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FILED

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6 on behalf of herself and all others similarly situated

PALE PICKER
CLERK OF THE SUPERIOR COURT
COUNTY OF CONTRA COSTA, CA
BY: **DEPT. 1** CASE IS ASSIGNED TO
DEPT. 1 FOR ALL
PURPOSES

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 FOR THE COUNTY OF CONTRA COSTA

C19-00954

9 KRISTINA CLARK on behalf of herself and all
10 others similarly situated

Case No. **C19-00954**
ASSIGNED FOR ALL PURPOSES TO:
11 JUDGE:
12 DEPT:

11 Plaintiff,

12 vs.

CLASS ACTION COMPLAINT

13
14 PETSMART, INC., a Delaware corporation,
15 and DOES 1 through 50, inclusive,

- 1) Failure to pay Lawful Wages
- 2) Failure to Provide Lawful Meal
Periods or Compensation in Lieu
Thereof
- 3) Failure to Provide Lawful Rest
Periods or Compensation in Lieu
Thereof
- 4) Failure to Timely Pay Wages
- 5) Knowing and Intentional Failure to
Comply With Itemized Employee
Wage Statement Provisions
- 6) Violations of the Unfair Competition
Law

16 Defendants.

JURY TRIAL DEMANDED

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25 Plaintiff KRISTINA CLARK on behalf of herself and all others similarly situated assert
26 claims against Defendant PETSMART, INC., a Delaware corporation, and DOES 1 through 50,
27 inclusive (hereinafter collectively referred to as "Defendants") as follows:
28

First Local
200 V.I. 201
Oakland 607
415 200 1

COPY



I.

INTRODUCTION

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3 1. This is a Class Action, pursuant to Code of Civil Procedure section 382, brought
4 against Defendant PETSMART, INC., and any subsidiaries and affiliated companies (hereinafter
5 "PETSMART " or "Defendant") on behalf of Plaintiff KRISTINA CLARK (hereinafter
6 "Plaintiff") and all non-exempt employees employed by PETSMART in California. (hereinafter
7 referred to as "Non-Exempt Employees" and/or "Class Members").

8 2. During the liability period, defined as the applicable statute of limitations for each
9 and every cause of action contained herein, Defendants enforced shift schedules, employment
10 policies and practices, and workload requirements wherein Plaintiff and all other Non Exempt
11 Employees: (1) were not paid proper wages they earned for all hours they worked including
12 minimum wage and/or proper overtime compensation; (2) were not permitted to take their full
13 statutorily authorized rest and meal periods, or had their rest and meal periods shortened and/or
14 provided to them late due to the scheduling and work load and time requirements placed upon
15 them by Defendants. Defendants failed to pay such employees one (1) hour of pay at the
16 employees regular rate of compensation for each workday that the meal period and/or rest period
17 that was not properly provided;

18 3. During the liability period, Defendants have also failed to pay all wages owed to
19 discharged or resigned Class Members in a timely manner.

20 4. During the liability period, Defendants have also failed to maintain accurate
21 itemized records reflecting total hours worked and have failed to provide Non Exempt
22 Employees with accurate, itemized wage statements reflecting total hours worked and
23 appropriate rates of pay for those hours worked.

24 5. During the liability period, Defendants have also failed to pay all wages owed to
25 discharged or resigned Class Members in a timely manner.

26 6. During the liability period, Defendant failed to provide suitable seating to Plaintiff
27 and Class Members who occupied positions of "cashiers" in accordance with IWC Wage Order
28 and California law.

1 unlawful acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to
2 reflect the true names and capacities of the Defendants designated hereinafter as DOES when
3 such identities become known.

4 13. Plaintiff is informed and believes, and based thereon alleges, that Defendants
5 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a
6 joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each
7 Defendant are legally attributable to the other Defendants.

8 **IV.**

9 **FACTUAL BACKGROUND**

10 14. Plaintiff was employed by PETSMART from in or about August 2013 through in
11 or about August 2018. During her employment with PETSMART, Plaintiff occupied various
12 non exempt hourly positions including, but not limited to, manager and cashier.

