

1 Rachel W. Dempsey (SBN 310424)
2 rachel@towardsjustice.org
3 David H. Seligman (*pro hac vice* forthcoming)
4 david@towardsjustice.org
5 TOWARDS JUSTICE
6 2840 Fairfax Street, Suite 220
7 Denver, CO 80207
8 Tel: (720) 441-2236

6 Sparky Abraham (SBN 299193)
7 sparky@jubilee.legal
8 JUBILEE LEGAL
9 300 E Esplanade Dr, Ste 900
10 Oxnard, CA 93036-1275
11 Tel: (805) 946-0386

12 *Attorneys for Plaintiff and the Putative Classes*

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

14 **FOR THE COUNTY OF SAN MATEO**

15 BREANN SCALLY,)

16 Plaintiff, on behalf of herself and all)
17 others similarly situated,)

18 v.)

19 PETSMART LLC,)

20 Defendant.)

) Case No.

) **CLASS ACTION COMPLAINT FOR:**

) **(1) VIOLATIONS OF CAL. BUS. &**
) **PROF. CODE §§ 2802, 2804**

) **(2) VIOLATIONS OF CAL. BUS. &**
) **PROF. CODE § 17200**

) **(3) VIOLATION OF CAL. CIV. CODE**
) **§§ 1788 et seq.**

) **(4) VIOLATION OF CAL. CIV. CODE**
) **§§ 1750 et seq.**

) **(5) VIOLATION OF CAL. BUS. &**
) **PROF. CODE § 17500**

) **(6) VIOLATION OF CAL. LABOR**
) **CODE §§ 226.7 and 512**

) **JURY TRIAL DEMANDED**

1 Plaintiff BreAnn Scally, individually and on behalf of all others similarly situated, by and
2 through her attorneys, brings the following allegations against Defendant PetSmart LLC.

3 **INTRODUCTORY STATEMENT**

4 1. PetSmart, the largest retail pet chain store in the United States, provides grooming
5 services to over 13 million pets a year. PetSmart advertises to customers that their pets will be
6 “groomed with love” by professional stylists with extensive training. Meanwhile, the company
7 promises aspiring groomers free, paid training where they will receive exclusive instruction from
8 a dedicated teacher in a classroom setting as well as a supervised, hands-on grooming experience.

9 2. The reality California PetSmart groomers face when they enroll in training, which
10 PetSmart calls Grooming Academy, is something much different. Prospective groomers quickly
11 find themselves grooming dogs for paying customers and may have to struggle for attention from
12 overextended trainers or salon managers. Despite its academic-sounding name, Grooming
13 Academy does not provide employees with a recognized degree or credentialing. And once
14 groomers complete Grooming Academy, they are thrust into a demanding and sometimes
15 dangerous job, often working for barely above minimum wage.

16 3. But even when groomers find that the job is not what they signed up for, they are
17 not free to leave, because Grooming Academy is not actually free. PetSmart requires that all
18 employees who enroll in Grooming Academy sign a Training Repayment Agreement Provision
19 (“TRAP”). The TRAP requires PetSmart groomers to take on \$5,000 of debt to PetSmart in
20 exchange for Grooming Academy training. PetSmart forgives that debt only if the worker stays at
21 their job for two years after they begin training, no matter how little they are paid or how poorly
22 they are treated. The TRAP even allows PetSmart to collect on the \$5,000 debt if an employee
23 leaves their grooming job involuntarily, such as if they are fired or laid off.

24 4. That \$5,000 far exceeds any reasonable value of the Grooming Academy and is
25 well beyond what PetSmart groomers, who make barely above minimum wage, are able to afford.
26 As a result, the TRAP strips PetSmart workers of bargaining power that they could use to seek out
27 employment opportunities in which they would be paid more or treated better.

28

STATEMENT OF FACTS

I. Grooming at PetSmart

12. PetSmart is one the largest retailers of pet-related products and services in North America, with more than 1,300 stores in the United States and more than 150 stores in California alone.

13. One major service that the company provides is pet grooming. PetSmart prominently advertises its groomers as “[p]rofessional stylists with over 800 hours of training & 6 months apprenticeship.” It relies heavily on this training in its marketing materials, where it tells customers that it “takes over a year to become a certified Pet Stylist” at PetSmart.

14. Prospective PetSmart groomers who do not have prior grooming experience are required to go through PetSmart’s training program, which generally begins when employees are hired as “bathers.”

15. In order to be eligible for promotion to groomer, bathers are required to bathe a specific number of dogs and to complete a booklet that provides information and benchmarks on the basics of dog bathing and grooming, including types of cuts and nail trims.

16. Once an employee has been a bather for the required amount of time and completed the other prerequisites, they are eligible for training and promotion to groomer. PetSmart calls the first stage of its groomer training “Grooming Academy.”

17. Grooming Academy involves three to four weeks of classroom training, which may be provided either by PetSmart supervisors at an employee’s home salon or by district-level trainers, also employed by PetSmart, at a separate training location. The classroom training involves completing a PetSmart instructional pamphlet with information about grooming dogs, including specific styles of grooms and specific breeds of dogs, and performing grooms of different dog breeds in different styles (e.g., sporting terriers, long-legged terriers, poodles, etc).

18. PetSmart makes money off of grooms provided during Grooming Academy. Customers are charged a discounted rate for grooms performed by trainees.

19. Despite its academic-sounding name, Grooming Academy does not provide California PetSmart groomers with a recognized degree or licensing. Rather, PetSmart has

1 imposed it as the company’s own requirement for the groomers it employs. California does not
2 require any specific licensing or degree to work as an animal groomer.

3 20. The Bureau for Private Postsecondary Education (“BPPE”), the agency that
4 regulates private proprietary higher education institutions in California, including other pet
5 grooming academies, has not approved the Grooming Academy to operate in the state.

