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12 SUPERIOR COURT OF THE STATE OF CALIFORNIA

13 FOR THE COUNTY OF CONTRA COSTA

C19-00662

15 MICHELLE DAVIS, KELSEY NELSON-
16 STARK, and MARIE RILEY, as aggrieved
17 employees pursuant to the Private Attorneys
18 General Act ("PAGA"), on behalf of the
19 State on California and other aggrieved
20 employees,

19 Plaintiffs,

20 vs.

21 PETSMAART, INC., a Delaware
22 corporation; and DOES 1 through 10,
23 inclusive.

23 Defendants.

Case No.:

COMPLAINT - PAGA ENFORCEMENT ACTION

- (1) Claim for Civil Penalties Pursuant to PAGA § 2699 for Violations of California Labor Code and Wage Order 7-2001, Section 14(A); and
- (2) Claim for Civil Penalties Pursuant to PAGA § 2699 for Violations of California Labor Code and Wage Order 7-2001, Section 14(B).

Jury Trial Demanded

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1 Plaintiffs Michelle Davis, Kelsey Nelson-Stark, and Marie Riley, as aggrieved
2 employees and on behalf of the State of California and all other aggrieved employees, allege
3 as follows:

4 JURISDICTION AND VENUE

5 1. This is an enforcement action under the Labor Code Private Attorneys General
6 Act of 2004, California Labor Code section 2698 *et seq.* ("PAGA") to recover civil penalties
7 on behalf of Plaintiffs, the State of California, and other current and former employees who
8 worked for Defendants in California as non-exempt, hourly-paid Retail Sales Associates,
9 Cashiers, Retail Store Managers, Assistant Store Managers, Loss Prevention
10 Representatives/Exit Security, or other positions assigned cashier, greeter, or entrance/exit
11 security duties in a California retail store location (excluding Salon Leaders, Pet Stylists,
12 Stylists in Training, Bathers, PetsHotels workers) and who suffered violations of 7-2001
13 Wage Order Section 14(A) and/or (B) as set forth in this complaint at any time between one
14 year prior to the filing of the pre-filing written notice to the Labor and Workforce
15 Development Agency ("LWDA") in this case on January 18, 2019, until judgment ("non-party
16 Aggrieved Employees"). Plaintiffs' share of civil penalties sought in this action does not
17 exceed \$75,000.

18 2. This Court has jurisdiction over this action pursuant to the California
19 Constitution, Article VI, section 10. The overall amount in controversy exceeds \$ 25,000.
20 The statute under which this action is brought does not specify any other basis for jurisdiction.

21 3. This Court has jurisdiction over all Defendants because, on information and
22 belief, Defendants are either citizens of California, have sufficient minimum contacts in
23 California, and otherwise intentionally avail themselves of the California market so as to
24 render the exercise of jurisdiction over them by the California courts consistent with
25 traditional notions of fair play and substantial justice. Also, the Plaintiffs and all other
26 aggrieved employees were employed by Defendants in California.

27 4. There is no basis for federal diversity jurisdiction in this action given that the
28 State of California, as the real party in interest in this action, is not a "citizen" for purposes of

1 satisfying diversity jurisdiction. *Urbino v. Orkin Servs. of Cal.*, 726 F.3d 1118, 1123 (9th Cir.
2 Cal. 2013). *Urbino* also holds that civil penalties cannot be aggregated to satisfy the amount
3 in controversy requirement for federal diversity jurisdiction in this action, and that diversity
4 jurisdiction cannot be established when Plaintiffs' share of the civil penalties attributable to
5 violations personally suffered are less than \$75,000. *Id.* at 1122.

6 5. Venue is proper in this Court because Defendants employ persons within the
7 County of Contra Costa and have violated the seating requirements of the applicable Wage
8 Order in this county which give rise to the civil penalties sought in this action. Cal. Code Civ.
9 P. § 393. Specifically, Defendants have violated the seating requirements at least one store
10 within the County of Contra Costa, including Defendants' store at 1380 Fitzgerald Drive,
11 Pinole, California 94564. Pursuant to California Civil Code of Procedure section 393, venue
12 is proper for the recovery of a penalty imposed by statute in the county in which the cause, or
13 some part of the cause, arose. Because Defendants have employees in Contra Costa County
14 and the State of California could bring this action to recover penalties in Contra Costa County,
15 venue is proper. *Id.*

16 6. Further, venue is proper in this Court because Defendants are non-California
17 citizens and have their principal place of business in Arizona, and because they have not filed
18 a statement with the California Secretary of State designating a county in which they maintain
19 a principal place of business in accordance with California Corporations Code sections 16959
20 and 18200. Cal. Code Civ. P. § 395.2. Thus, Defendants have no right to any particular
21 venue and Plaintiffs may file this complaint in any county in California. *See Juneau Spruce*
22 *Corp. v. International Longshoremen's & Warehousemen's Union*, 37 Cal.2d 760, 763-764
23 (1951); *see also, Easton v. Sup.Ct. (Schneider Bros., Inc.)*, 12 Cal. App. 3d 243, 246-247
24 (1970). Cal. Code Civ. P. § 395.5.

25 7. California Labor Code sections 2698 *et seq.*, the "Labor Code Private Attorneys
26 General Act of 2004" ("PAGA"), authorize aggrieved employees to sue as private attorneys
27 general their current or former employers for various civil penalties for violations of various
28 provisions in the California Labor Code. Labor Code section 1198 makes a violation of a

1 Wage Order such as Section 14(A) or 14(B) a violation of the Labor Code.

2 **THE PARTIES**

3 8. Plaintiff Michelle Davis worked for Defendants as an hourly-paid, non-exempt
4 employee from approximately February 2014 to August 2015, and again from November 2017
5 to November 2018. Plaintiff Davis worked for Defendants as a Cashier at their Petsmart retail
6 store in Fresno, California. During her employment, Plaintiff Davis typically worked four (4)
7 to eight (8) hours a day, four (4) to five (5) days per week. Plaintiff Davis's job duties as a
8 Cashier included operating the cash register, bagging items, processing returns and exchanges,
9 and providing customer service.

