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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO- CENTRAL DIVISION

RAECHANIEL HALL, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

NATIONAL CITY PUPPY, LLC., a corporation, d/b/a Yellow Store Enterprises, LLC, a limited liability company; KRW ASSOCIATES, LLC, d/b/a Global CFS; PayTomorrow, business entity unknown; and DOES 1 through 25, Inclusive

Defendants.

Case No.: 37-2019-00015933-CU-BC-CTL

CLASS ACTION

PLAINTIFFS' COMPLAINT FOR

1. **Failure to Comply with California Civil Code § 1670.10;**
2. **Violations of California Consumer Legal Remedies Act;**
3. **Violation of California Unfair Competition Law;**
4. **Injunctive Relief**

[Request for Jury Trial]

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD HEREIN:

COMES NOW, Plaintiff RAECHANIEL HALL ("Plaintiff"), by and through her attorneys, brings this action on behalf of herself and all others similarly situated against NATIONAL CITY PUPPY, INC.; KRW ASSOCIATES, LLC, d/b/a Global CFS, d/b/a PayTomorrow; and DOES 1 through 25, inclusive (collectively "Defendants"). Plaintiff and/or her representatives allege the following based upon belief and expectation that, after the reasonable opportunity for discovery, the following allegations will be established:

NATURE OF ACTION GENERALLY

1. This Class Action is a California statewide class action for violation of California Civil Code § 1670.10, arising out of Defendants' void contracts entered into with consumers to lease dogs and cats after January 1, 2018.

2. At all times mentioned, Defendant NATIONAL CITY PUPPY, was, and is, a California corporation (hereinafter "NATIONAL"), and duly authorized to do business in the State of California, including the County of San Diego. NATIONAL's principal business location is 1430 E. Plaza Blvd., Suite E-19 B, National City, CA 91950.

3. At all times mentioned, Defendant KRW ASSOCIATES, LLC, d/b/a Global CFS, d/b/a PayTomorrow, was, and is, a California limited liability company (hereinafter "KRW"), and duly authorized to do business in the State of California, including the County of San Diego. KRW's principal business location is 19600 W. Catawba Avenue, Building C, Suite 301, Cornelias, NC 28031. KRW's agent for service in California is In Corp Services, with a street address of 5716 Corsa Avenue, Suite 110, Westlake Village, CA 91362-735.

4. As more fully alleged herein, Defendants' violations revolve around issuing and entering into contracts that transfer ownership of dogs and cats after January 1, 2018. As a result of these transactions, Defendants have violated provisions of California law.

5. Plaintiff signed Defendants' Closed End Consumer Goods Lease Agreement and Retail Installment Contract and Security Agreement for the lease of a dog on September 10, 2018. The Agreements made the ownership of the dog contingent upon (1) entering a lease that offers a purchase option and (2) completing installment payments subsequent to the transfer of possession of the dog.

6. This action is brought on behalf of Plaintiff and a class of Defendants' consumers to secure and vindicate rights afforded to them by California Civil Code § 1670.10, California Code of Civil Procedure § 1750 et seq., and California Business and Professions Code § 17200 et seq.

7. Plaintiffs are victims of Defendants' unlawful practices and bring this action to

obtain ownership of the dogs and cats, compensation for their amounts paid under their contracts with defendants, interest, statutory penalties, expert witness fees, costs of suit herein and attorneys' fees pursuant to all attorney-fee statutes found by the Court to apply to the facts presented at trial.

PARTIES, JURISDICTION AND VENUE

8. Plaintiff is an individual residing in San Diego County, California.

9. Plaintiff is informed and believes and thereon alleges that Defendant NATIONAL is, and at all relevant times was, a corporation doing business in the State of California, County of San Diego.

10. Plaintiffs are informed and believe and thereon allege that Defendant KRW is, and at all relevant times was, a limited liability company doing business in the State of California, County of San Diego.

11. This Court has subject matter jurisdiction over this action pursuant to California Civil Code § 1780. This court has personal jurisdiction over the parties because Plaintiff submits to the jurisdiction of the court and Defendants National and KRW systematically and continuously do business in the county of San Diego, State of California. Venue is proper because the claims arose within this judicial district.

