

EXHIBIT B

(Class Action Settlement Agreement)

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

**ERICA SILBERSTEIN, on behalf of
herself and on behalf of all
others similarly situated**

Plaintiff,

v.

CASE NO.: 8:19-cv-02800-SCB-AAS

**PETSMART, INC.,
A foreign, profit corporation**

Defendant.

_____ /

CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE

Named Plaintiff, Erica Silberstein (“Plaintiff”), individually and on behalf of the Settlement Class defined below, and Defendant, Petsmart, Inc. (“Petsmart” or “Defendant”) (collectively, the “Parties”), enter into this Class Action Settlement Agreement and Release (“Agreement”) to resolve all claims in this action, subject to the approval of the Court.

I. Recitals.

1. Plaintiff initiated this action by filing a Complaint on November 12, 2019. Plaintiff asserted claims on behalf of herself and a putative class (collectively, “Plaintiff”) against Defendant under the Employee Retirement Income Security Act of 1974 (“ERISA”), as amended by the Consolidated Omnibus Budget Reconciliation Act of 1985 (“COBRA”), alleging that Defendant violated the notice requirements of COBRA. Plaintiff sought statutory penalties pursuant to 29 U.S.C. §1132(c)(1) and 29 C.F.R. §2575.502c-1 and other damages for themselves and each putative Class member who was sent an alleged defective COBRA. Defendant has, at all relevant times, denied Plaintiff’s allegations and affirmatively asserted its

compliance with the law. In addition, Defendant has further raised various affirmative defenses in this Action.

2. Following the exchange of information and an arms-length mediation before third party mediator, Hunter Hughes, during which both sides were represented by competent counsel, the Parties reached a resolution to this action and the Parties now enter into this Class Action Settlement Agreement and Release, which memorializes in full the terms of the Parties' amicable resolution of this case.

3. Defendant expressly denies that it has engaged in any wrongdoing and denies that the COBRA notice at issue is deficient, and denies any violation of COBRA or ERISA. By entering into this Agreement, Defendant does not admit, nor concede any fault or liability in connection with any facts or claims that have been or could have been alleged against it in this action. Defendant denies that it has any liability whatsoever to Plaintiff or any members of the Settlement Class. Defendant has entered into this Agreement solely to purchase peace and in recognition of the substantial expense and burden of continued litigation, the substantial period of time required to arrive at a judicial resolution of the issues presented, and the concomitant inconvenience, distraction, and disruption to its business operations.

4. Plaintiff's counsel, who have substantial experience representing class representatives and prosecuting class actions, have investigated the law and facts relating to the claims asserted in the Complaint. Based on their experience in representing class representatives and litigating class action cases, Plaintiff's counsel has concluded that this Settlement is fair and reasonable and in the best interests of the Settlement Class. Plaintiff's counsel has given due consideration to the benefits of amicably resolving this case as described herein and the risks and delays associated with further litigation.

5. Subject to the approval of the Court, the Parties propose to settle this Action on the terms set forth this Agreement.

II. Definitions.

As used in this Agreement, capitalized terms and phrases not otherwise defined have the meanings provided below:

6. Action or Lawsuit: the above-captioned action, *Silberstein v. Petsmart, Inc.*, Case No. 8:19-cv-02800-SCB-AAS, United States District Court, Middle District of Florida, Tampa Division.

7. Agreement or Settlement or Settlement Agreement: this Class Action Settlement Agreement and Release.

8. Class Counsel: Luis A. Cabassa and Brandon J. Hill of Wenzel Fenton Cabassa, P.A. and Marc Edelman of Morgan & Morgan, P.A.

9. Class Notice Date: the date that Notices of Settlement are initially mailed to Settlement Class Members.

10. Class Period for the Class:

All participants and beneficiaries in the Defendant's Health Plan who were sent a required COBRA notice by Defendant, between November 12, 2015 and November 5, 2018 and who did not: (i) elect COBRA or (ii) execute an arbitration agreement with a class and collective waiver.

11. Class Representative or Named Plaintiff: Erika Silberstein.

12. COBRA: the Consolidated Omnibus Budget Reconciliation Act of 1985, including all regulations promulgated and applicable case law thereunder.

