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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF HUMBOLDT

LENARD MILLER, individually, and on behalf
of other members of the general public similarly
situated,

Plaintiff,

vs.

SPORTSMAN'S WAREHOUSE
SOUTHWEST, INC., a California corporation;
SPORTSMAN'S WAREHOUSE, INC., a Utah
corporation; SPORTSMAN'S WAREHOUSE
HOLDINGS, INC., a Delaware corporation; and
DOES 1 through 10, inclusive,

Defendants.

Case No.: CV2000279

**JOINT STIPULATION OF CLASS ACTION
SETTLEMENT AND RELEASE**

1 **JOINT STIPULATION OF CLASS ACTION SETTLEMENT AND RELEASE**

2 This Joint Stipulation of Class Action Settlement and Release ("Settlement" or "Settlement
3 Agreement") is made and entered into by and between Plaintiff Lenard "Alan" Miller ("Plaintiff" or
4 "Class Representative"), as an individual and on behalf of all others similarly situated, and Defendants
5 Sportsman's Warehouse Southwest, Inc., Sportsman's Warehouse, Inc., and Sportsman's Warehouse
6 Holdings, Inc. ("Defendants") (collectively with Plaintiff, the "Parties").

7 The Plaintiffs, on behalf of themselves and the Settlement Class, and Defendants agree as
8 follows:

9 **DEFINITIONS**

10 The following definitions are applicable to this Settlement Agreement. Definitions contained
11 elsewhere in this Settlement Agreement will also be effective:

12 1. "Action" means Lenard Miller v. Sportsman's Warehouse Southwest, Inc., No.
13 CV2000279 (Humboldt County Superior Court).

14 2. "Attorneys' Fees and Costs" means attorneys' fees agreed upon by the Parties and
15 approved by the Court for Class Counsel's litigation and resolution of the Action, and all out-of-pocket
16 costs incurred and to be incurred by Class Counsel in the Action, including but not limited to fees and
17 expenses of experts, investigation expenses, postage, telephone, and photocopying charges, costs
18 associated with documenting the Settlement, providing any notices required as part of the Settlement or
19 Court order, securing the Court's approval of the Settlement, administering the Settlement, and obtaining
20 entry of a Judgment terminating the Action. The Attorneys' Fees and Costs will also mean and include
21 the additional reimbursement of any costs and expenses associated with Class Counsel's litigation and
22 settlement of the Action.

23 3. "Class Counsel" means Capstone Law APC.

24 4. "Class List" means a complete list of all Class Members that Defendants will diligently
25 and in good faith compile from their records and formatted in Microsoft Office Excel, and will include:
26 each Class Member's full name; most recent mailing address and telephone number; Social Security
27 number; dates of employment; the respective number of Workweeks that each Class Member worked
28 during the Class Period; and any other relevant information needed to calculate settlement payments.

1 5. “Class Member(s)” or “Settlement Class” means all current and former California non-
2 exempt hourly employees of Defendants who worked at any time from February 21, 2016 through
3 September 23, 2020. The number of Settlement Class Members will not exceed 2,250 (in order of hire).

4 6. “Class Period” means the period from February 21, 2016 through date of Preliminary
5 Approval.

6 7. “Class Representative Enhancement Payment” means the amount agreed by the Parties
7 and approved by the Court to be paid to Plaintiff in recognition of his effort and work in prosecuting the
8 Action on behalf of Class Members, and for his general release of claims.

9 8. “Class Settlement Amount” means the Class Settlement Amount of Two Million One
10 Hundred Twenty Five Thousand Dollars (\$2,125,000), to be paid by Defendants in full satisfaction of all
11 Released Claims arising from the Action, which includes all Individual Settlement Payments to
12 Participating Class Members, Attorneys’ Fees and Costs to Class Counsel, the Class Representative
13 Enhancement Payment to Plaintiff, the Labor and Workforce Development Agency Payment, and
14 Settlement Administration Costs to the Settlement Administrator.

15 9. “Court” means the Humboldt County Superior Court.

16 10. “Defendants” means Defendants Sportsman’s Warehouse Southwest, Inc., Sportsman’s
17 Warehouse, Inc., and Sportsman’s Warehouse Holdings, Inc.

18 11. “Effective Date” means the later of: (i) the sixty-first (61) calendar day after Final
19 Approval, provided no appeal has been initiated, whether by an absent Class Member who has timely
20 intervened or moved to vacate the judgment or by a Party or Class Counsel pursuant to paragraph 65
21 below; or (iii) if such an appeal is timely initiated, the date of final resolution of that appeal (including
22 any requests for rehearing and/or petitions for certiorari), resulting in final judicial approval of the
23 Settlement.

24 12. “Final Approval” means the date on which the Court enters an order granting final
25 approval of the Settlement Agreement.

26 13. “Individual Settlement Payment” means each Participating Class Member’s respective
27 share of the Net Settlement Amount.

28 14. “LWDA Payment” means seventy-five percent (75%) of the \$100,000 portion of the

1 Class Settlement Amount allocated to resolution of Class Members' claims arising under the Labor
2 Code Private Attorneys General Act of 2004, Cal. Lab. Code §§ 2698, ~~et seq.~~ ("PAGA"), which
3 amounts to \$75,000 and which shall be paid to the Labor and Workforce Development Agency
4 ("LWDA").

5 15. "Net Settlement Amount" means the portion of the Class Settlement Amount remaining
6 after deducting the Attorneys' Fees and Costs, the Class Representative Enhancement Payment, the
7 Labor and Workforce Development Agency Payment, and Settlement Administration Costs, which shall
8 be fully distributed to Participating Class Members without any reversion to Defendants.

9 16. "Notice of Objection" means a Class Member's valid and timely written objection to the
10 Settlement Agreement. For the Notice of Objection to be valid, it must include: (i) the objector's full
11 name, signature, address, and telephone number, (ii) a written statement of all grounds for the objection
12 accompanied by any legal support for such objection; (iii) copies of any papers, briefs, or other
13 documents upon which the objection is based; and (iv) a statement whether the objector intends to appear
14 at the final fairness hearing.