10 9. Plaintiff Kelsey Nelson-Stark worked for Defendants as an hourly-paid, non-
11 exempt employee from approximately June 2018 to November 2018. Plaintiff Nelson-Stark
12 worked for Defendants as a Retail Sales Associate at their Petsmart retail store in Santa Maria,
13 California. During her employment, Plaintiff Nelson-Stark typically worked four (4) or more
14 hours a day, three (3) days per week. Plaintiff Nelson-Stark's job duties as a Retail Sales
15 Associate included assisting customers on the sales floor and operating the cash register.

16 10. Plaintiff Marie Riley worked for Defendants as an hourly-paid, non-exempt
17 employee from approximately August 2016 to May 2018. Plaintiff Riley worked for
18 Defendants as a Retail Sales Associate at their Petsmart retail store in Stevenson Ranch,
19 California. During her employment, Plaintiff Riley typically worked six (6) or more hours a
20 day, three (3) to four (4) days per week. Plaintiff Riley's job duties as a Retail Sales Associate
21 included assisting customers on the sales floor and operating the cash register.

22 11. Defendant PETSMART, INC., was and is, upon information and belief, a
23 Delaware corporation doing business in California, and at all times hereinafter mentioned, an
24 employer whose employees are engaged throughout this county, the State of California, or the
25 various states of the United States of America.

26 12. Plaintiffs are unaware of the true names or capacities of the Defendants sued
27 herein under the fictitious names DOES 1 through 10, but will seek leave of this Court to
28 amend the complaint and serve such fictitiously named Defendants once their names and

1 capacities become known.

2 13. Plaintiffs are informed and believe, and thereon allege, that DOES 1 through 10
3 are the partners, agents, owners, shareholders, managers, or employees of PETSMART, INC.,
4 at all relevant times.

5 14. Plaintiffs are informed and believe, and thereon allege, that each and all of the
6 acts and omissions alleged herein was performed by, or is attributable to, PETSMART, INC.
7 and/or DOES 1 through 10 (collectively "Defendants" or "PETSMART"), each acting as the
8 agent, employee, alter ego, and/or joint venturer of, or working in concert with, each of the
9 other co-Defendants and was acting within the course and scope of such agency, employment,
10 joint venture, or concerted activity with legal authority to act on the others' behalf. The acts
11 of any and all Defendants were in accordance with, and represent, the official policy of
12 Defendants.

13 15. At all relevant times, Defendants, and each of them, ratified each and every act
14 or omission complained of herein. At all relevant times, Defendants, and each of them, aided
15 and abetted the acts and omissions of each and all the other Defendants in proximately causing
16 the damages herein alleged.

17 16. Plaintiffs are informed and believe, and thereon allege, that each of said
18 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,
19 omissions, occurrences, and transactions alleged herein.

20 **PAGA REPRESENTATIVE ALLEGATIONS**

21 17. Defendants own and operate a chain of pet supply and service retail stores
22 throughout North America. Defendants operate approximately 1500 retail locations in North
23 America, including approximately 170 locations in California.

24 18. On information and belief, Defendants maintain their corporate headquarters in
25 Phoenix, Arizona, with operations in the United States based out of Phoenix, Arizona. Upon
26 information and belief, Defendants maintain a single, centralized Human Resources
27 department in Phoenix, Arizona, which is responsible for conducting Defendants' recruiting
28 and hiring of new employees, as well as communicating and implementing Defendants'

1 company-wide policies to employees throughout California.

2 19. In particular, on information and belief, Plaintiffs and other non-party
3 Aggrieved Employees received the same standardized documents and/or written policies.
4 Upon information and belief, the usage of standardized documents and/or written policies,
5 indicate that Defendants dictated policies at the corporate level and implemented them
6 company-wide, regardless of their employees' assigned locations or positions. Upon
7 information and belief, Defendants maintained uniform practices with respect to its provision
8 of seats (or lack thereof) in its retail stores for all non-exempt, hourly-paid employees in
9 California, including Plaintiffs and non-party Aggrieved Employees.

10 20. Plaintiffs allege that Defendants' California retail stores are generally similar in
11 their layout and design and that there was and continues to be ample space near each cash
12 wrap and near each store entrance/exit to allow for the presence and use of a seat or stool by
13 Plaintiffs and other non-party Aggrieved Employees during the performance of their work
14 duties.

15 21. Plaintiffs and other non-party Aggrieved Employees have spent a substantial
16 portion of their day behind Defendants' cash wraps or near store entrances/exits. The nature
17 of the work of an employee performing cashier duties, greeting customers, and/or performing
18 exit security duties can reasonably be accomplished from a seated position. However, as set
19 forth herein, Defendants have not provided and do not provide Retail Sales Associates,
20 Cashiers, Retail Store Managers, Assistant Store Managers, Loss Prevention
21 Representatives/Exit Security, or other positions assigned cashier, greeter, or exit security
22 duties, including Plaintiffs and other non-party Aggrieved Employees, with seats or stools at
23 or near their cash wraps or store entrances/exits.

24 22. Defendants continue to employ non-exempt or hourly-paid Retail Sales
25 Associates, Cashiers, Retail Store Managers, Assistant Store Managers, Loss Prevention
26 Representatives/Exit Security, or other positions assigned cashier, greeter, or entrance/exit
27 security duties at retail store locations throughout California.

28 23. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or

1 should have known that Plaintiffs and other non-party Aggrieved Employees were entitled to
2 suitable seating and/or were entitled to sit when it did not interfere with the performance of
3 their register, greeter, or exit security duties and also have seats nearby to use during a lull in
4 tasks that do require moving about or standing.

5 24. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
6 should have known that Plaintiffs and other non-party Aggrieved Employees were entitled to
7 have seats in reasonable proximity to their work area and be permitted to use such seats when
8 it does not interfere with the performance of their duties during a lull in tasks that do require
9 moving about or standing.

10 25. At all times herein set forth, PAGA provides that any provision of law under
11 the Labor Code and applicable IWC Wage Order that provides for a civil penalty to be
12 assessed and collected by the LWDA for violations of the California Labor Code and
13 applicable IWC Wage Order may, as an alternative, be recovered by aggrieved employees in a
14 civil action brought on behalf of themselves and other current or former employees pursuant
15 to procedures outlined in California Labor Code section 2699.3.

16 26. PAGA defines an "aggrieved employee" in Labor Code section 2699(c) as "any
17 person who was employed by the alleged violator and against whom one or more of the
18 alleged violations was committed."