13. COBRA Coverage: continuing health and welfare insurance coverage provided under COBRA.

14. COBRA Notice: the notice regarding the right to elect COBRA Coverage provided by or on behalf of Defendant to the Settlement Class (as defined below) in the form at issue in the Action.

15. Court: the U.S. District Court for the Middle District of Florida, Tampa Division.

16. Deadline to Opt Out or Object: the date the Court establishes as the deadline by which Settlement Class Members must postmark a written notice of their intent to opt out of the Settlement and by which any objections to the Settlement must be filed with the Court. Settlement Class Members shall have sixty (60) days after the Notice of Settlement is mailed to opt out of or object to the Settlement.

17. Defendant: The named defendant in this lawsuit, PetSmart, Inc.

18.

Effective Date: means the first day after the first date on which all of the following have occurred: a) all Parties and Class Counsel have executed this Agreement; b) the Court has preliminarily approved this Agreement; c) reasonable notice has been given to the Settlement Class Members, including providing them an opportunity to opt out, or object to the Settlement; d) the Court has held a final approval hearing, entered a final Order approving the Agreement, awarded the Plaintiff any incentive award, and awarded Class Counsel its reasonable attorneys' fees and costs; and, e) any period for appeals, motion for reconsideration, rehearing, certiorari or any other proceeding seeking review ("Review Proceeding") has expired without the initiation of a Review Proceeding, or if a Review Proceeding has been timely initiated, that there has occurred a full and complete disposition of any such Review Proceeding, including the exhaustion of proceedings in any remand and/or subsequent appeal on remand.

19. Final Approval Hearing: the hearing to be conducted by the Court, following the Court's preliminary approval of this Settlement, dissemination of the Notice of Settlement to the Settlement Class distributed by the Settlement Administrator, and required notices under the Class Action Fairness Act ("CAFA") distributed by Defendant, at which time Plaintiff will request (and Defendant will not oppose) the Court to finally approve the fairness, reasonableness and adequacy of the terms of this Settlement and to enter a Final Approval Order.

20. Final Approval Motion: Plaintiff's unopposed motion seeking final approval of this Settlement.

21. Final Approval Order: the Court's order granting final approval of this Settlement on the terms provided herein, or as the same may be modified by subsequent written mutual agreement of the Parties.

22. Gross Settlement: the total maximum amount that Defendant shall pay in settlement of this Action pursuant to this Agreement.

23. Net Settlement Proceeds: the amount of money remaining after the Gross Settlement is reduced by the following amounts, none of which Defendant opposes:

- a. any service award to the Named Plaintiff that the Court approves up to \$7,500;
- b. any award of Class Counsel attorneys' fees up to 33.33% of the total Gross Settlement, plus costs; and,
- c. Court-approved costs of the settlement administration process, including class notice.

24. Notice of Settlement: the Notice of Class Action Settlement approved by the Court in its Preliminary Approval Order, which shall be sent to the Settlement Class Members by the Settlement Administrator by U.S. Mail.

25. Parties: Named Plaintiff, the putative class, and Defendant.

26. Preliminary Approval Motion: Plaintiff's unopposed motion seeking preliminary approval of this Settlement Agreement.

27. Preliminary Approval Order: the Court's order preliminarily approving this Settlement Agreement.

28. Released Parties: (i) Defendant (ii) its current and former third party COBRA notice providers (including but not limited to, HealthEquity, WageWorks, Inc., and CONEXIS, Inc.), (iii) Defendant's third party health care provider or claims administrator, (iv) its outsourced third party COBRA administrator, if any (v) any entity that was involved in any way with the

drafting or delivery of the COBRA notice as defined herein, (vi) PetSmart's benefit plans, benefit plan administrators, sponsors and fiduciaries, and (vii) for each of them, their affiliates, parent companies, subsidiaries, predecessors, successors, corporate family members, officers, directors, partners, employees, attorneys, agents, insurers, shareholders, representatives, trustees, principals, and assigns.

29. Settlement Class: class (as more specifically defined above) certified pursuant to Fed. R. Civ. P. 23 for settlement purposes only, consisting of approximately 12,170 members who were sent the COBRA Notice by or on behalf of Defendant at any time during the class period described herein who (i) did not elect continuation of coverage; or (ii) did execute an arbitration agreement with a class/collective action waiver, excluding any individuals who timely file a valid written notice of intent to opt out of the Settlement.