15 17. "Notice Packet" means the Notice of Class Action Settlement, substantially in the form
16 attached as Exhibit A.

17 18. "Parties" means Plaintiff and Defendants collectively.

18 19. "Participating Class Members" means all Class Members who do not submit timely and
19 valid Requests for Exclusion.

20 20. "Plaintiff" means Plaintiff Lenard "Alan" Miller.

21 21. "Preliminary Approval" means the date on which the Court enters an order granting
22 preliminary approval of the Settlement Agreement.

23 22. "Released Claims" means all claims, rights, demands, liabilities, and causes of action,
24 arising from, or related to, the same set of operative facts as those set forth in the operative complaint
25 during the Class Period, including: (i) all claims for unpaid overtime; (ii) all claims for meal and rest
26 break violations; (iii) all claims for unpaid minimum wages; (iv) all claims for unreimbursed business
27 expenses; (v) all claims for the failure to timely pay wages upon termination based on the preceding
28 claims; (vi) all claims for the failure to timely pay wages during employment based on the preceding

claims; (vii) all claims for wage statement violations based on the preceding claims; and (viii) all claims asserted through California Business & Professions Code §§ 17200, ~~et seq.~~, and California Labor Code §§ 2698, ~~et seq.~~ based on the preceding claims.

23. “Released Parties” means Defendants, their parents, subsidiaries, affiliated entities, past or present officers, directors, shareholders, employees, agents, principals, heirs, representatives, accountants, auditors, consultants, insurers and reinsurers, and their respective successors and predecessors in interest, subsidiaries, affiliates, parents and attorneys, if any.

24. “Request for Exclusion” means a timely letter submitted by a Class Member indicating a request to be excluded from the Settlement. The Request for Exclusion must: (i) set forth the name, address, telephone number and last four digits of the Social Security Number of the Class Member requesting exclusion; (ii) be signed by the Class Member; (iii) be returned to the Settlement Administrator; (iv) clearly state that the Class Member does not wish to be included in the Settlement; and (v) be faxed or postmarked on or before the Response Deadline.

25. “Response Deadline” means the deadline by which Class Members must postmark or fax to the Settlement Administrator Requests for Exclusion, or postmark Notices of Objection to the Settlement Administrator. The Response Deadline will be forty-five (45) calendar days from the initial mailing of the Notice Packet by the Settlement Administrator, unless the forty-fifth (45th) calendar day falls on a Sunday or State holiday, in which case the Response Deadline will be extended to the next day on which the U.S. Postal Service is open.

26. “Settlement Administration Costs” means the costs payable from the Class Settlement Amount to the Settlement Administrator for administering this Settlement, including, but not limited to, printing, distributing, and tracking documents for this Settlement, tax reporting, distributing the Class Settlement Amount, and providing necessary reports and declarations, as requested by the Parties. The Settlement Administration Costs will be paid from the Class Settlement Amount, including, if necessary, any such costs in excess of the amount represented by the Settlement Administrator as being the maximum costs necessary to administer the Settlement. Based on an estimated Settlement Class of approximately 2,250 Class Members, the Settlement Administration Costs are currently estimated to be Twenty Thousand Dollars (\$20,000).

27. “Settlement Administrator” means CPT Group, Inc., or any other third-party class action settlement administrator agreed to by the Parties and approved by the Court for the purposes of administering this Settlement. The Parties each represent that they do not have any financial interest in the Settlement Administrator or otherwise have a relationship with the Settlement Administrator that could create a conflict of interest.

28. “Workweeks” means the number of days of employment for each Class Member during the Class Period, dividing by seven (7), and rounding up to the nearest whole number. All Class Members will be credited with at least one Workweek.

GENERAL SETTLEMENT TERMS

29. Class Certification for Settlement Purposes. The Parties hereby stipulate to class action certification for purposes of the Settlement only. If, for any reason, the Settlement is not approved, the stipulation to certification will be void. The Parties further agree that certification for purposes of the Settlement is not an admission that class action certification is proper under the standards applied to contested certification motions and that this Settlement Agreement will not be admissible in this or any other proceeding as evidence that either (i) a class action should be certified or (ii) Defendants are liable to Plaintiff or any Class Member, other than according to the Settlement's terms.

30. Class Settlement Amount. Defendants shall pay the sum of Two Million One Hundred Twenty Five Thousand Dollars (\$2,125,000) in full settlement of the claims released herein. There will be no reversion of the Class Settlement Amount to Defendants. The Class Settlement Amount has been agreed to by Plaintiff and Defendants based on the aggregation of the agreed-upon settlement value of individual claims. In no event will Defendants be liable for more than the Class Settlement Amount, except that Defendants will be separately responsible for any employer payroll taxes required by law, including the employer FICA, FUTA, and SDI contributions, which shall not be paid from the Class Settlement Amount. Payment of the Class Settlement Amount shall be through a one-time deposit into a Qualified Settlement Account to be established by the Settlement Administrator. Defendants will pay the employer's share of payroll taxes on the wage portion of Individual Settlement Payments separately. After the Effective Date, the Class Settlement Amount will be used for: (i) Individual Settlement Payments; (ii) the Labor and Workforce Development Agency Payment; (iii) the Class Representative

Enhancement Payment; (iv) Attorneys' Fees and Costs; and (v) Settlement Administration Costs. Defendants will deposit the Class Settlement Amount and the employer's share of payroll taxes within ten (10) calendar days of the Effective Date.

31. Attorneys' Fees and Costs. Defendants agree not to oppose or impede any application or motion by Class Counsel for Attorneys' Fees and Costs of not more than one-third of the Class Settlement Amount, or Seven Hundred Eight Thousand Three Hundred Thirty Three Dollars (\$708,333), plus the reimbursement of all out-of-pocket costs and expenses associated with Class Counsel's litigation and settlement of the Action (including expert fees, investigations expenses, photocopying, etc.), not to exceed Twenty Thousand Dollars (\$20,000). The amount of Attorneys' Fees and Costs shall be subject to Court approval and shall be paid from the Class Settlement Amount.