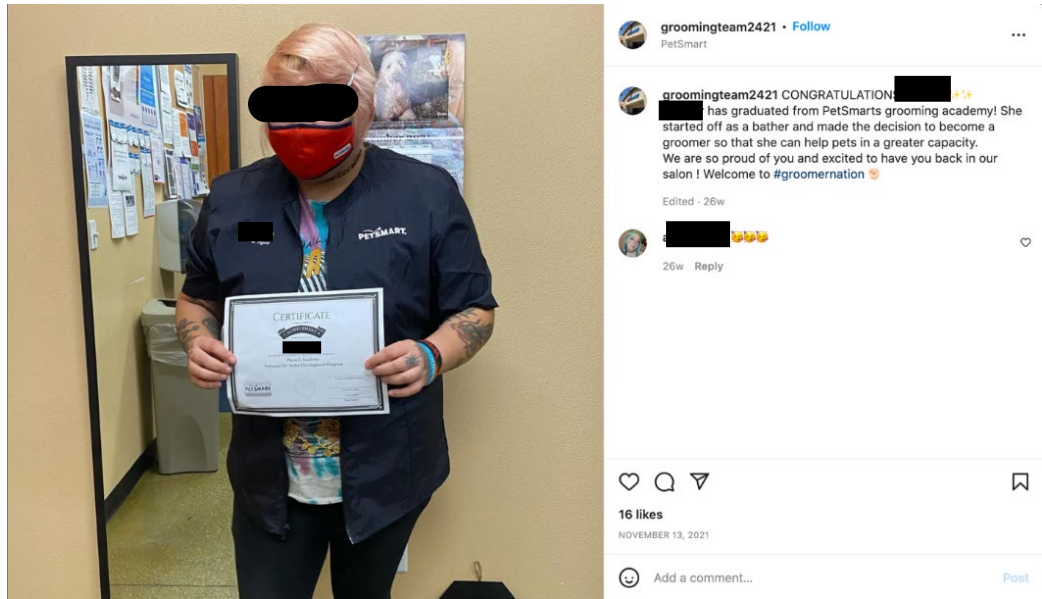
6 21. PetSmart employees who complete Grooming Academy are typically provided
7 with a certificate at a “graduation” ceremony indicating they have completed the program, such as
8 in the images below.

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

 **Life at PetSmart** @LifeatPetSmart · May 16, 2018 ...
More than 2,500 Pet Groomers graduate from our Grooming **Academy**
each year!
[#petsmartgrooming](#) [#LifeatPetSmart](#)



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



22. Once groomers have completed Grooming Academy, PetSmart requires them to complete 200 “supervised grooms” at their hourly pay rate—meaning without any additional commission. Whether and how closely groomers are in fact supervised during these 200 grooms depends on the staffing level of the PetSmart location where they work. Supervision during supervised grooms is sometimes non-existent. PetSmart charges customers for grooms from trainees completing their 200 “supervised grooms” at the same rate as it charges customers for other grooms.

23. Once employees have completed the required 200 “supervised grooms,” they become PetSmart Stylists in Training. After six more months working for PetSmart, they become PetSmart Pet Stylists. Stylists in Training earn a 40% commission from each dog they groom, and Pet Stylists earn a 50% commission.

1 **II. The Training Repayment Agreement Provision**

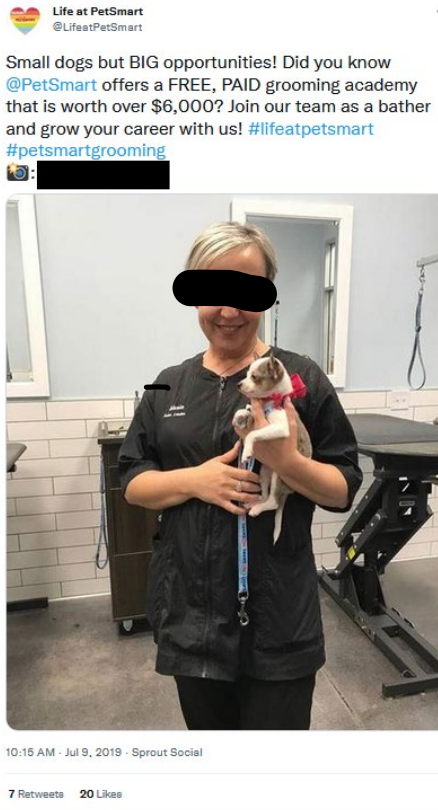
2 24. PetSmart’s Careers website advertises its “FREE Paid Training,” which it states is
3 “[v]alued at **\$6,000**” and “includes over 800 hours with more than 200 different dogs.”



10 **FREE Paid Training**

11 Valued at **\$6,000**—our grooming academy includes over 800 hours
12 with more than 200 different dogs.

13 25. PetSmart also touts its training as free on its social media accounts, such as the
14 Twitter account below, and in job postings.



1 26. But PetSmart’s groomer training is not at all free. To the contrary, PetSmart charges
2 groomers \$5,000 for Grooming Academy, and an additional \$500 for a set of the grooming tools
3 that groomers need in order to perform their jobs. The only alternative groomers have to obtaining
4 tools from PetSmart is to purchase their own grooming tools at their own expense.

5 27. PetSmart requires employees to pay for the training and tools by taking on debt to
6 PetSmart. PetSmart forgives the debt only if the employee remains at PetSmart for two years after
7 the completion of their training.

8 28. The charges for training and the initial toolkit are set forth in a Training Repayment
9 Agreement Provision (“TRAP”) titled “Grooming Academy Training Agreement and
10 Authorization for Deduction from Wages.” The TRAP provides that the signer agrees to pay
11 PetSmart \$5,000 (or, if they choose to accept the grooming toolkit, \$5,500) if their employment
12 with PetSmart is terminated either voluntarily or involuntarily within two years of starting
13 Grooming Academy. This amount is reduced to \$2,500 (or \$2,750 with the grooming toolkit) if
14 the termination occurs more than a year after first anniversary of the start of Grooming Academy.