30. Settlement Class Members: any individual who is a member of the Settlement Class. A list of the names of each Settlement Class Member and the address to which a COBRA Notice was sent shall be provided by Defendant, or on behalf of Defendant, by the applicable outsourced third party COBRA administrator, to the Settlement Administrator within thirty (30) days after issuance of the Preliminary Approval Order.

31. Settlement Account: the account, which shall be a Qualified Settlement Fund as established by IRS regulations, that is established by the Settlement Administrator for purposes of administering monetary relief under this Agreement.

32. Settlement Administrator: American Legal Claims Services, LLC, a third-party settlement administrator selected and retained by the Parties for purposes of administering the Settlement and mailing the Notice of Settlement and Settlement Payments to Settlement Class Members.

33. Settlement Fund Payor: The named defendant in this lawsuit, Defendant Petsmart, Inc.

34. Settlement Payment: an equal portion of the Net Settlement Proceeds that each Settlement Class Member shall be entitled to receive, payable by check from the Settlement Administrator, pursuant to this Agreement.

III. Monetary Benefits to the Settlement Class.

35. Settlement Account. Within ten (10) days of the Effective Date, the Settlement Administrator shall establish a Settlement Account, which shall be treated as a Qualified Settlement Fund, for purposes of administering monetary relief under this Agreement, and shall provide Class Counsel and Defendant's counsel with any information relating to the Settlement Account that is reasonably necessary for the Settlement Fund Payor to fund the Settlement Account, including but not limited to a properly executed Form W-9.

36. Funding of Settlement Account. Within fifteen (15) days of the Effective Date, and upon receipt of a properly executed W-9 for the Settlement Account, Defendant shall deposit a sum total of Five Hundred Thousand Dollars and No Cents (\$500,000) into the Settlement Account, which sum may be paid in one or more deposits to the Gross Settlement Account, which shall establish the Gross Settlement and be used by the Settlement Administrator to pay Settlement Class Members and to pay any amounts approved by the Court for Plaintiff's attorneys' fees and costs, expenses of settlement administration, and any class representative service award. Payment of this sum shall be the sole, total and only payment obligation of the Defendant or any other Released Party in Settlement of this Action, inclusive of any and all settlement administration costs.

37. Settlement Payments. The Net Settlement Proceeds, *i.e.*, the amount remaining in the Settlement Account after deduction of any and all amounts approved by the Court for Plaintiff's attorneys' fees and costs, and expenses of settlement administration, and any class representative service awards, shall be distributed to Settlement Class Members on a pro rata basis in the form of individual settlement checks. Each Class Member will receive an equal pro rata portion of the Net Settlement Proceeds. Defendant and any other Released Party shall not have liability as to the Settlement Payments, the allocation of Settlement Payments to each Class Member, and/or the distribution of Settlement Payments to each Class Member.

38. Manner of Distribution. The Settlement Administrator shall send the Settlement Payments to Settlement Class Members by U.S. Mail within thirty (30) days after Defendant has funded the Settlement Account. For purposes of this mailing, the Settlement Administrator shall use the address information that Defendant provides for each Settlement Class Member in accordance with this Agreement, subject to appropriate updating of addresses by cross-referencing the National Change of Address Database. If any Settlement Payment is returned by the U.S. Postal Service with a forwarding address before the check's expiration date, the Settlement Administrator will promptly re-mail the check to the forwarding address. If the Settlement Payment is returned without a forwarding address, the Settlement Administrator shall make reasonable efforts to obtain a current address for the pertinent Settlement Class Member, and the Settlement Administrator shall re-mail the check if a current address is obtained before the check's expiration date.

39. Deadline for Cashing Checks. Each Settlement Class Member shall have sixty (60) Days from the date which appears on the face of check issued to him/her to negotiate his/her settlement check. If any funds remain in the Settlement Account after the 60-day deadline for

Settlement Class Members to negotiate their settlement checks as a result of uncashed or undeliverable checks, the Settlement Administrator shall retain such funds in the Settlement Account for a period of ten (10) days to allow for the processing and payment of any checks that may still be in the bank's check clearing process. Thereafter, the Settlement Administrator shall close out the Settlement Account by issuing a check for any remaining balance as a *cy pres* award to be paid to Bay Area Legal Services.