32. Class Representative Enhancement Payment. In exchange for a general release, and in recognition of his effort and work in prosecuting the Action on behalf of Class Members, Defendants agree not to oppose or impede any application or motion for a Class Representative Enhancement Payment of Ten Thousand Dollars (\$10,000), to Plaintiff. The amount of the Class Representative Enhancement Payment shall be subject to Court approval, will be paid from the Class Settlement Amount and will be in addition to Plaintiff's Individual Settlement Payment paid pursuant to the Settlement. Plaintiff will be solely and legally responsible to pay any and all applicable taxes on the Class Representative Enhancement Payment.

33. Settlement Administration Costs. The Settlement Administrator will be paid for the reasonable costs of administration of the Settlement and distribution of payments from the Class Settlement Amount, which is currently estimated to be Twenty Thousand Dollars (\$20,000). These costs, which will be paid from the Class Settlement Amount, will include, *inter alia*, the required tax reporting on the Individual Settlement Payments, the issuing of 1099 and W-2 IRS Forms, distributing Notice Packets, calculating and distributing the Class Settlement Amount, and providing necessary reports and declarations.

34. PAGA Allocation and LWDA Payment. Subject to Court approval, the Parties agree to allocate the amount of One Hundred Thousand Dollars (\$100,000) from the Class Settlement Amount to satisfaction of Plaintiff's and Class Members' PAGA claims. Pursuant to PAGA, Seventy-Five Percent

(75%), or Seventy Five Thousand Dollars (\$75,000), of this PAGA allocation shall be the LWDA Payment paid to the LWDA, and Twenty-Five Percent (25%), or Twenty Five Thousand Dollars (\$25,000), will become part of the Net Settlement Amount.

35. Net Settlement Amount. The entire Net Settlement Amount will be distributed to Participating Class Members. No portion of the Net Settlement Amount will revert to or be retained by Defendants.

36. Individual Settlement Payment Calculations. Individual Settlement Payments will be calculated and apportioned from the Net Settlement Amount based on the number of Workweeks a Class Member worked during the Class Period. Specific calculations of Individual Settlement Payments will be made as follows:

36(a) Defendants will calculate the total number of Workweeks worked by each Class Member during the Class Period and the aggregate total number of Workweeks worked by all Class Members during the Class Period.

36(b) To determine each Class Member's estimated "Individual Settlement Payment," the Settlement Administrator will use the following formula: The Net Settlement Amount will be divided by the aggregate total number of Workweeks, resulting in the "Workweek Value." Each Class Member's "Individual Settlement Payment" will be calculated by multiplying each individual Class Member's total number of Workweeks by the Workweek Value.

36(c) The Individual Settlement Payment will be reduced by any required deductions for each Participating Class Member as specifically set forth herein, including employee-side tax withholdings or deductions.

36(d) The entire Net Settlement Amount will be disbursed to all Class Members who do not submit timely and valid Requests for Exclusion. If there are any valid and timely Requests for Exclusion, the Settlement Administrator shall proportionately increase the Individual Settlement Payment for each Participating Class Member according to the number of Workweeks

1 worked, so that the amount actually distributed to the Settlement Class
2 equals 100% of the Net Settlement Amount.

3 37. No Credit Toward Benefit Plans. The Individual Settlement Payments made to
4 Participating Class Members under this Settlement, as well as any other payments made pursuant to this
5 Settlement, will not be utilized to calculate any additional benefits under any benefit plans to which any
6 Class Members may be eligible, including, but not limited to profit-sharing plans, bonus plans, 401(k)
7 plans, stock purchase plans, vacation plans, sick leave plans, PTO plans, and any other benefit plan.
8 Rather, it is the Parties' intention that this Settlement Agreement will not affect any rights, contributions,
9 or amounts to which any Class Members may be entitled under any benefit plans.

10 38. Non-Admission of Liability. The Parties enter into this Settlement to resolve the dispute
11 that has arisen between them and to avoid the burden, expense and risk of continued litigation. In
12 entering into this Settlement, Defendants do not admit, and specifically deny, that they have violated any
13 federal, state, or local law; violated any regulations or guidelines promulgated pursuant to any statute or
14 any other applicable laws, regulations or legal requirements; breached any contract; violated or breached
15 any duty; engaged in any misrepresentation or deception; or engaged in any other unlawful conduct with
16 respect to their employees. Neither this Settlement Agreement, nor any of its terms or provisions, nor
17 any of the negotiations connected with it, will be construed as an admission or concession by Defendants
18 of any such violations or failures to comply with any applicable law. Except as necessary in a
19 proceeding to enforce the terms of this Settlement, this Settlement Agreement and its terms and
20 provisions will not be offered or received as evidence in any action or proceeding to establish any
21 liability or admission on the part of Defendants or to establish the existence of any condition constituting
22 a violation of, or a non-compliance with, federal, state, local or other applicable law.

23 TAX MATTERS

24 39. Tax Treatment of Individual Settlement Payments. All Individual Settlement Payments
25 will be allocated as follows: (i) Twenty-Five Percent (25%) of each Individual Settlement Payment will
26 be allocated as wages and subject to legally required employee tax withholdings, for which IRS Forms
27 W-2 will be issued; and (ii) Seventy-Five (75%) will be allocated as penalties and interest and not subject
28 to deductions or withholdings, for which IRS Forms 1099-MISC will be issued.

1 40. Administration of Taxes by the Settlement Administrator. The Settlement
2 Administrator will be responsible for issuing to Plaintiff, Participating Class Members, and Class
3 Counsel any W-2, 1099, or other tax forms as may be required by law for all amounts paid pursuant to
4 this Settlement. The Settlement Administrator will also be responsible for forwarding all payroll taxes
5 and penalties to the appropriate government authorities.

