, the wages
2 earned and unpaid at the time of discharge are due and payable immediately.”

3 133. Labor Code section 202(a) states: “If an employee not having a written contract for a
4 definite period quits his or her employment, his or her wages shall become due and payable not later than
5 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit,
6 in which case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any
7 other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to
8 receive payment by mail if he or she so requests and designates a mailing address. The date of the mailing
9 shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours
10 of the notice of quitting.”

11 134. Through Defendants’ conduct during the applicable statutory period including, but not
12 limited to, the conduct alleged herein, including that alleged on information and belief, Defendants
13 willfully failed to provide Plaintiff and members of the Waiting Time Penalty Subclass with all wages due
14 and owing, including minimum wages, overtime wages, regular wages, meal premiums, and rest
15 premiums by the time specified by Labor Code sections 201(a) and 202(a), as applicable.

16 135. Labor Code section 203(a) states, in relevant part, “If an employer willfully fails to pay,
17 without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 202, and 205.5, any wages
18 of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty
19 from the due date thereof at the same rate until paid or until an action therefore is commenced; but the
20 wages shall not continue for more than 30 days.”

21 136. As a direct result of Defendants’ violations alleged herein, Plaintiff and members of the
22 Waiting Time Penalty Subclass have suffered and continue to suffer substantial losses related to the use
23 and enjoyment of such wages, including lost interest on such monies and expenses and attorney’s fees in
24 seeking to compel Defendants to fully perform their obligation under state law, all to their respective
25 damage in amounts according to proof at trial and within the jurisdictional limitations of this Court.

26 137. Plaintiff seeks to recover in a civil action all remedies to the fullest extent permissible
27 including those permitted pursuant to Labor Code sections 203 and Code of Civil Procedure 1021.5.

28 138. Plaintiff requests relief as described below.

EIGHTH CAUSE OF ACTION

FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES

(Violation of Labor Code § 2802)

(Alleged by Plaintiff individually and on behalf of the PetsHotel Manager Class and the PetsHotel Leader Class Against Defendant)

139. Plaintiff re-alleges and hereby incorporates by reference each and every allegation set forth above.

140. Plaintiff and the PetsHotel Manager Class and the PetsHotel Leader Class are or were employees of Defendants within the meaning of the Labor Code and IWC Wage Order 5-2001.

141. Labor Code section 2802 requires an employer to indemnify its employees for all expenses that the employees necessarily expend as a direct a result of discharge of their duties of employment with Defendant.

142. At all times relevant herein and as a condition of his employment, Plaintiff and, on information and belief, members of the PetsHotel Manager Class and the PetsHotel Leader Class incurred business expenses in direct consequence of their job duties through the maintenance and supply of their personal equipment to complete their job duties. For example, Defendants required Plaintiff and members of the PetsHotel Manager Class and the PetsHotel Leader Class to carry and use personal cell phones to communicate with other PetSmart employees, including while they were off-duty. As a result, Plaintiff and members of the PetsHotel Manager Class and the PetsHotel Leader Class reasonably incurred business-related expenses necessary to discharge their duties of employment with Defendant, all at their own cost.

143. The costs of these business-related expenses were reasonably incurred by Plaintiff and members of the PetsHotel Manager Class and the PetsHotel Leader Class as a direct consequence of the discharge of their duties and Plaintiff and members of the PetsHotel Manager Class and the PetsHotel Leader Class are, therefore, entitled to recover these costs under Labor Code section 2802, the protections of which cannot be waived by mutual agreement.

144. Labor Code section 2802(b) states that “[a]ll awards made by a Court for reimbursement of necessary expenditures” shall carry interest, at the same rate as judgments in civil actions, and said

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1 interest will accrue from the date on which the employee incurred the necessary expenditure or loss
2 including, but not limited to, reasonable costs and attorney’s fees incurred by the employee enforcing their
3 rights granted pursuant to Labor Code section 2802.

4 145. Defendants failed to reimburse Plaintiff and, on information and belief, members of the
5 PetsHotel Manager Class and the PetsHotel Leader Class for all necessary business expenditures incurred
6 in direct consequence of the discharge of their duties of employment in violation of Labor Code section
7 2802.