12. Plaintiffs are ignorant to the true names and capacities of the defendants sued herein as DOES 1 through 25 and therefore sues these defendants by such fictitious names. Plaintiffs will amend this Complaint to allege the true names and capacities when they are ascertained.

13. Plaintiffs are informed and believe and thereon allege that each fictitiously named defendant is responsible in some manner for the occurrences herein alleged and Plaintiffs' injuries and damages as herein alleged are directly, proximately and/or legally caused by defendants and all of their acts.

14. Plaintiffs are informed and believe and thereon allege that the aforementioned DOES are somehow responsible for the acts alleged herein as the agents, employers, representatives or employees of other named defendants and in doing the acts herein alleged were

acting within the scope of their agency, employment or representative capacity of said named defendants or of each other.

15. The tortious acts, omissions and unlawful business practices alleged herein were performed by Defendants' employees. Defendants allowed and/or condoned a continuing pattern of illegal practices.

SPECIFIC FACTUAL ALLEGATIONS

16. This lawsuit concerns Defendants' unlawful and unfair practice of entering into contracts on or after January 1, 2018, to transfer ownership of a dog or cat to consumers, and in doing so, making the ownership contingent upon the making of payments over a period of time subsequent to the transfer of possession of the dog or cat.

17. This lawsuit also concerns Defendants' unlawful and unfair practice of entering into contracts with consumers on or after January 1, 2018, for the lease of a dog or cat that provide for or offer the option of transferring ownership of the dog or cat at the end of the lease term.

18. On or about September 10, 2018, Plaintiff HALL, a 25-year-old female, and her boyfriend, Keith Brown, visited NATIONAL's storefront, National City Puppy, at 1430 E. Plaza Blvd. East, National City, CA 91950.

19. At the store, Plaintiff HALL and Mr. Brown found the dog that they wanted to purchase – a Boston Terrier. NATIONAL told Plaintiff HALL that the dog's price was $2,500.00.

20. NATIONAL described its financing options. Choosing a financing option would allow Plaintiff HALL to take the dog home that day after making a down payment. However, unbeknownst to Plaintiff HALL, she would not own the dog until she completed *multiple* lease payments *and* exercised her right to a purchase option.

21. Next, NATIONAL ran a credit check on Plaintiff HALL and told her that she only had one financing option. The sole financing option was as follows: a down payment of $249.76 on September 10, 2018, and then make all subsequent payments subject to 0% interest over the next nine months. Based on Defendants representations, Plaintiff HALL chose this option.

22. NATIONAL holds itself out on its website as having "30 years of industry

experience" in selling dogs. Therefore, Plaintiff HALL trusted and agreed to NATIONAL's payment plan.

23. After Plaintiff HALL agreed to the payment plan, NATIONAL told her to complete the financing process on PayTomorrow, KRW's website which hosts businesses' ecommerce purchases and financing contracts. NATIONAL sent Plaintiff HALL a text message from phone number 370-83. The text message included a link to PayTomorrow.com and read:

> "Hey Raechaniel, please click below to e-sign your PayTomorrow Consumer Agreements and finalize your purchase from National City Puppy. Please note you will need to make your first monthly payment today via debit card (no prepaid cards) allowed. Please click "https://api.paytomorrow.com/api/support/esign/application/3d2a50c1-ab56-4e19-980c-f157a6300c01 to finalize your purchase. Any questions please call 866-230-1034."

24. When Plaintiff HALL visited the KRW website, she was directed to a list of NATIONAL's financing options. Despite seeing a list of payment options on the website, NATIONAL told her to choose the financing option that included $249.76 as the down payment. NATIONAL aggressively directed Plaintiff HALL to click on a button that read: "I accept this option."

25. After Plaintiff HALL submitted the down payment, she received a receipt for account #109330-1. The receipt noted that Plaintiff HALL's total payments would equal $2,416.67. Plaintiff also received a text message that read:

> "Congratulations Raechaniel! Your financing from PayTomorrow is finalized. Please check your email for the signed contracts regarding your purchase from National City Puppy. If you have any questions, please call our Customer Service department at 866-230-1034."