19 27. Plaintiffs and other current and former California employees of Defendants are
20 "aggrieved employees" as defined by Labor Code section 2699(c) in that they are all
21 Defendants' current or former California employees who experienced violations of 7-2001
22 Wage Order, Section 14(A) and 14(B).

23 28. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved
24 employee, including Plaintiffs, may pursue a civil action arising under PAGA after the
25 following requirements have been met:

- 26 (a) The aggrieved employee or representative shall give written notice by
27 online filing with the LWDA and by certified mail to the employer of
28 the specific provisions of the California Labor Code alleged to have

1 been violated, including the facts and theories to support the alleged
2 violation.

3 **(b)** An aggrieved employee's notice filed with the LWDA pursuant to
4 2699.3(a) and any employer response to that notice shall be
5 accompanied by a filing fee of seventy-five dollars (\$75).

6 **(c)** The LWDA shall notify the employer and the aggrieved employee or
7 representative by certified mail that it does not intend to investigate the
8 alleged violation ("LWDA's Notice") within sixty (60) calendar days of
9 the postmark date of the aggrieved employee's notice. Upon receipt of
10 the LWDA Notice, or if no LWDA Notice is provided within sixty-five
11 (65) calendar days of the postmark date of the aggrieved employee's
12 notice, the aggrieved employee may commence a civil action pursuant
13 to California Labor Code section 2699 to recover civil penalties.

14 29. Pursuant to California Labor Code sections 2699.3(c), aggrieved employees,
15 through Plaintiffs, may pursue a civil action arising under the PAGA for violations of any
16 provision other than those listed in Section 2699.5 after the following requirements have been
17 met:

18 **(a)** The aggrieved employee or representative shall give written notice by
19 online filing with the LWDA and by certified mail to the employer of
20 the specific provisions of the California Labor Code alleged to have
21 been violated (other than those listed in Section 2699.5), including the
22 facts and theories to support the alleged violation.

23 **(b)** An aggrieved employee's notice filed with the LWDA pursuant to
24 2699.3(c) and any employer response to that notice shall be
25 accompanied by a filing fee of seventy-five dollars (\$75).

26 **(c)** The employer may cure the alleged violation within thirty-three (33)
27 calendar days of the postmark date of the notice sent by the aggrieved
28 employee or representative. The employer shall give written notice

1 within that period of time by certified mail to the aggrieved employee or
2 representative and by online filing with the LWDA if the alleged
3 violation is cured, including a description of actions taken, and no civil
4 action pursuant to Section 2699 may commence. If the alleged violation
5 is not cured within the 33-day period, the aggrieved employee may
6 commence a civil action pursuant to Section 2699.

7 30. On January 22, 2019, Plaintiff Davis provided written notice by online filing to
8 the LWDA and by Certified Mail to Defendants of the specific provisions of the California
9 Labor Code alleged to have been violated, including facts and theories to support the alleged
10 violations, in accordance with California Labor Code section 2699.3. Plaintiff Davis's written
11 notice was accompanied with the applicable filing fees of seventy-five dollars (\$75). That
12 same day, the LWDA PAGA Administrator confirmed receipt of Plaintiff Riley's written
13 notices and assigned Plaintiff Davis PAGA Case Number LWDA-CM-658394-19. A true and
14 correct copy of Plaintiff Davis's written notice to the LWDA and Defendants dated January
15 22, 2019, is attached hereto as "Exhibit 1."

16 31. On January 18, 2019, Plaintiff Nelson-Stark provided written notice by online
17 filing to the LWDA and by Certified Mail to Defendants of the specific provisions of the
18 California Labor Code alleged to have been violated, including facts and theories to support
19 the alleged violations, in accordance with California Labor Code section 2699.3. Plaintiff
20 Nelson-Stark's written notice was accompanied with the applicable filing fees of seventy-five
21 dollars (\$75). That same day, the LWDA PAGA Administrator confirmed receipt of Plaintiff
22 Nelson-Stark's written notices and assigned Plaintiff Nelson-Stark PAGA Case Number
23 LWDA-CM-657559-19. A true and correct copy of Plaintiff Nelson-Stark's written notice to
24 the LWDA and Defendants dated January 18, 2019, is attached hereto as "Exhibit 2."

25 32. On January 22, 2019, Plaintiff Riley provided written notice by online filing to
26 the LWDA and by Certified Mail to Defendants of the specific provisions of the California
27 Labor Code alleged to have been violated, including facts and theories to support the alleged
28 violations, in accordance with California Labor Code section 2699.3. Plaintiff Riley's written

1 notice was accompanied with the applicable filing fees of seventy-five dollars (\$75). That
2 same day, the LWDA PAGA Administrator confirmed receipt of Plaintiff Riley's written
3 notices and assigned Plaintiff Riley PAGA Case Number LWDA-CM-658396-19. A true and
4 correct copy of Plaintiff Riley's written notice to the LWDA and Defendants dated January
5 22, 2019, is attached hereto as "Exhibit 3."

6 33. As of the filing date of this complaint, over 65 days have passed since Plaintiffs
7 sent their initial notices described above to the LWDA, and the LWDA has not responded that
8 it intends to investigate Plaintiffs' claims and Defendants have not cured the violations.

9 34. Thus, Plaintiffs have satisfied the administrative prerequisites under California
10 Labor Code section 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
11 violations of California Labor Code section 1198.

12 35. Defendants, at all times relevant to this complaint, were employers or persons
13 acting on behalf of an employer(s) who violated Plaintiffs' and other non-party Aggrieved
14 Employees' rights by violating sections of the California Labor Code as set forth above.

15 36. As set forth below, Defendants have violated provisions of both the Labor Code
16 sections regulating hours and days of work as well as the applicable IWC Wage Order,
17 specifically, Labor Code section 1198 and California Code of Regulations, Title 8, section
18 11070(14)(A)-(B).

19 37. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a),
20 2699.3(a), 2699.3(c), and 2699.5, Plaintiffs, acting in the public interest as private attorneys
21 general, seek assessment and collection of civil penalties for themselves, all other non-party
22 Aggrieved Employees, and the State of California against Defendants for violations of
23 California Labor Code section 1198.