13 15. Due to the time constraints and work load requirements implemented by
14 Defendants, Plaintiff and Class Members were occasionally required to complete certain job
15 duties "off the clock" and therefore not paid all lawful wages earned including proper overtime
16 compensation and minimum wage. For instance, Plaintiff and Class Members occasionally were
17 required to work without taking an uninterrupted thirty (30) minute meal break before the fifth
18 hour of the work shift due to the work load requirements including amount of customers to
19 attend to. Additionally, Plaintiff was not compensated for all hours that she worked for PET
20 SMART nor for the time period in which she also worked "off the clock."

21 16. During the liability period, Defendant's policy and practice requires that Plaintiff
22 and Class Members remain on the premises during their scheduled rest breaks so that they may
23 be accessible to tend to the business needs of the store. During part of the liability period, in or
24 about 2017, Plaintiff and Class Members were provided "walkie-talkies" which they were
25 required to take on their rest breaks. As such, PET SMART did not authorize and permit
26 Plaintiff and Class Members to take a duty free ten (10) minute rest period for every four hours
27 or major fraction thereof worked. Plaintiff and Class Members were not compensated one (1)
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1 hour of pay at her regular rate of compensation for each workday that a rest period was not
2 provided, in violation of California labor laws, regulations, and IWC Wage Orders.

3 17. Due to the work load requirements and time constraints resulting from the
4 demands of work shift, Plaintiff and Class Members were required to work in excess of five (5)
5 hours without being provided an uninterrupted thirty (30) minute meal period by the end of the
6 fifth hour and are not compensated one (1) hour of pay at their regular rate of compensation for
7 each workday that a meal period was not provided, in violation of California labor laws,
8 regulations and IWC Wage Order.

9 18. During the liability period, Plaintiff and Non Exempt Employees who worked as
10 "cashiers" were required to stand in the performance of their job duties. PET SMART did not
11 provide cashiers with suitable seating in accordance with applicable IWC Wage Order and
12 California law despite the fact that the nature of the cashier's work reasonably permits use of
13 seats.

14 19. Defendants have also failed to maintain accurate itemized records reflecting total
15 hours worked and have failed to provide Non Exempt Employees with accurate, itemized wage
16 statements reflecting total hours worked and appropriate rates of pay for those hours worked.

17 20. Defendant willfully failed to pay all earned wages to Plaintiff and Class Members
18 in a timely manner to Non Exempt Employees; nor has Defendant paid to Plaintiff and Non
19 Exempt Employees, upon or after termination of their employment with Defendant, all
20 compensation due, including but not limited to all wages owed and compensation for having
21 failed to properly provide rest periods and meal periods.

22 21. Plaintiff is informed and believes, and based thereon alleges, that Defendants
23 currently employ and during the relevant period have employed over one hundred (100)
24 employees in the State of California in non-exempt hourly positions.

25 22. Plaintiff and Class Members employed by PETS MART, at all times pertinent
26 hereto, have been non-exempt employees within the meaning of the California Labor Code, and
27 the implementing rules and regulations of the IWC California Wage Orders.
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CLASS ACTION ALLEGATIONS

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3 23. Plaintiff seeks to represent a Class comprised of and defined as: All persons who
4 are or were employed by PETSMART in the state of California as non exempt employees within
5 four (4) years prior to the date this lawsuit is filed until resolution of this lawsuit (collectively
6 referred to as the "Class" and/or Class Members").

7 24. Plaintiff also seeks to represent Subclasses which are composed of persons
8 satisfying the following definitions:

9 a. All persons who are or were employed by PETSMART in the state of
10 California as non exempt employees, within the statutory liability period, and were not
11 accurately and fully paid all lawful wages owed to them including minimum wages and/or
12 proper overtime compensation for all their hours worked.

