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To Whom it May Concern:

The National Employment Law Project (NELP) appreciates this opportunity to address the problem of employer-driven debt. NELP is a non-profit research, policy, and advocacy organization that for over 50 years has sought to ensure that all workers, especially those most vulnerable to workplace exploitation or abuse, receive the basic workplace protections guaranteed by our nation’s labor and employment laws. NELP has a long history of challenging non-compete provisions and the way that they undercut worker power and constrain worker mobility. Similarly, we support workers challenging misclassification as independent contractors and the way these fissured employment practices shift many of the basic costs of doing business from the corporations who should rightfully be carrying them onto workers who end up having to pay to work.<sup>1</sup>

In 2021, President Biden issued an Executive Order to promote competition in the economy, calling on all agencies to address barriers to worker mobility in the labor market, including encouraging agencies to ban or limit non-compete provisions.<sup>2</sup> In July of 2022, the Federal Trade Commission (FTC) and the National Labor Relations Board (NLRB) entered into a memorandum of understanding to work together to challenge anticompetitive and deceptive employment practices. As FTC Chair Lina M. Khan noted, the agreement will “advance our shared mission [with the NLRB] to ensure that unlawful business practices aren’t depriving workers of the pay, benefits, conditions, and dignity that they deserve.”<sup>3</sup>

When employers present workers with take-it-or-leave-it terms that compel workers to take on debt in order to work, these arrangements can also be understood in a consumer protection context. Protecting workers and their families from this hybrid form of consumer and workplace debt is important to achieving the CFPB’s strategic goals of protecting consumers from unfair and deceptive practices and empowering consumers to live better financial lives.<sup>4</sup>

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### Background: employer-held debt makes workers into consumers

Research has shown that for those without savings or accumulated wealth, worker indebtedness of any type results in distinct labor market decisions, including engaging in shorter job searches,<sup>5</sup> and the decision to accept job offers quickly even at the cost of potential earnings.<sup>6</sup> Some who carry unsecured debt but need to meet financial needs are preyed upon by unscrupulous lenders who charge onerous interest fees, entering into a vicious downward spiral of debt that has long-lasting financial and health repercussions.<sup>7</sup> And carrying a high debt load can impact workers’ credit scores which may lead to denied job applications; surveys reveal that 1 in 7 respondents with poor credit histories have been told they were not hired for a job because of the information on their credit report.<sup>8</sup> These implications of indebtedness are particularly damaging to Black and Latino families who are targeted by low credit scores at rates of 20 percent and 11 percent respectively (by contrast, 5 percent of white consumers score low on credit reports).<sup>9</sup>

Debt may become even more constraining for workers when the debt holder is also their employer. When companies compel workers to repay costs for mandatory training, or to enter into unfair leasing or purchasing agreements for mandatory equipment, those employers push workers into employment structures that shift business costs off employers and onto workers (such as supposed independent contractor agreements or franchise agreements). If workers experience paycheck deductions for basic

work supplies, they are denied the most basic tenet of the labor market: the ability to realize the true market value of their labor. Often, these employer-imposed debt relationships are framed within the employment relationship and assumed to be a workplace issue, while in practice this corporate extension of credit to workers also resembles a predatory financial arrangement with workers paying off their debts with a combination of human capital, withheld wages, and employment immobility. (In fact, as we detail below, at times these practices involve the presence of private equity firms which thrive on a business model on extraction of wealth and resources to advance their own firm profits.)

From indentured servitude to the company town, US employers have long sought to couple control of the workplace with the discipline of debt in order to extract labor from workers at a discounted price. By springing sometimes opaque legal documents on workers early into a new job, employers are using what some scholars call “contracts of dispossession” to trap their employees into lender/borrower relationships that result in longer than desired tenures with their companies.<sup>10</sup> This practice of treating workers as employees and consumers resulted in some of the bloodiest labor battles of the 19<sup>th</sup> century. In the 21<sup>st</sup> century the outcomes may be less outwardly dramatic, but the ruin that workers experience while carrying employer-driven debt is no less damaging.<sup>11</sup> These debts decrease worker mobility, diminish workers’ ability to negotiate higher wages, damage long-term credit worthiness, and impact their ability to engage in other consumer activity.

Legal challenges to employer-held debt have often been framed as either violations of wage and hour law<sup>12</sup> or as manifestations of employer misclassification of workers as independent contractors. In some cases, public policies regarding TRAPs have been combined with broader policies regarding non-compete clauses.<sup>13</sup> But this practice goes beyond traditional labor standards and protections; when companies exploit worker vulnerabilities to market loans or internal leasing programs for the very training and equipment required to do a job, the companies are operating also like financial services companies and, as a result, the worker is not just an employee of the firm but also truly a consumer of the firm’s side business.

Indeed, the Illinois Attorney General has characterized take-it-or-leave-it contract provisions that compel workers to stay at an employer as violations of the state’s consumer protection laws, citing the provisions that, “Unfair methods of competition and unfair or deceptive acts or practices, including but not limited to the use or employment of any deception[,] fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that other rely upon the concealment, suppression or omission of such material fact” are unlawful.<sup>14</sup>

## Training Repayment Agreement Policies (TRAPs): non-compete provisions with a hefty price tag

It once was the case that skills training was done by the public sector through schools (academic and vocational) or through publicly-funded workforce development programs, by unions through apprenticeships and training programs, and by employers themselves. As workers progressed through the workplace, skills they developed in one role prepared them for success at the next.<sup>15</sup> As Peter Cappelli has pointed out, this system has long been in decline though we don’t truly know by how much as the federal government ceased collecting data on the issue.<sup>16</sup>

In recent decades, employers have made much of what they call a “worker skills gap” in trying to hire new employees, and a robust market has developed in expensive private job training establishments that demand that workers lose time and other opportunity costs on programs that may or may not help them find remunerative work in the end.<sup>17</sup> In demanding degrees and certifications, asking for extensive experience (including often unpaid internships), and paying lower wages during on-the-job training periods, employers communicate to employees and would-be employees that skills and knowledge are necessary for success in the labor market. This perception may make the offer of training hard to resist, even if it comes accompanied by sometimes obfuscatory language about time required in lieu of repayment or collection practices if the training debt is unpaid.

For employers, a TRAP may seem like a strategy to get around legal objections to non-compete provisions. As one researcher puts it, “Court cases have been kind to employers in litigating these training repayment agreements.”<sup>18</sup> Indeed, one business advocate explained to peers in the roofing industry that while non-competes for workers in the field were likely to be unenforceable, requiring certification training with a reimbursement requirement could help employers get around the prohibition.<sup>19</sup>

Supporters of TRAPs argue that without them companies lose monetary investments in worker skill development and some imply that business competitors will become “free riders,” scooping up well-trained employees without investing in training themselves compelling more generous firms to “train the enemy”.<sup>20</sup> The Department of the Treasury has determined that while these and other non-compete measures might benefit employers, they can also reduce worker bargaining power, reduce needed labor churn, and ignore pertinent state laws while relying on a lack of worker knowledge in their use.<sup>21</sup> And as many have pointed out, a TRAP is every bit as limiting for worker autonomy as a non-compete agreement, but because it comes with a large price tag a TRAP not only keeps a worker from taking a new job in the same industry but may make them feel compelled to stay on at the same job until they have worked off their debts.

