

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

-----X	:	
ERIK KELLGREN, THERESE KOPCHINSKI,	:	
and CHRISTINE LEE, Individually and on	:	
Behalf of All Other Persons Similarly Situated,	:	Case No.
	:	13-cv-00644-L-KSC
	:	
Plaintiffs,	:	
	:	SECOND AMENDED
-against-	:	COMPLAINT AND
	:	<u>JURY DEMAND</u>
	:	
PETCO ANIMAL SUPPLIES, INC., PETCO	:	
ANIMAL SUPPLIES STORES, INC.,	:	
PETCO HOLDINGS, INC., and PETCO	:	
HOLDINGS, INC. LLC,	:	
	:	
Defendants.	:	
-----X	:	

INTRODUCTION

Plaintiffs Erik Kellgren (“Kellgren”), Therese Kopchinski (“Kopchinski”), and Christine Lee (“Lee”) (hereafter, “Plaintiffs”), individually and on behalf of all others similarly situated, file this Second Amended Complaint (the “Complaint”) against Defendants Petco Animal Supplies, Inc., Petco Animal Supplies Stores, Inc., Petco Holdings, Inc., and Petco Holdings, Inc. LLC, (collectively, “Defendants” or “Petco”), seeking all available relief under the Fair Labor Standards Act of 1938 (“FLSA”), 29 U.S.C. §§ 201, *et. seq.*, the Pennsylvania Minimum Wage Act (the “PMWA”), 43 P.S. §§ 333.101, *et seq.*, and Oregon statutes O.R.S. §§ 653.055 and 652.150, (collectively, “Oregon Law”). The following allegations are based on personal knowledge as to Plaintiffs’ own conduct and are made on information and belief as to the acts of others.

NATURE OF THE ACTION

1. Plaintiffs allege on behalf of themselves and other former Assistant Managers and similarly situated current and former employees holding comparable positions but different titles (“Assistant Managers” or “AMs”), employed by Defendants in the United States, who elected to opt into this action pursuant to the FLSA (hereinafter the “Collective Action Members”), that they are entitled to, *inter alia*: (i) unpaid overtime wages for hours worked above forty (40) hours in a workweek, as required by law, and (ii) liquidated damages pursuant to the FLSA, 29 U.S.C. §§ 201, *et seq.*

2. Plaintiffs Kopchinski and Lee, pursuant to Fed. R. Civ. P. 23, bring this class action on behalf of themselves and all other persons similarly situated who suffered damages as a result of Defendants’ violations of all applicable statutory and common laws regarding the payment of overtime wages (collectively, “State Labor Laws” or when appropriate “State Law Claims”) in the states of Oregon and Pennsylvania (the “State Classes”) during the applicable statute of limitations period in each state (the “State Class Members”). Plaintiffs allege that they are entitled to, *inter alia*: (i) unpaid overtime wages for hours worked above forty (40) hours in a workweek, as required by law, and (ii) liquidated damages pursuant to applicable state law.

JURISDICTION AND VENUE

3. This Court has jurisdiction over Plaintiffs’ FLSA claims pursuant to 29 U.S.C. § 216(b) and 28 U.S.C. § 1331, it has supplemental jurisdiction over Plaintiffs’ State Law Claims pursuant to 28 U.S.C. § 1367.

4. Defendants are subject to personal jurisdiction in the State of California.

5. The claims of the Plaintiffs and Collective Action Members involve matters of national and/or interstate interest.

6. The State Law Claims involve matters of national or interstate interest.

7. Venue is proper pursuant to 28 U.S.C. §1391 because a substantial part of the events or omissions giving rise to the claims occurred in this District inasmuch as Defendants have their principal place of business in this District.

8. This Court is empowered to issue a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202.

THE PARTIES

Plaintiffs

9. Plaintiff Kellgren was, at all relevant times, an adult individual over the age of eighteen (18), residing in Illinois.

10. Plaintiff Kellgren was employed by Defendants from approximately 2007 until October 2010 as an AM at Defendants' stores located in St. Charles, Aurora, Oswego, and Shorewood, Illinois.

