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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

ERIK KELLGREN, THERESE KOPCHINSKI, and CHRISTINE LEE, Individually and on Behalf of All Other Persons Similarly Situated,

Plaintiffs,

v.

PETCO ANIMAL SUPPLIES, INC.; PETCO HOLDINGS, INC.; and DOES 1 to 100, inclusive,

Defendants.

Case No. 3:13-cv-00644-L-KSC

ORDER GRANTING PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS AND COLLECTIVE ACTION SETTLEMENT, CERTIFICATION OF A SETTLEMENT CLASS, REIMBURSEMENT OF ATTORNEYS' FEES, COSTS, EXPENSES AND INCENTIVE AWARDS TO REPRESENTATIVE PLAINTIFFS AND JUDGMENT

Final Approval Hearing: February 12, 2018

Complaint Filed: March 19, 2013

District Judge: Hon. M. James Lorenz
Courtroom: 5B (Schwartz)

Magistrate Judge: Karen S. Crawford

Trial Date: Not Set

MARIA COTE, Individually and on Behalf of All Other Persons Similarly Situated,

Plaintiffs,

v.

PETCO ANIMAL SUPPLIES, INC.; PETCO HOLDINGS, INC.,

Defendants.

Case No. 3:17-cv-00898-L-KSC
Complaint Filed: January 31, 2017
(D. Mass.)

Transferred to SDCA: May 4, 2017

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<p>DESERIE MICHEL, on behalf of herself and all others similarly situated,</p> <p>Plaintiffs,</p> <p>v.</p> <p>PETCO ANIMAL SUPPLIES, INC. and PETCO HOLDINGS, INC.,</p> <p>Defendants.</p>	<p>Case No. 3:17-cv-01092-L-KSC</p> <p>Complaint Filed: April 14, 2016 (E.D.N.Y.)</p> <p>Transferred to SDCA: May 30, 2017</p>
<p>HEATHER VARGAS, Individually and on Behalf of All Other Persons Similarly Situated,</p> <p>Plaintiffs,</p> <p>v.</p> <p>PETCO ANIMAL SUPPLIES, INC.; PETCO HOLDINGS, INC.,</p> <p>Defendants.</p>	<p>Case No. 3:17-cv-01561-L-KSC</p> <p>Complaint Filed: April 6, 2017 (D.N.J.)</p> <p>Transferred to SDCA: August 3, 2017</p>
<p>JAMES HECKER, on Behalf of Himself and All Others Similarly Situated,</p> <p>Plaintiff,</p> <p>v.</p> <p>PETCO ANIMAL SUPPLIES, INC., PETCO ANIMAL SUPPLIES STORES, INC., PETCO HOLDINGS, INC., and DOES 1 TO 100, Inclusive,</p> <p>Defendants.</p>	<p>Case No.: 3:17-cv-01169-L-KSC</p> <p>Complaint Filed: November 23, 2016 (N.D. ILL.)</p> <p>Transferred to SDCA: June 8, 2017</p>

1 ROBERT WAGNER, Individually and
2 On Behalf of All Other Persons
3 Similarly Situated,

4 Plaintiffs,

5 v.

6 PETCO ANIMAL SUPPLIES, INC.,
7 PETCO ANIMAL SUPPLIES STORES,
8 INC., and PETCO HOLDINGS, INC.,

9 Defendants.

Case No.: 3:17-cv-01793-L-KSC

Complaint Filed: January 15, 2017 (D. Colo.)

Transferred to SDCA: September 28, 2017

10 **ORDER AND JUDGMENT GRANTING FINAL APPROVAL OF**
11 **PROPOSED CLASS AND COLLECTIVE ACTION SETTLEMENT**

12
13 **WHEREAS**, the Plaintiffs and Defendants in the above-captioned
14 consolidated actions have entered into a Settlement Agreement intended to
15 resolve the litigation against Defendants arising out of their alleged unlawful
16 compensation practices for Assistant Managers (“AMs”) who were classified
17 as exempt and not paid overtime; and

18 **WHEREAS**, the Settlement Agreement attached as Exhibit A to the
19 Declaration of Seth R. Lesser, filed in connection with Plaintiffs’ Motion for
20 Preliminary Approval, Dkt. No. 280-3, together with supporting materials,
21 sets forth the terms and conditions for a proposed settlement and dismissal
22 with prejudice of the above actions against Defendants; and

23 **WHEREAS**, the Court was satisfied that the terms and conditions set
24 forth in the Settlement Agreement were the result of good faith, arms-length
25 settlement negotiations between competent and experienced counsel for both
26 Plaintiffs and Defendants; and