15 29. The TRAP requires the signer to aver that the training “is voluntary, for my personal
16 benefit, and is transferrable to grooming positions with other employers.”

17 30. The TRAP purports to authorize PetSmart to withhold money from wages and other
18 payments to the employee in order to satisfy the employee’s obligations under the TRAP.

19 31. The TRAP further requires that all employees pay any amount owed to PetSmart
20 within 30 days of the voluntary or involuntary termination of employment. Pursuant to the TRAP,
21 failure to pay the full amount within that time could result in PetSmart filing a civil action against
22 the employee to collect the outstanding TRAP debt, including costs, collection charges, attorney’s
23 fees, and interest at the “highest rate permitted by law.”

24 32. The effect of the TRAP is not only to shift onto PetSmart’s workers the costs of a
25 training that benefits PetSmart, but also to chill workers from seeking employment elsewhere,
26 undermining their bargaining power to seek out decent wages or better treatment from PetSmart
27 or a competitor.

28

1 33. Many PetSmart groomers make barely above minimum wage. For these workers,
2 \$5,500 could be more than two months of pay. As a result, leaving their jobs in search of higher
3 wages could lead to difficulty paying rent or putting food on the table.

4 34. PetSmart can choose whether to enforce the TRAP under circumstances of its own
5 choosing. Employees do not know what criteria affect the decision of whether to enforce a
6 particular TRAP or not, which appears to be made at the corporate level, as store-level managers
7 provide inconsistent and often incorrect information about the likelihood of enforcement. Because
8 a PetSmart employee does not know whether or not PetSmart will enforce the TRAP until after
9 they have left the company, the chilling effect of the TRAP on employee mobility is universal even
10 when enforcement is inconsistent.

11 35. Groomers who do leave their jobs early may face aggressive collection efforts from
12 PetSmart that can harm their credit scores and make it more difficult for them to take out a loan,
13 secure housing, or obtain employment elsewhere.

14 36. Employees who don't leave PetSmart during the two-year period after starting
15 groomer training are also significantly harmed. Many of these workers are stuck in low-paying and
16 unpleasant jobs, fearful of finding somewhere else to work. And because PetSmart knows that its
17 groomers are stuck in a TRAP of PetSmart's own design, PetSmart can resist normal market
18 pressures to increase wages or treat their groomers better.

19 37. PetSmart's TRAP creates a debt which it states is for "personal benefit"; however,
20 the TRAP does not contain any relevant consumer disclosures, such as Truth in Lending Act
21 disclosures or the Holder Rule Notice.

22 **III. Obligation to Purchase Grooming Tools**

23 38. As noted above, PetSmart offers its groomers a basic grooming toolkit when they
24 complete Grooming Academy, which it advertises as "free." Groomers who accept these grooming
25 tools owe a \$500 debt to PetSmart above the debt incurred through the baseline TRAP, which is
26 forgiven if they work as groomers for the company for at least two years.

27 39. Other than the optional grooming toolkit, PetSmart groomers are required to
28 purchase their own grooming tools. These tools can include, among others, clippers, scissors,

1 brushes, blades, and blade-holders. In addition, groomers are responsible for the costs of
2 sharpening their own tools outside of the work time. In all, these costs can amount to hundreds or
3 even thousands of dollars per year, which employees pay themselves out of pocket and for which
4 they are not reimbursed.

5 40. PetSmart is aware that employees spend substantial amounts of their own money
6 on the tools required to perform their jobs. Indeed, it offers salon employees a 35% discount on
7 tools purchased to use in a Grooming Salon—i.e., tools that they use in the course of performing
8 their work as groomers beyond what they receive in the initial grooming toolkit. Tools and other
9 items purchased for personal use are eligible for a different, lower discount.

10 **IV. Job Duties and Missed Meal and Rest Breaks**

11 41. Groomers are frequently scheduled to groom one dog every hour, and sometimes
12 more. Grooming a dog is a time-consuming process that includes bathing and drying the dog,
13 combing and trimming the dog's hair, and clipping the dog's nails. Some dogs are more
14 cooperative than others, and for dogs that are skittish, badly behaved, or simply have thick fur or
15 are large, a regular groom can take several hours. As a result, groomers are under significant time
16 pressure. This time pressure is particularly acute for Stylists in Training and Pet Stylists, who are
17 paid on commission and who therefore are incentivized to groom as many animals as quickly as
18 possible.

19 42. In addition to bathing and grooming dogs, PetSmart bathers and groomers often
20 perform substantial administrative and other work, including intake and billing for grooming
21 customers and answering phones. They are also responsible for cleaning the pet salon between
22 grooms and maintaining a general level of sanitation.

23 43. These pressures may contribute to a dangerous working environment where
24 employees are required to groom dangerous or aggressive animals, and where there is not enough
25 time in the workday to maintain an adequate level of sanitation.

26 44. Keeping up with the required volume of work frequently means that employees do
27 not have a reasonable opportunity to take rest breaks during work periods of at least three-and-a-

28

1 half hours, or to take uninterrupted 30-minute meal breaks during work periods of more than five
2 hours per day.

3 45. Managers are aware that workers cannot take their legally entitled breaks. In
4 response to complaints from workers, they often blame the workers for not working quickly
5 enough.

6 **V. BreAnn Scally**

7 46. BreAnn Scally started working at the PetSmart in Salinas, California in February
8 2021 as a full-time bather. Scally was hoping to pursue a career in animal rescue and believed that
9 the free training PetSmart advertised would help her to advance in that goal.