11. At all relevant times, Plaintiff Kellgren and the Collective Action Members were engaged in commerce or in the production of goods for commerce as described in 29 U.S.C. §§ 206 and 207.

12. Plaintiff Kopchinski, was, at all relevant times, an adult individual over the age of eighteen (18), residing in Pennsylvania.

13. Plaintiff Kopchinski, was employed by Defendants from approximately 2011 until June 16, 2016, as an AM at Defendants' store located in Monroeville, Pennsylvania.

14. At all relevant times, Plaintiff Kopchinski, the Collective Action Members, and the State Classes were engaged in commerce or in the production of goods for commerce as described in 29 U.S.C. §§ 206 and 207.

15. Plaintiff Lee, was, at all relevant times, an adult individual over the age of eighteen (18), residing in The Dalles, Oregon.

16. Plaintiff Lee was employed by Defendants from approximately April 2014 until November 2014, as an AM at Defendants' stores located in Keizer, Oregon.

17. At all relevant times, Plaintiff Lee, the Collective Action Members, and the State Classes were engaged in commerce or in the production of goods for commerce as described in 29 U.S.C. §§ 206 and 207.

Defendants:

18. Upon information and belief, Defendant Petco Animal Supplies, Inc. is a Delaware corporation with its principal place of business at 10850 Via Frontera, San Diego, California. According to its website, Petco Animal Supplies, Inc. is a privately held company with more than 1,150 specialty retail stores nationwide, selling pet food, live animals, pet supplies and related goods and services.

19. Upon information and belief, Defendant Petco Animal Supplies Stores, Inc. is a Delaware corporation with its principal place of business at 10850 Via Frontera, San Diego, California.

20. Upon information and belief, Defendant Petco Holdings, Inc. is a Delaware corporation with its principal place of business at 10850 Via Frontera, San Diego, California.

21. Upon information and belief, Defendant Petco Holdings, Inc. LLC, is a Delaware corporation with its principal place of business at 10850 Via Frontera, San Diego, California.

22. Defendants Petco Animal Supplies, Inc., Petco Animal Supplies Stores, Inc., Petco Holdings, Inc., and Petco Holdings, Inc. LLC, were and are doing business in California, including at their retail locations throughout the State of California.

23. At all relevant times, Defendants Petco Animal Supplies, Inc., Petco Animal Supplies Stores, Inc., Petco Holdings, Inc., and Petco Holdings, Inc. LLC, have employed Plaintiffs and the Collective Action Members within the meaning of the FLSA.

24. Defendants Petco Animal Supplies, Inc., Petco Animal Supplies Stores, Inc., Petco Holdings, Inc., and Petco Holdings, Inc. LLC, are each covered employers within the meaning of the FLSA.

25. Defendants Petco Animal Supplies, Inc., Petco Animal Supplies Stores, Inc., Petco Holdings, Inc., and Petco Holdings, Inc. LLC, have been and continue to be enterprises engaged in commerce or the production of goods for commerce within the meaning of the FLSA.

26. Defendants Petco Animal Supplies, Inc., Petco Animal Supplies Stores, Inc., Petco Holdings, Inc., and Petco Holdings, Inc. LLC, employed employees (including Plaintiffs, the Collective Action Members and the State Class Members) who were engaged in commerce or the production of goods for commerce.

27. Upon information and belief, Defendant Petco Animal Supplies, Inc., Petco Animal Supplies Stores, Inc., Petco Holdings, Inc., and Petco Holdings, Inc. LLC, each had annual gross revenues in excess of \$500,000 for all relevant periods herein.

28. Defendants Petco Animal Supplies, Inc., Petco Animal Supplies Stores, Inc., Petco Holdings, Inc., and Petco Holdings, Inc. LLC, operate in concert and together in a common enterprise and through related activities, so that the actions of one may be imputed to the other, and/or they operate as joint employees within the meaning of the FLSA, and/or were

otherwise legally responsible in some way for the matters alleged herein and proximately caused Plaintiffs and the Collective Action Members to be subject to the unlawful pay practices described in this Complaint.