### TRAPs are increasingly common in industries that employ significant numbers of Black and immigrant workers

TRAPs are reportedly used in many occupations, including truckers, police officers, fire fighters, mechanics, nurses, hair salons, bank workers, social workers, pilots, federal employees, and some retail workers.<sup>22</sup> If we look to TRAPs’ sibling, the non-compete clause, researchers have found that over 18 percent of the U.S labor force was bound by these agreements in 2014 including 13 percent of workers earning less than \$40,000 a year such as those in installation and repair jobs, production occupations, janitorial work, warehouse work, and personal services occupations.<sup>23</sup>

Many of these industries depend on an underpaid workforce comprised significantly of Black, immigrant, people of color, and women workers.<sup>24</sup>

| Occupation                                      | Black workers as percent of workforce      | Hispanic/Latinx workers as percent of workforce | Women workers as percent of workforce |
|---|--|---|---------------------------------------|
| Installation and repair                         | 8.3  | 22.0  | 4.3                                   |
| Janitorial                                      | 18.1                                       | 31.5  | 39.7                                  |
| Transportation and Warehousing                  | 21.3                                       | 21.5  | 25.1                                  |
| Nursing   | 13.3                                       | 8.8   | 86.7                                  |
| Hairdressers, hair stylists, and cosmetologists | 12.8                                       | 17.7  | 92.4                                  |
| Community and Social Service Workers            | 19.7                                       | 12.5  | 67.5                                  |
| Driver/sales workers and truck drivers          | 18.7                                       | 23.6  | 7.9                                   |
| Firefighting                                    | 8.9  | 11.0  | 5.1                                   |
| Police  | 11.5                                       | 14.6  | 15.3                                  |
| Pilots  | 3.9  | 6.1   | 5.3                                   |
| Federal Employees                               | 38 percent classified as “people of color” |   | 43.3                                  |

Debt is a crisis for Black and Latinx families. While 10.8 percent of all US households have a zero or negative level of wealth, Black families experience net debt at a rate of 18.9 percent, and Latinx ones at a rate of 11.3 percent.<sup>25</sup> As the CFPB has found, communities of color are already more burdened by educational debt than white ones; a greater percentage of these families carry educational debt, the interest rates they experience are higher, and as a result students in these communities are more likely to experience delinquency or default.<sup>26</sup> These communities are also more frequently targeted by abusive debt collection practices. In Black and Latinx neighborhoods 42 percent of borrowers had debt in collections, with more aggressive contacts and a higher likelihood of wage garnishment.<sup>27</sup>

If companies in underpaying industries continue to practice TRAPs and other extractive practices to saddle their workers with employer-held debt, the racial wealth gap will only continue to grow with Black and immigrant workers targeted even more aggressively by collections services.

### Limiting worker job mobility harms workers and the economy as a whole

By limiting job mobility, TRAPs harm both individual household finances and the economy as a whole. Economists have long understood that job mobility is important to the economy; when employees move between jobs productivity and innovation increase for employers, as do wages for workers. However, research also finds that because changing jobs requires some amount of financial capital (moving expenses, possible gaps in wage earning, job search expenses) workers without accumulated wealth and with debt burdens are less likely to change jobs.<sup>28</sup> This becomes even more challenging when contemplating a career move might come with a bill for thousands or even tens of thousands of dollars to repay training costs.

In one study of truck drivers, researchers found that a TRAP reduced employee quitting by 15 percent. (By comparison, another study of workers in a different industry found that a non-compete contract absent a TRAP led to an 8 percent drop in turnover.<sup>29</sup>) As the researchers note, the employer in the

study made “strenuous” enforcement efforts of their TRAP: if the workers quit before the term of the agreement, the firm informed them of the amount due and if it was not paid the debt was referred to multiple collection agencies and to credit agencies. Further, the researchers found that many of the drivers already had credit scores that would place them in a “subprime” category, making them even more vulnerable to the long-term effects of failing to pay off their debt.<sup>30</sup>

By contrast, when Oregon banned non-compete provisions for workers paid by the hour, monthly job-to-job mobility for these workers increased by 12-18 percent.<sup>31</sup>

The nature of TRAPS in the commercial trucking industry is particularly egregious. To ensure a steady supply of drivers, large trucking firms such as CRST and CR England run their own CDL (commercial drivers’ license) schools. The schools can cost over \$6,000 to attend and students are required to remain employed at the trucking company for six months to two years to pay off their training costs. Because data show that 9 of 10 truckers leave their jobs within a year, trucking firms depend on a constant flow of new recruits to maintain employment levels.<sup>32</sup>

Steve Viscelli, a University of Pennsylvania sociologist and expert in the American trucking industry, calls this system “debt peonage,” and argues that it perpetuates the low wages and abusive working conditions that define the modern trucking industry. Although truck driving was once considered a pathway to the middle class,<sup>33</sup> the industry is now characterized by forced unpaid time spent on the job,<sup>34</sup> employers demanding that drivers violate mandatory rest periods,<sup>35</sup> and an overall stress on personal relationships.<sup>36</sup> To that end, Viscelli has said, “What the industry wants is super cheap, flexible labor and that’s what it’s had for years. The [trucking companies have] been cycling through literally millions of people, who decide to become truck drivers and then get burned by the industry.”<sup>37</sup>

As part of his research into trucking labor practices, Viscelli himself enrolled in a truck driving training school to earn a CDL, and later spent six months as a truck driver at a for-hire carrier. Through this experience, along with interviewing other drivers, Viscelli observed that a driver’s willingness to remain in their position, due to the training debt obligation, takes effect even before finishing training school. At the two-week overnight CDL school Viscelli attended, the relentless schedule and constant surveillance fostered an atmosphere of insecurity, intimidation, and coercion, which was so severe that, according to Viscelli, “Several students snuck away in the middle of the night, as if escaping some kind of forced labor camp.” But for the remaining students, as Viscelli noted, “...it became obvious that having to pay back the training was the only thing keeping [them] there.”<sup>38</sup>

### Timing matters: TRAPs presented after a job offer is accepted leave workers with no real choice but to accept dangerous terms

If the agreement is presented alongside reams of other employment paperwork, employers may depend on the “lack of salience” to get workers to sign; unaware of the later ramifications for employment flexibility or wage negotiation power, workers don’t pay attention to these provisions or their terms.<sup>39</sup> One survey of engineers found that less than one-third of workers reported that they had been told about the non-compete in their job offer, but instead were asked to sign after having turned down any other offers. Half of respondents said they weren’t asked to sign until on or after their first day on the job.<sup>40</sup> A study conducted by the US Treasury found that 40 percent of workers received a non-compete agreement only after accepting a job offer.<sup>41</sup> Jonathan Harris, a legal scholar who has examined TRAPs extensively, notes that this mandatory nature of the terms and the unequal power dynamic in place

between employer and new employee makes them “ripe for analysis under the doctrine of unconscionability.”<sup>42</sup>

Younger workers who have less experience in the hiring process, or who are driven to quickly accept job offers due to other debt they may be carrying like student loans, could be even more pressured when confronted by a TRAP. In one survey only 3.7 percent of younger workers refused to sign a non-compete provision (versus 11.2 percent of older workers).<sup>43</sup> Similarly, according to the US Treasury, few workers—a mere 10 percent-- presented with non-competes bargain over the terms, with more than one-third of workers not even realizing that the terms were negotiable.<sup>44</sup>

The TRAP issued by PetSmart to employees receiving pet grooming training does not indicate that any portion of the agreement is negotiable. In complicated long run-on sentences phrased in the passive voice, the agreement lays out withholdings and deductions the worker agrees to in exchange for the training. In two sentences, one of which totals 44 words and six different clauses, it is hard to believe that most workers would recognize its full import when they encountered it among their hiring papers.<sup>45</sup>

This take-it-or-leave-it model of presenting TRAPs and other noncompete agreements on a worker’s first day has lasting effects. Research has shown that among those who are presented with a non-compete before they accept a job offer, giving them time to reject or renegotiate the agreement, workers earn 19 percent higher wages, receive 14 percent more training, and report being more satisfied with their employment.<sup>46</sup> At the very least, employers should be required to disclose the presence of a TRAP, the terms of the debt, whether or not it is negotiable, and as credit cards are required to do the total cost of the debt at the stated interest rate if only minimal payments are made as a result of leaving the employer.