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FIRST CAUSE OF ACTION
FAILURE TO PROVIDE SUITABLE SEATING
VIOLATION OF LABOR CODE SECTION 1198 AND CALIFORNIA CODE OF
REGULATIONS, TITLE 8, SECTION 11070(14)(A)

(By Plaintiffs on Behalf of the State of California and Aggrieved Employees Against all Defendants)

38. Plaintiffs incorporate by reference and re-allege as if fully stated herein each and every allegation set forth above.

39. California Labor Code §§ 2698, *et seq.* (“PAGA”) permits Plaintiffs to recover civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code section 2699.5. Section 2699.5 enumerates Labor Code section 1198, among others. Defendants’ conduct, as alleged herein, violates section 1198 of the California Labor Code, by failing to provide suitable seating to Plaintiffs and other non-party Aggrieved Employees as set forth below.

40. At all relevant times herein, California Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. California Labor Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.”

41. California Code of Regulations, Title 8, section 11070(14)(A) provides that “[a]ll working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats.”

42. During the relevant time period, Defendants violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11070(14)(A), because Plaintiffs and other non-party Aggrieved Employees were not allowed to sit, even when the nature of their work would reasonably permit the use of seats, nor were they provided with suitable seats. As Retail Sales Associates, Cashiers, Retail Store Managers, Assistant Store

1 Managers, Loss Prevention Representatives/Exit Security, or other positions assigned cashier,
2 greeter, or entrance/exit security duties, a substantial amount of Plaintiffs' and other non-party
3 Aggrieved Employees' tasks could have been performed from a seated position at their cash
4 wraps or registers and near store entrances/exits. Plaintiffs and other non-party Aggrieved
5 Employees could have handled transactions at the cash register and provided customer service
6 and/or could have greeted customers and performed entrance/exit security duties, all while
7 seated without interference in their ability to perform those duties.

8 43. Defendants could have placed seats or stools at cash wraps and store
9 entrances/exits for use by Plaintiffs and other non-party Aggrieved Employees while assigned
10 to the register, greeter, or entrance/exit security positions. However, on a company-wide
11 basis, Defendants did not provide seats or stools at cash wraps or store entrances/exits. For
12 example, when Plaintiffs were assigned to work at the cash registers, they were required to
13 stand the entire time because Defendants did not provide seats or stools at cash registers.
14 Other non-party Aggrieved Employees similarly are not permitted to sit while performing
15 register, greeter, or entrance/exit security duties, because Defendants do not provide seats or
16 stools at cash wraps or store entrances/exits.

17 44. As a result of Defendants' company-wide policy and/or practice prohibiting
18 Retail Sales Associates, Cashiers, Retail Store Managers, Assistant Store Managers, Loss
19 Prevention Representatives/Exit Security, or other positions assigned cashier, greeter, or
20 entrance/exit security duties from sitting during their shifts and failure to provide suitable
21 seating to these employees, Plaintiffs and other non-party Aggrieved Employees were forced
22 to stand during shifts and denied seats. Defendants' failure to provide suitable seating to
23 Plaintiffs and other non-party Aggrieved Employees violated and continues to violate
24 California Labor Code section 1198 and IWC Wage Order 7-2001, Section 14(A).

25 45. Plaintiffs and other non-party Aggrieved Employees and the State of California
26 are therefore entitled to recover civil penalties pursuant to Labor Code section 2699(a), (f),
27 and (g).

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SECOND CAUSE OF ACTION
FAILURE TO PROVIDE SUITABLE SEATING
VIOLATION OF LABOR CODE SECTION 1198 AND CALIFORNIA CODE OF
REGULATIONS, TITLE 8, SECTION 11070(14)(B)

(By Plaintiffs on Behalf of the State of California and Aggrieved Employees Against all Defendants)

46. Plaintiffs incorporate by reference and re-allege as if fully stated herein each and every allegation set forth above.

47. California Labor Code §§ 2698, *et seq.* ("PAGA") permits Plaintiffs to recover civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code section 2699.5. Section 2699.5 enumerates Labor Code section 1198, among others. Defendants' conduct, as alleged herein, violates section 1198 of the California Labor Code, by failing to provide suitable seating to Plaintiffs and other non-party Aggrieved Employees as set forth below.

48. At all relevant times herein, California Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. California Labor Code section 1198 requires that ". . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful."

49. California Code of Regulations, Title 8, section 11070(14)(B) provides that "[w]hen employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties."

50. During the relevant time period, Defendants violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11070(14)(B), because Plaintiffs and other non-party Aggrieved Employees were not allowed to sit, even during lulls

1 in their work duties, nor were they provided with suitable seats in reasonable proximity to
2 their work areas.

3 51. Defendants did not provide Plaintiffs and other non-party Aggrieved
4 Employees with seats or stools in reasonable proximity to their work to allow them to use
5 seats when it would not interfere with the performance of their duties for times when they
6 were not engaged in active duties that require standing. In other words, to the extent Plaintiffs
7 and other non-party Aggrieved Employees engaged in duties in which the nature of the work
8 required standing, Defendants denied them the use of seats nearby when they were not
9 engaged in those duties. Even though the layout of Defendants' workplaces could
10 accommodate seats or stools, Defendants have, on a company-wide basis, denied Plaintiffs
11 and other non-party Aggrieved Employees suitable seating altogether.

12 52. As a result of Defendants' company-wide policy and/or practice prohibiting
13 Retail Sales Associates, Cashiers, Retail Store Managers, Assistant Store Managers, Loss
14 Prevention Representatives/Exit Security, or other positions assigned cashier, greeter, or
15 entrance/exit security duties from sitting at any time, even when they were not engaged in
16 active duties requiring standing, and company-wide failure to provide seats in reasonable
17 proximity to their work areas, Plaintiffs and other non-party Aggrieved Employees were
18 forced to stand during shifts and denied seats. Defendants' failure to provide suitable seating
19 to Plaintiffs and other non-party Aggrieved Employees violated and continues to violate
20 California Labor Code section 1198 and IWC Wage Order 7-2001, Section 14((B).

21 53. Plaintiffs and other non-party Aggrieved Employees and the State of California
22 are therefore entitled to recover civil penalties pursuant to Labor Code section 2699(a), (f),
23 and (g).