40. Payments Not Considered Wages. The Parties agree that the Settlement Payments are not wages and shall not be treated as such for tax purposes. The Settlement Administrator shall arrange for the preparation and filing of any tax reports, forms, and returns required to be filed, prepared or disseminated by the Settlement Account, and will send Class Counsel copies of any such filings and receipts of payment in a timely manner. Neither the Parties nor their respective counsel shall have any liability or responsibility of any sort for filing any tax returns or paying any taxes with respect to the Settlement Account. If any tax liability exists, it is the responsibility of each Class Member only.

IV. Attorneys' Fees and Expenses; Costs of Administration.

41. Unopposed Motion for Attorneys' Fees and Expenses. At least ten (10) days prior to the Final Approval Hearing, Plaintiff will seek an order from the Court awarding Class Counsel their reasonable attorneys' fees in the sum total of Thirty-Three and One-Third Percent (33.33%) of the Gross Settlement and, in addition, out-of-pocket expenses incurred in this Action, which, upon approval, will be paid from the Settlement Account. Defendant agrees that it will not oppose Plaintiff's application for attorneys' fees and costs, up to 33.33% of the Gross Settlement, plus reasonable costs. The cost of notice for administration shall be paid out of the Gross Settlement and will also reduce the Settlement Class Members' claims proportionally to

the cost. The procedure for and the allowance or disallowance of any application for fees and expenses are matters separate and apart from the Settlement. Any order or proceeding relating to fees and expenses, or any appeal from any order relating thereto, or any reversal or modification thereof, shall have no effect on the Settlement, and shall not operate to, or be grounds to, terminate or cancel the Agreement or to affect or delay the finality of the Final Approval Order or Judgment.

42. Payment of Approved Attorneys' Fees and Expenses. Within ten (10) days of the Settlement Account being funded, the Settlement Administrator shall pay attorneys' fees and expenses to Class Counsel, pursuant to the terms of the Court order granting such award, by wire transfer or check from the Settlement Account as directed by Class Counsel to the trust account of Wenzel Fenton Cabassa, P.A.

43. Cost of Administration. The Parties agree that all costs of administration shall be paid out of the Gross Settlement and not separately by Defendant or Class Counsel.

V. Service Award.

44. Service Award. At the same time that Plaintiff and Class Counsel file a Motion for Attorneys' Fees and Expenses, they may seek approval of a class representative service award of seven thousand five hundred dollars (\$7,500) for Named Plaintiff Erica Silberstein. In the event this request for a service award is approved by the Court, the Settlement Administrator shall issue a check from the Settlement Account made payable to Named Plaintiff Erica Silberstein at the same time that Class Counsel's attorneys' fees and expenses are paid. Defendant agrees not to oppose a request for the service award for Plaintiff, as awarded by the Court. The procedure for and the allowance or disallowance of any Service Award are matters separate and apart from the Settlement. Any order or proceeding relating to the Service Award,

or any appeal from any order relating thereto, or any reversal or modification thereof, shall have no effect on the Settlement, and shall not operate to, or be grounds to, terminate or cancel the Agreement or to affect or delay the finality of the Final Approval Order or Judgment.

VI. Release of Claims.

45. Plaintiff and Class Release. On the Effective Date, and in consideration of the benefits provided by this Agreement, the sufficiency of which has been determined by the Court and is hereby acknowledged by the Parties, Named Plaintiff Erica Silberstein and all Settlement Class Members, and each of the foregoing's attorneys, agents, spouses, children, beneficiaries, heirs, assigns and dependents, who have not opted out of the Settlement Class shall fully and forever release, waive, acquit, and discharge Defendant, and each of the Released Parties from any and all claims arising out of the facts alleged in the Complaint filed in the Action, including but not limited to any and all claims alleged in the Lawsuit, relating to the COBRA notices issued, or the cessation of employment that were or could have been asserted in this Action, including but not limited to loss of wages and benefits or loss of earning capacity. No individual claims by class members for benefits under ERISA are subject to this waiver except to the extent the claim for benefits or disputed benefits relate to the alleged failure to receive a proper COBRA notice. Similarly, no 401(k)-related or ERISA breach fiduciary duty claims, beyond those alleged in the Lawsuit, are released.