### Employer-held debt could leave lasting damage to workers’ financial lives

If a worker leaves an employer with an outstanding balance due to a TRAP, a cascade of other negative experiences could result in lasting harm to her and her family. In BreAnn Scally’s lawsuit against PetSmart regarding its TRAP for pet groomer employees, she states that,

“The TRAP...requires that all employees pay any amount owned to PetSmart within 30 days of the voluntary or involuntary termination of employment. Pursuant to the TRAP, failure to pay the full amount with that time could result in PetSmart filing a civil action against the employee to collect the outstanding TRAP debt, including costs, collection charges, attorney’s fees, and interest at the **‘highest rate permitted by law.’**”<sup>47</sup> (emphasis added)

A TRAP imposed on police officers in Allen, Texas, was more specific, noting that payments of at least \$100 would be due on the same day each month to the city and would carry an interest rate of 10 percent per year. To ensure the city could enforce repayment, the former officer was also required to keep the city apprised of any changes in residence or employment for the duration of the repayment period, in writing, and within 15 days.<sup>48</sup>

Ms. Scully’s complaint notes that enforcement of the PetSmart TRAP is inconsistent and unpredictable, increasing the chilling effect it has on workers’ choice to leave the company. The manner in which an employer pursues that debt matters; research has found that when a creditor either attempts to collect debt themselves or hires a company to do it in their name (“first-party debt collectors”) they tend to be

more lenient than other collection companies who purchase the debt and then attempt to collect in their own name (“third-party debt collectors”).<sup>49</sup>

In Ms. Scully’s case, she reportedly learned of her debt to her former employer only when she did a routine check of her credit report. She owed them \$5,000 for her training, and an additional \$500 for tools she received to do her job. The debt had been referred to collection, and her credit score had dropped from the high 600s to the low 600s as a result.<sup>50</sup>

One study found that if a consumer arrives at a negotiated settlement with a debt collector, they may be compelled to find the funds for a large lump sum payment draining the family coffers or to agree to wage garnishment from their pay with their new employer. Settlement can increase the probability of subsequent delinquency (by 20 percent over base rates), bankruptcy (160 percent), or foreclosure (130 percent).<sup>51</sup> High financial debt among young adults has been shown to be associated with higher stress, mental health disorders, and higher blood pressure.<sup>52</sup> Further, research into other types of debt show that those who are behind in payments or in collections may forego health care or mental health care.<sup>53</sup>

These TRAP debts can be exorbitant, and it is not always clear that the employer valuation of the training is based in market realities. As one scholar has noted, “At a minimum, employers asserting claims for reimbursement should be required to establish the amounts sought through evidence of actual expenditures or costs, rather than allowing employers to rely on boilerplate ‘liquidated damages’ recitations.”<sup>54</sup> As the CFPB is aware, consumers report troubling encounters with debt collection agencies every day. They often report that collections agents threaten their credit histories, threaten legal action, attempt to seize property, or even threaten to arrest or jail consumers.<sup>55</sup>

### The CFPB should investigate the role of private equity and other financial firms in the creation and perpetuation of TRAPs.

The recent publicity over PetSmart’s practice of compelling groomers to sign TRAPs has brought the presence of private equity (PE) in this business model to light. The national pet store chain was purchased by BC Partners in 2015 for nearly \$9 billion, one of the biggest buyouts of the year. In the absence of regulatory oversight or training requirements for pet groomers, BC Partners was free to design and implement its own training scheme.<sup>56</sup> As detailed above, that training was accompanied by a TRAP that left would-be groomers with low wages and an inability to change jobs without paying a substantial penalty.

But BC Partners is not alone in this practice. Workers have gone public about TRAPs at other companies with PE connections. For instance, the transportation company CRST, which sent debt collectors after a former driver for \$6,000 based on a TRAP,<sup>57</sup> is owned by Hillcrest Holdings, a family-owned investment firm that partners with PE firms like Akoya Capital to buy other companies. FDM Group, an IT company that requires a 6-month period of unpaid training that costs departing workers \$20,000 to \$30,000 if they leave in less than two years,<sup>58</sup> was purchased by Inflexion Private Equity.

Even more commonly, PE is purchasing “corporate training solutions” companies. The Global Corporate Training market is forecasted to reach \$487.3 billion by 2030<sup>59</sup> and private equity is purchasing online training programs that boast big corporate client lists. In 2021, PE acquisitions accounted for 11.8 percent of all mergers and acquisitions in the sector.<sup>60</sup> Significant purchases have included:

- 2021 TPG acquired Teachers of Tomorrow from another PE firm (Gauge Capital), a company that provides training, certification, and professional development to teachers.
- 2021 RLJ Equity Partners bought Ogle School, a provider of cosmetology and esthetics career education in Texas.
- 2021 Clearlake Capital Group purchased Cornerstone OnDemand which provides workforce education services to companies like Wells Fargo, MidMichigan Health, and Siemens.
- In 2018, Golden Gate Capital bought Vector Solutions, a first-responder eLearning company, from another PE company (Providence Equity Partners).
- In 2017, Luminate Capital Partners invested in Axonify a provider of “remote training for frontline workers,” which services Walmart, Levi’s, and Dollar General.
- Blackstone Partners purchased Ascend Learning in 2017, specializing in medical-industry education.
- In 2014, Renovus Capital Partners invested in Telemedia, which provides technical skills training content and programs for large industrial companies including Boeing, International Paper, and Jones Lang LaSalle;
- In 2016, FFL Partners bought Crisis Prevention Institute, which provides training and consulting in behavior management and dementia care for human service professionals, before selling it three years later to another PE company, Wendel Group.

One company, Skillsoft, provides a cautionary tale about the role of PE in employer-provided training. Skillsoft, provides services to hundreds of companies including Adobe, Areva, Dollar Tree, Petsmart, Orbitz, Sprint, the USDA and US Army, and numerous colleges and universities.<sup>61</sup> In 2010 Skillsoft was acquired by Advent International, Bain Capital, and Berkshire Partners for \$1.1 billion. It then went on to purchase several other training companies, and in 2014 the company was sold to Charterhouse Capital Partners for \$2.4 billion. It then went on to buy still more companies.<sup>62</sup> In June of 2020 Skillsoft filed for bankruptcy before emerging again just two months later.<sup>63</sup> Skillsoft immediately merged with Churchill Capital, a global investment fund, and at the same time purchased yet another IT and business skills training company for \$1.5 billion.<sup>64</sup>

This growing role in employer-provided worker training by PE should raise alarms in the context of employer-held debt. The well-documented history of PE in for-profit colleges indicates that this industry sees education as an opportunity to extract learner dollars through high tuition and questionable value. Researchers have concluded that PE buyouts of for-profit schools resulted in “higher tuition, higher per-student debt, lower graduation rates, lower student loan repayment rates, and lower earnings among graduates.”<sup>65</sup> It is critical that these conditions are not replicated for workers who feel compelled to trade long-term job mobility, earnings, and negotiating power for TRAPs that don’t even result in real skills building or learning.

## TRAPs are just one of many employer-held debt vehicles that trap workers

“Independent Contractors” experience massive employer-held debt obligations

Julian Bond, the first president of the Southern Poverty Law Center and chairman of the NAACP, once compared truckers compelled to lease expensive and necessary trucks from their employers to sharecroppers in the Deep South.<sup>66</sup> Cases involving allegations of worker misclassification in this industry can shed a light on the kinds of up-front equipment purchasing or leasing some companies force

workers to shoulder. In fact, employers highlight these kinds of onerous leases to acquire necessary equipment to claim that workers are making an “investment” that proves their independent contractor status even as they determine which worker receives lucrative accounts and which one doesn’t get any business, a tactic the drivers call “starving” them out of the truck.<sup>67</sup>