6 41. No Tax Advice. Defendants make no representation as to the tax treatment or legal
7 effect of any payments called for by this Settlement, and Class Counsel, Plaintiff and Participating Class
8 Members are not relying on any statement, representation, or calculation by Defendants or by the
9 Settlement Administrator in this regard.

10 42. Circular 230 Disclaimer. EACH PARTY TO THIS AGREEMENT (FOR
11 PURPOSES OF THIS SECTION, THE "ACKNOWLEDGING PARTY" AND EACH PARTY TO
12 THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN "OTHER PARTY")
13 ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS AGREEMENT, AND
14 NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES
15 OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR
16 WILL ANY SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED
17 OR BE RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES
18 TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE
19 ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER, OR ITS
20 OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX
21 ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO THIS
22 AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY OR ANY
23 ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY
24 UPON ANY COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISOR TO
25 ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE
26 ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISOR TO ANY OTHER
27 PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY OF
28 ANY SUCH ATTORNEY'S OR ADVISOR'S TAX STRATEGIES (REGARDLESS OF WHETHER

1 SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE
2 ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY
3 TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS
4 AGREEMENT.

5 43. Tax Liability. Any tax obligation arising from any payment provided under this
6 Settlement will be the sole responsibility of each person or entity receiving such payment(s).
7 Specifically, taxes on the Class Representative Enhancement Payment shall be solely the responsibility
8 of the Plaintiff; taxes on awards to Class Counsel for fees and costs shall be solely Class Counsel's
9 responsibility; and each Participating Class Member is responsible to pay his or her portion of the taxes
10 due upon any Individual Settlement Payment he or she receives under this Settlement Agreement.
11 Should any taxing authority or agency determine that any Participating Class Member owes additional
12 personal income taxes and/or employee contributions on any portion of his or her Individual Settlement
13 Payment based on a challenge to the allocation of wage and non-wage portions set forth in paragraph 39,
14 such Participating Class Member shall be solely responsible for the payment of his or her personal
15 income taxes and/or employee contributions.

16 **CLASS NOTICE AND RESPONSE PROCEDURES**

17 44. Administration Process. The Parties agree to cooperate in the administration of the
18 settlement and to make all reasonable efforts to control and minimize the costs and expenses incurred in
19 administration of the Settlement.

20 45. Delivery of the Class List. Within twenty (20) calendar days of Preliminary Approval,
21 Defendants will provide the Class List to the Settlement Administrator and to Class Counsel.

22 46. Notice by First-Class U.S. Mail. Within ten (10) calendar days after receiving the Class
23 List from Defendants, the Settlement Administrator will mail a Notice Packet to all Class Members via
24 regular First-Class U.S. Mail, using the most current, known mailing addresses identified in the Class
25 List.

26 47. Confirmation of Contact Information in the Class Lists. Prior to mailing, the Settlement
27 Administrator will perform a search based on the National Change of Address Database for information
28 to update and correct for any known or identifiable address changes. Any Notice Packets returned to the

1 Settlement Administrator as non-deliverable on or before the Response Deadline will be sent promptly
2 via regular First-Class U.S. Mail to the forwarding address affixed thereto and the Settlement
3 Administrator will indicate the date of such re-mailing on the Notice Packet. If no forwarding address is
4 provided, the Settlement Administrator will promptly attempt to determine the correct address using a
5 skip-trace, or other search using the name, address and/or Social Security number of the Class Member
6 involved, and will then perform a single re-mailing. Those Class Members who receive a re-mailed
7 Notice Packet, whether by skip-trace or by request, will have either (i) an additional fifteen (15) calendar
8 days or (ii) until the Response Deadline, whichever is later, to submit a Request for Exclusion or an
9 objection to the Settlement.

10 48. Notice Packets. All Class Members will be mailed a Notice Packet. Each Notice Packet
11 will provide: (i) information regarding the nature of the Action; (ii) a summary of the Settlement's
12 principal terms; (iii) the Settlement Class definition; (iv) the total number of Workweeks each respective
13 Class Member worked for Defendants during the Class Period; (v) each Class Member's estimated
14 Individual Settlement Payment and the formula for calculating Individual Settlement Payments; (vi) the
15 dates which comprise the Class Period; (vii) instructions on how to submit Requests for Exclusion or
16 Notices of Objection; (viii) the deadlines by which the Class Member must postmark or fax Request for
17 Exclusions, or postmark Notices of Objection to the Settlement; and (ix) the claims to be released.

18 49. Procedure to Dispute Information on Notice Packets. Class Members will have an
19 opportunity to dispute the information provided in their Notice Packets. To the extent Class Members
20 dispute their employment dates or the number of Workweeks on record, Class Members may produce
21 evidence to the Settlement Administrator showing that such information is inaccurate. The Settlement
22 Administrator will decide the dispute. Defendants' records will be presumed correct, but the Settlement
23 Administrator will evaluate the evidence submitted by the Class Member and will make the final
24 decision as to the merits of the dispute. All disputes will be decided within ten (10) business days of the
25 Response Deadline.

26 50. Defective Submissions. If a Class Member's Request for Exclusion is defective as to the
27 requirements listed herein, that Class Member will be given an opportunity to cure the defect(s). The
28 Settlement Administrator will mail the Class Member a cure letter within three (3) business days of

1 receiving the defective submission to advise the Class Member that his or her submission is defective
2 and that the defect must be cured to render the Request for Exclusion valid. The Class Member will
3 have until (i) the Response Deadline or (ii) fifteen (15) calendar days from the date of the cure letter,
4 whichever date is later, to postmark or fax a revised Request for Exclusion. If the revised Request for
5 Exclusion is not postmarked or received by fax within that period, it will be deemed untimely.

6 51. Request for Exclusion Procedures. Any Class Member wishing to opt-out from the
7 Settlement Agreement must sign and fax or postmark a written Request for Exclusion to the Settlement
8 Administrator on or before the Response Deadline. In the case of Requests for Exclusion that are mailed
9 to the Settlement Administrator, the postmark date will be the exclusive means to determine whether a
10 Request for Exclusion has been timely submitted.