24 **REQUEST FOR JURY TRIAL**

25 Plaintiffs request a trial by jury.

26 **PRAYER FOR RELIEF**

27 Plaintiffs, on behalf of the State of California and all other non-party Aggrieved
28 Employees, pray for relief and judgment against Defendants, jointly and severally, as follows:

1 1. For civil penalties and attorneys’ fees in excess of twenty-five thousand dollars
2 (\$25,000) to the State of California and aggrieved employees.

3 **As to the First Cause of Action**

4 2. That the Court declare, adjudge and decree that Defendants violated California
5 Labor Code section 1198 and IWC 7-2001 Wage Order, Section 14(A) as to Plaintiffs and
6 other non-party Aggrieved Employees (by failing to provide suitable seating);

7 3. For civil penalties pursuant to California Labor Code sections 2699(a), (f)-(g)
8 for violations of California Labor Code section 1198;

9 4. For attorneys’ fees and costs pursuant to California Labor Code section
10 2699(g)(1), and any and all other relevant statutes, for Defendant’ violations of California
11 Labor Code section 1198;

12 5. For pre-judgment and post-judgment interest as provided by law; and

13 6. For such other and further relief as the Court may deem equitable and
14 appropriate.

15 **As to the Second Cause of Action**

16 7. That the Court declare, adjudge and decree that Defendants violated California
17 Labor Code section 1198 and IWC 7-2001 Wage Order, Section 14(B) as to Plaintiffs and
18 other non-party Aggrieved Employees (by failing to provide suitable seating);

19 8. For civil penalties pursuant to California Labor Code sections 2699(a), (f)-(g)
20 for violations of California Labor Code section 1198;

21 9. For attorneys’ fees and costs pursuant to California Labor Code section
22 2699(g)(1), and any and all other relevant statutes, for Defendant’ violations of California
23 Labor Code section 1198;

24 10. For pre-judgment and post-judgment interest as provided by law; and

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11. For such other and further relief as the Court may deem equitable and appropriate.

Dated: March 29, 2019

Respectfully submitted,
Capstone Law APC

By: 

Arnab Banerjee
Brandon Brouillette

Attorneys for Plaintiffs Michelle Davis, Kelsey Nelson-Stark, and Marie Riley

EXHIBIT 1

BROOKE WALDROP
310.712.8033 Direct
Brooke.Waldrop@capstonelawyers.com

January 22, 2019

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
(<https://dir.tfaforms.net/198>)

Subject: *Michelle Davis v. PetSmart, Inc.*

Dear PAGA Administrator:

This office represents Michelle Davis in connection with her claims under the California Labor Code, and this letter is sent in compliance with the notice requirements of the California Labor Code Private Attorneys General Act, California Labor Code section 2699.3. Ms. Davis was an employee of PetSmart, Inc. ("PETSMART").

The employer may be contacted directly at the address below:

PETSMART, INC.
19601 N. 27TH AVENUE
PHOENIX AZ 85027

Ms. Davis intends to seek civil penalties, attorney's fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 ("PAGA"). Ms. Davis seeks relief on behalf of herself, the State of California, and other persons who are or were employed by PETSMART as a non-exempt, hourly-paid Retail Sales Associate, Cashier, Retail Store Manager, Assistant Store Manager, Loss Prevention Representative/Exit Security, or other position assigned cashier, greeter, or entrance/exit security duties in a California retail store location ("aggrieved employees"). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

PETSMART employed Ms. Davis as an hourly-paid, non-exempt employee from approximately February 2014 to August 2015, and the again from November 2017 to November 2018. Ms. Davis first worked as a Pet Care Associate, and then as a Cashier at PETSMART Store #0082 in Fresno, California. Ms. Davis typically worked four (4) to eight (8) hours per day and four (4) to five (5) days per week. Ms. Davis's job duties as a Cashier included ringing up customer purchases at the cash register, bagging items, and processing returns and exchanges.

PETSMART committed one or more of the following Labor Code violations against Ms. Davis, the facts and theories of which follow, making her an “aggrieved employee” pursuant to California Labor Code section 2699(c).¹ Ms. Davis’s relevant claims are as follows:

PETSMART’s Company-Wide and Uniform HR Practices

PETSMART owns and operates a chain of pet supply and service retail stores throughout North America. PETSMART operates approximately 1,500 retail locations in North America, including approximately 170 locations in California. PETSMART, INC. is Delaware corporation with its headquarters in Phoenix, Arizona. Upon information and belief, PETSMART maintains a centralized Human Resources (HR) department at their corporate headquarters in Phoenix, Arizona, for all non-exempt, hourly-paid employees working for PETSMART at retail stores in California, including Ms. Davis and other aggrieved employees. PETSMART maintained uniform practices with respect to its provision of seats (or lack thereof) in its retail stores for all non-exempt, hourly-paid employees in California, including Ms. Davis and other aggrieved employees, regardless of their location or position.

Violation of California Labor Code § 1198

California Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. California Labor Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.” California Code of Regulations, Title 8, section 11070(14)(A) provides that “[a]ll working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats.” California Code of Regulations, Title 8, section 11070(14)(B) provides that “[w]hen employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.”

“The ‘nature of the work’ refers to an employee’s tasks performed at a given location for which a right to a suitable seat is claimed, rather than a ‘holistic’ consideration of the entire range of an employee’s duties anywhere on the jobsite during a complete shift. If the tasks being performed at a given location reasonably permit sitting, and provision of a seat would not interfere with performance of any other tasks that may require standing, a seat is called for.” *Kilby v. CVS Pharmacy, Inc.*, 368 P.3d 554, 558 (Cal. 2016). “Whether the nature of the work reasonably permits sitting is a question to be determined objectively based on the totality of the circumstances. An employer’s business judgment and the physical layout of the workplace are relevant but not dispositive factors. The inquiry focuses on the nature of the work, not an individual employee’s characteristics.” *Id.* The

¹ These facts, theories, and claims are based on Ms. Davis’s experience and counsel’s review of those records currently available relating to Ms. Davis’s employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional claims that the aggrieved employee was not initially aware of (because the aggrieved employee was not aware of the law’s requirements, the employer misinformed its employee of the law’s requirements, or because the employer effectively hid the violations). Thus, Ms. Davis reserves the right to supplement this letter with additional facts, theories, and claims if she becomes aware of them subsequent to the submission of this letter.

burden of proof to show suitable seating is not available is on the employer. *Id.* at 568. In other words, the employer must show that compliance is “infeasible because no suitable seating exists.” *See id.*

PETSMART’s California retail stores are generally similar in their layout and design and there was and continues to be ample space behind each cash wrap and near each entrance/exit to allow for the presence and use of a seat or stool by Ms. Davis and other aggrieved employees during the performance of their work duties. PETSMART could provide aggrieved employees with a seat or stool at store entrances/exits and cash wraps, but instead denies them seating and forces aggrieved employees to stand throughout the day.