- In 2010, workers’ rights group filed an amicus brief in US Court of Appeals case on behalf of a truck driver, Fernando Ruiz, who was challenging his employment status with a company called Affinity. While the brief specifically challenged jurisdiction questions as well as misclassification of Mr. Ruiz, *amici* included details about the significant level of employer-held debt he carried. The company advanced “virtually all costs associated with leasing the trucks,” and then withheld these costs from his weekly pay.<sup>68</sup>
- In a 2014 opinion regarding class action status of 2,300 delivery drivers for FedEx, the judge noted that while drivers could use their own vehicles this was subject to detailed rules about truck appearance and functionality and that, “Drivers authorize FedEx to pay for vehicle licensing, taxes, and fees, and to deduct these costs from the drivers’ pay.” Furthermore, the company charged for a “Business Support Package” that included necessary equipment to send delivery information to FedEx; while this package was ostensibly optional the judge noted the equipment was “not readily available from any other source” and the costs were deducted from driver pay.<sup>69</sup>
- In 2017, USA Today conducted a year-long investigation into the practice of employer-held debt in the trucking industry, telling the story of Samuel Talavera who sometimes brought home less than \$1 a week after paying for his truck lease and who, when the truck broke down and he couldn’t afford to repair it, was fired and the \$78,000 he had paid toward the truck was gone. Eddy Gonzalez, too, lost his truck and all he’d paid toward it when he took time off for his mother’s funeral, as did Ho Lee after he fell ill and missed a week of work. Many of the 300 drivers that the reporters interviewed said they were compelled to pay for their trucks, but also insurance, fuel, parking in the company lot, and even in one case for office toilet paper and supplies. Some revealed that they were given “take it or leave it” lease-to-own contracts written in languages they could not read and without an interpreter to help them understand the terms of the deal.<sup>70</sup> Featuring photos of tax returns and pay stubs, the report revealed workers receiving \$0.67 a week and only \$20,000 in annual pay on accounts bringing in \$95,000. Some like Faustino Denova, Germen Merino, and Jose Covarrubias got pay stubs showing they owed their employers money at the end of the week.<sup>71</sup>
- A 2017 case against Celadon Group revealed that upon signing a lease contract, truckers were obligated to maintain an escrow account and to authorize the company, at its discretion, “to apply all or any portion of [a driver’s] Escrow Account to the payment of any charges or indebtedness” incurred during the term of the lease. In this case the court found that these leases did not qualify as loans because the charges were taken from wages and because truckers had signed the agreement; in other words, because workers did not understand the nuances of Indiana financial law, they had to shoulder employer-held debt.<sup>72</sup>
- In a 2021 US District Court case against Pathway Leasing, truck drivers who sought to move cargo for XPO and other affiliated companies signed up-front truck-lease agreements with Pathway, a recommended lessor. As the Magistrate observed, “Not all [the drivers] fully understood all portions of the equipment lease agreement”<sup>73</sup> and that one “kind of got forced into signing” the contract.<sup>74</sup> When the leased trucks needed maintenance, drivers had to pay for it themselves, sometimes through loans from Pathway. As a result, “some plaintiffs received

little take-home pay after making payments on the notes.”<sup>75</sup> While the leasing agreements were not, in this case, found to be fraudulent it remains the case that workers carried significant amounts of employer-held debt to lease and maintain the trucks they needed to do their jobs.

In some cases, truck drivers who challenge the paycheck deductions for their leases with labor enforcement agencies have proven successful; a 2015 study found that in California 19 decisions by the Division of Labor Standards Enforcement found that these workers were actually employees and therefore wage deductions for lease payments were illegal and more than \$1 million in wages, unlawful deductions, and penalties were returned to them.<sup>76</sup>

These types of employer-held debt agreements are not limited to the trucking industry. Uber was facing a challenge to its on-demand ride service model: only 20 percent of workers who applied to drive for the company had vehicles that could pass the company’s inspections and had insurance, and among those who did, low driver retention meant that nearly 96 percent of its drivers left the company within one year of their start date.<sup>77</sup>

Uber then began to offer prospective drivers with poor credit ratings the chance to lease a car that met all of Uber’s requirements directly from them. Payments for the car would be taken from driver accounts, and sometimes offset most of the drivers’ earnings.<sup>78</sup> Drivers were presented with a lengthy lease agreement and then paid a \$250 upfront fee for a vehicle, payments were due weekly and were automatically deducted from their earnings. One expert who analysed the agreement concluded, “The terms, the way they’re proposed, are predatory and are very much driven toward profiting off drivers rather than to facilitate an increase in drivers.”<sup>79</sup> One report compared the cost of leasing a used Toyota from the Uber leasing affiliate with that of simply buying the car outright from an online sales outlet: the lease would total more than \$25,000 over three years, but it would cost only \$13,000 to purchase the car. If there were unknown toll fees for the workers, the company did not notify them of those fines and eventually took the money from drivers’ accounts.<sup>80</sup>

### “Franchisees” paying for empty promises

Last year, the Washington State Attorney General filed a lawsuit against National Maintenance Contractors, a company that convinced mostly immigrant workers to go deeply into debt to purchase a supposed franchise in order to receive cleaning assignments. Selling “business units” for \$5,000, the company also charged a 14 percent monthly fee for billing and other services. If cleaning clients did not submit payment, National held the worker responsible for making the company whole. The attorney general noted that while National would not guarantee promised revenue levels to supposed franchisees, “on the rare occasions that National provides accounts that put a franchisee over their promised revenue levels, National demands franchisees pay additional fees to keep that account.”<sup>81</sup>

As David Weil has written, in this multi-tiered franchise structure the ultimate franchisor can see profits of more than 40 percent over operating costs, but only if there is a steady stream of new worker franchisees to “replace those unable to make the business model work, allow[ing] franchising to persist (and benefit the franchisor.)”<sup>82</sup> NELP has observed that the next tier down, the regional entity, is “often able to make a marginal profit only by engaging in cost-saving strategies, including misclassifying janitors as independent contractors or selling ‘franchise’ licenses to unwitting workers.”<sup>83</sup> In addition to franchise fees, workers may be required to pay for cleaning equipment and supplies, or to pay a fee to obtain access to cleaning accounts.<sup>84</sup>

In Arizona, a defrauded franchisee won a suit last year against another janitorial franchisor called Jani-King and observed that it cost her more than \$137,000 to sue the company. “Jani-King of Phoenix structures their contracts from Franchisees to only go through expensive arbitration for Jani-King to avoid public record,” she wrote in a press statement. “Yet when Jani-King doesn’t get the ruling in their favor, they file endless appeals hoping franchisees will eventually run out of money and give up on the lawsuit.”<sup>85</sup>

The janitorial industry has long been rife with these schemes to convince unwary workers to pay to work. In 2007, immigrant workers in Massachusetts filed a class action lawsuit against Florida-based Coverall, a janitorial company that claimed to have 5,000 franchisees. The company demanded a \$14,000 franchising fee but was willing to finance much of it for the workers, deducting the cost from future earnings. The arrangement of these franchises entailed a three-part structure: the franchisor, a master franchisee who made cleaning assignments within a particular territory, and the franchisee.<sup>86</sup> The would-be entrepreneurs ended up struggling under enormous amounts of employer-held debt.

In 2010, a US District Judge wrote in his decision, “Describing franchising as a business in itself, as Coverall seeks to do, sounds vaguely like a description for a modified Ponzi scheme—a company that does not earn money from the sale of good and services, but from taking in more money from unwitting franchisees to make payments to previous franchisees.”<sup>87</sup> More recently, the US Court of Appeals for the Tenth Circuit came to a similar conclusion when it ruled that despite making workers sign and pay for franchises, they remain workers for purposes of the Fair Labor Standards Act.<sup>88</sup> What the debate over FLSA status fails to capture, however, is the impact of employer-held debt on these janitors classified as workers:

“It’s heartbreaking to meet immigrants who have put their entire life savings to these franchises thinking they have businesses to support themselves and their families. Instead, they are buying jobs that are terrible, that pay less than minimum wage. When they do get a check, the franchisor has taken out so many deductions, for royalties, supplies, management fees, and bogus insurance policies, that they receive very little. I’ve seen pay stubs that say the franchisee owes the company money.”<sup>89</sup>

And in 2018, Ruth Mark, a janitorial worker, filed a suit against OpenWorks, a cleaning company that compelled workers to enter into supposed franchise agreements to get cleaning assignments. In her complaint, she explained that she made a down payment of \$5,000 for OpenWorks’ start-up fee of \$15,200, with the other \$10,200 financed by OpenWorks itself. She was also told to pay for a background check, training expenses, uniforms, and the cost of forming her own limited liability corporation. Once she was assigned to cleaning jobs, she was required to pay an administrative fee of 15 percent of her revenue, pay for OpenWorks’ insurance premiums, and to pay to “purchase” access to additional cleaning clients. Financing for all these fees was set at 12 percent per year.<sup>90</sup>

As NELP and several immigrants’ rights and worker advocacy organizations pointed out in a 2013 brief in a suit against Jan-Pro, this multi-tiered master franchise scheme also raises public policy concerns. By charging the workers the ostensible franchise fee, but then controlling the work, Jan-Pro and companies like it not only underpay workers and burden them with debt, but they also avoid paying payroll taxes and other insurance premiums. This costs federal and state governments billions in unpaid social insurance funds; compels law-abiding competitors to use the same structure in order to compete; and leaves workers without labor or consumer protections.<sup>91</sup>

Sadly, The Master Franchise model continues to this day and in additional industries. A simple Google search for Master Franchise Opportunities reveals myriad businesses commercial cleaning, but also in the health and fitness industry, fast food industry, in-home senior care, and childcare.<sup>92</sup>

## Conclusion

NELP appreciates the opportunity to share our concerns about the growing use of employer-held debt to limit worker mobility and bargaining power, and how this relationship between employer and employee creates a consumer protection issue. We encourage the CFPB to continue exploring this issue and to take action to protect workers who may fall prey to these practices by requiring early and explicit disclosure of the terms and conditions of employer-held debt in the languages that workers understand; by enforcing existing protections against unfair, deceptive, or coercive practices in the offering of financial products or the provision of consumer financial services; by ensuring compliance with all applicable laws protecting debtors from predatory debt collection practices; and by working with other independent federal agencies like the FTC to protect workers' ability to compete in the labor market and to fight for consumer protection.