VII. Notice and Right to Opt Out or Object.

46. Notice to Settlement Class Members. The Settlement Administrator shall utilize the Court-approved short and long form of the Notice of Settlement, which will be the only forms utilized by the Administrator. The Settlement Administrator shall also provide the proposed form of the long form of notice that will be posted on the Settlement Administrator's

website along with a list of other pertinent documents which will be available to Settlement Class Members on the Settlement Administrator's website. Moreover, within ten (10) business days after receiving Court-approval of the format and contents of the short and long form of the Notice of Settlement from the Parties, the Settlement Administrator will send the Short Form Notice of Settlement to all Settlement Class Members via first-class U.S. Mail, postage prepaid in the approved form of envelope, if applicable. The Settlement Administrator shall also make the Long Form of notice available on its website at the time when the Notice of Settlement is mailed to the Settlement Class Members.

47. Manner of Distributing Notice. For purposes of distributing the Short Form Notice of Settlement, the Settlement Administrator shall use the address information that Defendant provides for each Settlement Class Member in accordance with this Agreement, subject to appropriate updating by the Settlement Administrator or Class Counsel of addresses by cross-referencing the National Change of Address Database. If any Notice of Settlement is returned by the U.S. Postal Service with a forwarding address, the Settlement Administrator will promptly re-mail the Notice to the forwarding address provided. If the Notice of Settlement is returned without a forwarding address, the Settlement Administrator shall make reasonable efforts to obtain a valid address for the pertinent Settlement Class Member, and mail the Notice to the updated address.

48. Settlement Telephone Number and Talking Points. Effective on the Class Notice Date, and through the expiration of the period for cashing checks, the Settlement Administrator shall establish a toll-free telephone number with an interactive voice response ("IVR") system that Settlement Class Members may call to obtain further information about the Settlement.

Defendant shall have no responsibility for responding to Settlement Class Member inquiries whether written, electronic, or via telephone.

49. Settlement Website. Effective on the Class Notice Date, or as soon as thereafter practicable, and through the expiration of the period for cashing checks, the Settlement Administrator shall establish an active website from which Settlement Class Members can download relevant forms such as the Complaint, the Notice of Settlement, the Term Sheet, the Settlement Agreement, and ECF-filed (*i.e.*, publicly-available) copies of the pleadings in support of approval of the Settlement, Plaintiff's motion for attorneys' fees and expenses, Plaintiff's motion for class representative service award, papers reflecting costs of administration, and the long form of notice. The Settlement Website must be taken down by the Settlement Administrator within 30 days of the Effective Date.

50. Right to Opt Out. Settlement Class Members who wish to exclude themselves from the Settlement must submit a written statement requesting exclusion from the Settlement ("opt-out request"), postmarked no later than the Deadline to Opt Out or Object. Such opt-out request must affirmatively state that the individual wishes to opt-out of the Settlement, state the case name and number, contain the name, address, telephone number, and email address of the Settlement Class Member requesting exclusion, and be personally signed by that Settlement Class Member. The opt-out request must be sent by U.S. Mail to the Settlement Administrator (at the address provided in the Notice of Settlement), and must be timely postmarked on or before the Deadline to Opt Out or Object. The Settlement Administrator shall provide the Parties' Counsel (as specified below) with copies of all opt-out requests within five (5) business days after the Deadline to Opt Out or Object. Any Settlement Class Member who timely requests exclusion from the Settlement will not be entitled to any Settlement Payment and will not be

bound by this Settlement or have any right to object, appeal or comment thereon. No opt-out request may be made on behalf of a group of Settlement Class Members. Each opt-out must be individually signed.

51. Objections. Any Settlement Class Member who does not opt-out and wishes to object to the Settlement must file a timely written statement of objection with the Clerk of Court, and mail a copy of that objection with the requisite postmark to the Settlement Administrator (at the address provided in the Notice of Settlement) no later than the Deadline to Opt Out or Object. The Settlement Administrator shall provide the Parties' Counsel (as specified below) with copies of all objections within five (5) business days after the Deadline to Opt Out or Object. The statement of objection must state the case name and number; state with specificity the grounds for the objection; state whether it applies to only the objector, to a specific subset of the class, or to the entire class; provide the name, address, telephone number, and email address of the Settlement Class Member making the objection; and indicate whether the Settlement Class Member intends to appear at the Final Approval Hearing, either with or without counsel. In addition, any statement of objection must be personally signed by the Settlement Class Member and, if represented by counsel, then also by counsel. Any Settlement Class Member who fails to timely object to the Settlement in the manner specified above shall be deemed to have waived any objections to the Settlement and shall be foreclosed from making any objections, whether by appeal or otherwise, to the Settlement.