8 146. Furthermore, Labor Code section 2802(c) states that “[f]or the purposes of this section, the
9 term ‘necessary expenditures or losses’ shall include all reasonable costs, including, but not limited to,
10 attorney’s fees incurred by the employee in enforcing the rights granted by this section.

11 147. As a direct result of Defendant’s Labor Code and IWC Wage Order violations alleged
12 herein, Plaintiff and members of the PetsHotel Manager Class and the PetsHotel Leader Class suffered,
13 and continue to suffer, losses related to the expenses incurred by them, in an amount to be shown according
14 to proof at trial and within the jurisdictional limitations of this Court.

15 148. Plaintiff, individually, and on behalf of the PetsHotel Manager Class and the PetsHotel
16 Leader Class seeks all available remedies for Defendant’s violations to the extent permitted by law.

17 149. Plaintiff requests relief as described below.

18 **NINTH CAUSE OF ACTION**

19 **FAILURE TO MAINTAIN ACCURATE RECORDS**

20 (Violation of Labor Code § 1174 and the “Records” section of IWC Wage Order 5-2001)
21 (Alleged by Plaintiff individually and on behalf of the PetsHotel Manager Class and the PetsHotel
22 Leader Class Against Defendant)

23 150. Plaintiff re-alleges and hereby incorporates by reference each and every allegation set forth
24 above.

25 151. Plaintiff and members of the PetsHotel Manager Class were misclassified by Defendants
26 as “exempt”, when in fact they should have been classified as “non-exempt” employees of Defendants
27 within the meaning of the Labor Code and the applicable IWC Wage Order. On April 13, 2015, Defendants
28 reclassified Plaintiff and members of the PetsHotel Manager Class to “non-exempt” employees. At all
times during the statutory period, Plaintiff and members of the PetsHotel Manager Class should have been

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1 treated as “non-exempt” employees within the meaning of the Labor Code and the applicable IWC Wage
2 Order, entitled to the full protections of both the Labor Code and the applicable IWC Wage Order.

3 152. Labor Code section 1174(d) states: “Every person employing labor in this state shall: Keep,
4 at a central location in the state or at the plants or establishments at which employees are employed, payroll
5 records showing the hours worked daily by and the wages paid to employees employed at the respective
6 plants or establishments. These records shall be kept in accordance with rules established for this purpose
7 by the commission, but in any case shall be kept on file for not less than three years.”

8 153. Labor Code section 1174.5 states “Any person employing labor who willfully fails to
9 maintain accurate and complete records required by subdivision (d) of Section 1174, shall be subject to a
10 civil penalty of five hundred dollars.”

11 154. IWC Wage Order 5-2001 section 7 obligates an employer to keep accurate information by
12 underpaying minimum wages, regular wages, and overtime, and not recording accurate meal periods.
13 IWC Wage Order 5-2001 section 7(A)(3) states in pertinent part “Every employer shall keep accurate
14 information with respect to each employee including the following: ... (3) Time records showing when the
15 employee begins and ends each work period. Meal periods, split shift intervals and total daily hours
16 worked shall also be recorded.”

17 155. Through Defendants’ conduct during the applicable statutory period including, but not
18 limited to, the conduct alleged herein, including that alleged on information and belief, Defendants
19 violated Labor Code section 1198 and IWC Wage Order 5-2001 when they failed to keep accurate
20 information and record each employees’ hours and meal periods.

21 156. At all material times, Defendants were and/or are Plaintiff’s and members of the PetsHotel
22 Manager Class and the PetsHotel Leader Class’ employers and/or persons acting on behalf of Defendants
23 within the meaning of Labor Code section 558, who violated or caused to be violated, a section of Part 2,
24 Chapter 1, of the California Labor Code or any provision regulating hours and days of work in any Order
25 of the Industrial Welfare Commission and, as such, are subject to penalties for each underpaid employee
26 as set forth in Labor Code section 558 including the payment of the underpaid wages to affected
27 employees.