Sincerely,

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National Employment Law Project

## Endnotes

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<sup>1</sup> See for instance, “Testimony of Najah Farley in support of Proposed S.B. 906, An Act Concerning Non-Compete Agreements, Session Year 2021,” Hearing before the Connecticut General Assembly, March 4, 2021, <https://s27147.pcdn.co/wp-content/uploads/Testimony-NELP-Najah-Farley-SB906-3-4-21.pdf> and “Leveling the Playing Field: Protecting Workers and Businesses affected by Misclassification,” Testimony of Catherine K. Ruckelshaus, Hearing before the United States Congress, Senate Committee on Health, Education, Labor & Pensions, June 17, 2020, <https://www.help.senate.gov/imo/media/doc/Ruckelshaus.pdf>.

<sup>3</sup> “Federal Trade Commission, National Labor Relations Board Forge New Partnership to Protect Workers from Anticompetitive, Unfair, and Deceptive Practices,” News Release, Federal Trade Commission, July 19, 2022, <https://www.ftc.gov/news-events/news/press-releases/2022/07/federal-trade-commission-national-labor-relations-board-forge-new-partnership-protect-workers>

<sup>4</sup> Consumer Financial Protection Bureau Strategic Plan, FY 2022-2026. <https://www.consumerfinance.gov/about-us/budget-strategy/strategic-plan/>

<sup>5</sup> Yan Li, “Job Search with Debt Burden: Aggregate Implications of Student Loans,” *Journal of Monetary Economics* 117 (January 2021): 741-759.

<sup>6</sup> Robert Bednarzik, Andreas Kern, and John J. Hisnanick, “Displacement and Debt: The Role of Debt in Returning to Work in the Period Following the Great Recession,” *IZA Discussion Paper Series, No. 10764*, May 2017. <https://www.econstor.eu/bitstream/10419/161387/1/dp10764.pdf>

<sup>7</sup> American Public Health Association, “The impacts of individual and household debt on health and well-being,” *Policy Statement 20216*, October 26, 2021. <https://www.apha.org/Policies-and-Advocacy/Public-Health-Policy-Statements/Policy-Database/2022/01/07/The-Impacts-of-Individual-and-Household-Debt-on-Health-and-Well-Being>

<sup>8</sup> Amy Traub, “Discredited: how employment credit checks keep qualified workers out of a job,” Demos, 2012. [https://www.demos.org/sites/default/files/publications/Discredited-Demos\\_0.pdf](https://www.demos.org/sites/default/files/publications/Discredited-Demos_0.pdf)

<sup>9</sup> “From inherent racial bias to incorrect data—the problems with current credit scoring models,” *Forbes*, February 26, 2021. <https://www.forbes.com/advisor/credit-cards/from-inherent-racial-bias-to-incorrect-data-the-problems-with-current-credit-scoring-models/> These numbers do not take into account those whose circumstances do not even allow for a credit score to be generated, or “credit invisibles.” In 2015, the Consumer Financial Protection Bureau estimated that 15 percent of Black and Hispanic individuals were credit invisible, with between 12 and 13 percent more having unscored records. CFPB Office of Research, “Data Point: Credit Invisibles,” 2015. [https://files.consumerfinance.gov/f/201505\\_cfpb\\_data-point-credit-invisibles.pdf](https://files.consumerfinance.gov/f/201505_cfpb_data-point-credit-invisibles.pdf)

<sup>10</sup> Sandeep Vaheesan and Matthew Buck, “Non-competes and other contracts of dispossession,” *Mich. St. L. Rev (forthcoming)* 2022. [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3727043](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3727043)

<sup>11</sup> Shaun Richman, “Company towns are still with us,” *The American Prospect*, March 21, 2018. <https://prospect.org/economy/company-towns-still-us/>; Howard R. Stanger, *The Company Town: the Industrial Edens and Satanic Mills that Shaped the American Economy* (New York: Basic Books, 2010).

<sup>12</sup> See Jonathan Harris, “Unconscionability in Contracting for Worker Training,” *72 Alabama Law Review* 723 (2021). [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3642017](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3642017)

<sup>13</sup> See for instance Colorado’s 2022 “Restrictive Employments Agreement Act” which added to earlier provisions regarding non-compete clauses to also include non-solicitation of business and customers, confidentiality provisions, and reimbursement for training and education costs.

[https://www.jacksonlewis.com/sites/default/files/docs/Colorado-2022a\\_1317\\_signed.pdf](https://www.jacksonlewis.com/sites/default/files/docs/Colorado-2022a_1317_signed.pdf)

<sup>14</sup> *Illinois v. Check into Cash of Illinois*, Circuit Court of Cook County, Illinois, County Department, Chancery Division, *Illinois v. Check into Cash of Illinois*, filed October 2017.

[https://illinoisattorneygeneral.gov/pressroom/2017\\_10/Check\\_Into\\_Cash-Complaint.pdf](https://illinoisattorneygeneral.gov/pressroom/2017_10/Check_Into_Cash-Complaint.pdf); See also Terri Gerstein, Lorelei Salas, and David Seligman, “When corporations deceive and cheat workers, consumer laws should be used to protect workers,” *Working Economics Blog*, Economic Policy Institute, May 5, 2021.

<https://www.epi.org/blog/when-corporations-deceive-and-cheat-workers-consumer-laws-should-be-used-to-protect-workers/>