26. NATIONAL never told or explained to Plaintiff HALL that during the financing process Plaintiff HALL did not own the dog. In fact, Plaintiff HALL believed she owned the dog once she made the down payment.

27. When Plaintiff HALL arrived home that day, NATIONAL emailed her the contracts from KRW. The contracts were titled: Closed End Consumer Goods Lease Agreement ("Closed Agreement") and Retail Installment Contract and Security Agreement ("Retail

Agreement"). Plaintiff had not seen either Agreement while navigating PayTomorrow.com. Thus, she did not agree to any of the terms in the contract other than the payment of the principal amount of $249.76.

28. The Closed Agreement and Retail Agreement contracts included information Plaintiff did not recall seeing on the forms available on PayTomorrow.com. For example, both contracts indicate that the seller's name and address is KRW, LLC dba Global CFS, 17505 West Catawba Avenue, Suite 200, Cornelius, NC 28031 – not NATIONAL.

29. The Closed Agreement indicated that the "agreed upon value" of the "property" was $2,500.00. It also indicated that Plaintiff HALL owed nine total payments of $249.76, including the principal amount. Per the contract language, Plaintiff HALL's payments are due on the 10th of each month. As indicated by the Agreement, Plaintiff HALL will have paid $2,247.87 by the end of the lease. A clause in the Agreement read: "You are leasing the property and have no ownership rights in it unless you exercise your purchase option." The purchase option is listed in paragraph nine. The purchase option stated: "You will have an option to purchase the Property at the scheduled end of the Lease for $1,750.00 official fees and taxes." The wording in the Agreement is clear evidence that Plaintiff HALL did not own the Boston Terrier. Defendants only intended on transferring the dog *after* the lease, *after* Plaintiff HALL exercised the purchase option, and *after* Plaintiff HALL made multiple payments.

30. Despite the Closed Agreement indicating that the "agreed upon value" of the Boston Terrier was $2,500.00, the Retail Agreement stated that Plaintiff HALL needed to pay an additional $1,750.00 at the end of the lease to own the dog so that Plaintiff Hall would "giv[e] a security interest in the goods or property being purchased." Thus, Plaintiff HALL will have to make nine additional payments of $207.64 in order to own the dog.

31. The Agreements also included a finance charge of $118.74. Thus, the agreed upon value of the dog is actually the agreed upon value of $2,500.00, plus the $1,750.00 purchase option, plus the $118.74 finance charge.

32. Both Agreements demonstrate that Defendants intended to retain all ownership rights of the Boston Terrier until Plaintiff HALL fulfilled the terms under the lease, exercised a

purchase option requiring an additional nine months of payments, and satisfying a finance charge.

33. The following clause in the Retail Agreement further demonstrates the unfair business practices between Plaintiff HALL and Defendants:

> "If this Agreement is in default and [KRW is] not immediately paid all amounts due under this Agreement, **[KRW] may: demand that [Plaintiff HALL] deliver the Collateral to [KRW]; repossess the Collateral; foreclose on the Collateral under applicable law**; or pursue any other remedy [KRW has] under applicable law." (emphasis added)

34. On or about October 1, 2018, Plaintiff HALL received a monthly billing statement through PayTomorrow.com. The statement indicated that Plaintiff HALL owed $249.76 on the next payment date, October 10, 2018. The billing statement was itemized, unlike any other document that Plaintiff HALL saw thus far. It showed that the $249.76 was comprised of a payment of $83.33 for "Depreciation/Principal" and $166.43 for "Lease Charge/Interest."

35. Since early October 2018, Plaintiff HALL has called NATIONAL's store multiple times to vaccinate the dog. NATIONAL reassured her that the dog's vaccinations were current. However, Plaintiff HALL was aware that the dog still required a plethora of vaccinations. Each time she received the same response: "The manager is unavailable" – or words to that effect.

36. On or about October 2018, Plaintiff HALL called the number listed on PayTomorrow.com. During the call, a KRW representative told her, "Call the store because they are the ones who have your money." Based on this statement, Plaintiff was confused as to whether she entered into a contract with NATIONAL or KRW.

