

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF CALIFORNIA

Kellgren, et al. v. Petco Animal Supplies, Inc., et al.
Cote v. Petco Animal Supplies, Inc., et al.
Hecker v. Petco Animal Supplies, Inc., et al.
Michel v. Petco Animal Supplies Stores, Inc., et al.
Vargas v. Petco Animal Supplies, Inc., et al.
Wagner v. Petco Animal Supplies, Inc., et al.

OFFICIAL COURT-AUTHORIZED NOTICE OF PROPOSED SETTLEMENT

Re: Settlement of Lawsuits for Alleged Failure to Pay Overtime Compensation to Assistant Managers at Petco Stores Outside of California

INTRODUCTION

The Court has preliminarily approved a proposed settlement in the cases listed above (the “Lawsuits”).

If you submit the enclosed Claim Form to the Settlement Administrator by **January 16, 2018**, and if the settlement is approved by the Court, you will be mailed a check totaling approximately \$____ (depending on how many timely and valid Claims Forms are received). If you previously had returned a consent to join this lawsuit, you must still return a Claim Form to participate in the Settlement and to receive your share.

You can, if you wish, opt out of the Settlement (and withdraw from the case if you had previously sent in a consent to join), but, if you do so and you still wish to pursue any claims against Petco that have not already expired, you will have to start a new action and represent yourself in that case or obtain new lawyers to represent you. You can also object to the Settlement (but if you object, you cannot opt out).

More information about this case, the proposed Settlement, and your rights are set forth below in this Notice.

The law prohibits retaliation against current or former employees who participate in settlements.

1. WHAT IS THE LAWSUIT ABOUT AND WHY WAS THIS NOTICE SENT?

Former Petco Assistant Managers (“AMs”) sued Petco Animal Supplies, Inc., Petco Holdings, Inc., Petco Holdings, Inc. LLC, and Petco Animal Supplies Stores, Inc. (together “Petco”), alleging that they were not paid overtime for hours worked over 40 in a workweek. The AMs claim that they are owed money under the federal Fair Labor Standards Act and/or the state laws of Colorado, Illinois, Massachusetts, New Jersey, New York, Oregon, and Pennsylvania. Petco denies these allegations and asserts that its pay practices for AMs complied with all legal requirements. Without admitting liability, Petco agreed to a settlement to avoid further litigation.

Petco’s records indicate you worked as an AM (outside the state of California) sometime during the periods defined in Section 2 below. You received this Notice because the Court preliminarily approved a Settlement Agreement agreed to by the Parties and because the Court authorized the mailing of this Notice to you.

2. WHO IS INCLUDED IN THE SETTLEMENT?

The Settlement includes people in the following “Settlement Class”:

- Individuals who submitted consents to join in the *Kellgren* action and who, as of September 27, 2017 have not withdrawn their consent or had their claims in the *Kellgren* action dismissed;
- Individuals who worked as AMs at Petco stores in Colorado from January 15, 2014 to June 18, 2016;
- Individuals who worked as AMs at Petco stores in Illinois from November 23, 2013 to June 18, 2016;
- Individuals who worked as AMs at Petco stores in Massachusetts from January 31, 2014 to June 18, 2016;
- Individuals who worked as AMs at Petco stores in New Jersey from April 6, 2015 to June 18, 2016;
- Individuals who worked as AMs at Petco stores in New York from April 14, 2010 to June 18, 2016;
- Individuals who worked as AMs at Petco stores in Oregon from October 21, 2014 to June 18, 2016; and
- Individuals who worked as AMs at Petco stores in Pennsylvania, from July 14, 2014 to June 18, 2016.

3. WHAT ARE THE TERMS OF THE SETTLEMENT AND HOW MUCH CAN YOU EXPECT TO RECEIVE?

If the Settlement is approved, Petco will pay up to a total of \$7,995,000.00 (the “Maximum Gross Settlement Amount”), including alleged unpaid wages; overtime compensation; liquidated damages; penalties; interest; counsel’s fees, costs, and litigation expenses; the cost of settlement administration; any employer share of payroll taxes; incentive awards to the named Plaintiffs; and all other settlement-related payments and costs.