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- <sup>15</sup> Katherine V.W. Stone, "Knowledge at work: disputes over the ownership of human capital in the changing workplace," *Cornell Law Faculty Publications* 1609 (2002).  
<https://scholarship.law.cornell.edu/cgi/viewcontent.cgi?article=2436&context=facpub>
- <sup>16</sup> Peter Cappelli, "What employers really want? Workers they don't have to train," *Washington Post*, September 5, 2014. <https://www.washingtonpost.com/news/on-leadership/wp/2014/09/05/what-employers-really-want-workers-they-dont-have-to-train/>; and "Summary: Who's responsible for job skills?" Wharton PPI B-School for Public Policy Seminar, September 24, 2019 [https://repository.upenn.edu/pennwhartonppi\\_bschool/5/](https://repository.upenn.edu/pennwhartonppi_bschool/5/)
- <sup>17</sup> Livia Lam, "A design for workforce equity: workforce redesign for quality training and employment, a framing paper," (Washington, D.C.: Center for American Progress, 2019),  
<https://www.americanprogress.org/article/design-workforce-equity/>; Livia Lam and Mary Alice McCarthy, "Making the JOBS Act work," *The Hill*, June 14, 2019, <https://thehill.com/blogs/congress-blog/education/448622-making-the-jobs-act-work/>; Stephanie Cronen, Meghan McQuiggan, and Emily Isenberg, "Adult Training and Education: Results from the National Household Education Surveys Program of 2016," *National Center for Education Statistics*, (Washington D.C.: US Department of Education, 2017) <https://nces.ed.gov/pubs2017/2017103rev.pdf> (finding disparities in usefulness of training programs based on race and gender).
- <sup>18</sup> Nickolaus Arndt Stumo-Langer, "Formerly Employed Need Not Apply: An analysis of the ubiquity of non-compete agreements, their impacts on workers, and policy solutions," MPP Professional Paper, Hubert H. Humphrey School of Public Affairs, the University of Minnesota. April 2020.  
<https://conservancy.umn.edu/bitstream/handle/11299/214863/Formerly%20Employed%20Need%20Not%20Apply.pdf?sequence=1> Jonathan Harris notes that "Courts have usually, but not always, enforced TRAs since the contracts began appearing in the 1990s," noting that they are seen as preferable to noncompete agreements. Harris, p. 726.
- <sup>19</sup> Philip J. Siegel, "Protect your investment," *Professional Roofing Magazine*, November 2019.  
<https://www.professionalroofing.net/Articles/Protect-your-investment--11-01-2019/4566>
- <sup>20</sup> See for example, Brandon S. Long, "Protecting employer investment in training: noncompetes vs. repayment agreements," *Duke Law Journal* 54 (2005): 1295-1320; Evan Starr, "Training the enemy? Firm-sponsored training and the enforcement of covenants not to compete," (2015) [http://www-personal.umich.edu/~starre/papers/JMP/Starr\\_JMP.pdf](http://www-personal.umich.edu/~starre/papers/JMP/Starr_JMP.pdf)
- <sup>21</sup> Office of Economic Policy, U.S. Department of the Treasury, "Non-compete Contracts: Economic Effects and Policy Implications," March 2016.  
[https://home.treasury.gov/system/files/226/Non\\_Compete\\_Contracts\\_Economic\\_Effects\\_and\\_Policy\\_Implications\\_MAR2016.pdf](https://home.treasury.gov/system/files/226/Non_Compete_Contracts_Economic_Effects_and_Policy_Implications_MAR2016.pdf)
- <sup>22</sup> Michael Hoffman and Stephen V. Burks, "Training Contracts, Employee Turnover, and the Returns from First-Sponsored General Training," National Bureau of Economic Research, Working Paper 23247, March 2017; Caitlin Harrington, "Beware the contract clause loading US workers with debt," *Wired*, August 4, 2022.  
<https://www.wired.com/story/contract-clause-loading-us-workers-with-debt/>
- <sup>23</sup> Evan Starr, Norman Bishara, and J.J. Prescott, "Non-competes in the U.S. Labor Force," *Univ. Mich. L. & Econ. Rsch. Paper Series 1* (2020) [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2625714](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2625714); Sophie Quinton, "These days, even janitors are required to sign non-compete clauses," *USA Today*, May 27, 2017  
<https://www.ksdk.com/article/news/nation-now/these-days-even-janitors-are-being-required-to-sign-non-compete-clauses/465-348384001>; Spencer Woodman, "Exclusive: Amazon makes even temporary warehouse workers sign 18 month non-competes," *The Verge*, March 26, 2015  
<https://www.theverge.com/2015/3/26/8280309/amazon-warehouse-jobs-exclusive-noncompete-contracts>; Tammy Grubb, "Did Chapel Hill cleaners take trade secrets, clients to new jobs?" *The Herald Sun*, May 31, 2017  
<https://amp.heraldsun.com/news/local/counties/orange-county/article153629779.html>. Note that more states have banned non-compete provisions since this data was compiled.
- <sup>24</sup> Department of Labor, Labor Force Statistics from the Current Population Survey, employed persons by detailed occupation, sex, race, and Hispanic or Latino ethnicity, 2021 <https://www.bls.gov/cps/cpsaat11.htm>; For data on race see "A revealing look at racial diversity in the federal government," Our Public Service blog, August 26, 2021 : <https://ourpublicservice.org/blog/a-revealing-look-at-racial-diversity-in-the-federal-government/> (also noting the dramatic racial disparities by GS levels), data on gender from OPM's Federal Workforce Data FedScope, September 2021 data, <https://www.fedscope.opm.gov/> accessed on August 29, 2022.

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- <sup>25</sup> Tashfia Hasan, Latherine Lucas McKay, and Joanna Smith-Ramani, “Disparities in debt: why debt is a driver in the racial wealth gap,” Aspen Institute Financial Security Program, February 2022. [https://www.aspeninstitute.org/wp-content/uploads/2022/02/FINAL-ASP-FSW\\_Disparities-in-Debt\\_020722-3.pdf](https://www.aspeninstitute.org/wp-content/uploads/2022/02/FINAL-ASP-FSW_Disparities-in-Debt_020722-3.pdf)
- <sup>26</sup> Aissa Canchola and Seth Frotman, “The significant impact of student debt on communities of color,” CFPB blog, September 15, 2016. <https://www.consumerfinance.gov/about-us/blog/significant-impact-student-debt-communities-color/>
- <sup>27</sup> “Racial disparities in consumer debt collection,” National Consumer Law Center fact sheet, undated. [https://www.nclc.org/images/pdf/debt\\_collection/fact-sheets/fact-sheet-racial-disparities-in-debt-collection.pdf](https://www.nclc.org/images/pdf/debt_collection/fact-sheets/fact-sheet-racial-disparities-in-debt-collection.pdf)
- <sup>28</sup> J.M. Applegate and Marco A. Janssen, “Job Mobility and Wealth Inequality,” *Computational Economics* (2022) 59:1-25, [https://www.researchgate.net/publication/345944146\\_Job\\_Mobility\\_and\\_Wealth\\_Inequality](https://www.researchgate.net/publication/345944146_Job_Mobility_and_Wealth_Inequality)
- <sup>29</sup> Matt Marx, Deborah Stumsky, and Lee Fleming, “Mobility, skills, and the Michigan non-compete experiment,” *Management Science* 55 (2009): 875-889, [https://www.researchgate.net/publication/220534518\\_Mobility\\_Skills\\_and\\_the\\_Michigan\\_Non-Compete\\_Experiment](https://www.researchgate.net/publication/220534518_Mobility_Skills_and_the_Michigan_Non-Compete_Experiment) .
- <sup>30</sup> Hoffman and Burks, p. 7-8.
- <sup>31</sup> Michael Lipsitz and Evan Starr, “Low-wage workers and the enforceability of non-compete agreements,” *Management Science*, September 20, 2019, [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3452240](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3452240) .
- <sup>32</sup> Sarah Butrymowicz and Meredith Kolodner, “Trucking Companies Train You on the Job. Just Don’t Try to Quit,” *New York Times*, April 5, 2022. <https://www.nytimes.com/2022/04/05/business/economy/trucker-training.html>
- <sup>33</sup> Michael Sainato, “‘This used to be a great job’: US truckers driven down by long hours and low pay,” *The Guardian*, December 27, 2021. <https://www.theguardian.com/business/2021/dec/27/us-truck-drivers-economy-pay-conditions>
- <sup>34</sup> Dominick Reuter, Grace Kay, and Grace Dean, “Companies don't pay for 'wasting a trucker's time,' US Transportation Secretary says: 'We've got to fix that',” *Insider*, January 13, 2022. <https://www.businessinsider.com/buttigieg-companies-dont-pay-for-wasting-a-truckers-time-2022-1>; David Collins, “Truck drivers picket at Port of Baltimore over unpaid time spent idling,” *WBAL TV 11*, August 11, 2022. <https://www.wbaltv.com/article/truck-drivers-picket-port-of-baltimore-unpaid-time-idling/40872289>
- <sup>35</sup> “Trucking company fired driver for refusing to violate safety regulations OSHA orders NFI Interactive Logistics Inc. to reinstate, pay employee \$276K,” U.S. Department of Labor, Occupational Safety and Health Administration, June 8, 2016. <https://www.osha.gov/news/newsreleases/region1/06082016>; Rebecca Lindstrom, “Truck drivers say they have driven beyond the legal limit because they were pressured to,” *11 ALive WXIA-TV*, July 19, 2022. <https://www.11alive.com/article/news/investigations/truck-driver-claim-time-sheets-manipulated/85-32ac2dbc-befc-4b99-bcc9-9266210e8385>
- <sup>36</sup> Peter S. Goodman, “The Real Reason America Doesn’t Have Enough Truck Drivers,” *The New York Times*, February 9, 2022. <https://www.nytimes.com/2022/02/09/business/truck-driver-shortage.html>; Steve Viscelli, *The Big Rig: Trucking and the Decline of the American Dream*, (Oakland, CA: University of California Press, 2016), pp. 3, 72, 102, 218.
- <sup>37</sup> Erin McCormick, “‘Indentured servitude’: low pay and grueling conditions fueling US truck driver shortage,” *The Guardian*, November 22, 2021. <https://www.theguardian.com/business/2021/nov/22/indentured-servitude-low-pay-and-grueling-conditions-fueling-us-truck-driver-shortage>
- <sup>38</sup> Viscelli, 2016, pp. 46-47.
- <sup>39</sup> US Department of the Treasury, p. 9.
- <sup>40</sup> Matt Marx and Lee Fleming, “Non-compete Agreements: Barriers to Entry...and Exit?” *Innovation Policy and the Economy* 12: 39-64, <https://www.journals.uchicago.edu/doi/full/10.1086/663155>
- <sup>41</sup> US Department of the Treasury, p. 13.
- <sup>42</sup> Harris, p. 726.
- <sup>43</sup> Matt Marx, “Reforming Non-Competes to Support Workers,” (Washington, D.C.: The Hamilton Project, 2018), [https://www.brookings.edu/wp-content/uploads/2018/02/es\\_2272018\\_reforming\\_noncompetes\\_support\\_workers\\_marx\\_policy\\_proposal.pdf](https://www.brookings.edu/wp-content/uploads/2018/02/es_2272018_reforming_noncompetes_support_workers_marx_policy_proposal.pdf)
- <sup>44</sup> US Department of the Treasury, p. 13.