10 47. While working as a bather, Scally helped groomers wash and dry dogs while also
11 learning certain basic grooming techniques, such as foot trims and sanitary trims. She charted her
12 progress in a PetSmart booklet that she was required to complete in order to be eligible to train as
13 a groomer.

14 48. In or around the end of April 2021, Scally completed her required work as a bather
15 and began Grooming Academy. Prior to beginning Grooming Academy, she signed a document
16 called “Grooming Academy Training: Agreement and Authorization for Deduction from Wages”
17 (hereinafter, the “TRAP”). This TRAP purported to bind Scally to pay PetSmart \$5,500 if her
18 employment with PetSmart was terminated before the second anniversary of the start date of her
19 Grooming Academy training. Per the agreement, this amount would be reduced by one-half if she
20 left between the first and second anniversary of her Grooming Academy start date.

21 49. The PetSmart manager who had Scally sign the TRAP did not explain to her that
22 she was signing an agreement to pay PetSmart \$5,000 for training if she left the company within
23 two years of beginning Grooming Academy.

24 50. Scally accepted the grooming toolkit that PetSmart offered in exchange for an
25 additional \$500 debt.

26 51. Scally’s Grooming Academy trainer was the salon manager at the store where
27 Scally worked, and most of the training took place in the salon itself. Because the salon manager
28 was responsible for running the salon, including performing her own grooms and supervising four

1 to five other groomers and approximately three bathers, in addition to training Scally, there was
2 very little one-on-one training, and most of what Scally learned was by working through the
3 training materials on her own and watching other groomers do their jobs.

4 52. Grooming Academy took Scally approximately three weeks to complete, rather
5 than the four weeks of instruction that PetSmart advertises. The first week was largely solo
6 bookwork. During the next two weeks, Scally was required to practice grooming on the dogs that
7 came into PetSmart. If she had to practice a certain breed cut, she would perform that type of cut
8 on whatever breed of dog was available, and then re-cut the dog's hair in a way appropriate for its
9 breed before returning the dog to the paying customer. PetSmart charged customers for grooms
10 that Scally performed while in Grooming Academy, with a 35% discount. These grooms took place
11 in the regular PetSmart salon.

12 53. Once Scally completed Grooming Academy, she was required to complete 200
13 "supervised grooms" before she was eligible to receive commissions as a Stylist in Training. In
14 practice, these 200 grooms were not closely supervised at all. The Salon Manager responsible for
15 supervising Scally was also performing her own grooms, overseeing other groomers and bathers,
16 and performing other management duties.

17 54. Throughout her employment at PetSmart, Scally and her colleagues were expected
18 to work through meal and rest breaks in order to stay on top of the large volume of work they were
19 required to perform. This work included everything from grooming animals to handling frustrated
20 or hostile customers to helping the salon manager with scheduling employees. It was a regular
21 practice for employees to clock out for a lunch break, as instructed by PetSmart, but continue
22 working with their supervisors' knowledge, because they had no other option if they wanted to
23 complete the work required of them.

24 55. Scally quit her job at PetSmart on September 4, 2021, because she was struggling
25 under the stress of the job and unable to cover her bills on her salary, which was just above
26 minimum wage.

27 56. Prior to quitting, Scally spoke with her salon manager about the TRAP she had been
28 required to sign. She could not afford the \$5,500 penalty for leaving less than a year after starting

1 Grooming Academy, leaving her with the impossible choice of going into debt because she was
2 staying at a job that paid her below market wages and going into debt pursuant to the TRAP
3 because she left that job for a higher-paying one. Her salon manager said, however, that PetSmart
4 was unlikely to seek to collect on the debt if Scally earned enough money for the company by
5 grooming and upselling to make up for the cost of her training. As a result, Scally kept careful
6 track of the revenue she brought in for PetSmart and did not leave until she was comfortable that
7 she had earned back the cost of her training by September 2021.

8 57. Scally did not receive any communications about the TRAP from PetSmart or their
9 agents through the fall. However, in January 2022, a collection appeared on her credit report in the
10 amount of \$5,500. The debt collector was IC System. Scally disputed the debt to Experian, but her
11 dispute was denied.

12 58. Scally did not receive any notice from PetSmart or IC System prior to the TRAP
13 debt appearing on her credit report.

14 59. After requests to IC System for more documentation regarding the debt, IC System
15 sent her a collection balance notice dated March 30, 2022 that identified the creditor as PetSmart.

16 60. On information and belief, IC System acted as PetSmart's agent in its collection
17 activities directed at Scally regarding the TRAP debt.

18 61. On information and belief, PetSmart directs its agents, including IC System, to
19 engage in debt collection activities regarding TRAP debt. These collection activities include but
20 are not limited to furnishing information on credit reports and sending collection notices.

21 62. As a result of the new debt on her credit report, Scally's credit score dropped
22 significantly, from the high 600s to the low 600s. This decrease meant that she was unable to co-
23 sign an apartment lease with her boyfriend, which she had been planning to do. She has also
24 avoided applying for additional loans, including additional credit cards, since the drop in her credit
25 score. Although she had been planning to return to school for a veterinary assistant degree, she
26 decided not to because she did not want to take on the additional student loans with her lowered
27 credit score.

28

1 consumer disclosures. Common questions for the Grooming Tools Class include whether
2 grooming tools are necessary expenditures incurred by groomers in direct consequence of the
3 discharge of their duties. Common questions for the Meal and Rest Breaks Class include whether
4 PetSmart's routine policy and practice was to schedule groomers and bathers such that they lacked
5 a reasonable opportunity to take their meal and rest breaks. Common questions for the Debt
6 Collection Subclass include (1) whether PetSmart or its agents made false or misleading
7 representations regarding the character or legal status of the TRAP debt; (2) whether PetSmart or
8 its agents threatened actions that it cannot legally take regarding the TRAP debt; (3) whether
9 PetSmart or its agents used false representations or deceptive means to collect the TRAP debt; and
10 (4) whether PetSmart or its agents attempted to collect an amount of TRAP debt not permitted by
11 law.

