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SAN DIEGO COUNTY, CA

5 Attorneys for Plaintiff
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7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
8 **COUNTY OF SAN DIEGO**
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10 CHERYL REVERE, on behalf of herself and all) Case No. 37-2008-00091999-CU-BT-CTL
11 others similarly situated,)
12 Plaintiff,)
13 v.) **CLASS ACTION COMPLAINT FOR**
14 PETCO ANIMAL SUPPLIES STORES, INC., a) **UNJUST ENRICHMENT, VIOLATION**
Delaware corporation, and DOES 1 through 10,) **OF UNFAIR COMPETITION LAW,**
15 inclusive,) **CONVERSION, AND IMPOSITION OF**
16) **CONSTRUCTIVE TRUST**
17 Defendants.) **[CLASS ACTION]**
18)
19)
20)

21 **I.**
22 **NATURE OF THE ACTION**

23 1. This is a class action seeking a return of alleged sales taxes collected by pet supplies
24 store Petco from California customers who utilize a P.A.L.S. discount card to purchase pet supplies
25 from Petco. Petco improperly collected from its customers an alleged sales tax on amounts that are
26 not included in Petco's gross receipts and thus are not subject to taxation by the California Board of
27 Equalization.

28 **II.**
JURISDICTION AND VENUE

2. At all relevant times hereto, Petco was headquartered in San Diego, CA. The

1 transactions at issue herein take place in San Diego, CA.

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3 **III.**
PARTIES

4 3. Plaintiff Cheryl Revere (“Revere”) is an individual residing in San Diego, California.

5 4. Defendant Petco Animal Supplies Stores, Inc. is a corporation duly organized under
6 the laws of the state of Delaware. Petco’s principal place of business and corporate headquarters is
7 at 9125 Recho Road, San Diego, California, 92121.

8 5. Plaintiff is unaware of the true names and capacities of defendants sued herein as
9 DOES 1 through 10, inclusive, and therefore sues these defendants by such fictitious names.
10 Plaintiff is informed and believes, and thereon alleges, that each of said fictitiously-named
11 defendants is in some manner responsible for the acts, omissions, injuries and/or damages alleged
12 herein. Plaintiff will amend this complaint to allege the true names and capacities of said
13 fictitiously-named defendants when the same have been ascertained.

14 6. Plaintiff is informed and believes, and thereon alleges, that at all times herein
15 mentioned, each of the defendants was the agent, employee, representative, partner, joint venturer,
16 and/or alter ego of each of the other defendants and, in doing the things alleged herein, was acting
17 within the course and scope of such agency, employment, representation, on behalf of such
18 partnership or joint venture, and/or as such alter ego, with the authority, permission, consent, and/or
19 ratification of each of the other defendants.

20 **IV.**
GENERAL ALLEGATIONS

21 7. Petco offers P.A.L.S membership cards to its customers. P.A.L.S. stands for “Petco
22 Animal Lovers Save.” Much like a grocery membership card, P.A.L.S. cards entitle customers to
23 discounts on products at the point of sale (when payment is made.) Petco does not charge its
24 customers to become a P.A.L.S. member.

25 8. Under California law and California Board of Equalization regulations, the amount
26 discounted from the original sales price is not part of the gross receipts on which a retailer, such as
27 Petco, must pay sales tax. Specifically, 18 C.C.R. § 1671.1, entitled “Discounts, Coupons, Rebates,
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1 and Other Incentives” states:

2 (b) Discounts.

3 (1) Cash discounts are offered by a retailer to its customer for prompt payment by
4 that customer. If the customer makes prompt payment and takes the discount, the
5 retailer's gross receipts are reduced by the amount of the discount. Cash discounts
6 allowed and taken on sales are excluded from gross receipts. If, however, the
customer does not make prompt payment, the retailer's gross receipts are the amount
billed. *Generally, discounts provided to customers utilizing a grocery store discount
club card are regarded as cash discounts or retailer coupons.*

7 (Italics added.)

8 9. Petco collected from its customers, sales tax on the pre-discounted amount and not the
9 post-discounted amount.

10 10. Plaintiff Revere has been a P.A.L.S. member for approximately six years. She has
11 purchased numerous P.A.L.S.-discounted items during that time, including crickets for her frog, dog
12 food, heat lamps, light bulbs, wood chips, frog log, and water dishes. PETCO maintains records of
13 these purchases in a database. She has paid to Petco, sums representing alleged sales taxes on the
14 pre-discounted amounts and has been damaged as a result.

15 11. On information and belief, Petco does not remit said alleged sales taxes to the Board
16 of Equalization. Alternatively, Petco is not obligated by law to collect remit said alleged sales taxes
17 to the Board of Equalization.

18 **V.**
19 **CLASS ALLEGATIONS**

20 12. Plaintiff brings this suit as a class action under Section 382 of the Code of Civil
21 Procedure on behalf of the following class of persons:

22 All Petco P.A.L.S customers residing in California who purchased goods from
23 Petco retail stores located in California and received a P.A.L.S discount on the
goods during the past four years.