29. Defendants issued paychecks to Plaintiffs and all similarly situated employees during their employment.

30. Defendants directed the work of Plaintiffs and similarly situated employees, and benefited from work performed that Defendants suffered or permitted from them.

31. Plaintiffs and similarly situated employees worked in excess of forty (40) hours per workweek, without receiving overtime compensation as required by the FLSA, the PMWA and Oregon Law.

32. Pursuant to Defendants' policy, pattern and/or practice, Defendants did not pay Plaintiffs and other similarly situated employees proper overtime wages for hours they worked for Defendants' benefit in excess of forty (40) hours in a workweek.

FACTUAL ALLEGATIONS

33. Defendants employed Plaintiffs, the Collective Action Members, and the State Class Members as Assistant Managers.

34. Defendants maintain control, oversight, and discretion over the operation of their retail stores, including their employment practices with respect to Plaintiffs, the Collective Action Members, and the State Class Members as Assistant Managers.

35. The work of Plaintiffs, the Collective Action Members, and the State Class Members as Assistant Managers was performed in the normal course of Defendants' business.

36. Consistent with Defendants' policy, pattern and/or practice, Plaintiffs, the Collective Action Members, and the State Class Members regularly worked in excess of forty

(40) hours per workweek without being paid overtime wages when they were Assistant Managers, in violation of the FLSA, the PMWA and Oregon Law.

37. The number of shifts that Plaintiffs, the Collective Action Members, and the State Class Members worked per week as Assistant Managers can be ascertained from Defendants' records.

38. Defendants have assigned and are aware of all of the work that Plaintiffs, the Collective Action Members, and the State Class Members have performed.

39. The work performed for Defendants by Plaintiffs, the Collective Action Members, and the State Class Members required little skill and no capital investment, nor did said work include managerial responsibilities or the exercise of meaningful independent judgment and discretion.

40. Starting from the three years prior to the filing of an individual's consent to join this action through the date of Preliminary Approval, with an additional time period added to reflect the toll of the statute of limitations entered by the Kellgren court in Dkt. No. 32; (the "Collective Action Period"), and during the applicable Class periods (as defined herein) Plaintiffs, the Collective Action Members, and the State Class Members performed the same primary job duties: working the cash registers, stocking shelves, cleaning and straightening the store, assisting customers, organizing the store according to detailed corporate directives called planograms, unpacking merchandise, unloading trucks, and caring for pets, including cleaning pet cages.

41. Throughout the Collective Action Period and the applicable Class periods, the primary job duties of Plaintiffs, the Collective Action Members, and the State Class Members

did not include hiring, firing, disciplining, or directing the work of other employees, or exercising meaningful independent judgment or discretion.

42. The primary job duties of Plaintiffs, the Collective Action Members, and the State Class Members did not materially differ from the duties of Defendants' non-exempt hourly paid employees. Their primary duties were manual in nature. The performance of manual labor and non-exempt duties occupied the majority of working time for Plaintiffs, the Collective Action Members, and the State Class Members.

43. Pursuant to a centralized, company-wide policy, pattern and/or practice, Defendants classified Plaintiffs, the Collective Action Members, and the State Class Members as exempt from coverage of the overtime provisions of the FLSA, the PMWA, and Oregon Law.

44. Upon information and belief, Defendants did not perform a person-by-person analysis of the job duties of Plaintiffs, the Collective Action Members, or the State Class Members when making the decision to classify all of them uniformly as exempt from the overtime protections of the FLSA, the PMWA, and Oregon Law.

45. Defendants established labor budgets to cover labor costs for the stores in which Plaintiffs, the Collective Action Members, and the State Class Members worked. Defendants did not provide sufficient resources in the labor budgets for non-exempt employees to complete all of the non-exempt tasks in each store. Defendants knew or recklessly disregarded the fact that failing to provide sufficient resources in store labor budgets resulted in Plaintiffs, the Collective Action Members, and the State Class Members (who were not paid overtime) working more than forty (40) hours in a workweek and primarily performing manual and non-exempt duties, without receiving overtime compensation. This allowed Defendants to avoid paying additional wages (including overtime) to the non-exempt store-level employees.