Ms. Davis and other aggrieved employees spent a substantial portion of their day behind these cash wraps and/or by the store entrances/exits. The nature of the work of an employee performing cashier duties, greeting customers, and/or exit security duties can reasonably be accomplished from a seated position. However, PETSMART systematically, and on a company-wide basis, does not provide seats or stools at or near each cash register or at entrances/exits, forcing employees, including Ms. Davis and other aggrieved employees, to stand throughout their work shifts.

PETSMART violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11070(14)(A)-(B) because Ms. Davis and other aggrieved employees were not allowed to sit, even when it would not have interfered with the performance of their duties, nor were they provided with suitable seats. A substantial portion of Ms. Davis’s and other aggrieved employees’ duties were performed from and connected to a cash wrap and/or store entrance/exit and could have been performed from a seated position. Ms. Davis and other aggrieved employees could have handled transactions at the cash register and provided customer service, and/or could have greeted customers and performed exit security duties, all while seated without interference in their ability to complete these duties. Throughout her employment, when Ms. Davis was handling transactions at a cash register, she was required to stand the entire time because PETSMART did not provide seats or stools in its retail stores, including behind the cash register.

In addition, PETSMART did not provide Ms. Davis and other aggrieved employees with seats or stools in reasonable proximity to PETSMART store entrances/exits and cash wraps to allow them to use seats when it would not interfere with the performance of their duties for times when they were not engaged in active duties that require standing. In other words, to the extent Ms. Davis and other aggrieved employees engaged in duties in which the nature of the work required standing, PETSMART denied them the use of seats nearby during lulls in their work duties. Even though the layout of areas adjacent to store entrances/exits and cash wraps could accommodate seats or stools, PETSMART has, on a company-wide basis, denied Ms. Davis and other aggrieved employees suitable seating altogether.

Moreover, PETSMART did not inform Ms. Davis and other aggrieved employees of their rights to a seat or stool under California law. As a result of PETSMART’s company-wide policy and/or practice of prohibiting aggrieved employees from sitting at any time, even when they were not engaged in active duties requiring standing, and company-wide failure to provide seats in reasonable proximity to their work areas, Ms. Davis and other aggrieved employees were forced to stand during shifts and denied seats. PETSMART’s failure to provide suitable seating to Ms. Davis and other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order 7-2001, Section 14(A)-(B).

Ms. Davis and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code section 2699(a), (f)-(g). Ms. Davis, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for herself, all other aggrieved employees, and the State of California against PETSMART for violations of California Labor Code section 1198.

Therefore, on behalf of all aggrieved employees, Ms. Davis seeks all applicable penalties related to these violations of the California Labor Code pursuant to PAGA.

Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Brooke Waldrop
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, CA 90067
(310) 712-8033

Best Regards,

A handwritten signature in black ink, appearing to read "B. Waldrop", written in a cursive style.

Brooke Waldrop

Copy: PETSMART, INC. (via U.S. Certified Mail)

EXHIBIT 2

ROBIN HALL
310.712.8023 Direct
Robin.Hall@capstonelawyers.com

January 18, 2019

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
(<https://dir.tfaforms.net/198>)

Subject: *Kelsey Nelson-Stark v. PetSmart, Inc.*

Dear PAGA Administrator:

This office represents Kelsey Nelson-Stark in connection with her claims under the California Labor Code, and this letter is sent in compliance with the notice requirements of the California Labor Code Private Attorneys General Act, California Labor Code section 2699.3. Ms. Nelson-Stark was an employee of PetSmart, Inc. ("PETSMART").

The employer may be contacted directly at the address below:

PETSMART, INC.
19601 N. 27TH AVENUE
PHOENIX AZ 85027

Ms. Nelson-Stark intends to seek civil penalties, attorney's fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 ("PAGA"). Ms. Nelson-Stark seeks relief on behalf of herself, the State of California, and other persons who are or were employed by PETSMART as a non-exempt, hourly-paid Retail Sales Associate, Cashier, Retail Store Manager, Assistant Store Manager, Loss Prevention Representative/Exit Security, or other position assigned cashier, greeter, or entrance/exit security duties in a California retail store location ("aggrieved employees"). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

PETSMART employed Ms. Nelson-Stark as an hourly-paid, non-exempt employee from approximately June 2018 to November 2018. Ms. Nelson-Stark worked as a Retail Sales Associate at PETSMART Store #0076 in Santa Maria, California. Ms. Nelson-Stark typically worked four (4) or more hours per day and three (3) days per week. Ms. Nelson-Stark's job duties as a Retail Sales Associate included assisting customers on the sales floor and ringing up customer purchases at the cash register.

PETSMART committed one or more of the following Labor Code violations against Ms. Nelson-Stark, the facts and theories of which follow, making her an “aggrieved employee” pursuant to California Labor Code section 2699(c).¹ Ms. Nelson-Stark’s relevant claims are as follows:

PETSMART’s Company-Wide and Uniform HR Practices

PETSMART owns and operates a chain of pet supply and service retail stores throughout North America. PETSMART operates approximately 1,500 retail locations in North America, including approximately 170 locations in California. PETSMART, INC. is Delaware corporation with its headquarters in Phoenix, Arizona. Upon information and belief, PETSMART maintains a centralized Human Resources (HR) department at their corporate headquarters in Phoenix, Arizona, for all non-exempt, hourly-paid employees working for PETSMART at retail stores in California, including Ms. Nelson-Stark and other aggrieved employees. PETSMART maintained uniform practices with respect to its provision of seats (or lack thereof) in its retail stores for all non-exempt, hourly-paid employees in California, including Ms. Nelson-Stark and other aggrieved employees, regardless of their location or position.

Violation of California Labor Code § 1198

California Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. California Labor Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.” California Code of Regulations, Title 8, section 11070(14)(A) provides that “[a]ll working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats.” California Code of Regulations, Title 8, section 11070(14)(B) provides that “[w]hen employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.”