28 ///

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1 157. As a direct result of Defendants’ violations alleged herein, Plaintiff and members of the
2 PetsHotel Manager Class and the PetsHotel Leader Class have suffered and continue to suffer substantial
3 losses related to Defendants’ failure to record and maintain records of members of the PetsHotel Manager
4 Class and the PetsHotel Leader Class’ hours and meal periods, including expenses and attorney’s fees in
5 seeking to compel Defendants to fully perform their obligations under state law, all to their respective
6 damage in amounts according to proof at trial and within the jurisdictional limitations of this Court.

7 158. Plaintiff seeks to recover in a civil action all remedies to the fullest extent possible
8 including those permitted pursuant to Labor Code section 558, 1174.5, and Code of Civil Procedure
9 section 1021.5.

10 159. Plaintiff requests relief as described below.

11 **TENTH CAUSE OF ACTION**

12 **VIOLATION OF BUSINESS & PROFESSIONS CODE §§ 17200 ET SEQ.**

13 (Alleged by Plaintiff individually and on behalf of the PetsHotel Manager Class and the PetsHotel
14 Leader Class Against Defendant)

15 160. Plaintiff re-alleges and hereby incorporates by reference each and every allegation set forth
16 above.

17 161. Business & Professions Code section 17200 states “As used in this chapter, unfair
18 competition shall mean and include any unlawful, unfair or fraudulent business act or practice and unfair,
19 deceptive, untrue or misleading advertising and any act prohibited by Chapter 1 (commencing with
20 Section 17500) of Part 3 of Division 7 of the Business and Professions Code.”

21 162. Through Defendants’ conduct during the applicable statutory period including, but not
22 limited to, the conduct alleged herein, including that alleged on information and belief, Defendants have
23 engaged in unlawful, unfair, or fraudulent business practices in California by practicing, employing, and
24 utilizing, the employment practices outlined in the preceding paragraphs all in violation of California law
25 and the Industrial Welfare Commission Wage Orders. Defendants’ use of such practices constitutes an
26 unfair business practice, unfair competition, and provides an unfair advantage over Defendants’
27 competitors doing business in the State of California that comply with their obligations to properly provide
28 employment conditions in compliance with the law and pay employees for all earned wages and
compensation as required by law.

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1 163. Defendants' violations of the Labor Code and the Industrial Welfare Commission Wage
2 Orders and their scheme to lower payroll costs as alleged herein constitute unlawful business practices
3 because these actions were done in a systematic manner over a period of time to the detriment of Plaintiff
4 and the Class. The acts complained of herein occurred within the last four (4) years preceding the filing
5 of this complaint and include, but are not limited to, failure to (i) provide meal periods; (ii) provide rest
6 periods; (iii) pay minimum, overtime, and regular wages, as well as meal and rest break premiums, both
7 during and after separation of employment; (iv) maintain accurate records; (v) provide and maintain
8 accurate itemized wage statements; (vi) pay timely wages during employment; (vii) pay timely wages
9 upon separation of employment; and (viii) indemnify employees for their expenses and losses.

10 164. Plaintiff is informed and believes and on that basis alleges that, at all times herein
11 mentioned, Defendants have engaged in the above-mentioned acts of unlawful, deceptive, and unfair
12 business practices prohibited by California Business and Professions Code section 17200 *et seq.*, including
13 those set forth in the preceding paragraph, thereby depriving Plaintiff of the minimum working condition
14 standards and conditions due, including those under the California Labor Code and Wage Order of the
15 Industrial Welfare Commission.

16 165. As a result of Defendants' unfair competition as alleged herein, Plaintiff has suffered injury
17 in fact and lost money or property. Plaintiff has been deprived of the rights to wages and benefits due as
18 alleged herein.

19 166. Plaintiff is entitled to an injunction and other declaratory and equitable relief against such
20 practices to prevent future damage for which there is no adequate remedy at law, and to avoid a multiplicity
21 of lawsuits.