If you submit the enclosed Claim Form so that it is received by the Settlement Administrator by **January 16, 2018**, and the Settlement is approved by the Court, you will receive a check totaling approximately \$___ (depending on how many timely and valid Claim Forms are received) that includes the following amounts:

Back Pay: \$___ (this amount will be subject to standard payroll deductions, and you will receive an IRS Form W-2 for this payment)

Liquidated Damages: \$___ (this amount will not be subject to standard payroll deductions, but you may owe taxes on this amount and will receive an IRS Form 1099-Misc for this payment)

The amount that each individual who timely returns a valid Claim Form will receive will be calculated based on the number of weeks worked during the relevant period under either the federal or state law governing your claim.

4. WHO IS CLASS COUNSEL AND HOW WILL THEY BE PAID?

Class Counsel are:

HEPWORTH GERSHBAUM & ROTH, PLLC David A. Roth, Esq. Marc Hepworth, Esq. Charles Gershbaum, Esq. Rebecca S. Predovan, Esq. 192 Lexington Avenue, Suite 802 New York, NY 10016 Telephone: (212) 545-1199	KLAFTER OLSEN & LESSER LLP Seth R. Lesser, Esq. Fran L. Rudich, Esq. Michael Reed, Esq. Christopher Timmel, Esq. Two International Drive, Suite 350 Rye Brook, NY 10573 Telephone: (914) 934-9200
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Class Counsel has pursued the case for the past four years on a contingency basis and have not received any payment of fees or any reimbursement of their out-of-pocket expenses related to the recovery on behalf of the Class. As part of the Settlement, subject to Court approval, Class Counsel will apply to the Court for expenses in the amount of \$161,901.14, as well as legal fees in an amount of no more than \$2,665,000, which is 33 1/3% of the Maximum Gross Settlement Amount. Class Counsel will also request an incentive award of no more than \$10,000 for Settlement Class Representatives Erik Kellgren, Maria Cote, James Hecker, Therese Kopchinski, Christine Lee, Deserie Michel, Heather Vargas, and Robert Wagner for their role in the case. Attorneys' fees, costs, expenses, and service payments will not be deducted from your estimated settlement payments set out in Section 3.

5. WHAT ARE YOUR OPTIONS?

You have four options with regards to this settlement. You can:

- (1) Participate in the Settlement by returning a Claim Form;
- (2) Opt out of the Settlement and the case;
- (3) Object; or
- (4) Do nothing.

Details about how each option would affect your rights are explained below.

If you had previously returned a consent to join this action, if you wish to participate in the Settlement and receive your share, you must still return a Claim Form. If you had not previously returned a consent to join, you can still participate by returning a Claim Form.

6. HOW CAN YOU PARTICIPATE IN THE SETTLEMENT?

To receive your share of the Settlement, you need to timely mail, email, overnight delivery, or fax the enclosed Claim Form to the Settlement Administrator, JND, using the contact information below. It is highly suggested that you keep a copy of the Claim Form and proof of how you returned your Claim Form.

You can also timely fill out an online Claim Form at www.Petco-AM-Settlement.com.

If you send back a Claim Form, it must be received or postmarked by **January 16, 2018**.

Petco Settlement
c/o JND Legal Administration
PO Box 7028
Broomfield, CO 80021
Toll-free: 1-844-853-3456
www.Petco-AM-Settlement.com

By submitting a timely, valid Claim Form, you will release the claims described in Section 13.

If you choose to participate, you can contact the Settlement Administrator before the claim filing deadline of January 16, 2018 to confirm your fully completed Claim Form was received. You should keep the Settlement Administrator informed of any changes in your address until you have received your settlement check and tax reporting forms.

7. HOW CAN YOU EXCLUDE YOURSELF (“OPT OUT”)?

If you do not want to be part of this settlement, you must submit a written exclusion by First Class U.S. Mail, postage prepaid, to the Settlement Administrator postmarked by **December 11, 2017**. If you had previously filed a consent to join the lawsuit but do not wish to participate in the Settlement, you must submit a written exclusion and by doing so you will also be withdrawing from the lawsuit.