24 13. Excluded from the class are the defendant herein, any person, firm, trust,
25 corporation, officer, director or other individual or entity in which the defendant has a controlling
26 interest or which is related to or affiliated with the defendant, and the legal representatives, heirs,
27 successors-in-interest or assigns of any such excluded party.

28 14. The number of Petco putative class members is so numerous that joinder of all

1 such customers would be impracticable. Plaintiff's claims are typical of the claims of the
2 members of the Class.

3 15. Plaintiff will fairly and adequately protect the interests of the members of the
4 Class and Plaintiff has no interests which are contrary to or in conflict with those of the Class
5 members he seeks to represent. Plaintiff has retained competent counsel experienced in class
6 action litigation to further ensure such protection and intends to prosecute this action vigorously.

7 16. A class action is superior to other available methods for the fair and efficient
8 adjudication of this controversy since joinder of all members is impracticable. Furthermore, as
9 the future harm suffered by individual members of the Class may be relatively small, the expense
10 and burden of individual litigation make it impossible for the members of the Class to
11 individually redress the wrongs done to them. Plaintiff knows of no difficulty that will be
12 encountered in the management of this litigation that would preclude its maintenance as a class
13 action.

14 17. Common questions of law and fact exist as to all members of the Class and
15 predominate over any questions affecting solely individual members of the Class. Among the
16 questions of law and fact common to the Class includes whether Petco's charging of sales taxes
17 on the pre-discounted sale price was proper.

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19 **VI.**
20 **FIRST CAUSE OF ACTION**
21 **UNJUST ENRICHMENT**
(AGAINST ALL DEFENDANTS)

22 18. Plaintiff hereby incorporates by reference each of the preceding allegations as
23 though fully set forth herein.

24 19. Defendants were unjustly enriched at Plaintiff and the class's expense.
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VII.
SECOND CAUSE OF ACTION
VIOLATION OF UNFAIR COMPETITION LAW
BUS. & PROF. CODE §§ 17200
(AGAINST ALL DEFENDANTS)

20. Plaintiff hereby incorporates by reference each of the preceding allegations as though fully set forth herein.

21. Defendants' acts and practices alleged herein constitute unfair and fraudulent business acts and practices within the meaning of California Bus. & Prof. Code §§ 17200, *et. seq.*

22. Defendants engaged in unfair business acts and practices in that the harm caused by defendant's conduct outweighs any utility of such conduct and such conduct offends public policy, is immoral, unscrupulous, unethical, deceitful and offensive, and cause substantial injury to Plaintiff and the members of the class.

23. As a direct and proximate cause of these acts and practices, Plaintiff and the class suffered injury.

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VIII.
THIRD CAUSE OF ACTION
CONVERSION
(AGAINST ALL DEFENDANTS)

24. Plaintiff hereby incorporates by reference each of the preceding allegations as though fully set forth herein.

25. Defendants wrongfully exerted, in an act of dominion, control of specific sums of funds of its P.A.L.S. customers, including Plaintiff and the members of the class.

26. Plaintiff and the members of the class were damaged as a result thereof.

IX.
FOURTH CAUSE OF ACTION
CONSTRUCTIVE TRUST
(AGAINST ALL DEFENDANTS)

27. Plaintiff hereby incorporates by reference each of the preceding allegations as though fully set forth herein.

28. Plaintiff and the members of the class are the rightful owner of amounts collected

1 by Defendants as alleged sales taxes.

2 29. Defendants wrongfully gained and/or detained said amounts by fraud, accident,
3 mistake, undue influence, and violation of trust.

4 30. Plaintiff and the members of the class seek the imposition of a constructive trust for
5 the benefit of Plaintiff and the class.

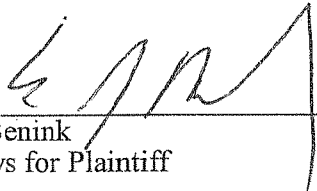
6 **PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiff requests relief as follows:

- 8 1. Damages and/or restitution and disgorgement in the amount of not more than
9 \$5,000,000 in an amount to be proven at trial;
- 10 2. Imposition of a constructive trust over funds that Defendants collected;
- 11 3. Certification of a class of Petco members as described, *supra*;
- 12 4. Appointment of Krause Kalfayan Benink & Slavens, LLP as the lead attorneys and
13 Cheryl Revere as the lead plaintiff;
- 14 5. Attorneys fees and costs as provided for by law;
- 15 6. Prejudgment interest;
- 16 7. Punitive damages; and
- 17 8. Any other relief that the Court may deem proper and just.
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19 Dated: September 18, 2008

KRAUSE KALFAYAN BENINK &
SLAVENS, LLP

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22 _____
23 Eric J. Benink
24 Attorneys for Plaintiff
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