12 68. The claims of Plaintiff are typical of the claims of the Class Members. Plaintiff
13 worked for PetSmart within the relevant time period as a bather and a groomer, was trained at
14 Grooming Academy, is subject to a TRAP, and regularly worked through meal and rest breaks,
15 and was harmed as a result.

16 69. Plaintiff will fairly and adequately represent and protect the interests of the Class
17 and have retained counsel competent and experienced in complex litigation, class actions, and
18 employment and consumer law. Plaintiff's claims are representative of the claims of the other
19 members of the Classes. Plaintiff and Class members sustained damages as a result of Defendant's
20 conduct. Plaintiff has no interests antagonistic to those of the Classes, and Defendant has no
21 defenses unique to Plaintiff. Plaintiff and her counsel are committed to vigorously prosecuting this
22 action on behalf of the members of the Classes. Neither Plaintiff nor her counsel have any interest
23 adverse to the Classes.

24 70. A class action is superior to other available methods for the fair and efficient
25 adjudication of this controversy, as joinder of all members of the Class is impracticable.
26 Individual litigation would not be preferable to a class action because individual litigation would
27 increase the delay and expense to all parties due to the complex legal and factual controversies
28 presented in this Complaint. By contrast, a class action presents far fewer management

1 difficulties and provides the benefits of single adjudication, economy of scale, and
2 comprehensive supervision by a single court. Economies of time, effort, and expense will be
3 fostered and uniformity of decisions will be ensured.

4 71. Class certification is appropriate because PetSmart has acted and/or refused to act
5 on grounds generally applicable to the Classes, making appropriate declaratory, equitable, and
6 injunctive relief and damages with respect to Plaintiff and the Classes as a whole.

7 **COUNT I (in the alternative): ILLEGAL TRAP UNDER THE EMPLOYMENT LAWS**

8 **CAL. BUS. & PROF. CODE §§ 2802, 2804**

9 **(Plaintiff on behalf of herself and the TRAP Class against Defendant)**

10 72. Plaintiff incorporates by reference all previous paragraphs of this Complaint.

11 73. California Labor Code § 2802(a) requires an employer to indemnify an employee
12 for all necessary expenditures or losses incurred by the employee in direct consequence of the
13 discharge of her his or her duties, or of his or her obedience to the directions of the employer.

14 74. This right cannot be waived by contract. Cal. Labor Code § 2804.

15 75. Under California law, employers are responsible for the cost of employer-required
16 training undertaken by the employee in direct consequence of the discharge of the employee's
17 duties or due to the employee's obedience to the directions of the employer, that is incurred for the
18 employer's benefit and is not required by statute or ordinance.

19 76. PetSmart unlawfully charges its groomers, including Plaintiff and the TRAP Class,
20 up to \$5,000 for completing employer-required training for the benefit of PetSmart that is not
21 required by California statute or ordinance, in violation of California Labor Code § 2802.

22 77. Plaintiff and the TRAP Class have been harmed in an amount according to proof at
23 trial, and seek reimbursement of all necessary expenditures plus any available damages, interest,
24 penalties, fees, and costs.

25 78. In addition, Plaintiff seeks a declaratory judgment that the TRAP debt is
26 unenforceable according to California law and an injunction to prevent PetSmart from attempting
27 to collect on the TRAP debt.

28

1 87. California Education Code § 94886 provides in relevant part that “a person shall
2 not open, conduct, or do business as a private postsecondary educational institution in this state
3 without obtaining an approval to operate under this chapter,” where a private postsecondary
4 educational institution is a “private entity with a physical presence in this state that offers
5 postsecondary education to the public for an institutional charge.” Cal. Educ. Code § 94858.

6 88. Additionally, California Education Code provides that “a note, instrument, or other
7 evidence of indebtedness relating to payment for an educational program is not enforceable by an
8 institution unless, at the time of execution . . . the institution held an approval to operate.” Cal.
9 Educ. Code § 94917.

10 89. If Plaintiff did not incur the costs of PetSmart’s Grooming Academy in direct
11 consequence of the discharge of her duties as a PetSmart groomer but rather because of the
12 personal benefits of that training to her, then PetSmart’s Grooming Academy is a post-secondary
13 institution that is unapproved and unlicensed by the State of California.

14 90. PetSmart has engaged in unfair competition because it has offered postsecondary
15 education to its employees in exchange for a right to payment without approval to operate from
16 the BPPE. Relatedly, it has falsely represented that the TRAP debt is collectable from the Plaintiff
17 and the TRAP Class. These unfair and unlawful business practices have injured Plaintiff and the
18 Class. Plaintiff and the TRAP Class have been harmed in an amount according to proof at trial and
19 seek reimbursement of all necessary expenditures plus any available damages, interest, penalties,
20 fees, and costs.

21 91. In addition, Plaintiff and the Class seek a declaratory judgment that the TRAP debt
22 is unenforceable according to California law.

23 92. In addition, Plaintiff and the Class seek a public injunction to prevent PetSmart
24 from continuing to operate as an unapproved institution, and to prevent PetSmart from attempting
25 to collect on the TRAP debt.

26
27
28

1 **COUNT IV (in the alternative): ABUSIVE PRACTICES RELATING TO THE**
2 **PROVISION OF A CONSUMER FINANCIAL PRODUCT OR SERVICE**

3 **CAL. BUS. & PROF. CODE § 17200**

4 **(Plaintiff on behalf of herself and the TRAP Class against Defendant)**

5 93. Plaintiff incorporates by reference all previous paragraphs of this Complaint.