11 52. Settlement Terms Bind All Class Members Who Do Not Opt-Out. Any Class Member
12 who does not affirmatively opt-out of the Settlement Agreement by submitting a timely and valid
13 Request for Exclusion will be bound by all of its terms, including those pertaining to the Released
14 Claims, as well as any Judgment that may be entered by the Court if it grants final approval to the
15 Settlement.

16 53. Objection Procedures. To object to the Settlement Agreement, a Class Member must
17 postmark a valid Notice of Objection to the Settlement Administrator on or before the Response
18 Deadline. The Notice of Objection must be signed by the Class Member and contain all information
19 required by this Settlement Agreement. The postmark will be deemed the exclusive means for
20 determining that the Notice of Objection is timely. Class Members who postmark timely Notices of
21 Objection will have a right to appear at the Final Approval Hearing in order to have their objections
22 heard by the Court. At no time will any of the Parties or their counsel seek to solicit or otherwise
23 encourage Class Members to submit written objections to the Settlement Agreement or appeal from the
24 Order and Judgment. Class Counsel will not represent any Class Members with respect to any such
25 objections to this Settlement.

26 54. Certification Reports Regarding Individual Settlement Payment Calculations. The
27 Settlement Administrator will provide Defendants' counsel and Class Counsel a weekly report that
28 certifies the number of Class Members who have submitted valid Requests for Exclusion, objections to

1 the Settlement, and whether any Class Member has submitted a dispute to any information contained in
2 their Notice Packet. Additionally, the Settlement Administrator will provide to counsel for both Parties
3 any updated reports regarding the administration of the Settlement Agreement as needed or requested.

4 **PAYMENTS TO CLASS**

5 55. Distribution Timing of Individual Settlement Payments. Within twenty (20) calendar
6 days of the Effective Date, the Settlement Administrator will issue payments to: (i) Participating Class
7 Members; (ii) the Labor and Workforce Development Agency; (iii) Plaintiff; and (iv) Class Counsel.
8 The Settlement Administrator will also issue a payment to itself for Court-approved services performed
9 in connection with the Settlement.

10 56. Un-cashed Settlement Checks. Funds represented by Individual Settlement Payment
11 checks returned as undeliverable and Individual Settlement Payment checks remaining un-cashed for
12 more than one hundred and eighty (180) calendar days after issuance will be tendered to the State
13 Controller's Office, Unclaimed Property Division.

14 57. Certification of Completion. Upon completion of administration of the Settlement, the
15 Settlement Administrator will provide a written declaration under oath to certify such completion to the
16 Court and counsel for all Parties.

17
18 58. No Prior Assignments. The Parties and their counsel represent, covenant, and warrant
19 that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign,
20 transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of
21 action or right herein released and discharged.

22 59. Nullification of Settlement Agreement. In the event that: (i) the Court does not finally
23 approve the Settlement as provided herein; or (ii) the Settlement does not become final for any other
24 reason, then this Settlement Agreement, and any documents generated to bring it into effect, will be null
25 and void. Any order or judgment entered by the Court in furtherance of this Settlement Agreement will
26 likewise be treated as void from the beginning.

27 **SETTLEMENT APPROVAL PROCESS**

28 60. Preliminary Approval Hearing. Plaintiff will obtain a hearing before the Court to

1 request the Preliminary Approval of the Settlement Agreement, and the entry of a Preliminary Approval
2 Order for: (i) conditional certification of the Settlement Class for settlement purposes only, (ii)
3 preliminary approval of the proposed Settlement Agreement, (iii) setting a date for a final fairness
4 hearing. The Preliminary Approval Order will provide for the Notice Packet to be sent to all Class
5 Members as specified herein. In conjunction with the Preliminary Approval hearing, Plaintiff will
6 submit this Settlement Agreement, which sets forth the terms of this Settlement, and will include the
7 proposed Notice of Class Action Settlement, attached as Exhibit A. Class Counsel will be responsible
8 for drafting all documents necessary to obtain preliminary approval, and shall provide a draft of the
9 preliminary approval motion to Defendants' counsel for their input at least seven (7) calendar days prior
10 to filing with the court.

11 61. Final Settlement Approval Hearing and Entry of Judgment. Upon expiration of the
12 deadlines to postmark Requests for Exclusion or objections to the Settlement Agreement, and with the
13 Court's permission, a final fairness hearing will be conducted to determine the Final Approval of the
14 Settlement Agreement along with the amounts properly payable for: (i) Attorneys' Fees and Costs; (ii)
15 the Class Representative Enhancement Payment; (iii) Individual Settlement Payments; (iv) the Labor
16 and Workforce Development Agency Payment; (v) all Settlement Administration Costs. The final
17 fairness hearing will not be held earlier than thirty (30) calendar days after the Response Deadline. Class
18 Counsel will be responsible for drafting all documents necessary to obtain final approval, and shall
19 provide a draft of the final approval motion to Defendants' counsel for their input at least seven (7)
20 calendar days prior to filing with the court. Class Counsel will also be responsible for drafting the
21 attorneys' fees and costs application to be heard at the final approval hearing.

22 62. Judgment and Continued Jurisdiction. Upon final approval of the Settlement by the
23 Court or after the final fairness hearing, the Parties will present the Judgment to the Court for its
24 approval. After entry of the Judgment, the Court will have continuing jurisdiction solely for purposes of
25 addressing: (i) the interpretation and enforcement of the terms of the Settlement, (ii) Settlement
26 administration matters, and (iii) such post-Judgment matters as may be appropriate under court rules or
27 as set forth in this Settlement Agreement.

28 **RELEASES UPON EFFECTIVE DATE**

1 63. Releases by Participating Class Members. Upon the Effective Date, and except as to
2 such rights or claims as may be created by this Settlement Agreement, each Participating Class Member,
3 together and individually, on their behalf and on behalf of their respective spouses, heirs, executors,
4 administrators, agents, and attorneys, shall be deemed to have fully and forever released and discharged
5 all of the Released Parties, or any of them, from each of the Released Claims during the Class Period.