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- <sup>45</sup> The sentences read: “I further acknowledge that if, for any reason, any or all such withholding(s)/deduction(s) are not made, are not made in full, or otherwise do not fulfill all of my obligations under this Agreement, I still remain responsible and liable to fulfill these obligations. To fulfill my obligations, I will be required to submit any amount still owned to PetSmart within 30 days of my voluntary or involuntary termination of my employment.” See redacted copy of the PetSmart TRAP at: [https://protectborrowers.org/wp-content/uploads/2022/07/PetSmart-TRAP\\_Redacted.pdf](https://protectborrowers.org/wp-content/uploads/2022/07/PetSmart-TRAP_Redacted.pdf)
- <sup>46</sup> Starr, Prescott, and Bishara.
- <sup>47</sup> Breann Scally v. PetSmart LLC, Class Action Complaint, Superior Court of the State of California for the County of San Mateo, filed July 2022, [https://protectborrowers.org/wp-content/uploads/2022/07/PetSmart-complaint\\_file.pdf](https://protectborrowers.org/wp-content/uploads/2022/07/PetSmart-complaint_file.pdf), p. 8.
- <sup>48</sup> “Officer Training Reimbursement Agreement, City of Allen Police Department,” <https://www.cityofallen.org/DocumentCenter/View/16567/Officer-Training-Reimbursement-Agreement-Contract?bidId=> (last visited on August 25, 2022).
- <sup>49</sup> Viktor Fedaseyev and Robert Hunt, “The Economics of Debt Collection: Enforcement of Consumer Credit Contracts,” *Federal Reserve Bank of Philadelphia Working Papers*, WP 18-04, January 2018. <https://www.philadelphiafed.org/-/media/frbp/assets/working-papers/2018/wp18-04r.pdf?la=en>
- <sup>50</sup> Dave Jamieson, “A PetSmart Dog Groomer Quit Her Job, They Billed Her Thousands of Dollars for Training,” *Huffington Post* August 4, 2022. [https://www.huffpost.com/entry/petsmart-dog-groomer-billed-training\\_n\\_62e32ae4b0c55016181768](https://www.huffpost.com/entry/petsmart-dog-groomer-billed-training_n_62e32ae4b0c55016181768)
- <sup>51</sup> Ing-Haw Cheng, Felipe Severino, and Richard R. Townsend, “How do consumers fare when dealing with debt collectors? Evidence from out-of-court settlements,” *The Review of Financial Studies* 34 (2021): 1617-1660. [https://www.researchgate.net/profile/Felipe-Severino/publication/345252764\\_How\\_Do\\_Consumers\\_Fare\\_When\\_Dealing\\_with\\_Debt\\_Collectors\\_Evidence\\_from\\_Out-of-Court\\_Settlements/links/6137b90e5c10801fe1821c47/How-Do-Consumers-Fare-When-Dealing-with-Debt-Collectors-Evidence-from-Out-of-Court-Settlements.pdf](https://www.researchgate.net/profile/Felipe-Severino/publication/345252764_How_Do_Consumers_Fare_When_Dealing_with_Debt_Collectors_Evidence_from_Out-of-Court_Settlements/links/6137b90e5c10801fe1821c47/How-Do-Consumers-Fare-When-Dealing-with-Debt-Collectors-Evidence-from-Out-of-Court-Settlements.pdf)
- <sup>52</sup> Elizabeth Sweet, Arijit Nandi, Emma K. Adam, and Thomas W. McDade, “The high price of debt: Household financial debt and its impact on mental and physical health,” *Social Science & Medicine* 91 (August 2013): 94-100, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3718010/>. There are some indications that female debtors are more likely to report a negative impact on their health as a result of debt. See Gengxuan Chen, Qinmin Jia, Pankaj Maskara, and Albert Williams, “Impact of financial debt on borrower’s health based on gender,” *International Journal of Consumer Studies* 45 (2021): 423-440, <https://onlinelibrary.wiley.com/doi/abs/10.1111/ijcs.12632>
- <sup>53</sup> Michael Babula and Alp Idil Ersoy-Babula, “Falling behind: the role of student loans on forgoing healthcare,” *Health Soc. Care Community* 30 (2022): 1944-1950, <https://onlinelibrary.wiley.com/doi/full/10.1111/hsc.13573>; Craig Evan Pollack and Julia Lynch, “Health status of people undergoing foreclosure in the Philadelphia region,” *American Journal of Public Health* 99(2009): 1833-1839, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2741520/>
- <sup>54</sup> Stuart Lichten and Eric M. Fink, “‘Just when I thought I was out....’ Post-employment repayment obligations,” *Washington and Lee Journal of Civil Rights and Social Justice* 25 (2019): p. 56, [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3359847](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3359847)
- <sup>55</sup> “Fair Debt Collection Practices Act, CFPB Annual Report 2022,” (Washington, D.C.: CFPB, April 2022). [https://files.consumerfinance.gov/f/documents/cfpb\\_fdcpa\\_annual-report-congress\\_04-2022.pdf](https://files.consumerfinance.gov/f/documents/cfpb_fdcpa_annual-report-congress_04-2022.pdf)
- <sup>56</sup> Greed Unleashed: PetSmart, BC Partners, and what happens when private equity preys on workers and pets,” United for Respect, September 2021. <https://united4respect.org/wp-content/uploads/2021/09/Greed-Unleashed-Report.pdf>
- <sup>57</sup> “Student debt trap snags unwary truck driver trainees,” *The Oregonian*, August 14, 2017. [https://www.oregonlive.com/business/2017/08/student\\_debt\\_trap\\_snags\\_unwary.html](https://www.oregonlive.com/business/2017/08/student_debt_trap_snags_unwary.html)
- <sup>58</sup> “Trapped at work: how big business uses student debt to restrict worker mobility,” Student Borrower Protection Center Report, July 2022, p. 8. [https://protectborrowers.org/wp-content/uploads/2022/07/Trapped-at-Work\\_Final.pdf](https://protectborrowers.org/wp-content/uploads/2022/07/Trapped-at-Work_Final.pdf)
- <sup>59</sup> Corporate Training Market Research 2030, Allied Market Research, <https://www.alliedmarketresearch.com/corporate-training-market-A06445> (accessed August 26, 2022).