To be effective, the request for exclusion must express your desire to be excluded from the Settlement, and must include your full name, current address and be signed by you (the Settlement Class member requesting exclusion). **If you exclude yourself, you will not receive any monies from the Settlement.**

If you fail to include the required information, or if your request for exclusion is not timely, your request for exclusion will be deemed null, void, and ineffective. Failure to be excluded will result in you remaining a member of the Settlement Class, and you will be bound by any final judgment and will not have any right to object or appeal any order related to the Settlement. If you submit a Claim Form and request for exclusion, the Claim Form will be considered and the request for exclusion will not, and you will remain a member of the Settlement Class and receive your share of the Settlement.

8. HOW CAN YOU OBJECT?

Unless you have excluded yourself from the Settlement Class as provided in Section 7 above, you can object to the terms of the Settlement, and/or the attorneys’ request for fees and expenses, and/or the request for incentive awards. If you submit a Claim Form, you do not lose the right to object, but you do not need to submit a Claim Form in order to object. If you object and the Settlement is approved, and you fail to submit a timely and valid request to be excluded, you will be barred from bringing your own individual lawsuit asserting claims related to the matters released through this Settlement, and you will be bound by the final judgment and release and all Orders entered by the Court. You may, but need not, enter an appearance through counsel of your choice. If you do, you will be responsible for your own attorneys’ fees, costs, and expenses.

In order to object to the Settlement and/or the requests for attorneys’ fees, costs, expenses, or incentive awards, you must, on or before **December 11, 2017**, submit your written objection to the Settlement Administrator by First Class U.S. mail, postage prepaid. The objection must be signed by the Settlement Class Member and include his or her name, current mailing and email addresses, and phone number, and state all grounds for the objection and all facts supporting the objection. You must also include whether you are represented by counsel, and if you are, the name and address of your counsel. You must also provide notice to the Settlement Administrator if you intend to appear at the Final Approval Hearing and whether you or your counsel is making an entry of appearance. Any individual who does not timely make their objections in this manner will be deemed to have waived all objections and shall not be heard or have the right to appeal approval of the Settlement.

9. WHAT IF YOU DO NOTHING?

If you do nothing and fail to timely submit a Claim Form, you will not receive any money from the Settlement. You will release the state law claims described in Section 13.

If you do nothing, you may still have the ability to pursue your overtime claim under federal law if the deadline to file such a claim has not already expired. However, you will not receive any money from the Settlement.

10. WHAT HAPPENS IF THE COURT APPROVES THE SETTLEMENT?

If the Court approves the Settlement, a settlement check will be issued to individuals who have timely submitted a fully completed Claim Form and have not excluded themselves from the Settlement.

The Settlement will be binding on all members of the Settlement Class who do not timely and properly request exclusion. This means that all members of the Settlement Class who do not exclude themselves cannot bring their own lawsuits against Petco based on the claims described in Section 13. This includes, but is not limited to, claims for back pay, liquidated damages, penalties, interest, and attorneys' fees, costs, and expenses.

If the Court approves the Settlement, individuals who timely submit a fully completed Claim Form will also release their claims under the federal Fair Labor Standards Act. This includes, but is not limited to, claims for back pay, liquidated damages, penalties, interest, costs, and attorneys' fees, costs, and expenses.

11. WHAT HAPPENS IF THE COURT DOES NOT APPROVE THE SETTLEMENT?

If the Court does not approve the Settlement, the case will proceed as if no settlement has been attempted and there can be no assurance that the Class will recover more than is provided for in this settlement, or indeed, anything.

12. WHEN IS THE FINAL SETTLEMENT APPROVAL HEARING?

A hearing will be held before the Honorable Judge M. James Lorenz of the United States District Court for the Southern District of California on February 12, 2018 at 11:00 a.m. at 221 West Broadway, San Diego, CA 92101, Courtroom 5B. The purpose of the hearing is for the Court to decide whether the Settlement is fair, reasonable, and adequate and should be approved and, if so, to determine what amount of attorneys' fees, costs and expenses, or incentive payments should be awarded. The time and date of this hearing may be changed without further notice.