46. Defendants acted willfully and knew, by virtue of the fact that their General Managers and District Managers (as their authorized agents) actually saw Plaintiffs, the Collective Action Members, and the State Class Members, and other similarly situated Assistant Managers perform primarily manual labor and non-exempt duties, that a result of the underfunded labor budgets was to limit the amount of money available to pay non-exempt employees to perform such work.

47. As an experienced and practical retailer operating over 1,150 stores throughout the country, Defendants were aware or recklessly disregarded the fact that by underfunding the labor budgets for store locations, Plaintiffs, the Collective Action Members, the State Class Members and other similarly situated Assistant Managers were primarily performing non-exempt duties and that they were also not performing activities that would suffice to make their actual job duties comply with any exemption in the FLSA, the PMWA, or Oregon Law. Inasmuch as Defendants are substantial corporate entities aware of their obligations under the FLSA, the PMWA, and Oregon Law, they, accordingly, acted willfully or recklessly in failing to classify Plaintiffs and other similarly situated Assistant Managers as non-exempt employees.

48. Defendants' unlawful conduct as described above, was willful and/or in reckless disregard of the applicable wage and hour laws pursuant to Defendants' centralized, company-wide policy, pattern, and/or practice of attempting to minimize labor costs by violating the FLSA, the PMWA, and Oregon Law.

49. As part of its regular business practice, Defendants have intentionally, willfully and repeatedly engaged in a policy, pattern and/or practice of violating the FLSA, the PMWA, and Oregon Law with respect to Plaintiffs and the Collective and Class Action Members. This policy, pattern and/or practice includes, but it is not limited to, Petco's foregoing knowledge of

its obligations and the kind of work that Plaintiffs, the Collective Action Members, and the State Class Members were and have been performing. As a result, Defendants have been:

- a. willfully misclassifying Plaintiffs, the Collective Action Members, and the State Class Members;
- b. willfully failing to pay Plaintiffs, the Collective Action Members, and the State Class Members overtime wages for hours they worked in excess of forty (40) hours per week; and
- c. willfully failing to provide enough money in their store-level labor budgets for Defendants' non-exempt employees to perform their duties and responsibilities, thereby forcing Defendants' exempt Assistant Managers to perform such non-exempt tasks.

50. Defendants' willful violations of the FLSA, the PMWA, and Oregon Law are further demonstrated by the fact that throughout the Collective and Class Action Periods and continuing to the present, Defendants failed to maintain accurate and sufficient time records for Plaintiffs, the Collective Action Members, and the State Class Members. Defendants acted recklessly or in willful disregard of the FLSA and Oregon and Pennsylvania law by instituting a policy and/or practice that did not allow Plaintiffs and the Collective and State Class Members to record all hours worked.

51. Due to the foregoing, Defendants' failure to pay overtime wages for work performed by Plaintiffs, the Collective Action Members, and the State Class Members in excess of forty (40) hours per workweek was willful and has been widespread, repeated and consistent.

FLSA COLLECTIVE ACTION ALLEGATIONS

52. Pursuant to 29 U.S.C. §§ 207 and 216(b), Plaintiff Kellgren sought to prosecute his FLSA claims as a Collective Action on behalf of all persons who are currently or were formerly employed by Defendants as Assistant Managers and individuals holding comparable salaried positions with different titles employed by Defendants within the United States from three years prior to the filing of an individual consent to join during the Collective Action Period. The Court has granted conditional certification. *See* Dkts. Nos. 78, 86.

53. Defendants are liable under the FLSA for, *inter alia*, failing to pay proper overtime wages to Plaintiffs and the Collective Action Members.

54. The similarly situated employees are known to Defendants, are readily identifiable, and can be located through Defendants' records.