13 b. All persons who are or were employed by PETSMART in the state of
14 California as non exempt employees within the statutory liability period, who have not been
15 provided an uninterrupted 30 minute meal period when they worked over five hours in a work
16 shift by the end of the fifth hour and were not provided compensation in lieu thereof;

17 c. All persons who are or were employed by PETSMART in the state of
18 California as non exempt employees within the statutory liability period, who have not been
19 authorized or permitted to take a duty free ten minute rest period for every four (4) hours or
20 major fraction thereof worked per day and were not provided compensation in lieu thereof;

21 d. All persons who are or were employed by PETSMART in the state of
22 California as non exempt employees within the statutory liability period who were not timely
23 paid all wages due and owed to them upon the termination of their employment with
24 Defendants; and

25 e. All persons who are or were employed by PETSMART in the state of
26 California as non exempt employees who, within the statutory liability period, were not
27 provided with accurate and complete itemized wage statements.

28 25. Plaintiff reserves the right under Rule 3.765, California Rules of Court, to

1 amend or modify the class description with greater specificity or further division into
2 subclasses or limitation to particular issues.

3 26 This action has been brought and may properly be maintained as a class action
4 under the provisions of section 382 of the Code of Civil Procedure because there is a well-
5 defined community of interest in the litigation and the proposed Class is easily ascertainable.

6 **A. Numerosity**

7 27. The potential members of the Class as defined are so numerous that joinder of all
8 the members of the Class is impracticable. While the precise number of Class Members has not
9 been determined at this time, Plaintiff is informed and believes that Defendants currently
10 employ, and/or during the relevant time period employed, approximately over 100 Non-
11 Exempt Employees in California who are or have been affected by Defendants' unlawful
12 practices as alleged herein.

13 **B. Commonality**

14 28. There are questions of law and fact common to the Class predominating over any
15 questions affecting only individual Class Members. These common questions of law and fact
16 include, without limitation:

- 17 i. Whether Defendants violated Labor Code §§ 510, 1194 and applicable IWC
18 Wage Orders by failing to pay all earned wages including overtime compensation to
19 Non-Exempt Employees who worked "off the clock" and in excess of eight (8) hours in
20 a work day and/or more than forty (40) hours in a workweek;
- 21 ii. Whether Defendants also violated Labor Codes sections 200, 1194, and 1197 for
22 failing to pay minimum wages for time spent working "off the clock" without pay.
23 Labor Code §1197 provides that employees are to be paid minimum wage for each hour
24 worked, and cannot be averaged the minimum and the payment of a lesser wage than
25 the established is unlawful
- 26 iii. Whether Defendants violated Labor Code §§ 226.7, 512 and applicable IWC
27 Wage Order by failing to provide statutorily compliant 30 minute meal periods to Non-
28

1 Exempt Employees on days in which they worked in excess of 5 hours and failing to
2 compensate said employees one hour wages in lieu of meal periods;

3 iv. Whether Defendants violated Labor Code sections 226.7 and applicable IWC
4 Wage Orders by failing to authorize and permit lawful 10 minute rest periods to Non-
5 Exempt Employees for every four hours or major fraction thereof worked and failing to
6 compensate said employees one hours wages in lieu of rest periods;

7 v. Whether Defendants violated sections 201-203 of the Labor Code by failing to
8 pay all earned wages and/or premium wages due and owing at the time that any Non-
9 Exempt Employees' employment with Defendants terminated.

10 vi. Whether Defendants violated sections 226 of the Labor Code and applicable
11 IWC Wage Orders by failing to, among other violations, maintain accurate records of
12 Non-Exempt Employees' earned wages, work periods, meal periods and deductions;

13 vii. Whether Defendants violated section 17200 *et seq.* of the Business and
14 Professions Code by failing to pay proper minimum and/or overtime wages to Non-
15 Exempt Employees; failing to provide proper rest and/or meal periods and failing to pay
16 compensation in lieu thereof; failing to timely pay wages, failing to keep accurate
17 records all in violation of Labor Code §§, 201, 202, 203, 204, 226, 226.7, 510, 512,
18 1194, 1198, 1199, and applicable IWC Wage Orders.