13. WHAT CLAIMS ARE BEING RELEASED?

If you do not timely and validly exclude yourself from the Settlement, you will enter into the following release:

You, including your heirs, agents, representatives, successors, assigns and estates, shall be deemed to have fully, finally and forever, irrevocably and unconditionally released, remised, and discharged Petco from any and all suits, actions, causes of action, claims, obligations, rights, liabilities or demands against Petco for wages, premium pay or wages, damages, penalties, liquidated damages, punitive damages, interest, attorneys' fees, litigation costs or any restitution or other equitable relief, whether known or unknown, asserted or unasserted, that are based on putative violations of state or local law (both statutory and common law) pertaining to hours of work or payment of wages, including overtime compensation, record-keeping requirements, and requirements governing the timing of payment of wages, while employed by Petco in the position of Assistant Manager, including without limitation all state and local claims that were asserted or

could have been asserted in the Lawsuits, based on the allegations in them, regarding events that occurred or are alleged to have occurred from the beginning of time until June 18, 2016.

This release specifically covers, but is not limited to, claims under the following statutes and regulations:

- Colorado Wage Claim Act, C.R.S.A. § 8-4-101 *et seq.* and Colorado Minimum Wage Act, C.R.S.A. § 8-6-101 *et seq.*;
- Illinois Minimum Wage Law, 820 ILCS §§ 105 *et seq.*, 105/1, 105/4a, 105/12(a), 105/14(a), and Illinois Wage Payment and Correction Act, 820 ILCS § 115/1;
- Mass. Gen. Laws ch. 149, §§ 148, 150 and ch. 151, §§ 1A *et seq.*;
- New Jersey Wage & Hour Law, N.J.S.A. §§ 12:56-6.1, 34:11-4.2, 34:11-56a *et seq.*;
- New York Labor Law §§ 160 *et seq.*, 190 *et seq.*, 191 *et seq.*, 195 (3) & (4), 198, and 661 and 12 New York Codes, Rules & Regulations §§ 142-1 *et seq.*;
- Oregon Revised Statutes §§ 652.150, *et seq.*, 652.200, 653.055, 653.261 and Oregon Administrative Rules § 839-020-0030; and
- Pennsylvania Minimum Wage Act, 43 P.S. §§ 333.101 *et seq.*

Additionally, if you submit a timely and valid Claim Form, you enter into the following release:

You, including your heirs, agents, representatives, successors, assigns and estates, shall be deemed to have fully, finally and forever, irrevocably and unconditionally released, remised, and discharged Petco from any and all suits, actions, causes of action, claims, obligations, rights, liabilities or demands against Petco for claims for wages, penalties, liquidated damages, interest, attorneys' fees, litigation costs or any restitution or other equitable relief, whether known or unknown, asserted or unasserted, that are based on putative violations of federal law pertaining to hours of work or payment of wages, including alleged failure to pay overtime compensation and keep and preserve records sufficient to determine wages and hours, while employed by Petco in the position of Assistant Manager, including without limitation all claims that were asserted or could have been asserted in *Kellgren* under the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.*, regarding events that occurred or are alleged to have occurred from the beginning of time until June 18, 2016.

14. NO RETALIATION

Petco is encouraging all Settlement Class Members to participate in the Settlement. Whether you are a current or former Petco employee who is eligible for this settlement, your decision as to whether or not to submit a Claim Form, Consent to Join, and Release will in no way affect your employment with Petco. Petco is prohibited by law from taking any action against employees who participate in the Settlement, do not participate in the Settlement, or object to the Settlement.

15. ARE THERE MORE DETAILS AVAILABLE?

For additional information, you may contact the Settlement Administrator:

Petco Settlement
c/o JND Legal Administration
PO Box 7028
Broomfield, CO 80021
Toll-free: 1-844-853-3456
Email: PetcoAMSettlement@jndla.com
www.Petco-AM-Settlement.com

NO INQUIRIES SHOULD BE DIRECTED TO THE COURT.