“The ‘nature of the work’ refers to an employee’s tasks performed at a given location for which a right to a suitable seat is claimed, rather than a ‘holistic’ consideration of the entire range of an employee’s duties anywhere on the jobsite during a complete shift. If the tasks being performed at a given location reasonably permit sitting, and provision of a seat would not interfere with performance of any other tasks that may require standing, a seat is called for.” *Kilby v. CVS Pharmacy, Inc.*, 368 P.3d 554, 558 (Cal. 2016). “Whether the nature of the work reasonably permits sitting is a question to be determined objectively based on the totality of the circumstances. An employer’s business judgment and the physical layout of the workplace are relevant but not dispositive factors. The

¹ These facts, theories, and claims are based on Ms. Nelson-Stark’s experience and counsel’s review of those records currently available relating to Ms. Nelson-Stark’s employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional claims that the aggrieved employee was not initially aware of (because the aggrieved employee was not aware of the law’s requirements, the employer misinformed its employee of the law’s requirements, or because the employer effectively hid the violations). Thus, Ms. Nelson-Stark reserves the right to supplement this letter with additional facts, theories, and claims if she becomes aware of them subsequent to the submission of this letter.

inquiry focuses on the nature of the work, not an individual employee's characteristics.” *Id.* The burden of proof to show suitable seating is not available is on the employer. *Id.* at 568. In other words, the employer must show that compliance is “infeasible because no suitable seating exists.” *See id.*

PETSMART’s California retail stores are generally similar in their layout and design and there was and continues to be ample space behind each cash wrap and near each entrance/exit to allow for the presence and use of a seat or stool by Ms. Nelson-Stark and other aggrieved employees during the performance of their work duties. PETSMART could provide aggrieved employees with a seat or stool at store entrances/exits and cash wraps, but instead denies them seating and forces aggrieved employees to stand throughout the day.

Ms. Nelson-Stark and other aggrieved employees spent a substantial portion of their day behind these cash wraps and/or by the store entrances/exits. The nature of the work of an employee performing cashier duties, greeting customers, and/or exit security duties can reasonably be accomplished from a seated position. However, PETSMART systematically, and on a company-wide basis, does not provide seats or stools at or near each cash register or at entrances/exits, forcing employees, including Ms. Nelson-Stark and other aggrieved employees, to stand throughout their work shifts.

PETSMART violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11070(14)(A)-(B) because Ms. Nelson-Stark and other aggrieved employees were not allowed to sit, even when it would not have interfered with the performance of their duties, nor were they provided with suitable seats. A substantial portion of Ms. Nelson-Stark’s and other aggrieved employees’ duties were performed from and connected to a cash wrap and/or store entrance/exit and could have been performed from a seated position. Ms. Nelson-Stark and other aggrieved employees could have handled transactions at the cash register and provided customer service, and/or could have greeted customers and performed exit security duties, all while seated without interference in their ability to complete these duties. Throughout her employment, when Ms. Nelson-Stark was handling transactions at a cash register, she was required to stand the entire time because PETSMART did not provide seats or stools in its retail stores, including behind the cash register.

In addition, PETSMART did not provide Ms. Nelson-Stark and other aggrieved employees with seats or stools in reasonable proximity to PETSMART store entrances/exits and cash wraps to allow them to use seats when it would not interfere with the performance of their duties for times when they were not engaged in active duties that require standing. In other words, to the extent Ms. Nelson-Stark and other aggrieved employees engaged in duties in which the nature of the work required standing, PETSMART denied them the use of seats nearby during lulls in their work duties. Even though the layout of areas adjacent to store entrances/exits and cash wraps could accommodate seats or stools, PETSMART has, on a company-wide basis, denied Ms. Nelson-Stark and other aggrieved employees suitable seating altogether.

Moreover, PETSMART did not inform Ms. Nelson-Stark and other aggrieved employees of their rights to a seat or stool under California law. In fact, PETSMART’s management expressly instructed Ms. Nelson-Stark to stand at all times during her shift. As a result of PETSMART’s company-wide policy and/or practice of prohibiting aggrieved employees from sitting at any time, even when they were not engaged in active duties requiring standing, and company-wide failure to provide seats in reasonable proximity to their work areas, Ms. Nelson-Stark and other aggrieved employees were forced to stand during shifts and denied seats. PETSMART’s failure to provide

suitable seating to Ms. Nelson-Stark and other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order 7-2001, Section 14(A)-(B).

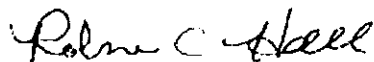
Ms. Nelson-Stark and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code section 2699(a), (f)-(g). Ms. Nelson-Stark, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for herself, all other aggrieved employees, and the State of California against PETSMART for violations of California Labor Code section 1198.

Therefore, on behalf of all aggrieved employees, Ms. Nelson-Stark seeks all applicable penalties related to these violations of the California Labor Code pursuant to PAGA.

Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Robin Hall
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, CA 90067
(310) 712-8023

Best Regards,



Robin Hall

Copy: PETSMART, INC. (via U.S. Certified Mail);

EXHIBIT 3

ROBIN HALL
310.712.8023 Direct
Robin.Hall@capstonelawyers.com

January 22, 2019

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
(<https://dir.tfaforms.net/198>)

Subject: *Marie Riley v. PetSmart, Inc.*

Dear PAGA Administrator:

This office represents Marie Riley in connection with her claims under the California Labor Code, and this letter is sent in compliance with the notice requirements of the California Labor Code Private Attorneys General Act, California Labor Code section 2699.3. Ms. Riley was an employee of PetSmart, Inc. ("PETSMART").

The employer may be contacted directly at the address below:

PETSMART, INC.
19601 N. 27TH AVENUE
PHOENIX AZ 85027

Ms. Riley intends to seek civil penalties, attorney's fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 ("PAGA"). Ms. Riley seeks relief on behalf of herself, the State of California, and other persons who are or were employed by PETSMART as a non-exempt, hourly-paid Retail Sales Associate, Cashier, Retail Store Manager, Assistant Store Manager, Loss Prevention Representative/Exit Security, or other position assigned cashier, greeter, or entrance/exit security duties in a California retail store location ("aggrieved employees"). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

PETSMART employed Ms. Riley as an hourly-paid, non-exempt employee from approximately August 2016 to May 2018. Ms. Riley worked as an associate at PETSMART Store #0100 located at 24965 Pico Canyon Road, Stevenson Ranch, California 91381. Ms. Riley typically worked six (6) or more hours per day, three (3) to four (4) days per week. Ms. Riley's job duties as an associate included assisting customers on the sales floor and ringing up customer purchases at the cash register.