22 167. Plaintiff is informed and believes, and on that basis alleges, that the illegal conduct alleged
23 herein is continuing and there is no indication that Defendants will not continue such activity into the
24 future. Plaintiff alleges that if Defendants are not enjoined from the conduct set forth in this Complaint,
25 they will continue to fail to pay the wages and compensation required to be paid and will fail to comply
26 with other requirements of the California Labor Code and Wage Order of the Industrial Welfare
27 Commission 5-2001.

28 168. As a direct and proximate result of Defendants' conduct, Defendants have received and

1 will continue to receive monies that rightfully belong to members of the general public who have been
2 adversely affected by Defendants’ conduct, as well as to Plaintiff by virtue of unpaid wages and other
3 monies.

4 169. Plaintiff is entitled to and seeks any and all available remedies including restitution and
5 recovery of reasonable attorney’s fees pursuant to California Code of Civil Procedure section 1021.5,
6 Business and Professions Code section 17200 *et seq.*, the substantial benefit doctrine, and/or the common
7 fund doctrine.

8 170. Plaintiff requests relief as described below.

9 **ELEVENTH CAUSE OF ACTION**

10 **PRIVATE ATTORNEYS GENERAL ACT CLAIM FOR CIVIL PENALTIES**

(Violation of Labor Code § 2698 *et seq.*)

11 (Alleged by Plaintiff on behalf of all aggrieved PetsHotel Managers and PetsHotel Leaders)

12
13 171. Plaintiff re-alleges and hereby incorporates by reference each and every allegation set forth
14 above.

15 172. Pursuant to Labor Code section 2699, any provision of the Labor Code that provides for a
16 civil penalty to be assessed and collected by the LWDA or any of its departments, divisions, commissions,
17 boards, agencies or employees for violation of the code may, as an alternative, be recovered through a
18 civil action brought by an aggrieved employee on behalf of himself or herself and other current or former
19 employees pursuant to the procedures specified in Labor Code section 2699.3.

20 173. Plaintiff is an “aggrieved employee” because he was employed by the alleged violator and
21 had one or more of the alleged violations committed against him, and therefore is properly suited to
22 represent the interests of other current and former employees employed by Defendants as a PetsHotel
23 Manager/Leader.

24 174. Pursuant to Labor Code section 2698 *et seq.*, Plaintiff has exhausted his administrative
25 remedies by serving via email the LWDA, and via certified return receipt requested Defendants with his
26 claims for wage and hour violations and penalties on August 19, 2016. The 60-day statutory period expired
27 for the letter containing Plaintiff’s wage and hour violations and penalties without any correspondence
28 indicating that the LWDA would be investigating the claims. Therefore, Plaintiff has satisfied and

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1 exhausted the procedural notice requirement to pursue penalties against Defendants pursuant to Labor
2 Code section 2698 *et seq.*

3 175. Labor Code section 2698 *et seq.*, imposes upon Defendants, and each of them, a penalty of
4 one hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation and
5 two hundred (\$200.00) for each aggrieved employee per pay period for each subsequent violation of Labor
6 Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512, 1174(d), 1194, 1197, 1197.1, 1198, and 2802.

7 176. As set forth above, Defendants intentionally failed to pay Plaintiff and other aggrieved
8 PetsHotel Managers and PetsHotel Leaders all regular, minimum, and overtime wages due as well as
9 failed to pay meal and rest period premium wages.

10 177. In addition, Defendants failed to provide Plaintiff and other aggrieved PetsHotel Managers,
11 PetsHotel Leaders, Assistant PetsHotel Managers, Assistant PetsHotel Leaders, Store Leaders and/or
12 Seniors, and Overnight PetCare Specialists and/or Guest Services Associates with suitable seats when the
13 nature of the work reasonably permits the use of a seat.

14 178. Defendants have not provided meal periods, compliant under California law, to Plaintiff
15 and other aggrieved employees working as PetsHotel Managers/Leaders, in violation of Labor Code
16 sections 226.7 and 512 and IWC Wage Order 5-2001. Defendants, for example, did not allow their
17 employees working as PetsHotel Managers/Leaders, including Plaintiff, to take a 30-minute, “duty-free”
18 meal period before the commencement of the sixth hour of work as required under California law or
19 provide them with a second meal period when the employees worked more than 10 hours per day, as
20 required by Labor Code section 512. Defendants did not provide the meal period in compliance with
21 California law because the meal periods were not 30 minutes, duty free and/or timely provided.