19 viii. Whether Defendants violated section 17200 *et seq.* of the Business and
20 Professions Code and Labor Code sections §§ 201, 202, 203, 204, 226, 226.7, 510, 512,
21 1194, 1198, 1199, and applicable IWC Wage Orders which violation constitutes a
22 violation of fundamental public policy;

23 **C. Typicality**

24 29. The claims of the named Plaintiff are typical of the claims of the Class. Plaintiff
25 and all members of the Class sustained injuries and damages arising out of and caused by
26 Defendants' common course of conduct in violation of California laws, regulations, and statutes
27 as alleged herein.

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1 workday and/or forty (40) hours in a workweek without receiving the proper compensation at the
2 rate of time and one-half (1 1/2) of such employee's regular rate of pay.

3 36. During the liability period, Defendants' policies and/or practices resulted in
4 Plaintiff and Non Exempt Employees not receiving minimum wages for time spent working off
5 the clock while subject to the control of Defendant all without pay. Labor Code §1197 provides
6 that employees are to be paid minimum wage for each hour worked, and cannot be averaged the
7 minimum and the payment of a lesser wage than the established is unlawful.

8 37. As a result of the unlawful acts of Defendants, Plaintiff and the Class she seeks to
9 represent have been deprived of compensation for all earned wages including minimum wage
10 and/ or overtime wages in amounts to be determined at trial, and are entitled to recovery of such
11 amounts, plus interest and penalties thereon, attorneys' fees, and costs, pursuant to Labor Code
12 section 1194.

13 38. WHEREFORE, Plaintiff and the Class she seeks to represent request relief as
14 described herein and below.

15 **Second Cause of Action**
16 Failure to Provide Lawful Meal Periods
17 Or Compensation in Lieu Thereof
18 (Lab. Code §§226.7, 512, IWC Wage Orders)
19 (Against All Defendants)

20 39. Plaintiff repeats and incorporates herein by reference each and every allegation set
21 forth above, as though fully set forth herein.

22 40. By their failure to provide 30 minute uninterrupted meal periods by the end of the
23 fifth hour for days on which Non-Exempt employees work(ed) work periods in excess of 5 hours
24 and failing to provide compensation for such statutorily non-compliant meal periods, Defendants
25 violated the provisions of Labor Code §512 and applicable IWC Wage Orders.

26 41. By failing to record and maintain adequate and accurate time records according to
27 sections 226 and 1174 (d) of the Labor Code, Defendants have injured Plaintiff and Class
28 Members and made it difficult to calculate the unpaid meal period compensation due Plaintiff
and Class Members.

1 42. As a result of the unlawful acts of Defendants, Plaintiff and the Class she seeks to
2 represent have been deprived of premium wages in amounts to be determined at trial, and are
3 entitled to recovery of such amounts, plus interest and penalties thereon under Labor Code
4 §226.7.

5 43. WHEREFORE, Plaintiff and the Class she seeks to represent request relief as
6 described herein and below.

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8 **Third Cause of Action**
9 Failure to Provide Rest Periods
10 Or Compensation in Lieu Thereof
11 (Lab. Code §§226.7, IWC Wage Orders)
12 (Against All Defendants)

13 44. Plaintiff repeats and incorporates herein by reference each and every allegation set
14 forth above, as though fully set forth herein.

15 45. By their failure to authorize and permit a lawful ten minute rest period for every
16 four hours or major fraction thereof worked per day by Non Exempt Employees, and failing to
17 provide compensation for such non-provided rest periods, as alleged above, Defendants willfully
18 violated the provisions of Labor Code section 226.7 and IWC applicable Wage Orders.

19 46. As a result of the unlawful acts of Defendants, Plaintiff and the Class she seeks to
20 represent have been deprived of premium wages in amounts to be determined at trial, and are
21 entitled to recovery of such amounts, plus interest and penalties thereon under Labor Code
22 §226.7.

23 47. WHEREFORE, Plaintiff and the Class she seeks to represent request relief as
24 described herein and below.