37. NATIONAL knew of the illegal lease and loan agreements its employees coerced customers into signing. In fact, NATIONAL encouraged its customers to enter into the contracts. The NATIONAL website has a tab titled "Puppy Payments." On this tab, NATIONAL tells its customers, "Good credit, bad credit, no credit, or no credit check options available"; "We make it easy to afford a new puppy!" NATIONAL's website also promises that NATIONAL's "puppy payments" are "the safe and secure way to make puppy payments." Unfortunately, this is a false statement, as NATIONAL's lease and loan agreement schemes are void against public policy.

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CLASS ALLEGATIONS

38. Plaintiff brings this action on behalf of herself, and on behalf of all others similarly situated, and as a member of the Class defined as follows: All persons or entities who entered into contracts with Defendants after January 1, 2018, to do the following: (1) transfer ownership of a dog or cat in which the ownership was contingent upon the making of payments over a period of time subsequent to the transfer of possession of the dog or cat; or (2) lease a dog or cat with the option of transferring ownership of the dog or cat at the end of the lease term.

39. Plaintiff reserves the right to amend or otherwise alter the class definitions presented to the Court at the appropriate time, or to propose or eliminate sub-classes, in response to facts learned through discovery, legal arguments advanced by Defendants or otherwise.

40. This action has been brought and may be properly maintained as a class action pursuant to California Code of Civil Procedure § 382 and other applicable laws.

41. Numerosity of the Class: Members of the Class are so numerous that their individual joinder is impracticable. The precise number of Class members and their addresses are known to Plaintiff or will be known to Plaintiff through discovery. Class members may be notified of the pendency of this action by mail, electronic mail, the Internet, or published notice.

42. Existence of Predominance of Common Questions of Fact and Law: Common questions of law and fact exist as to all members of the Class. These questions predominate over any questions affecting only individual Class members. These common legal and factual questions include:

a. Whether Defendants' contracts are void against public policy;

b. Whether Defendants violated Civil Code § 1670.10;

c. Whether Defendants violated Civil Code § 1750 *et seq.*;

d. Whether Defendants' conduct in connection with their contracts to transfer ownership of dogs and cats is an unlawful business practice;

e. The nature and extent of class-wide injury and the measure of damages for the injury.

43. Typicality: Plaintiffs claims are typical of the claims of the members of the classes she represents because Plaintiff entered into lease and loan agreements with Defendants and was injured by the agreements. Plaintiff and the members of the classes she represents sustained the same or similar types of damages and losses.

44. Adequacy: Plaintiff is an adequate representative of the Class she seeks to represent because her interests do not conflict with the interests of the members of the subclasses Plaintiff seeks to represent. Plaintiff has retained counsel competent and experienced in complex class action litigation and Plaintiff intends to prosecute this action vigorously. The interests of members of each Class will be fairly and adequately protected by Plaintiff and her counsel.

45. Superiority and Substantial Benefit: The class action is superior to other available means for the fair and efficient adjudication of Plaintiff and the Class members' claims. The damages suffered by each individual Class member may be limited. Damages of such magnitude are small given the burden and expense of individual prosecution of the complex and extensive litigation necessitated by Defendants' conduct. Further, it would be virtually impossible for the Class members to redress the wrongs done to them on an individual basis. Even if members of the Class themselves could afford such individual litigation, the court system could not. Individualized litigation increases the delay and expense to all parties and the court system, due to the complex legal and factual issues of the case. By contrast, the class action device presents far fewer management difficulties, and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court.

46. The Class(es) should also be certified because:

a. The prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications with respect to individual Class members which would establish incompatible standards of conduct for Defendants;

b. The prosecution of separate actions by individual members of the Class would create a risk of adjudication with respect to them, which would, as a practical matter, be dispositive of the interests of the other Class members not parties to the adjudications, or substantially impair or impede their ability to protect their interests; and

c. Defendants have acted or refused to act on grounds generally

applicable to the Class, and/or the general public, thereby making appropriate final and injunctive relief with respect to the Classes as a whole.

FIRST CAUSE OF ACTION

Failure to Comply with California Civil Code § 1670.10

(All Plaintiffs against all Defendants and DOES 1 through 25 inclusive)

47. Plaintiff re-alleges and incorporates by reference each and every allegation contained in the preceding and subsequent paragraphs as though fully set forth herein.