PENNSYLVANIA CLASS ALLEGATIONS

55. Pursuant to Fed. R. Civ. P. 23(a), (b)(2) and (b)(3), Plaintiff Kopchinski brings this action under the PMWA on behalf of all persons who were employed by Defendant at any time from July 14, 2014, in the State of Pennsylvania, to the date of preliminary approval in this case (the "Pennsylvania Class Period"), who were employed by the Defendants as Assistant Managers and/or other comparable positions with different titles, who were classified as exempt by Petco and who were not paid overtime wages in violation of the PMWA. These individuals are referred to as the "Pennsylvania Class."

56. The class contains more than 40 persons and is so numerous so that joinder of all individual members is impracticable.

57. Defendants' conduct with respect to Plaintiff Kopchinski and the Pennsylvania Class raises questions of law and fact that are common to the entire class, including whether

Defendants employed Plaintiff Kopchinski and all members of the Pennsylvania Class within the meaning of the PMWA; the nature and extent of the class-wide injury and the appropriate measure of damages for the Pennsylvania Class; whether Defendants have a policy of misclassifying Assistant Managers as exempt from coverage of the overtime provisions of the PMWA; whether Defendants failed to pay Kopchinski and all members of the Pennsylvania Class the legally required amount of overtime compensation for hours worked in excess of forty (40) hours per workweek, in violation of the PMWA; and whether Defendants are liable for all damages claimed by Kopchinski and all members of the Pennsylvania Class.

58. Plaintiff Kopchinski's claims and Defendants' anticipated defenses are typical of the claims or defenses applicable to the entire class.

59. Plaintiff Kopchinski's interests in pursuing this lawsuit are aligned with the interests of the entire Pennsylvania Class.

60. Plaintiff Kopchinski will fairly and adequately protect the Pennsylvania Class Members' interests because they and their experienced and well-resourced counsel are free of any conflicts of interest and are prepared to vigorously litigate this action on behalf of all Pennsylvania Class members.

61. A class action provides the fairest and most efficient method for adjudicating the legal claims of all Pennsylvania Class Members.

62. Petco violated the the PMWA and the regulations promulgated thereunder by failing to pay proper overtime wages to Plaintiff Kopchinski and other Pennsylvania Class Members for all hours in which they worked over 40 in a given workweek.

63. There are questions of law and fact common to the members of the Pennsylvania Class that predominate over any questions solely affecting the individual members of the Pennsylvania Class.

64. The critical question of law and fact common to Plaintiff Kopchinski and the Pennsylvania Class that will materially advance the litigation is whether Petco is required by the PMWA to pay Plaintiff Kopchinski and the Pennsylvania Class at a rate of 1.5 times their regular hourly rate for hours worked overtime.

65. Other questions of law and fact common to the Pennsylvania Class that will materially advance the litigation include, without limitation:

- a. Whether Defendants can prove that their unlawful policies were implemented in good faith;
- b. Whether Petco is liable for all damages claimed by Plaintiff Kopchinski and the Pennsylvania Class, including, without limitation, compensatory, punitive and statutory damages, interest, costs and disbursements, and attorneys' fees; and
- c. Whether Petco should be enjoined from continuing to violate the PMWA in the future.

66. Plaintiff Kopchinski's claims are typical of the claims of the members of the Pennsylvania Class. Plaintiff Kopchinski has the same interests in this matter as all other members of the Pennsylvania Class.

67. Plaintiff Kopchinski is an adequate class representative, is committed to pursuing this action and has retained competent counsel experienced in wage and hour law and class action litigation.

68. Class certification of Plaintiff Kopchinski claim under the PMWA is appropriate pursuant to FED. R. CIV. P. 23(b)(2) because Petco has acted or refused to act on grounds generally applicable to the Pennsylvania Class, making appropriate both declaratory and injunctive relief with respect to the Pennsylvania Class as a whole. The members of the Pennsylvania Class are entitled to injunctive relief to end Petco's common and uniform policy and practice of denying the Pennsylvania Class the wages to which they are entitled.

69. Class certification of Plaintiff Kopchinski's claim under the PMWA is also appropriate pursuant to FED. R. CIV. P. 23(b)(3) because questions of law and fact common to the Pennsylvania Class predominate over questions affecting only individual members of the Pennsylvania Class, and because a class action is superior to other available methods for the fair and efficient adjudication of this litigation.