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- <sup>60</sup> “Corporate Training M&A Market Produces Record Volume and Valuations,” Capstone Partners Report, January 2022. [https://www.capstonepartners.com/wp-content/uploads/2022/02/Capstone-Partners-Corporate-Training-MA-Coverage-Report\\_January-2022.pdf](https://www.capstonepartners.com/wp-content/uploads/2022/02/Capstone-Partners-Corporate-Training-MA-Coverage-Report_January-2022.pdf)
- <sup>61</sup> As listed on [featuredcustomers.com/vendor/Skillsoft/customers](https://featuredcustomers.com/vendor/Skillsoft/customers) visited August 26, 2022.
- <sup>62</sup> “Corporate & Professional Training, Q2 2015,” Capstone Partners Report, 2015. [https://www.capstonepartners.com/sites/default/files/Capstone%20Corporate%20Training%20Report\\_Q2%202015.pdf](https://www.capstonepartners.com/sites/default/files/Capstone%20Corporate%20Training%20Report_Q2%202015.pdf)
- <sup>63</sup> Anigah Majid, “How Skillsoft got in and out of bankruptcy in just over 2 months,” ELearning Inside, September 4, 2020. <https://news.elearninginside.com/how-skillsoft-got-in-and-out-of-bankruptcy-in-just-over-2-months/>
- <sup>64</sup> “Churchill Capital Corp II announces agreement to acquire Skillsoft and Global Knowledge to create the leading digital learning company,” Skillsoft Press Release, October 13, 2020. <https://www.skillsoft.com/press-releases/skillsoft-announcement-oct-13-2020> .
- <sup>65</sup> Charlie Eaton, Sabrina Howell, and Constantine Yannelis, “When investor incentives and consumer interests diverge: private equity in higher education,” *The Review of Financial Studies* 33 (September 2020): 4024-4060. <https://academic.oup.com/rfs/article-abstract/33/9/4024/5602331>; “AFR Report: Private Equity’s Failing Grade in the For-Profit College Industry,” Americans for Financial Reform Report, March 29, 2018. <https://ourfinancialsecurity.org/2018/03/afr-report-private-equitys-failing-grade-profit-college-industry/>
- <sup>66</sup> Quoted in Scott Cummings, “Preemptive strike: law in the campaign for clean trucks,” *UC Irvine Law Review* 4 (Dec. 2014), p. 1000. <https://scholarship.law.uci.edu/cgi/viewcontent.cgi?article=1174&context=ucilr>
- <sup>67</sup> Brett Murphy, “Rigged: Forced into debt. Worked past exhaustion. Left with nothing,” *USA Today*, June 16, 2017. <https://www.usatoday.com/pages/interactives/news/rigged-forced-into-debt-worked-past-exhaustion-left-with-nothing/>
- <sup>68</sup> Motion of *Amici Curiae* California Rural Legal Assistance Foundation, Women’s Employment Rights Clinic, and Worksafe, Inc., in re Fernando Ruiz, et. al., v. Affinity Logistics Corp, United States Court of Appeals for the Ninth Circuit, filed October 4, 2010, Page 29. See also National Employment Law Project, International Brotherhood of Teamsters, et. al., *Amicus Curiae* Brief in support of Plaintiffs-Appellants, Ruiz v. Affinity Logistics Corp, United States Court of Appeals for the Ninth Circuit, filed March 2015. [https://s27147.pcdn.co/wp-content/uploads/2015/03/Ruiz\\_v\\_Affinity\\_NELP\\_Amicus.pdf](https://s27147.pcdn.co/wp-content/uploads/2015/03/Ruiz_v_Affinity_NELP_Amicus.pdf)
- <sup>69</sup> Opinion in Dean Alexander, et. al., v. FedEx Group Package System, United States Court of Appeals for the Ninth Circuit, dated Aust 27, 2014, p. 10.
- <sup>70</sup> Brett Murphy, “Rigged: Forced into debt. Worked past exhaustion. Left with nothing,.”
- <sup>71</sup> Brett Murphy, “Rigged: Forced into debt. Worked past exhaustion. Left with nothing,.”
- <sup>72</sup> Order issued in Blakely et al v.Celadon Group, Inc., US District Court, Southern District of Indiana (2017) p.4 & 8. <https://law.justia.com/cases/federal/district-courts/indiana/insdce/1:2016cv00351/63545/101/>
- <sup>73</sup> Franklin Merrill, et. al., v. Pathway Leasing, Findings of Fact, Conclusions of Law and Order of Judgment, US District Court for the District of Colorado, filed July 21, 2021. Finding of fact #49, p.22 [https://www.govinfo.gov/content/pkg/USCOURTS-cod-1\\_16-cv-02242/pdf/USCOURTS-cod-1\\_16-cv-02242-6.pdf](https://www.govinfo.gov/content/pkg/USCOURTS-cod-1_16-cv-02242/pdf/USCOURTS-cod-1_16-cv-02242-6.pdf)
- <sup>74</sup> Merrill v. Pathway, Finding of fact #51, P. 23
- <sup>75</sup> Merrill v. Pathway, Finding of fact #53, p. 24.
- <sup>76</sup> Rebecca Smith, Paul Alexander Marvy, and Jon Zerolnick, “The Big Rig: Restoring Middle-Class Jobs at America’s Ports Through Labor Law Enforcement,” (New York, NY: National Employment Law Project, 2015), p. 14. <https://www.nelp.org/wp-content/uploads/2015/03/Big-Rig-Overhaul-Misclassification-Port-Truck-Drivers-Labor-Law-Enforcement.pdf>
- <sup>77</sup> Amir Efrati, “How Uber will combat rising driver churn,” *The Information*, April 20, 2017.
- <sup>78</sup> Laura Bliss, “Uber’s Subprime Auto Leases Sound Awfully Predatory,” *Bloomberg*, June 3, 2016.
- <sup>79</sup> “Uber’s subprime leases put drivers on road, but leave some shackled,” *The Seattle Times*, June 2, 2016.
- <sup>80</sup> “Critics say Uber’s Vehicle Leasing Option is ‘Predatory,’” *CBS News*, May 16, 2017.
- <sup>81</sup> “AG Ferguson files lawsuit against janitorial services company for exploiting mostly immigrant workers,” Press Release, Washington State Office of the Attorney General, April 6, 2021. <https://www.atg.wa.gov/news/news-releases/ag-ferguson-files-lawsuit-against-janitorial-services-company-exploiting-mostly>
- <sup>82</sup> David Weil, “Market Structure and Compliance: Why Janitorial Franchising Leads to Labor Standards Problems (Boston University School of Management Working Paper, 2011), p. 15

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<sup>83</sup> Catherine Ruckelshaus, et. al., “Who’s the Boss: Restoring Accountability for Labor Standards in Outsourced Work,” National Employment Law Project, May 2014. P. 9. <https://www.nelp.org/publication/whos-the-boss-restoring-accountability-for-labor-standards-in-outsourced-work/>

<sup>84</sup> National Employment Law Project, et. al., Application to submit *Amicus Curiae* brief of workers’ rights advocates in support of plaintiffs, Vazquez et. al. v. Jan-Pro Franchising International, Supreme Court of California, filed August 17, 2020. <https://www.courts.ca.gov/documents/9-s258191-ac-workers-rights-advocates-081920.pdf>

<sup>85</sup> “Franchisee Voices Founder Wins More Than \$400K Lawsuit Against Jani-King of Phoenix,” Press Release by Franchisee Voices, January 11, 2022.

<sup>86</sup> See John Dunne, “Run through the wringer: how cleaning industry franchisors exploit franchisees’ hope for an American Dream,” *J. Marshall L. Rev* 47 (2013).

<sup>87</sup> Quoted in Wendy N. Davis, “Do janitorial firms cash in by misclassifying workers as independent contractors?” *ABA Journal*, September 1, 2014.

<sup>88</sup> US Court of Appeals for the Tenth Circuit, Appeal from the US District Court for the Western District of Oklahoma in the matter of Acosta v. Jani-King of Oklahoma, filed October 3 2018.

<https://www.ca10.uscourts.gov/sites/ca10/files/opinions/010110063224.pdf>

<sup>89</sup> Quoted in Julie Bennett, “Taking of the gloves: Commercial cleaning franchisees sue,” *Franchise Times*, August 2009.

<sup>90</sup> Class and collective action complaint and jury demand, Ruth Mark v. O.P.E.N. America, Inc., d/b/a OpenWorks, filed with the United States District Court for the District of Colorado, September 20. 2018.

<sup>91</sup> National Employment Law Project, Greater Boston Legal Services, et. al., Brief of *Amici Curiae*, Depianti et. al., v Jan-Pro Franchising International, Inc., Commonwealth of Massachusetts, Supreme Judicial Court, filed March 2015. <http://s27147.pcdn.co/wp-content/uploads/2015/03/MA-janitorial-franchisee-amicus.pdf>

<sup>92</sup> “Master Franchise Opportunities” listed at franchisedirect.com, accessed August 25, 2022. PDF of webpage on file with author.