48. Defendants, knowing of their willful violations of California's laws, made ownership of NATIONAL's dogs and cats contingent upon entering into loan agreements after January 1, 2018. Defendants also, while aware of their willful violations, after January 1, 2018, sometimes made ownership of NATIONAL's dogs and cats contingent upon entering a lease that offers a purchase option at the end of the lease term. Defendants' actions demonstrate their wanton desire to evade California's laws.

49. KRW assisted NATIONAL in implementing and distributing the illegal contracts to consumers. In fact, KRW's business name and address are listed as the "Seller" on both Agreements. Thus, KRW was aware of and condoned this illegal practice.

50. Given NATIONAL's "30 years of industry experience" and KRW's frequent business with NATIONAL, all Defendants understood that their practices were unlawful.

51. Due to Defendants' standard operating procedure, Plaintiffs were regularly forced into misleading contracts. Defendants knew of these facts and permitted, encouraged, and/or required Plaintiffs to enter into their contracts in order to own their dogs and cats.

52. As a proximate result of Defendants' unlawful conduct described herein, Plaintiffs have suffered and continue to suffer, from loss of all amounts the Plaintiffs paid under the contracts, an amount that has yet to be ascertained, but subject to proof at the time of trial.

SECOND CAUSE OF ACTION

Violations of the Consumer Legal Remedies Act

(All Plaintiffs against all Defendants and DOES 1 through 25 inclusive)

53. Plaintiff re-alleges and incorporates by reference each and every allegation

contained in the preceding and subsequent paragraphs as though fully set forth herein.

54. Plaintiff is a consumer" as defined by California Civil Code section 1761(d).

55. The cat and dog leasing services Defendant NATIONAL and Defendant KRW provided to Plaintiff and to the Class constitute "services" as defined by California Civil Code section 1761(c).

56. Defendant NATIONAL and Defendant KRW are "person[s]" as defined by California Civil Code section 1761(c).

57. Section 1170(a)(9), (14), and (19) of the Consumer Legal Remedies Act ("CLRA") makes it unlawful to insert an unconscionable provision in a contract with a consumer.

58. Defendant NATIONAL and Defendant KRW have inserted, and continues to insert, unconscionable cat and dog leasing and installment payment option provisions in its contracts with California consumers, including Plaintiff and the Class.

59. Unless restrained by this court, Defendant NATIONAL and Defendant KRW will continue to use unconscionable cat and dog leasing and installment payment option provisions against California consumers in violation of section 1770(a)(9), (14), and (19) of the CLRA, causing further damage to California consumers.

60. Plaintiff and the Class have no adequate remedy at law in that Defendant NATIONAL and Defendant KRW will continue to violate section 1770(a)(9), (14), and (19) of the CLRA, thus engendering a multiplicity of judicial proceedings in which it would be extremely difficult or impossible to ascertain the amount of compensation which would afford adequate relief. Pursuant to section 1780(a)(4) of the CLRA, Plaintiff and the Class are, therefore, entitled to and request an injunction prohibiting Defendant NATIONAL's and Defendant KRW's wrongful acts herein alleged.

61. The above-mentioned acts of Defendant NATIONAL and Defendant KRW were oppressive, fraudulent, and malicious, and were done with the intention on the part of Defendant NATIONAL and Defendant KRW depriving Plaintiff and the Class members of property and their legal rights, so as to justify an award of punitive damages.

62. Plaintiff and the Class are entitled to recover attorney's fees and costs pursuant to

California Code of Civil Procedure section 1780(d) and California Code of Civil Procedure section 1021.5.

THIRD CAUSE OF ACTION

Unlawful Business Practices in Violation of California Business and Professions Code §17200 *et seq.*

(All Plaintiffs against all Defendants and DOES 1 through 25 inclusive)

63. Plaintiffs re-allege and incorporate by reference each and every allegation contained in the preceding and subsequent paragraphs as though fully set forth herein.