70. Plaintiff Kopchinski knows of no difficulty that would be encountered in the management of this litigation that would preclude its maintenance as a class action.

OREGON CLASS ALLEGATIONS

71. Pursuant to Fed. R. Civ. P. 23(a), (b)(2) and (b)(3), Plaintiff Lee brings this action under Oregon Law behalf of all persons who were employed by Defendant at any time from October 21, 2010, in the State of Oregon, to the date of preliminary approval (the "Oregon Class Period"), who were employed by the Defendants as Assistant Managers and/or other comparable positions with different titles, who were classified as exempt employees by Petco and were not been paid overtime wages in violation of Oregon Law. These individuals are referred to as the "Oregon Class."

72. The class contains more than 40 persons and is so numerous so that joinder of all individual members is impracticable.

73. Defendants' conduct with respect to Plaintiff Lee and the Oregon Class raises questions of law and fact that are common to the entire class, including whether Defendants employed Plaintiff Lee and all members of the Oregon Class within the meaning of Oregon Law; the nature and extent of the class-wide injury and the appropriate measure of damages for the Oregon Class; whether Defendants have a policy of misclassifying Assistant Managers as exempt from coverage of the overtime provisions of Oregon Law; whether Defendants failed to pay Lee and all members of the Oregon Class the legally required amount of overtime compensation for hours worked in excess of forty (40) hours per workweek, in violation of Oregon Law; and whether Defendants are liable for all damages claimed by Lee and all members of the Oregon Class.

74. Plaintiff Lee's claims and Defendants' anticipated defenses are typical of the claims or defenses applicable to the entire class.

75. Plaintiff Lee's interests in pursuing this lawsuit are aligned with the interests of the entire Oregon Class.

76. Plaintiff Lee will fairly and adequately protect the Oregon Class Members' interests because they and their experienced and well-resourced counsel are free of any conflicts of interest and are prepared to vigorously litigate this action on behalf of all Oregon Class Members.

77. A class action provides the fairest and most efficient method for adjudicating the legal claims of all Oregon Class Members.

78. Petco violated Oregon Law and the regulations promulgated thereunder by failing to pay proper overtime wages to Plaintiff Lee and other Oregon Class Members for all hours in which they worked over 40 in a given workweek.

79. There are questions of law and fact common to the members of the Oregon Class that predominate over any questions solely affecting the individual members of the Oregon Class.

80. The critical question of law and fact common to Plaintiff Lee and the Oregon Class that will materially advance the litigation is whether Petco is required by Oregon Law to pay Plaintiff Lee and the Oregon Class at a rate of 1.5 times their regular hourly rate for hours worked overtime.

81. Other questions of law and fact common to the Oregon Class that will materially advance the litigation include, without limitation:

- a. Whether Defendants can prove that their unlawful policies were implemented in good faith;
- b. Whether Petco is liable for all damages claimed by Plaintiff Lee and the Oregon Class, including, without limitation, compensatory, punitive and statutory damages, interest, costs and disbursements, and attorneys' fees; and
- c. Whether Petco should be enjoined from continuing to violate Oregon Law in the future.

82. Plaintiff Lee's claims are typical of the claims of the members of the Oregon Class. Plaintiff Lee has the same interests in this matter as all other members of the Oregon Class.

83. Plaintiff Lee is an adequate class representative, is committed to pursuing this action and has retained competent counsel experienced in wage and hour law and class action litigation.

84. Class certification of Plaintiff Lee claim under Oregon Law is appropriate pursuant to FED. R. CIV. P. 23(b)(2) because Petco has acted or refused to act on grounds generally

applicable to the Oregon Class, making appropriate both declaratory and injunctive relief with respect to the Oregon Class as a whole. The members of the Oregon Class are entitled to injunctive relief to end Petco's common and uniform policy and practice of denying the Oregon Class the wages to which they are entitled.

85. Class certification of Plaintiff Lee's claim under Oregon Law is also appropriate pursuant to FED. R. CIV. P. 23(b)(3) because questions of law and fact common to the Oregon Class predominate over questions affecting only individual members of the Oregon Class, and because a class action is superior to other available methods for the fair and efficient adjudication of this litigation.