6 64. Release by Plaintiff. Upon the Effective Date, in addition to the claims being released by
7 all Participating Class Members, Plaintiff will release and forever discharge the Released Parties, to the
8 fullest extent permitted by law, of and from any and all claims, known and unknown, asserted and not
9 asserted, which Plaintiff has or may have against the Released Parties as of the date of execution of this
10 Settlement Agreement. To the extent the foregoing release is a release to which Section 1542 of the
11 California Civil Code or similar provisions of other applicable law may apply, Plaintiff expressly waives
12 any and all rights and benefits conferred upon his by the provisions of Section 1542 of the California
13 Civil Code or similar provisions of applicable law which are as follows:

14 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
15 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
16 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE
17 AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY
18 AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED
19 PARTY.

20 **MISCELLANEOUS PROVISIONS**

21 65. Confidentiality. Neither Plaintiff nor Plaintiff's counsel will publicize this settlement by
22 Defendants' name or their industry and location (i.e., sporting and hunting retail stores in California
23 and/or nationwide), through a press release, posting on counsels' website, in social media or by any other
24 public means, other than court filings and proceedings associated with the settlement. Nothing in this
25 provision is intended to prohibit (i) Plaintiff from discussing this settlement with his spouse or domestic
26 partner, attorneys or tax advisor; (ii) Plaintiff from discussing the settlement with other putative class
27 members after the settlement has been preliminarily approved by the Court; (iii) Plaintiff's counsel from
28 citing the settlement in this case as evidence supporting their competence as counsel in wage/hour and/or

1 class action matters in public court filings; or (iv) Plaintiff's counsel from communicating with putative
2 class members in this case or with the court in which this action is pending.

3 66. Waiver of Certain Appeals. The Parties agree to waive appeals and to stipulate to class
4 certification for purposes of this Settlement only; except, however, that Plaintiff or Class Counsel may
5 appeal any reduction to the Attorneys' Fees and Costs below the amount they request from the Court,
6 and either party may appeal any court order that materially alters the Settlement Agreement's terms.

7 67. Exhibits Incorporated by Reference. The terms of this Settlement Agreement include
8 the terms set forth in any attached Exhibits, which are incorporated by this reference as though fully set
9 forth herein. Any Exhibits to this Settlement Agreement are an integral part of the Settlement.

10 68. Entire Agreement. This Settlement Agreement and any attached Exhibits constitute the
11 entirety of the Parties' settlement terms. No other prior or contemporaneous written or oral agreements
12 may be deemed binding on the Parties. The Parties expressly recognize California Civil Code Section
13 1625 and California Code of Civil Procedure Section 1856(a), which provide that a written agreement is
14 to be construed according to its terms and may not be varied or contradicted by extrinsic evidence, and
15 the Parties agree that no such extrinsic oral or written representations or terms will modify, vary or
16 contradict the terms of this Settlement Agreement.

17 69. Amendment or Modification. No amendment, change, or modification to this
18 Settlement Agreement will be valid unless in writing and signed, either by the Parties or their counsel.

19 70. Authorization to Enter Into Settlement Agreement. Counsel for all Parties warrant and
20 represent they are expressly authorized by the Parties whom they represent to negotiate this Settlement
21 Agreement and to take all appropriate action required or permitted to be taken by such Parties pursuant
22 to this Settlement Agreement to effectuate its terms and to execute any other documents required to
23 effectuate the terms of this Settlement Agreement. The Parties and their counsel will cooperate with
24 each other and use their best efforts to effect the implementation of the Settlement. If the Parties are
25 unable to reach agreement on the form or content of any document needed to implement the Settlement,
26 or on any supplemental provisions that may become necessary to effectuate the terms of this Settlement,
27 the Parties may seek the assistance of the Court to resolve such disagreement.

28 71. Binding on Successors and Assigns. This Settlement Agreement will be binding upon,

1 and inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

2 72. California Law Governs. All terms of this Settlement Agreement and Exhibits hereto
3 will be governed by and interpreted according to the laws of the State of California.

4 73. Execution and Counterparts. This Settlement Agreement is subject only to the execution
5 of all Parties. However, the Settlement Agreement may be executed in one or more counterparts. All
6 executed counterparts and each of them, including electronic (e.g., DocuSign), facsimile, and scanned
7 copies of the signature page, will be deemed to be one and the same instrument.

8 74. Acknowledgement that the Settlement is Fair and Reasonable. The Parties believe this
9 Settlement Agreement is a fair, adequate and reasonable settlement of the Action and have arrived at this
10 Settlement after arm's-length negotiations and in the context of adversarial litigation, taking into account
11 all relevant factors, present and potential. The Parties further acknowledge that they are each represented
12 by competent counsel and that they have had an opportunity to consult with their counsel regarding the
13 fairness and reasonableness of this Settlement.

14 75. Invalidity of Any Provision. Before declaring any provision of this Settlement
15 Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest extent
16 possible consistent with applicable precedents so as to define all provisions of this Settlement Agreement
17 valid and enforceable.

18 76. Waiver. No waiver of any condition or covenant contained in this Settlement
19 Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered to
20 imply or constitute a further waiver by such party of the same or any other condition, covenant, right or
21 remedy.

22 77. Enforcement Actions. In the event that one or more of the Parties institutes any legal
23 action or other proceeding against any other Party or Parties to enforce the provisions of this Settlement
24 or to declare rights and/or obligations under this Settlement, the successful Party or Parties will be
25 entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs, including
26 expert witness fees incurred in connection with any enforcement actions.

27 78. Mutual Preparation. The Parties have had a full opportunity to negotiate the terms and
28 conditions of this Settlement Agreement. Accordingly, this Settlement Agreement will not be construed

more strictly against one party than another merely by virtue of the fact that it may have been prepared by counsel for one of the Parties, it being recognized that, because of the arms-length negotiations between the Parties, all Parties have contributed to the preparation of this Settlement Agreement.