6 94. If Plaintiff did not incur the costs of PetSmart’s Grooming Academy in direct
7 consequence of the discharge of her duties as a PetSmart groomer but rather because of the
8 personal benefits of that training to her, then the TRAP is a consumer financial product under
9 California and federal law. Cal. Fin. Code § 90005(c); 12 U.S.C. § 5481(5).

10 95. If the TRAP is a consumer financial product, then PetSmart is a covered person
11 under the California Consumer Financial Protection Law and the Consumer Financial Protection
12 Act. Cal. Fin. Code § 90005(f)(1); 12 U.S.C. § 5481(6).

13 96. California and federal law prohibit covered persons from engaging in any abusive
14 acts and practices in connection with consumer financial products or services. Cal. Fin. Code §
15 90003(a)(1); 12 U.S.C. § 5531(d).

16 97. Under federal law, an abusive act or practice occurs when a covered person “takes
17 unreasonable advantage of . . . the inability of the consumer to protect the interests of the consumer
18 in selecting or using a consumer financial product or service.” 12 U.S.C. § 5531(d)(2)(B). A
19 practice that is abusive under federal law is also abusive under California law.

20 98. PetSmart requires employees who participate in the Grooming Academy to pay for
21 this training through a TRAP. Employees who participate in the Grooming Academy to become
22 PetSmart groomers are not provided alternative options to finance the Grooming Academy other
23 than entering into the TRAP with their employer.

24 99. By requiring prospective grooming employees to agree to the TRAP, PetSmart
25 “takes unreasonable advantage” of the employees’ “inability to protect their interests in selecting
26 or using a consumer financial product.” 12 U.S.C. § 5531(d)(2)(B).

27 100. This unreasonable advantage was obtained as a direct result of consumers’ inability
28 to protect their interests because PetSmart required grooming academy employees to use a single

1 consumer financial product (the TRAP) offered by a single provider (PetSmart) with terms and
2 conditions dictated by that provider.

3 101. Because the sole financial product available to PetSmart employees also had the
4 effect of undermining their bargaining power by chilling them from seeking out employment for
5 a competitor, that product is inherently coercive.

6 102. Under federal law, an abusive act or practice also occurs when a covered person
7 “takes unreasonable advantage of...a lack of understanding on the part of the consumer of the
8 material risks, costs, or conditions of the product or service.” 12 U.S.C. § 5531(d)(2)(A). A practice
9 that is abusive under federal law is also abusive under California law.

10 103. Despite the company’s routine use of TRAPs, PetSmart’s website and employment
11 materials state repeatedly and publicly that its training, including Grooming Academy, is free, and
12 that it provides groomers with a free toolkit in connection with their training.

13 104. Moreover, because PetSmart can elect to selectively enforce the TRAP under
14 circumstances of the company’s choosing, PetSmart grooming employees do not know if PetSmart
15 will enforce the TRAP. PetSmart grooming employees are left at the whim of the company’s
16 arbitrary decisions when trying to determine whether to seek other employment.

17 105. By advertising that Grooming Academy is free while requiring prospective
18 grooming employees to enter into a TRAP, and by selectively and arbitrarily enforcing the TRAP,
19 PetSmart exploits the power it holds over its workers, “taking unreasonable advantage” of
20 employees’ and prospective employees’ “lack of understanding . . . of the materials risks, costs, or
21 conditions” of the TRAP. 12 U.S.C. § 5531(d)(2)(c).

22 106. This practice is also abusive under California law, because PetSmart is taking
23 unreasonable advantage of employees’ lack of understanding of the risks, costs, or conditions of
24 the TRAP to keep them from leaving the company. Cal. Fin. Code § 90003(a)(1).

25 107. PetSmart’s acts and practices relating to the TRAP are abusive.

26 108. These acts and practices constitute unfair and unlawful business practices, in
27 violation of Cal. Bus. & Prof. Code § 17200. These unfair and unlawful business practices have
28 injured Plaintiff and the TRAP Class.

1 109. Plaintiff and the Class seek a public injunction to enjoin PetSmart’s abusive acts
2 and practices relating to the TRAP.

3
4 **COUNT V (in the alternative): UNLAWFUL PRACTICES RELATING TO THE**
5 **PROVISION OF A CONSUMER FINANCIAL PRODUCT OR SERVICE**

6 **CAL. BUS. & PROF. CODE § 17200**

7 **(Plaintiff on behalf of herself and the TRAP Class against Defendant)**

8 110. Plaintiff incorporates by reference all previous paragraphs of this complaint.

9 111. California Financial Code § 22100 requires that all finance lenders, or “any person
10 who is engaged in the business of making consumer loans” must obtain a license from the
11 commissioner of the Department of Financial Protection and Innovation, the state agency that
12 regulates consumer credit. Cal. Fin. Code § 22009.

13 112. The California Financial Code prohibits any finance lender from making a
14 materially false or misleading statement to a borrower. Cal. Fin. Code § 22161(a)(1).

15 113. Issuers of closed end credit are required to provide certain disclosures pursuant to
16 the Truth in Lending Act (e.g., total amount financed; annual percentage rate; or terms of
17 repayment). 15 U.S.C. §§ 1631, 1638(a); 12 C.F.R. §§ 1026.17, 1026.18, 1026.24(d)(2).

18 114. Creditors who offer a finance sale must issue a notice to consumers pursuant to the
19 Federal Trade Commission’s Trade Regulation Rule Concerning Preservation of Consumers’
20 Claims and Defenses (“Holder Rule”) indicating that any future holder of the debt is subject to all
21 claims and defenses the debtor could assert against the seller. 16 C.F.R. § 433.2(a) and (b).

22 115. Defendant engages in unlawful practices under California law because it is offering
23 consumer loans without a license to do so. Additionally, Defendant engages in unlawful and unfair
24 practices because it represents that the TRAP debt is enforceable when it is not. These unlawful
25 business practices have injured Plaintiff and the TRAP Class.