27 **WHEREAS**, the Court granted Plaintiffs’ Motion for Preliminary
28 Approval of Class and Collective Action Settlement, Preliminary Certification

Case No. 13-CV-00644-L-KSC

ORDER GRANTING FINAL APPROVAL OF SETTLEMENT AND JUDGMENT

1 of a Settlement Class, Appointment of Class Representatives and Claims
2 Administrator, Approving Notice and for Final Fairness Hearing (the
3 “Preliminary Approval Motion”) and supporting materials, Dkt. Nos. 289, 292,
4 294; and

5 **WHEREAS**, the Court ordered the Notice and Claim Form and Consent
6 to Join FLSA Action incorporated into the Settlement Agreement to issue to
7 the Settlement Class in the manner specified in Plaintiffs’ Motion for
8 Preliminary Approval;

9 Accordingly, the Court finds, concludes, and hereby orders as follows:

10 1. Plaintiffs’ Motion for Final Approval is **GRANTED**.

11 2. The Court has jurisdiction over the subject matter of this action, all
12 members of the Settlement Class, and Defendants pursuant to 29 U.S.C. §§
13 1331, 1332, and 1367.

14 3. All defined terms in the Settlement Agreement shall have the same
15 meaning in this Order and Judgment.

16 4. In accordance with Federal Rule of Civil Procedure 23 and the
17 requirements of due process, the Settlement Class has been given proper and
18 adequate notice of the Settlement and the Fairness Hearing, and such notice
19 was carried out in accordance with the Preliminary Approval Order.

20 5. Prior to the Fairness Hearing, a declaration was filed with the
21 Court by the Claims Administrator, JND Legal Administration, confirming
22 that Notice was given in accordance with the terms of the Court’s previous
23 Order preliminarily approving the Settlement and as required by the Class
24 Action Fairness Act, 28 U.S.C. § 1715, *et seq.*

25 6. The Notice and notice methodology implemented pursuant to the
26 Settlement Agreement and the Court’s Preliminary Approval Order (a) were
27 appropriate and reasonable and constituted due, adequate, sufficient notice to
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1 all persons entitled to notice; and (b) met all applicable requirements of the
2 Federal Rules of Civil Procedure and Due Process.

3 7. The Settlement was negotiated with the assistance of an
4 experienced mediator, at arm's-length, by experienced counsel who were fully
5 informed of the facts and circumstances of the action and of the strengths and
6 weaknesses of their respective positions. The Settlement was reached after the
7 parties had completed extensive discovery and investigation, conducted legal
8 research and written discovery, conducted multiple depositions, and reviewed
9 tens of thousands of pages worth of documents. Counsel for both sides were
10 well positioned to evaluate the benefits of the Settlement, taking into account
11 the expense, risk, and uncertainty of protracted litigation over numerous
12 questions of fact and law.

13 8. The Settlement is fair, reasonable, and adequate. The Court
14 approves the Settlement.

15 9. The Court finds that for the purpose of this Settlement, the
16 requirements of Rule 23 of the Federal Rules of Civil Procedure are satisfied,
17 and that a class action is an appropriate method for resolving the claims
18 asserted in this litigation. All the prerequisites for class certification under
19 Rule 23 are present. The Settlement Class Members are ascertainable and too
20 numerous to be joined. For settlement purposes, questions of law and fact
21 common to all Settlement Class Members predominate over individual issues
22 and should be determined in one proceeding with respect to all of the
23 Settlement Class Members. The Settlement Class Representatives' claims are
24 typical of those of the Settlement Class for settlement purposes. The Settlement
25 Class Representatives and Class Counsel meet the adequacy requirements of
26 FED. R. CIV. P. 23(a)(4). For settlement purposes, the class action mechanism
27 is superior to alternative means for adjudicating and resolving the state law
28 claims asserted in these consolidated actions. **Case No. 13-CV-00644-L-KSC**

1 10. The Court further finds that the settlement of the FLSA claims
2 asserted by Plaintiffs and those who have consented to join the *Kellgren* action
3 is a settlement of a bona-fide dispute and is a fair and reasonable compromise
4 of the FLSA claims asserted.