PETSMART committed one or more of the following Labor Code violations against Ms. Riley, the facts and theories of which follow, making her an “aggrieved employee” pursuant to California Labor Code section 2699(c).¹ Ms. Riley’s relevant claims are as follows:

PETSMART’s Company-Wide and Uniform HR Practices

PETSMART owns and operates a chain of pet supply and service retail stores throughout North America. PETSMART operates approximately 1,500 retail locations in North America, including approximately 170 locations in California. PETSMART, INC. is Delaware corporation with its headquarters in Phoenix, Arizona. Upon information and belief, PETSMART maintains a centralized Human Resources (HR) department at their corporate headquarters in Phoenix, Arizona, for all non-exempt, hourly-paid employees working for PETSMART at retail stores in California, including Ms. Riley and other aggrieved employees. PETSMART maintained uniform practices with respect to its provision of seats (or lack thereof) in its retail stores for all non-exempt, hourly-paid employees in California, including Ms. Riley and other aggrieved employees, regardless of their location or position.

Violation of California Labor Code § 1198

California Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. California Labor Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.” California Code of Regulations, Title 8, section 11070(14)(A) provides that “[a]ll working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats.” California Code of Regulations, Title 8, section 11070(14)(B) provides that “[w]hen employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.”

“The ‘nature of the work’ refers to an employee’s tasks performed at a given location for which a right to a suitable seat is claimed, rather than a ‘holistic’ consideration of the entire range of an employee’s duties anywhere on the jobsite during a complete shift. If the tasks being performed at a given location reasonably permit sitting, and provision of a seat would not interfere with performance of any other tasks that may require standing, a seat is called for.” *Kilby v. CVS Pharmacy, Inc.*, 368 P.3d 554, 558 (Cal. 2016). “Whether the nature of the work reasonably permits sitting is a question to be determined objectively based on the totality of the circumstances. An employer’s business judgment and the physical layout of the workplace are relevant but not dispositive factors. The inquiry focuses on the nature of the work, not an individual employee’s characteristics.” *Id.* The burden of proof to show suitable seating is not available is on the employer. *Id.* at 568. In other

¹ These facts, theories, and claims are based on Ms. Riley’s experience and counsel’s review of those records currently available relating to Ms. Riley’s employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional claims that the aggrieved employee was not initially aware of (because the aggrieved employee was not aware of the law’s requirements, the employer misinformed its employee of the law’s requirements, or because the employer effectively hid the violations). Thus, Ms. Riley reserves the right to supplement this letter with additional facts, theories, and claims if she becomes aware of them subsequent to the submission of this letter.

words, the employer must show that compliance is “infeasible because no suitable seating exists.”
See id.

PETSMART’s California retail stores are generally similar in their layout and design and there was and continues to be ample space behind each cash wrap and near each entrance/exit to allow for the presence and use of a seat or stool by Ms. Riley and other aggrieved employees during the performance of their work duties. PETSMART could provide aggrieved employees with a seat or stool at store entrances/exits and cash wraps, but instead denies them seating and forces aggrieved employees to stand throughout the day.

Ms. Riley and other aggrieved employees spent a substantial portion of their day behind these cash wraps and/or by the store entrances/exits. The nature of the work of an employee performing cashier duties, greeting customers, and/or exit security duties can reasonably be accomplished from a seated position. However, PETSMART systematically, and on a company-wide basis, does not provide seats or stools at or near each cash register or at entrances/exits, forcing employees, including Ms. Riley and other aggrieved employees, to stand throughout their work shifts.

PETSMART violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11070(14)(A)-(B) because Ms. Riley and other aggrieved employees were not allowed to sit, even when it would not have interfered with the performance of their duties, nor were they provided with suitable seats. A substantial portion of Ms. Riley’s and other aggrieved employees’ duties were performed from and connected to a cash wrap and/or store entrance/exit and could have been performed from a seated position. Ms. Riley and other aggrieved employees could have handled transactions at the cash register and provided customer service, and/or could have greeted customers and performed exit security duties, all while seated without interference in their ability to complete these duties. Throughout her employment, when Ms. Riley was handling transactions at a cash register, she was required to stand the entire time because PETSMART did not provide seats or stools in its retail stores, including behind the cash register.

In addition, PETSMART did not provide Ms. Riley and other aggrieved employees with seats or stools in reasonable proximity to PETSMART store entrances/exits and cash wraps to allow them to use seats when it would not interfere with the performance of their duties for times when they were not engaged in active duties that require standing. In other words, to the extent Ms. Riley and other aggrieved employees engaged in duties in which the nature of the work required standing, PETSMART denied them the use of seats nearby during lulls in their work duties. Even though the layout of areas adjacent to store entrances/exits and cash wraps could accommodate seats or stools, PETSMART has, on a company-wide basis, denied Ms. Riley and other aggrieved employees suitable seating altogether.

Moreover, PETSMART did not inform Ms. Riley and other aggrieved employees of their rights to a seat or stool under California law. In fact, PETSMART’s management expressly instructed Ms. Riley to stand at all times during her shift. As a result of PETSMART’s company-wide policy and/or practice of prohibiting aggrieved employees from sitting at any time, even when they were not engaged in active duties requiring standing, and company-wide failure to provide seats in reasonable proximity to their work areas, Ms. Riley and other aggrieved employees were forced to stand during shifts and denied seats. PETSMART’s failure to provide suitable seating to Ms. Riley and other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order 7-2001, Section 14(A)-(B).


Ms. Riley and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code section 2699(a), (f)-(g). Ms. Riley, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for herself, all other aggrieved employees, and the State of California against PETSMAART for violations of California Labor Code section 1198.

Therefore, on behalf of all aggrieved employees, Ms. Riley seeks all applicable penalties related to these violations of the California Labor Code pursuant to PAGA.

Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Robin Hall
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, CA 90067
(310) 712-8023

Best Regards,



Robin Hall

Copy: PETSMAART, INC. (via U.S. Certified Mail);