26 116. Defendant engages in unlawful practices under California law because it is offering
27 consumer loans without including required disclosures under federal financial law, including the
28 Holder notice and the Truth in Lending Act disclosures.

 117. These unlawful business practices have injured Plaintiff and the TRAP Class.

1 118. Plaintiff and the TRAP Class have been harmed in an amount according to proof at
2 trial, and seek reimbursement of all necessary expenditures plus any available damages, interest,
3 penalties, fees, and costs.

4 119. Plaintiff and the Class seek a public injunction to enjoin PetSmart from engaging
5 in these unlawful practices relating to the TRAP debt.

6 **COUNT VI (in the alternative): VIOLATIONS OF THE ROSENTHAL ACT**

7 **CAL. CIV. CODE §§ 1788 et seq.**

8 **(Plaintiff on behalf of herself and the Debt Collection Subclass against Defendant)**

9 120. Plaintiff incorporates by reference all previous paragraphs of this Complaint.

10 121. PetSmart regularly engages in debt collection activities regarding TRAP debt,
11 including but not limited to representing that employees and former employees owe TRAP debt,
12 and engaging agents and third parties to collect TRAP debt.

13 122. If Plaintiff did not incur the costs of PetSmart’s Grooming Academy in direct
14 consequence of the discharge of her duties as a PetSmart groomer but rather because of the
15 personal benefits of that training to her, then, pursuant to the Rosenthal Act, the TRAP transaction
16 is a “consumer credit transaction,” the TRAP is a “consumer debt,” and PetSmart is a “debt
17 collector.” Cal. Civ. Code § 1788.2. PetSmart’s collection activities related to the TRAP debt are
18 covered by the Rosenthal Act.

19 123. For the reasons set forth above in Count III, the TRAP agreements are void, and
20 TRAP debt is void and unenforceable.

21 124. Because the TRAP is unenforceable due to PetSmart’s failure to obtain approval to
22 operate from the BPPE, debt collection activities by PetSmart and its agents regarding the TRAP
23 debt violate the Rosenthal Act. Specifically, PetSmart:

- 24 a. Violated 15 U.S.C. § 1692e(2)(A) by using false, deceptive, and misleading
25 representations of the character and legal status of the TRAP debt;
26 b. Violated 15 U.S.C. § 1692e(5) by threatening to take action that cannot
27 legally be taken in connection with the TRAP debt;
28

- 1 c. Violated 15 U.S.C. § 1692e(10) by using false representations or deceptive
- 2 means to attempt to collect the TRAP debt; and
- 3 d. Violated 15 U.S.C. § 1692f(1) by attempting to collect an amount not
- 4 permitted by law.

5 The foregoing sections of the Fair Debt Collection Practices Act are incorporated into the
6 Rosenthal Act through Cal. Civ. Code § 1788.17. Each of the foregoing violations therefore
7 violates Cal. Civ. Code § 1788.17.

8 125. The foregoing violations by PetSmart were intentional, were not the result of bona
9 fide error, and PetSmart does not maintain procedures reasonably adapted to avoid any such errors.

10 126. The foregoing violations by PetSmart were done willfully and knowingly with the
11 purpose of coercing the Debt Collection Subclass to pay the TRAP debt.

12 127. As a result of each and every violation of the Rosenthal Act, Plaintiff and the Debt
13 Collection Subclass are entitled to recover from Defendant any actual damages pursuant to Cal.
14 Civ. Code § 1788.30(a); statutory damages for a knowing or willful violation up to \$1,000 pursuant
15 to Cal. Civ. Code § 1788.30(b); and reasonable attorney’s fees and costs pursuant to Cal. Civ.
16 Code § 1788.30(c).

17 128. As a result of each and every violation of the Fair Debt Collection Practices Act, as
18 incorporated through Cal Civ. Code § 1788.17, Plaintiff and the Debt Collection Class are entitled
19 to recover from Defendant any actual damages pursuant to 15 U.S.C.§ 1692k(a)(1); statutory
20 damages up to \$1,000 pursuant to 15 U.S.C. § 1692k(a)(2)(A); and reasonable attorney’s fees and
21 costs pursuant to 15 U.S.C. § 1692k(a)(3).

22 129. As a result of each and every violation of the Fair Debt Collection Practices Act, as
23 incorporated through Cal. Civ. Code § 1788.17, Plaintiff and the Debt Collection Subclass are
24 entitled to recover up to the lesser of \$500,000 or one percent of the net worth of PetSmart pursuant
25 to 15 U.S.C. § 1692k(a)(2)(B), and reasonable attorney’s fees and costs pursuant to 15 U.S.C.
26 § 1692k(a)(3).

27
28

1 130. In addition, Plaintiff and the Debt Collection Subclass seek a public injunction to
2 enjoin PetSmart from continuing its unlawful, deceptive, and abusive practices relating to the
3 TRAP debt.

4 **COUNT VII (in the alternative): VIOLATIONS OF THE CONSUMER LEGAL**
5 **REMEDIES ACT**

6 **CAL. CIV. CODE §§ 1750 et seq.**

7 **(Plaintiff on behalf of herself and the TRAP Class against Defendant)**

8 131. Plaintiff incorporates by reference all previous paragraphs of this Complaint.

9 132. If Plaintiff and class members did not incur the costs of PetSmart’s Grooming
10 Academy in direct consequence of the discharge of their duties as PetSmart groomers but rather
11 because of the personal benefits of that training to them, then the PetSmart Grooming Academy,
12 and accompanying TRAP, constitute a “service,” and Plaintiff and class members are “consumers”
13 as defined in Civil Code § 1761.