64. Defendants engaged in unlawful activity prohibited by Business and Professions Code §17200 *et seq.* The actions of Defendants as alleged within this Complaint, constitute unlawful and unfair business practices within the meaning of Business and Professions Code §17200 *et seq.*

65. As described above, Defendants have conducted the following unlawful activities:

a. Violation of California Civil Code §1670.10 by entering into contracts after January 1, 2018, to transfer ownership of a dog or cat in which ownership is contingent upon the making of payments over a period of time subsequent to the transfer of possession of the dog or cat.

b. Violation of California Civil Code §1670.10 by entering into contracts after January 1, 2018 for the lease of a dog or cat that provides for or offers the option of transferring ownership of the dog or cat at the end of the lease term.

66. Defendants' activities also constitute unfair practices in violation of Cal. Bus. & Prof. Code §17200 *et seq.*, because Defendants' practices violate the above noted laws, and/or violated an established public policy and/or the practice is immoral, unethical, oppressive, unscrupulous, and substantially injurious to Plaintiffs.

67. As a result of Defendants' violations of Cal. Civ. Code §1670.10, Plaintiffs have suffered injury-in-fact and have lost money or property as a result of Defendants' practices. This injury-in-fact and loss of money or property consists of restitutionary remedies provided by the Cal. Civ. Code §§1670.10 and detailed in this complaint and other resulting harms. Plaintiffs are

entitled to restitution, an injunction, declaratory and other equitable relief against such unlawful practices to prevent future damage for which there is no adequate remedy at law.

68. As a result of their unlawful acts, Defendants have reaped and continues to reap unfair benefits and unlawful profits at the expense of Plaintiffs. Defendants should be enjoined from this activity and made to disgorged these ill-gotten gains and restore to Plaintiffs the wrongfully withheld profit or wages pursuant to Business and Professions Code §17203. Plaintiffs are informed and believe, and thereon allege, that Defendants are unjustly enriched through its failure to pay legal wages, and/or other remedies. Plaintiffs are informed and believe, and thereon allege, that Plaintiffs are prejudiced by Defendants' unfair trade practices.

69. As a direct and proximate result of the unfair business practices of Defendants, Plaintiffs are entitled to equitable and injunctive relief, including full restitution and/or disgorgement of all profits and wages which have been unlawfully withheld from Plaintiffs as a result of the business acts and practices described herein and enjoining Defendants to cease and desist from engaging in the practices described herein for the maximum time permitted pursuant to Business and Professions Code §17208, including any tolling.

70. The unlawful and unfair conduct alleged herein is continuing and there is no indication that Defendants will refrain from such activity in the future. Plaintiffs believe and allege that if Defendants are not enjoined from the conduce set forth in this Complaint; it will continue to violate California and federal laws. Plaintiffs further request that the Court issue a preliminary and permanent injunction.

FOURTH CAUSE OF ACTION

Injunctive Relief

(All Plaintiffs against all Defendants and DOES 1 through 25 inclusive)

71. Plaintiff re-alleges and incorporates by reference each and every allegation contained in the preceding and subsequent paragraphs as though fully set forth herein.

72. Pursuant to California Code of Civil Procedure section 526, Plaintiff and the Class are entitled to and request an injunction prohibiting Defendants wrongful acts alleged herein.

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PRAYER FOR RELIEF

WHEREFORE Plaintiff, on behalf of herself and all others similarly situated and also on behalf of the general public, respectfully prays for judgment against Defendants as follows:

1. An order that this action may proceed and be maintained as a class action;
2. For nominal, actual and compensatory damages;
3. For restitution of all monies and wages and expenses and benefits due to Plaintiffs;
4. For disgorged profits from the unfair and unlawful business practices of Defendants;
5. For interest accrued to date;
6. For interest pursuant to Civil Code § 1670.10;
7. For penalties pursuant to Civil Code § 1670.10;
8. For punitive and exemplary damages;
9. For costs and suit and expenses incurred herein;
10. For reasonable attorneys' fees;
11. For appropriate injunctive relief;
12. For appropriate equitable relief;
13. For appropriate declaratory relief; and
14. For all such other and further relief that the Court may deem just and proper.

JURY DEMAND

Plaintiffs demand a jury trial on all issues in this case.

Dated: November 21, 2018

THE PRIDE LAW FIRM

By: _____

DANTE T. PRIDE
Attorneys for Plaintiff and others Similarly situated