86. Plaintiff Lee knows of no difficulty that would be encountered in the management of this litigation that would preclude its maintenance as a class action.

**FIRST CAUSE OF ACTION:
(FAIR LABOR STANDARDS ACT: UNPAID OVERTIME WAGES)**

87. Plaintiffs, on behalf of themselves and the Collective Action Members, reallege and incorporate by reference paragraphs 1 through 87 as if they were set forth again herein.

88. At all relevant times, Defendants employed Plaintiffs, and employed or continue to employ, the Collective Action Members within the meaning of the FLSA.

89. Defendants have engaged in a widespread pattern and practice of violating the FLSA, as detailed in this Complaint.

90. Plaintiffs consented in writing to be a party to this action, pursuant to 29 U.S.C. § 216(b). *See* Dkt. Nos. 1, 103, 123.

91. The overtime wage provisions set forth in 29 U.S.C. §§ 201, *et seq.*, apply to Defendants.

92. At all relevant times and continuing to the present time, Defendants had a policy and practice of refusing to pay overtime compensation to Plaintiffs and the Collective Action Members, for hours worked in excess of forty (40) hours per workweek.

93. As a result of Defendants' willful failure to compensate Plaintiffs and the Collective Action Members, at a rate not less than one and one-half times the regular rate of pay for work performed in excess of forty (40) hours in a workweek, Defendants have violated and, continue to violate, the FLSA, 29 U.S.C. §§ 201, *et seq.*, including 29 U.S.C. §§ 207(a)(1) and 215(a).

94. As a result of Defendants' willful failure to record, report, credit and/or compensate their employees, including Plaintiffs and the Collective Action Members, Defendants have failed to make, keep and preserve records with respect to each of their employees sufficient to determine the wages, hours and other conditions and practices of employment in violation of the FLSA, 29 U.S.C. §§ 201, *et seq.*, including 29 U.S.C. §§ 211(c) and 215(a).

95. As a result of Defendants' policy and practice of minimizing labor costs by underfunding the labor budgets for their stores, Defendants knew or recklessly disregarded the fact that Plaintiffs and the Collective Action Members were primarily performing manual labor and non-exempt tasks.

96. Due to Defendants' failure to provide enough labor budget funds, failure to take into account the impact of the underfunded labor budgets on the job duties of Plaintiffs and the Collective Action Members, Defendants' actual knowledge, through their Store Managers and District Managers that the primary duties of Plaintiffs and the Collective Action Members were manual labor and other non-exempt tasks, Defendants' failure to perform a person-by-person

analysis of Plaintiffs' and the Collective Action Members' job duties to ensure that they were performing exempt job duties, Defendants' instituting a policy and practice that did not allow Plaintiffs and the Collective Action Members to record all hours worked, and Defendants' failure to post or keep posted a notice explaining the minimum wage and overtime wage requirements, Defendants knew and/or showed reckless disregard that their conduct was prohibited by the FLSA. 29 U.S.C. § 255(a).

97. As a result of Defendants' FLSA violations, Plaintiffs, on behalf of themselves and the Collective Action Members, are entitled (a) to recover from Defendants their unpaid wages for all of the hours worked by them, as overtime compensation, (b) to recover an additional, equal amount as liquidated damages for Defendants' willful violations of the FLSA, and (c) to recover their unreasonably delayed payment of wages, reasonable attorneys' fees, and costs and disbursements of this action, pursuant to 29 U.S.C. § 216(b).

98. Because Defendants' violations of the FLSA have been willful, a three-year statute of limitations applies, pursuant to 29 U.S.C. § 255.

SECOND CAUSE OF ACTION
(Failure to Pay Overtime to Members of the Pennsylvania State Class)

99. Plaintiff Kopchinski, on behalf of herself and the members of the Pennsylvania State Class, reallege and incorporate by reference paragraphs 1 through 87 as if they were set forth again herein.