VIII. Settlement Approval.

52. Preliminary Approval Motion. Plaintiff's counsel is responsible for drafting the first drafts of the settlement agreement, motion for preliminary approvals, plus all related exhibits/notices for Defendant's counsel's review, due within 14 days from the date this

agreement is executed. Defendant's edits/drafts are due back to Plaintiff's counsel within 14 days of receipt of drafts. The Parties will work in good faith to file a joint motion for preliminary approval as soon as reasonably practicable. The Parties agree to collaborate in good faith in the preparation and finalization of the Preliminary Approval Motion. The Preliminary Approval Motion will request that the Court (a) enter an agreed-upon Preliminary Approval Order; (b) certify the Settlement Class for Settlement purposes only; (c) appoint Plaintiff as the named Class Representative and Plaintiff's counsel as Class Counsel for Settlement purposes; (d) authorize distribution of the Notice of Settlement to the Settlement Classes; (e) set a Deadline to Opt Out or Object; and (f) set a date for a Final Approval Hearing, not to occur until at least ninety (90) days after the Court's Preliminary Approval Order.

53. CAFA Notices. Defendant shall submit the notices required under the Class Action Fairness Act, 28 U.S.C. § 1715, to the applicable state and federal officials within ten (10) days of the filing of the Preliminary Approval Motion.

54. Final Approval Motion. At least ten (10) days before the Final Approval Hearing, or on the date set by the Court (if different), Plaintiff shall file an Unopposed Motion for Final Approval Motion. Plaintiff's counsel shall take the lead on preparing a draft of the Final Approval Motion and Final Approval Order and will coordinate finalizing the motion and order with input from Defendant. The Parties agree to collaborate in good faith in the preparation and finalization of the Final Approval Motion and Final Approval Order. Plaintiff shall provide Defendant with a draft of the Unopposed Final Approval Motion at least 14 days before the deadline for filing, so that Defendant may have sufficient time for review and approval. Prior to finalizing the Final Approval Motion, the Settlement Administrator shall provide Class Counsel and Defendant's Counsel with a report listing the names and addresses of all Settlement Class

Members to whom the Settlement Administrator mailed a Notice of Settlement, and indicating which Settlement Class Members submitted a timely opt out request, if any, and which Settlement Class Members submitted a timely objection, if any (as well as copies of any such opt-outs or objections).

55. Right to Terminate Settlement. The Parties shall each have the right to unilaterally terminate this Agreement by providing written notice of their election to do so within ten (10) business days after all of the following have occurred: (a) the Court's refusal to certify the Settlement Class as defined herein; (b) the Court's refusal to grant preliminary approval of the Settlement after the Parties have attempted to re-submit the Preliminary Approval Motion at least one time addressing any issues raised by the Court as to the first Preliminary Approval Motion and/or Settlement Agreement; (c) the Court's refusal to grant final approval of the Settlement (or if the Final Approval Order agreed to by the Parties is materially modified in a manner unacceptable to either Party); or (d) only if any objection(s) are timely made, and, as a result of said objection, the date upon which the Final Approval Order is reversed, or if the Final Order is materially modified in a manner unacceptable to either Party by the U.S. Court of Appeals for the Eleventh Circuit or the U.S. Supreme Court. If there are no objections, Paragraph 56(d) is inapplicable.

56. The above notwithstanding, the Parties agree that should any of the conditions set forth in Paragraph 55 occur, the Parties will, within the above-indicated period, meet and confer by telephone in a good-faith attempt to reach agreement on a settlement of this Action.

57. In addition, Defendant shall have the right unilaterally to terminate this Agreement by providing written notice to Plaintiff's Counsel of its election to do so within ten (10) business days after the Deadline to Opt Out or Object if a total of one percent (1%) or more,

totaling at least 121, of the 12,170 putative members of the Settlement Classes request exclusion from the Settlement by submitting timely opt-out requests.