79. Representation By Counsel. The Parties acknowledge that they have been represented by counsel throughout all negotiations that preceded the execution of this Settlement Agreement, and that this Settlement Agreement has been executed with the consent and advice of counsel. Further, Plaintiff and Class Counsel warrant and represent that there are no liens on the Settlement Agreement.

80. All Terms Subject to Final Court Approval. All amounts and procedures described in this Settlement Agreement herein will be subject to final Court approval.

81. Cooperation and Execution of Necessary Documents. All Parties will cooperate in good faith and execute all documents to the extent reasonably necessary to effectuate the terms of this Settlement Agreement.

82. Binding Agreement. The Parties warrant that they understand and have full authority to enter into this Settlement Agreement, and further intend that this Settlement Agreement will be fully enforceable and binding on all parties, and agree that it will be admissible and subject to disclosure in any proceeding to enforce its terms, notwithstanding any mediation confidentiality provisions that otherwise might apply under federal or state law.

READ CAREFULLY BEFORE SIGNING

PLAINTIFF

Dated: 1/15/2021

DocuSigned by:

Lenard Miller

Lenard "Alan" Miller

**DEFENDANTS SPORTSMAN'S
WAREHOUSE SOUTHWEST, INC.,
SPORTSMAN'S WAREHOUSE, INC., AND
SPORTSMAN'S WAREHOUSE HOLDINGS,
INC.**

Dated: 1/25/2021

Steve Stoner

Steve Stoner
Chief Human Resources Officer
Sportsman's Warehouse, Inc.

APPROVED AS TO FORM

CAPSTONE LAW APC

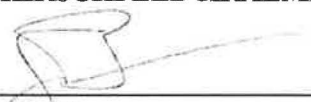
Dated: January 15, 2021

By: 
Raul Perez

Attorneys for Plaintiff Lenard "Alan" Miller and Neill O'Brien

HIRSCHFELD KRAEMER LLP

Dated: January 20, 2021

By: 
John Baum

Attorneys for Defendants Sportsman's Warehouse Southwest, Inc., Sportsman's Warehouse, Inc., and Sportsman's Warehouse Holdings, Inc.

Exhibit A

Lenard Miller v. Sportsman's Warehouse Southwest, Inc., No. CV2000279
SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE COUNTY OF HUMBOLDT
NOTICE OF CLASS ACTION SETTLEMENT

You are not being sued. This notice affects your rights. Please read it carefully

To: All current and former California non-exempt hourly employees of Defendants Sportsman's Warehouse Southwest, Inc., Sportsman's Warehouse, Inc., and Sportsman's Warehouse Holdings, Inc. ("Defendants") who worked at any time from February 21, 2016 through September 23, 2020.

On _____, the Honorable Kelly L. Neel of the Humboldt County Superior Court granted preliminary approval of this class action settlement and ordered the litigants to notify all Class Members of the settlement. **You have received this notice because Defendants' records indicate that you are a Class Member, and therefore entitled to a payment from the settlement.**

Unless you choose to opt out of the settlement by following the procedures described below, you will be deemed a Class Member and, if the Court grants final approval of the settlement, you will be mailed a check for your share of the settlement fund. The Final Fairness Hearing on the adequacy, reasonableness, and fairness of the Settlement will be held at ____:00 ____m. on _____, 2020 in Courtroom 4 of the Humboldt County Superior Court located at 825 Fifth St., Courtroom #4, Eureka, California 95501. You are not required to attend the hearing, but you are welcome to do so.

Summary of the Litigation

Plaintiff Lenard "Alan" Miller, on his behalf and on behalf of other current and former non-exempt employees, alleges that Defendants violated California state wage and hour laws as a result of their alleged failure to, among other things: (1) pay minimum and overtime wages to employees for all hours worked; (2) provide employees with meal and rest breaks; (3) reimburse employees for necessary business expenses; (4) timely pay all wages owed to employees during each pay period and upon termination of their employment; and (5) provide employees with accurate, itemized wage statements.

After the exchange of relevant information and evidence, the parties agreed to enter into settlement negotiations in an attempt to informally resolve the claims in the case. On September 23, 2020, the parties participated in a mediation with David Lowe, an experienced and well-respected class action mediator. With Mr. Lowe's guidance, the parties were able to negotiate a complete class-wide settlement of Plaintiffs' claims.

Counsel for Plaintiff, and the attorneys appointed by the Court to represent the class, Capstone Law APC ("Class Counsel"), have investigated and researched the facts and circumstances underlying the issues raised in the case and the applicable law. While Class Counsel believe that the claims alleged in this lawsuit have merit, Class Counsel also recognize that the risk and expense of continued litigation justify settlement. Based on the foregoing, Class Counsel believe the proposed settlement is fair, adequate, reasonable, and in the best interests of Class Members.

Defendants have denied, and continue to deny the factual and legal allegations in the case and believe that they have valid defenses to Plaintiff's claims. By agreeing to settle, Defendants are not admitting liability on any of the factual allegations or claims in the case or that the case can or should proceed as a class action. Defendants have agreed to settle the case as part of a compromise with Plaintiff.

Summary of The Proposed Settlement Terms

Plaintiff and Defendants have agreed to settle the underlying class claims in exchange for a Class Settlement Amount of \$2,125,000. This amount is inclusive of: (1) individual settlement payments to all Participating Class Members; (2) a Class Representative Enhancement Payment of \$10,000 to Lenard "Alan" Miller for his services on behalf of the class; (3) \$708,333 in attorneys' fees and up to \$20,000 in litigation costs and expenses; (4) a \$75,000 payment to the California Labor and Workforce Development Agency ("LWDA") in connection and accordance with the Labor Code Private Attorneys General Act of 2004 ("PAGA"), and (5) reasonable Settlement Administrator's fees and expenses currently estimated at \$20,000. After deducting the Class Representative Enhancement Payment, attorneys' fees and costs, the

payment to the LWDA, and the Settlement Administrator's fees and expenses, a total of approximately ____ will be distributed to Class Members who do not opt out of the settlement ("Net Settlement Amount").