100. Defendants' failure to pay Plaintiff Kopchinski and the members of the Pennsylvania State Class overtime compensation at a rate not less than one and one-half times the rate at which they are employed for work performed beyond the forty (40) hour workweek, is a violation of the Pennsylvania Labor Laws, including without limitation: the statutory wage

laws of Pennsylvania including the Pennsylvania Minimum Wage Act, 43 P.S. §§ 333.101, *et seq.*

101. Due to Defendants' violations of the Pennsylvania Labor Laws, Plaintiff Kopchinski and the members of the Pennsylvania State Class, are entitled to recover from Defendants their unpaid overtime compensation, all applicable statutory damages, reasonable attorneys' fees, and costs and disbursements of this action, pursuant to the Labor Laws of Pennsylvania.

THIRD CAUSE OF ACTION
(Failure to Pay Overtime to Members of the Oregon State Class)

102. Plaintiff Lee, on behalf of herself and the members of the State Class, realleges and incorporates by reference paragraphs 1 through 87 as if they were set forth again herein.

103. Defendants' failure to pay Plaintiff Lee and members of the Oregon State Class overtime compensation at a rate not less than one and one-half times the rate at which they are employed for work performed beyond the forty (40) hour workweek is a violation of the statutory wage laws Oregon, which include, without limitation, Oregon statutes O.R.S. §§ 653.261, 653.055 and 652.150 and OAR § 839-020-0030.

104. Due to Defendants' violations of Oregon Law, Plaintiff Lee and the members of the Oregon State Class are entitled to recover from Defendants their unpaid overtime compensation, all applicable statutory damages, reasonable attorneys' fees, and costs and disbursements of this action, pursuant to Oregon Law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, the Collective Action Members, and the State Class Members are entitled to and pray for the following relief:

- a. Continued designation of this action as an FLSA collective action on behalf of Plaintiffs and the Collective Action Members and prompt issuance of notice pursuant to 29 U.S.C. § 216(b) to all similarly situated individuals, apprising them of the pendency of this action, permitting them to assert timely FLSA claims in this action by filing individual Consents to Sue pursuant to 29 U.S.C. § 216(b), and tolling of the statute of limitations;
- b. Certification of the Pennsylvania as a class action pursuant to FED. R. CIV. P. 23(b)(2) and (b)(3), and the appointment of Plaintiff Kopchinski and her counsel to represent the members of the Pennsylvania Class;
- c. Certification of the Oregon Class as a class action pursuant to FED. R. CIV. P. 23(b)(2) and (b)(3), and the appointment of Plaintiff Lee and her counsel to represent the members of the Oregon Class;
- d. A declaratory judgment that the practices complained of herein are unlawful under the FLSA, the PMWA, and Oregon Law;
- e. An injunction requiring Petco to cease its unlawful practices under, and comply with, the PMWA;
- f. An injunction requiring Petco to cease its unlawful practices under, and comply with, Oregon Law;
- g. An award of unpaid wages for all hours worked in excess of 40 in a workweek at a rate of one and one-half times the regular rate of pay under the FLSA, the PMWA, and Oregon Law using the following common methodology for calculating damages: $((\text{Annual Salary} \div 52) \div 40) \times \text{Total Number of Overtime Hours Worked} \times 1.5$;

- h. An award of liquidated and/or punitive damages as a result of Petco's willful failure to pay for all hours worked in excess of 40 in a workweek at a rate of one and one-half times the regular rate of pay pursuant to 29 U.S.C. § 216, the PMWA, and Oregon Law;
- i. An award of damages representing the employer's share of FICA, FUTA, state unemployment insurance, and any other required employment taxes;
- j. An award of prejudgment and post-judgment interest;
- k. An award of costs and expenses of this action together with reasonable attorneys' and expert fees and an award of a service payment to the Plaintiffs; and
- l. Such other and further relief as this Court deems just and proper.

DEMAND FOR TRIAL BY JURY

Pursuant to FED. R. CIV. P. 38(b), Plaintiffs demand a trial by jury on all questions of fact raised by the Complaint.

Dated: September 11, 2017

By: /s/ David A. Roth
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