22 179. Defendants failed to properly authorize and permit rest periods to Plaintiff and other
23 aggrieved employees working as PetsHotel Managers/Leaders in violation of Labor Code section 226.7
24 and IWC Wage Order 5-2001. Defendants did not provide the rest period in compliance with California
25 law because the rest periods were not 10 minutes, duty free, paid, and/or timely provided.

26 180. Plaintiff and other aggrieved employees working as PetsHotel Managers/Leaders have not
27 received any meal or rest break premium wages as a result of Defendants not providing meal periods or
28 rest breaks in compliance with California law.

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1 181. Defendants failed to pay Plaintiff and other aggrieved employees working as PetsHotel
2 Manager/Leader regular, minimum, and overtime wages for all hours worked, in violation of Labor Code
3 sections 510, 1194, 1197, 1197.1, and 1198. Plaintiff and aggrieved employees working as PetsHotel
4 Manager/Leader often had to perform work-related duties, such as opening the store prior to their shift
5 start time off-the-clock, which were never compensated. In addition, Defendants failed to pay Plaintiff
6 and aggrieved employees' working as PetsHotel Manager/Leader for their overtime because Defendants
7 failed to record their hours worked in excess of 8 hours in a work day and 40 hours in a workweek.

8 182. Defendants failed to maintain accurate records because Defendants failed to record all
9 hours worked by Plaintiff and other aggrieved employees working as PetsHotel Manager/Leader,
10 including failing to record meal periods. As a result, records maintained by Defendants as to Plaintiff and
11 other aggrieved employees working as PetsHotel Managers/Leaders are incomplete and inaccurate, and
12 fail to comply with the requirements of Labor Code section 1174.

13 183. Defendants failed to provide Plaintiff and other aggrieved employees working as PetsHotel
14 Managers/Leaders with accurate itemized wage statements because Plaintiff was not compensated by
15 Defendants for all hours worked and not paid all compensation due. As a result, the wage statements
16 furnished by Defendants to Plaintiff and other aggrieved employees working as PetsHotel
17 Managers/Leaders were incomplete and inaccurate.

18 184. Defendants failed to provide Plaintiff and other aggrieved employees working as PetsHotel
19 Managers/Leaders with all wages due and owing during employment because Plaintiff and other aggrieved
20 employees working as PetsHotel Managers/Leaders were not properly compensated by Defendants for
21 minimum wages, regular wages, overtime wages, and for meal and rest period premiums.

22 185. Defendants failed to provide Plaintiff and other aggrieved employees working as PetsHotel
23 Managers/Leaders with all wages due and owing at the time of termination of employment because
24 Plaintiff and other aggrieved employees working as PetsHotel Managers/Leaders were not properly
25 compensated by Defendants for minimum wages, regular wages, overtime wages, and for meal and rest
26 period premiums.

27 186. Defendants violated Labor Code 2802 because Defendants required Plaintiff and other
28 aggrieved employees working as PetsHotel Managers/Leaders to carry and use personal cell phones to

1 communicate with other PetSmart employees, but failed to provide reimbursement for these reasonably
2 incurred business-related expenses.

3 187. Pursuant to Labor Code section 2698, Plaintiff seeks to recover civil penalties on behalf of
4 himself and other current and former aggrieved PetsHotel Managers and PetsHotel Leaders. The exact
5 amount of the applicable penalty is all in an amount to be shown according to proof at trial.

6 188. For bringing this action, Plaintiff is entitled to attorney’s fees and costs incurred herein.

7 189. Plaintiff requests relief as described below.