Each Class Member's settlement payment will be based on the number of Workweeks each Class Member worked in a non-exempt position during the period from February 21, 2016 through Preliminary Approval ("Class Period"). The formula for calculating settlement payments is as follows:

- (a) The total aggregate number of Workweeks that all participating Class Members worked during the applicable Class Period ("Total Workweeks") will be calculated from data provided by Defendants.
- (b) The value of each individual Workweek shall then be determined by dividing the proceeds of the Net Settlement Amount by the Total Workweeks amount, resulting in the "Workweek Point Value".
- (c) An "Individual Settlement Payment" amount for each Class Member will then be determined by multiplying the individual Class Member's number of Workweeks by the Workweek Point Value.
- (d) The entire Net Settlement Amount will be disbursed to all Class Members who do not submit timely and valid Requests for Exclusion.

According to Defendants' records, you worked during the Class Period in a non-exempt position for a total of ____ Workweeks. Accordingly, your estimated payment is approximately \$ _____. If you believe the information provided above is incorrect, please contact the Settlement Administrator at _____. If you dispute the workweek information stated above, Defendants' records will control unless you are able to provide documentation that establishes otherwise.

IRS Forms W-2 and 1099 will be distributed to participating Class Members and the appropriate taxing authorities reflecting the payments they receive under the settlement. Class Members should consult their tax advisors concerning the tax consequences of the payments they receive under the Settlement. For purposes of this settlement, 25% of each Individual Settlement Payment will be allocated as wages, which shall be subject to legally required withholdings and for which IRS Forms W-2 will be issued, and 75% will be allocated as non-wages not subject to withholdings for which IRS Forms 1099-MISC will be issued.

Your Options Under the Settlement

Option 1 – Automatically Receive a Payment from the Settlement

If you want to receive your payment from the settlement, then no further action is required on your part. You will automatically receive your settlement payment from the Settlement Administrator if and when the Settlement receives final approval by the Court.

If you choose **Option 1**, and if the Court grants final approval of the settlement, you will be mailed a check for your share of the settlement funds. In addition, you will be deemed to have released or waived the following claims ("Released Claims): All claims, rights, demands, liabilities, and causes of action, arising from, or related to, the same set of operative facts as those set forth in the operative complaint during the Class Period, including: (i) all claims for unpaid overtime; (ii) all claims for meal and rest break violations; (iii) all claims for unpaid minimum wages; (iv) all claims for unreimbursed business expenses; (v) all claims for the failure to timely pay wages upon termination based on the preceding claims; (vi) all claims for the failure to timely pay wages during employment based on the preceding claims; (vii) all claims for wage statement violations based on the preceding claims; and (viii) all claims asserted through California Business & Professions Code §§ 17200, et seq., and California Labor Code §§ 2698, et seq. based on the preceding claims.

Option 2 – Opt Out of the Settlement

Questions? Contact the Settlement Administrator toll free at 1-*-***-******

If you do not wish to participate in the settlement, you may exclude yourself from participating by submitting a written request to the Settlement Administrator expressly and clearly indicating that you have received this Notice of Class Action Settlement, decided not to participate in the settlement, and desire to be excluded from the settlement. The written request for exclusion must include your name, signature, address, telephone number, and last four digits of your Social Security Number. Sign, date, and mail the request for exclusion by First Class U.S. Mail or equivalent, to the address below.

Settlement Administrator

c/o _____

The written request to be excluded must be postmarked or faxed not later than _____, 2020. If you submit a request for exclusion which is not postmarked or faxed by _____, 2020, your request for exclusion will be rejected, and you will be included in the settlement class.

If you choose **Option 2**, you will no longer be a Class Member, and you will (1) be barred from participating in the settlement, but you will not be deemed to have released the Released Claims, (2) be barred from filing an objection to the settlement, and (3) not receive a payment from the settlement.

Option 3 – Object to the Settlement

If you decide to object to the settlement because you find it unfair or unreasonable, you must submit an objection stating why you object to the settlement. Your objection must provide: (1) your full name, signature, address, and telephone number, (2) a written statement of all grounds for the objection accompanied by any legal support for such objection; (3) copies of any papers, briefs, or other documents upon which the objection is based; and (4) a statement about whether you intend to appear at the Fairness Hearing. The objection must be mailed to the administrator at [administrator's address].

All objections must be received by the administrator by not later than _____ 2020. Late objections will not be considered. By submitting an objection, you are not excluding yourself from the settlement. To exclude yourself from the settlement, you must follow the directions described above. Please note that you cannot both object to the settlement and exclude yourself. You must choose one option only.

You may also, if you wish, appear at the Final Fairness Hearing set for _____ at _____ a.m./p.m. in the Superior Court of the State of California, for the County of Humboldt and discuss your objection with the Court and the Parties at your own expense. You may also retain an attorney to represent you at the hearing.

If you choose **Option 3**, you will still be entitled to the money from the settlement. If the Court overrules your objection, you will be deemed to have released the Released Claims.

Additional Information

This Notice of Class Action Settlement is only a summary of the case and the settlement. For a more detailed statement of the matters involved in the case and the settlement, you may refer to the pleadings, the settlement agreement, and other papers filed in the case. All inquiries by Class Members regarding this Class Notice and/or the settlement should be directed to the Settlement Administrator or Class Counsel.

Raul Perez

Capstone Law APC

1875 Century Park E., Suite 1000

Los Angeles, CA 90067

Phone: [case-specific number]

Questions? Contact the Settlement Administrator toll free at 1-*-***-******

PLEASE DO NOT CONTACT THE CLERK OF THE COURT, THE JUDGE, DEFENDANTS' ATTORNEYS
WITH INQUIRIES.

Questions? Contact the Settlement Administrator toll free at 1-*-***-******