5 11. The Court certifies the following Settlement Class for purposes of
6 this Settlement only:

- 7 • Individuals who filed with the Court consents to join the *Kellgren* action
8 and who, as of the date of entry of the Preliminary Approval Order had
9 not withdrawn their consent or had their claims dismissed;
- 10 • Individuals who worked in Colorado as an Assistant Manager (“AM”) for
11 Petco at any time between January 15, 2014 and June 18, 2016;
- 12 • Individuals who worked in Illinois as an AM for Petco at any time
13 between November 23, 2013 and June 18, 2016;
- 14 • Individuals who worked in Massachusetts as an AM for Petco at any time
15 between January 31, 2014 and June 18, 2016;
- 16 • Individuals who worked in New Jersey for Petco as an AM at any time
17 between April 6, 2015 and June 18, 2016;
- 18 • Individuals who worked in New York for Petco as an AM at any time
19 between April 14, 2010 and June 18, 2016;
- 20 • Individuals who worked in Oregon for Petco as an AM at any time
21 between October 21, 2014 and June 18, 2016; and
- 22 • Individuals who worked in Pennsylvania for Petco as an AM at any time
23 between July 14, 2014 and June 18, 2016.

24 12. Class Counsel, Klafter Olsen & Lesser LLP and Hepworth
25 Gershbaum & Roth, PLLC are hereby awarded attorneys’ fees in the amount of

26 \$ 2,665,000.00 which the Court finds to be fair and reasonable, and
27 \$ 161,901.00 in reimbursement of reasonable expenses incurred in
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1 prosecuting the action. The attorneys' fees and expenses so awarded shall be
2 paid from the Settlement Sum pursuant to the terms of the Settlement
3 Agreement.

4 13. The Court finds that the services provided by the Named Plaintiffs
5 to the Settlement Class have conferred a substantial benefit on the Settlement
6 Class, and hereby directs payment as provided under the terms of the parties'
7 Settlement Agreement from the Settlement Sum to Named Plaintiffs Erik
8 Kellgren, Maria Cote, James Hecker, Therese Kopchinski, Christine Lee, Deserie
9 Michel, Heather Vargas, and Robert Wagner of \$10,000 each as Incentive
10 Awards.

11 14. The certification of the Settlement Class is for settlement purposes
12 only and shall not constitute, nor be construed as, an admission on the part of
13 Defendants that these cases, or any other proposed or certified class or collective
14 action is appropriate for class or collective treatment pursuant to Federal Rule
15 of Civil Procedure 23, 29 U.S.C. § 216(b), or any other similar class or collective
16 action statute or rule. Nor shall this Order and Judgment be construed, used,
17 offered or admitted into evidence as an admission or concession by Defendants
18 of the validity of any claim or any actual or potential liability or fault.

19 15. Final Judgment is entered in the above-captioned cases in
20 accordance with the Settlement Agreement.

21 16. Following the Effective Date provided for in the Settlement
22 Agreement and receipt of the Settlement Sum from Defendants, as set forth in
23 the Settlement Agreement, the Claims Administrator shall effectuate
24 distribution of the settlement funds to the Settlement Class Members who made
25 timely and valid claims in accordance with the terms of the Settlement
26 Agreement.

1 17. Upon the Effective Date provided for in the Settlement Agreement,
2 all State Settlement Class Members who have not timely and validly excluded
3 themselves from the Settlement have released the claims as set forth in Section
4 5 of the Settlement Agreement and which is incorporated herein.

5 18. Upon the Effective Date provided for in the Settlement Agreement,
6 all Federal State Class Members who submitted timely and valid Claim Forms
7 have released the claims as set forth in Section 5 of the Settlement Agreement
8 and which is incorporated herein.

9 19. The claims of all Opt-In Plaintiffs who neither timely and validly
10 requested exclusion nor submitted a timely and valid Claim Form are hereby
11 dismissed with prejudice.

12 20. The claims of all Opt-In Plaintiffs who timely and validly requested
13 exclusion from the Settlement are hereby dismissed without prejudice.

14 21. All Settlement Class Members who have not timely and validly
15 excluded themselves from the Settlement are barred and permanently enjoined
16 from pursuing and/or seeking to reopen their claims that have been released or
17 dismissed in the Settlement Agreement or seeking to file, commence, prosecute,
18 maintain or participate in any other claim, lawsuit, or other proceeding based
19 on the claims that have been released or dismissed in the Settlement Agreement
20 and herein.


21 22. These consolidated actions are **DISMISSED WITH PREJUDICE**
22 except that the Court shall retain exclusive and continuing jurisdiction of the
23 above-captioned actions, the Settlement Class Members and the Defendants, to
24 interpret and enforce the terms, conditions and obligations of the Settlement
25 Agreement.

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IT IS SO ORDERED.

Dated: February 13, 2018


Hon. M. James Lorenz
United States District Judge