8 **TWELFTH CAUSE OF ACTION**

9 **PAGA CLAIM FOR FAILURE TO PROVIDE SUITABLE SEATS**

10 (Violation of Labor Code §§ 1198 and 2698, *et seq.* and the “Seats” section of IWC Wage Order 5-
2001)

11 (Alleged by Plaintiff on behalf of all aggrieved employees who worked as: PetsHotel Managers,
12 PetsHotel Leaders, Assistant PetsHotel Managers, Assistant PetsHotel Leaders, Store Leaders and/or
Seniors, and Overnight PetCare Specialists and/or Guest Services Associates)

13 190. Plaintiff re-alleges and hereby incorporates by reference each and every allegation set forth
14 above.

15 191. Labor Code section 1198 states: “The maximum hours of work and the standard conditions
16 of labor fixed by the commission shall be the maximum hours of work and the standard conditions of
17 labor for employees. The employment of any employee for longer hours than those fixed by the order or
18 under conditions of labor prohibited by the order is unlawful.”

19 192. IWC Wage Order 5-2001 section 14 states: “All working employees shall be provided with
20 suitable seats when the nature of the work reasonably permits the use of seats. When the employees are
21 not engaged in the active duties of their employment and the nature of the work requires standing, an
22 adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees
23 shall be permitted to use such seats when it does not interfere with the performance of their duties.”

24 193. The “nature of the work” refers to an employee’s task performed at a given location for
25 which a right to a suitable seat is claimed, rather than a “holistic” consideration of the entire range of an
26 employee’s duties anywhere on the jobsite during a complete shift. The determination of whether the
27 nature of the work “reasonably permits” the use of a seat is a question to be determined objectively based
28 on the totality of the circumstances.” *Kilby v. CVS Pharmacy, Inc.* 63 Cal.4th 1 (April 4, 2016).

194. Defendants violated Labor Code section 1198 and section 14 of the applicable IWC Wage

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1 Order because Plaintiff and other aggrieved employees, specifically only those who were employed as
2 PetsHotel Managers, PetsHotel Leaders, Assistant PetsHotel Managers, Assistant PetsHotel Leaders,
3 Store Leaders and/or Seniors, and Overnight PetCare Specialists and/or Guest Services Associates, were
4 not provided with suitable seats during their workday, even if they were not engaged in active duties and
5 when the use of seats would not interfere with the performance of their job duties. For example, Plaintiff
6 and other PetsHotel Managers, PetsHotel Leaders, Assistant PetsHotel Managers, Assistant PetsHotel
7 Leaders, Store Leaders and/or Seniors, and Overnight PetCare Specialists and/or Guest Services
8 Associates worked behind the check-in counter performing duties, such as, checking customers in and
9 out, answering telephone calls, completing paperwork, inputting customer data into the computer and
10 greeting customers. Although there is adequate space behind the check-in counter to provide employees
11 working there with suitable seats, Defendants failed to provide Plaintiff and these specific aggrieved
12 employees with suitable seats to use while performing said duties.

13 195. Pursuant to Labor Code § 2699 *et seq.*, any provision of the Labor Code that provides for
14 a civil penalty to be assessed and collected by the Labor and Workforce Development Agency (LWDA)
15 or any of its departments, divisions, commissions, boards, agencies or employees for violation of the code
16 may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of
17 himself or herself and other current or former employees pursuant to the procedures specified in Labor
18 Code § 2699.3.

19 196. Pursuant to Labor Code § 2699(c), “aggrieved employee” means any person who was
20 employed by the alleged violator and against whom one or more of the alleged violations was committed.

21 197. Plaintiff is an “aggrieved employee” because he was employed by the alleged violator and
22 had one or more of the alleged violations committed against him. Plaintiff is properly suited to represent
23 the interests of the other PetsHotel Managers, PetsHotel Leaders, Assistant PetsHotel Managers, Assistant
24 PetsHotel Leaders, Store Leaders and/or Seniors, and Overnight PetCare Specialists and/or Guest Services
25 Associates, who were similarly denied suitable seats by Defendants and are also aggrieved employees of
26 Defendants.