14 133. By its conduct as described above, PetSmart has engaged in deceptive practices that
15 violate the Consumer Legal Remedies Act, Civil Code §§ 1770(a)(9) and (14), thereby entitling
16 Plaintiff and class members to relief under Civil Code § 1780. PetSmart’s violations include:

- 17 a. Advertising the Grooming Academy as “free” when it is not free in violation
18 of Civil Code § 1770(a)(9); and
19 b. Representing that the TRAP creates an enforceable right and remedy on
20 behalf of PetSmart, and obligation on behalf of Plaintiff and class members,
21 that it does not create, in violation of Civil Code § 1770(a)(14).

22 134. PetSmart’s violations of the Consumer Legal Remedies Act described above
23 present a continuing threat to class members and members of the public in that PetSmart continues
24 to engage in these practices.

25 135. Plaintiff and members of the TRAP Class seek equitable relief from PetSmart’s
26 deceptive practices in violation of the Consumer Legal Remedies Act, including a public
27 injunction to enjoin PetSmart from continuing these practices.
28

1 145. Plaintiff, the TRAP Class, and the Grooming Tools Class have been harmed in an
2 amount according to proof at trial, and seek damages and restitution, plus any available damages,
3 interest, penalties, fees, and costs.

4 146. In addition, Plaintiffs seek a public injunction to prevent PetSmart from further
5 spreading its false statements.

6 **COUNT IX: FAILURE TO PROVIDE MEAL AND REST BREAKS**

7 **CAL. LABOR CODE §§ 226.7 and 512; IWC Wage Order No. 7**

8 **(Plaintiff on behalf of herself and the Meal and Rest Break Class against Defendant)**

9 147. Plaintiff incorporates by reference all previous paragraphs of this Complaint.

10 148. California Labor Code § 226.7(a) provides, “No employer shall require any
11 employee to work during any meal or rest period mandated by an applicable order of the Industrial
12 Welfare Commission.”

13 149. Wage Order No. 7 § 11(A) provides: “No employer shall employ any person for a
14 work period of more than five (5) hours without a meal period of not less than 30 minutes, except
15 that when a work period of not more than six (6) hours will complete the day’s work the meal
16 period may be waived by mutual consent of the employer and the employee.”

17 150. Wage Order No. 7 § 12(A) provides: “Every employer shall authorize and permit
18 all employees to take rest periods, which insofar as practicable shall be in the middle of each work
19 period. The authorized rest period time shall be based on the total hours worked daily at the rate
20 of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period
21 need not be authorized for employees whose total daily work time is less than three and one-half
22 (3 ½) hours.”

23 151. As set forth above, during the relevant period, it was Defendant’s policy and
24 practice to regularly fail to provide employees with the opportunity to take compliant off-duty
25 meal periods.

26 152. Defendant also regularly failed to authorize and permit employees who worked
27 more than 3.5 consecutive hours in a workday to take off-duty rest breaks.

28

1 153. As a result of Defendant’s policies and practices, Plaintiff and the Meal and Rest
2 Break Class were not authorized and permitted to take compliant meal or rest breaks.

3 154. Plaintiff and the Meal and Rest Break Class are entitled to recover one additional
4 hour of pay at the employee’s regular rate of compensation for each violation, plus any available
5 damages, interest, penalties, fees, and costs.

6
7 **COUNT X: UNFAIR COMPETITION FOR UNLAWFUL EMPLOYMENT**
8 **PRACTICES, FALSE ADVERTISING, & UNLAWFUL DEBT COLLECTION**
9 **PRACTICES**

10 **CAL. BUS. & PROF. CODE § 17200**

11 **(Plaintiff on behalf of herself and all Classes and Subclasses against Defendant)**

12 155. Plaintiff incorporates by reference all previous paragraphs of this Complaint.

13 156. Defendant’s policies and practices violate several provisions of the law, as set forth
14 above, including:

- 15 • Cal. Bus. & Prof. Code § 2802 (failure to indemnify employees for necessary
16 expenditures under the employment laws);
- 17 • Cal. Labor Code §§ 226.7 and 512 (missed meal and rest breaks);
- 18 • Cal. Bus. & Prof. Code § 17500 (false advertising); and
- 19 • Cal. Civ. Code § 1788.17 incorporating 15 U.S.C. §§ 1692e and 1692f (unlawful
20 debt collection).

21 157. These policies and practices constitute unfair and unlawful business practices, in
22 violation of Cal. Bus. & Prof. Code § 17200. These unfair and unlawful business practices have
23 injured Plaintiff and the Class.

24 158. Plaintiff and the Class are entitled to restitution as well as injunctive and other
25 equitable relief against such unfair and unlawful practices in order to remedy past harms and
26 prevent future damages, for which there is no adequate remedy at law.

27 **COUNT XI: DECLARATORY AND INJUNCTIVE RELIEF**

28 **CAL. CODE OF CIV. PROC. § 1060**

(Plaintiff on behalf of herself and the TRAP Class against Defendant)


1 j. Award such other and further legal and equitable relief as this Court deems
2 necessary, just, and proper.

3 **JURY DEMAND**

4 Plaintiff hereby requests a trial by jury of all claims that can be so tried.

5
6
7 Dated: July 28, 2022

Respectfully submitted,

8
9 By: 

10 Rachel W. Dempsey (SBN 310424)
11 David H. Seligman (Colorado Bar No. 49394), *pro hac vice*
12 forthcoming
13 TOWARDS JUSTICE
14 2840 Fairfax Street, Suite 220
15 Denver, CO 80207
16 Tel: (720) 441-2236
17 rachel@towardsjustice.org
18 david@towardsjustice.org

19 Sparky Abraham (SBN 299193)
20 sparky@jubilee.legal
21 JUBILEE LEGAL
22 300 E Esplanade Dr, Ste 900
23 Oxnard, CA 93036-1275
24 Tel: (805) 946-0386

25
26
27
28 *Attorneys for Plaintiff and the Proposed Class*