58. Termination of Settlement. If the Settlement is terminated pursuant to Paragraph 55 or 57 of this Agreement, the Parties will return to the *status quo ante*, and the Action shall proceed as if this Settlement had never been negotiated. In particular, it is agreed by the Parties that:

- (a) the Settlement proposed herein shall be of no further force and effect;
- (b) the agreements and definitions in this Settlement Agreement concerning the certification of the Settlement Class will not be used as evidence or argument to support class certification or the definition of any class in any further litigation, and Defendant will retain all rights to oppose the certification of any class in any further litigation; which shall survive the termination of the Settlement, this Settlement Agreement and all negotiations, proceedings and statements relating thereto, and any amendment thereof, shall be null and void and shall be without prejudice to the Parties or the Released Parties, and each Party and Released Party shall be restored to his, her or its respective position as it existed prior to the execution of this Settlement Agreement.

59. Settlement Modification. The Parties may agree by written stipulation of counsel to reasonable modifications of the timetables set forth in this Agreement or to modifications to this Agreement to effectuate the purpose of this Agreement or to conform to guidance from the Court, without the need to formally amend this Agreement.

60. Dismissal with Prejudice: Within five (5) days after the Effective Date, Plaintiff and Defendant agree that they will jointly stipulate to the dismissal with prejudice of the Action. Plaintiff and Defendant agree they will request that the Court retain jurisdiction to enforce the Settlement Agreement for a limited period of time.

IX. Other Provisions.

61. Mediation; Dispute Resolution. In the event that the Parties disagree upon the terms of this Settlement Agreement or as to any matter concerning the administration of this Class Action Settlement, the Parties and the relevant Released Parties agree to use their best efforts to amicably resolve the dispute and to participate in mediation before an agreed upon mediator prior to seeking relief from the Court.

62. Authority. The signatories below represent that they are fully authorized to enter into this Agreement. All class members who do not opt out are bound by the signature of the Plaintiff as to any settlement and/or judgment.

63. No Press Release or Publicity. Neither the Parties nor their counsel will issue any press releases or otherwise comment to the press concerning the Settlement.

64. No Admission/ No Waiver. The settlement shall not be deemed to be an admission of any liability or wrongdoing by Defendant or any Released Party in any manner, nor shall it be construed as such, but rather it is understood that Defendant is settling this matter merely to buy peace and avoid the cost of protracted litigation. Further, this settlement shall not be construed as any indication or admission that the COBRA Notice at issue was deficient in any way. Neither this Settlement Agreement, nor any document or account relating to this Settlement shall be construed as, offered or admitted into evidence as, or be deemed to be evidence for any purpose adverse to Defendant or any Released Party, except for purposes of settling this Action or enforcing settlement of this Action. Defendant enters into this Agreement solely on the facts and circumstances particular to the matters covered by this Agreement. This Settlement Agreement shall not be deemed as an admission by, waiver of, or used as estoppel against, the rights of Defendant to assert that the claims set forth in this case or any other case are otherwise inappropriate for class certification under Rule 23 in the absence of a settlement. To

the extent this settlement is not approved, Defendant do not waive, but rather expressly reserve all rights to challenge any and all claims and allegations asserted by Plaintiff (whether procedural or substantive) should the case proceed upon all procedural and substantive grounds.

65. Best Reasonable Efforts and Mutual Full Cooperation. The Parties agree to fully cooperate with one another to accomplish the terms of this Agreement, including, but not limited to, executing such documents and taking such other actions as may be reasonably necessary to implement the terms of this Settlement. The Parties will use their best reasonable efforts, including all efforts contemplated by this Agreement and any other efforts that may become necessary as ordered by the Court, or otherwise, to effectuate this Agreement and to secure the Court's approval of the Settlement.

66. Communications with Settlement Class Members. The Parties and their respective counsel shall not discourage any Settlement Class Member from participating in this Settlement or lobby or encourage any Settlement Class Member to opt out of the Settlement or object to the Settlement.

67. Binding Effect on Successors and Assigns. This Agreement will be binding upon and will inure to the benefit of the Parties and their respective heirs, trustees, executors, administrators, successors, and assigns.

68. Construction. The Parties agree that the terms and conditions of this Agreement are the result of lengthy, arms'-length negotiations between the Parties, and that this Agreement will not be construed in favor of or against any party by reason of the extent to which any party or party's counsel participated in the drafting of this Agreement.