27 198. Pursuant to Labor Code section 2698 *et seq.*, Plaintiff has exhausted his administrative
28 remedies by serving via email the LWDA, and via certified return receipt requested Defendants with his

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1 claims for wage and hour violations and penalties on August 19, 2016. The 60-day statutory period expired
2 Plaintiff's wage and hour violations and penalties without any correspondence indicating that the LWDA
3 would be investigating the claims. Therefore, Plaintiff has satisfied and exhausted the procedural notice
4 requirement to pursue penalties against Defendants pursuant to Labor Code section 2698 *et seq.*

5 199. Labor Code § 2699 imposes upon Defendants, and each of them, a penalty of one hundred
6 dollars (\$100.00) for each aggrieved employee per pay period for the initial violation and two hundred
7 (\$200.00) for each aggrieved employee per pay period for each subsequent violation in which Defendants
8 violated Labor Code §§ 1198.

9 200. Pursuant to Labor Code section 2698, Plaintiff seeks to recover civil penalties on behalf of
10 himself and other PetsHotel Managers, PetsHotel Leaders, Assistant PetsHotel Managers, Assistant
11 PetsHotel Leaders, Store Leaders and/or Seniors, and Overnight PetCare Specialists and/or Guest Services
12 Associates who were employed by Defendants. The exact amount of the applicable penalty is all in an
13 amount to be shown according to proof at trial.

14 201. For bringing this action, Plaintiff is entitled to attorney's fees and costs incurred herein.

15 202. Plaintiff requests relief as described below.

16 **THIRTEENTH CAUSE OF ACTION**

17 **VIOLATION OF THE FAIR LABOR STANDARDS ACT**

18 (Violation of 29 U.S.C. sections 207, 211(c),)

19 (Alleged by Plaintiff individually and on behalf of the PetsHotel Manager Class and the PetsHotel
20 Leader Class Against Defendant)

21 203. Plaintiff re-alleges and hereby incorporates by reference each and every allegation set forth
22 above.

23 204. Plaintiff brings this individual and Collective Action for FLSA violations on behalf of
24 himself and members of the Collective Action pursuant to 29 U.S.C. section 201, *et seq.*

25 205. Pursuant to 29 U.S.C. § 256(a), Plaintiff's written consent is attached hereto as Exhibit A
26 and filed concurrently herewith. Therefore, the Collective Action shall be considered to be commenced as
27 to Plaintiff from the day of the filing of this amended complaint.

28 206. At all times relevant hereto, Defendants employment of Plaintiff and members of the
Collective Action was covered by the FLSA through enterprise coverage because Defendants have an

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1 annual dollar volume of sales or business done of at least \$500,000.

2 207. At all times relevant herein, 29 U.S.C. § 203(d) of the Fair Labor Standards Act defined
3 employer as “any person acting directly or indirectly in the interest of an employer in relation to an
4 employee.” 29 U.S.C. § 203(d).

5 208. At all times relevant herein, Defendants acted directly or indirectly in the interest of an
6 employer in relation to Plaintiff and members of the Collective Action.

7 209. Defendants willfully failed to pay Plaintiff and members of the Collective Action overtime
8 compensation due under the FLSA in violation of 29 U.S.C. § 207(a) through its conduct alleged above,
9 including by failing to compensate Plaintiff and members of the Collective Action for all time spent
10 working under the direction and control of Defendants in excess of forty (40) hours per week.

11 210. At all times relevant herein, Defendants failed to keep records required by the FLSA, in
12 violation of 29 U.S.C. section 211(c), by failing to keep accurate records of the total hours worked by
13 Plaintiff and Members of the Collective Action.

14 211. As a result of Defendants’ conduct, Plaintiff and members of the Collective Action have
15 been damaged and are owed overtime compensation pursuant to 29 U.S.C. section 216(b), are entitled to
16 liquidated damages under 29 U.S.C. section 216(b), are entitled to pre-judgment interest if liquidated
17 damages are not awarded, and reasonable attorney’s fees and costs of suit, pursuant to 29 U.S.C. section
18 216(b).