25 **Fourth Cause of Action**
26 Failure to Timely Pay Wages Due At Termination
27 (Lab. Code §§ 201-203)
28 (Against All Defendants)

29 48. Plaintiff repeats and incorporates herein by reference each and every allegation set
30 forth above, as though fully set forth herein.

1 49. Sections 201 and 202 of the California Labor Code require Defendants to pay its
2 employees all wages due within 72 hours of termination of employment. Section 203 of the
3 Labor Code provides that if an employer willfully fails to timely pay such wages the employer
4 must, as a penalty, continue to pay the subject employees' wages until the back wages are paid in
5 full or an action is commenced. The penalty cannot exceed 30 days of wages.

6 50. Plaintiff and affected Class Members are entitled to compensation for all forms of
7 wages earned, including overtime compensation, minimum wage, and compensation for non
8 provided rest and meal periods but to date have not received such compensation therefore
9 entitling them Labor Code section 203 penalties.

10 51. More than 30 days have passed since Plaintiff and affected Class Members have
11 left Defendants' employ, and on information and belief, have not received payment pursuant to
12 Labor Code §203. As a consequence of Defendants' willful conduct in not paying all earned
13 wages, certain Class Members are entitled to 30 days' wages as a penalty under Labor Code
14 section 203 for failure to pay legal wages.

15 52. WHEREFORE, Plaintiff and the Class she seeks to represent request relief as
16 described herein and below.

17
18 **Fifth Cause of Action**
19 Knowing and Intentional Failure to Comply With Itemized Employee
20 Wage Statement Provisions
21 (Lab. Code § 226(b))
22 (Against All Defendants)

23 53. Plaintiff repeats and incorporates herein by reference each and every allegation set
24 forth above, as though fully set forth herein.

25 54. Section 226(a) of the California Labor Code requires Defendants to itemize in
26 wage statements all deductions from payment of wages and to accurately report total hours
27 worked by Plaintiff and the members of the proposed class. IWC Wage Orders require
28 Defendants to maintain time records showing, among others, when the employee begins and ends
each work period, meal periods, split shift intervals and total daily hours worked in an itemized

1 wage statement, and must show all deductions and reimbursements from payment of wages, and
2 accurately report total hours worked by Plaintiff and the members of the proposed class. On
3 information and belief, Defendants have failed to record all or some of the items delineated in
4 Industrial Wage Orders and Labor Code §226.

5 55. Plaintiff and Class Members have been injured by Defendants' actions by
6 rendering them unaware of the full compensation to which they were entitled under applicable
7 provisions of the California Labor Code and applicable IWC Wage Orders.

8 56. Pursuant Labor Code §226, Plaintiff and Class Members are entitled up to a
9 maximum of \$4,000.00 each for record-keeping violations.

10 57. WHEREFORE, Plaintiff and the Class she seeks to represent request relief as
11 described herein and below.

12 **Sixth Cause of Action**
13 Violation of Unfair Competition Law
14 (Bus. & Prof. Code, §§ 17200-17208)
15 (Against All Defendants)

16 58. Plaintiff repeats and incorporates herein by reference each and every allegation set
17 forth above, as though fully set forth herein.

18 59. Business & Professions Code Section 17200 provides:

19 As used in this chapter, unfair competition shall mean and include any *unlawful*,
20 *unfair* or fraudulent business act or practice and unfair, deceptive, untrue or
21 misleading advertising and any act prohibited by Chapter 1 (commencing with
22 Section 17500) of Part 3 of Division 7 of the Business and Professions Code.)
(Emphasis added.)

23 60. Defendants' violations of the Labor Code and Wage Order provisions set forth
24 above constitute unlawful and/or unfair business acts or practices.

25 61. The actions of Defendants, as alleged within this Complaint, constitute false,
26 fraudulent, unlawful, unfair, fraudulent and deceptive business practices, within the meaning of
27 Business and Professions Code section 17200, *et seq.*

28 62. Plaintiff and Class Members have been personally aggrieved by Defendants'
unlawful and unfair business acts and practices alleged herein.