69. Entire Agreement. This Settlement Agreement and the attached Exhibits, incorporated herein by reference, constitute the entire agreement of the Parties with respect to the

subject matter hereof and supersedes all prior negotiations, communications, and agreements between the Parties, and may not be amended, or any of their provisions waived, except by a writing executed by all Parties hereto. The Parties: (a) acknowledge that it is their intent to consummate this Settlement Agreement; and (b) agree to cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of the Settlement Agreement and to exercise their commercially reasonable best efforts to accomplish the foregoing terms and conditions of the Settlement Agreement. The Parties intend this Settlement Agreement to be a final and complete resolution of all disputes between them, relating to or arising out of, the subject matter of the Action. Accordingly, the Parties agree that the terms of the Settlement Agreement represent a good-faith settlement, reached voluntarily based upon adequate information and after consultation with experienced counsel. The Parties also agree Plaintiff's attorneys' fees and costs were not discussed until all other terms were reached.

70. Governing Law. This Settlement Agreement shall be governed by the laws of the State of Florida without giving effect to the conflict of laws or choice of law provisions thereof, except to the extent that the law of the United States governs any matter set forth herein, in which case such federal law shall govern.

71. Venue. The Parties hereby agree that any action brought upon the enforcement of this Agreement shall be commenced or filed in the United States District Court for the Middle District of Florida, Tampa Division.

72. Extensions. The Parties may agree, in writing, subject to the approval of the Court where required, to reasonable extensions of time to carry out the provisions of this Settlement Agreement.

73. Effect of Captions and Headings. Paragraph titles, captions, or headings in this Agreement are inserted as a matter of convenience and for reference purposes only, and in no way define, limit, extend, or describe the scope of this Agreement or any provision in it. Each term of this Agreement is contractual and is not merely a recital.

74. Notices. Unless otherwise specifically provided in this Agreement, any notices or communications to the Parties relating to this Settlement should be sent to their respective counsel in writing, and will be deemed to have been duly given as of the third business day after mailing by U.S. registered or certified mail, return receipt requested or as of the date of delivery confirmation by Federal Express, United Parcel Service or equivalent express carrier, as follows:

Plaintiff's Counsel:

Luis A. Cabassa, Esq.
Brandon J. Hill, Esq.
Wenzel Fenton Cabassa, P.A.
1110 N. Florida Ave., Suite 300
Tampa, FL 33602

Marc Reed Edelman
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One Tampa City Center Ste 700
201 N Franklin Street
Tampa, FL 33602

Defendant's Counsel:

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56 S Washington St
Valparaiso, IN 46383

Michael D. Ray
Ogletree Deakins
201 S. College St., Suite 2300
Charlotte, NC 28244

Jennifer Monrose Moore
Ogletree Deakins

100 North Tampa Street, Suite 3600
Tampa, Florida 33602

75. Counterparts. This Agreement may be executed in one or more counterparts. All executed copies of this Agreement and photocopies thereof (including facsimile and/or emailed copies of the signature pages), shall have the same force and effect and shall be as legally binding and enforceable as the original.

76. Class Signatories. The Parties agree that because the Settlement Class Members are so numerous, it is impossible and impracticable to have each Settlement Class Member execute this Agreement. Therefore, the Notice will advise all Settlement Class Members of the binding nature of the release and will have the same force and effect as if executed by each Class Member.

77. Authority of Court. The administration and implementation of the Settlement as embodied in this Settlement Agreement shall be under the authority of the Court. The Court shall retain jurisdiction to protect, preserve, and implement the Settlement Agreement, including, but not limited to, enforcement of the Release contained in the Agreement. The Court expressly retains jurisdiction in order to enter such further orders as may be necessary or appropriate in administering and implementing the terms and provisions of the Settlement Agreement.

X. Execution.

76. The undersigned, being duly authorized, have caused this Settlement Agreement to be executed on the dates shown below and agree that it shall take effect on Effective Date, as defined in this Agreement, and provided that it has been executed by all Parties.

7/20/2020

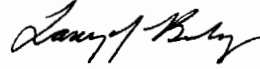
DATE

Erica Silberstein

NAMED PLAINTIFF ERICA SILBERSTEIN

08/03/2020

DATE



DEFENDANT PETSMART, INC.

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