19 212. Plaintiff requests relief as described below

20 **PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiff prays for judgment agai-nst Defendants, jointly and severally, as
22 applicable, as follows:

- 23 a. For injunctive relief as provided by the Labor Code to the extent permitted by law
24 including, but not limited to, pursuant to section 226(h), and Business and Professions
25 Code section 17200 *et seq.*;
- 26 b. For restitution as provided by Business and Professions Code section 17200 *et seq.*;
- 27 c. For an order requiring Defendants to restore and disgorge all funds to each affected person
28 acquired by means of any act or practice declared by this Court to be unlawful, unfair or

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- 1 fraudulent and, therefore, constituting unfair competition under Business and Professions
- 2 Code section 17200 *et seq.*;
- 3 d. For an award of unpaid wages, including regular wages, minimum and overtime wages,
- 4 meal and rest premium wages to the extent permissible by law to each affected person;
- 5 e. For penalties to the extent permitted pursuant to the Labor Code, Orders of the Industrial
- 6 Welfare Commission including, but not limited to, waiting time penalties under Labor
- 7 Code section 203, penalties under Labor Code sections 226(e), 558 and PAGA penalties
- 8 pursuant to Labor Code section 2698, *et seq.*;
- 9 f. For an award of penalties incurred under sections 210, 226.3, 226(e), and 1174.5 per
- 10 underpaid employee pursuant to Labor Code sections 210, 226(e), 226.3, and 1174.5;
- 11 g. For an award of liquidated damages to the extent permissible by Labor Code section 1194.2
- 12 and 29 U.S.C. section 216(b);
- 13 h. For penalties incurred under Labor Code section 1197.1 for each underpaid employee per
- 14 pay period for which the employee was underpaid;
- 15 i. For pre- and post-judgment interest to the extent permitted by law including, but not limited
- 16 to, Labor Code sections 218.6 and 1194;
- 17 j. For civil penalties pursuant to 29 U.S.C. section 216(e)(2);
- 18 k. For reasonable attorney's fees and cost of suit and, to the extent permitted by law, including
- 19 pursuant to Labor Code sections 218.5, 226, 226(h), 1194, 2698 *et seq.*, Code of Civil
- 20 Procedure section 1021.5, and 29 U.S.C. section 216(b); and
- 21 l. An award of such other and further relief as this Court deems proper and just.

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DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial by jury to the extent authorized by law.

Respectfully submitted,

Dated: March 20, 2018

GRAHAMHOLLIS APC

By: 

GRAHAM S.P. HOLLIS
GEOFF LA VAL
Attorneys for Plaintiff
WILLIAM MILBURN

GRAHAMHOLLIS APC
3555 FIFTH AVENUE SUITE 200
SAN DIEGO, CALIFORNIA 92103

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GRAHAMHOLLIS APC
3555 FIFTH AVENUE SUITE 200
SAN DIEGO, CALIFORNIA 92103

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EXHIBIT A

CONSENT TO SUE UNDER THE FAIR LABOR STANDARDS ACT

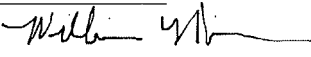
I hereby consent to opt-in and serve as the named Plaintiff in the Fair Labor Standards Act, 29 U.S.C. §§ 201, *et seq.* Collective Action lawsuit entitled *William Milburn v. PetSmart, Inc.*, filed against my former employer, PetSmart, Inc. ("Defendant"), to secure unpaid overtime pay, liquidated damages, attorney's fees, costs and other relief arising out of my employment.

I understand this lawsuit will be filed in the Superior Court of California County of Fresno on behalf of myself and all other similarly situated employees of the Defendant.

I worked for PetSmart, Inc. from approximately April 2, 2012 until October 31, 2015. During my employment, I was paid as an exempt employee from approximately November 18, 2013 to April 13, 2015, after which I was paid as a non-exempt employee until my employment ended.

I choose to be represented in this matter by the law firm **GRAHAMHOLLIS APC** and other attorneys with whom they may associate.

Name: william milburn

Signature: 

Date: 3/8/2018

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Lawsuit Demands PetSmart Rethink Pay Practices](#)
