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Attorneys for Defendant
TYR SPORT, INC.

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

TONY AGUILAR, individually, and on behalf of
all others similarly situated,

Plaintiff,

vs.

TYR SPORT, INC., a California corporation; and
DOES 1 through 10, inclusive,

Defendants.

Case No.: 30-2021-01188780-CU- OE-CXC

Reassigned For All Purposes To:

Hon. Peter J. Wilson

Dept: CX102

CLASS AND REPRESENTATIVE ACTION

**JOINT STIPULATION OF CLASS ACTION
AND PRIVATE ATTORNEYS GENERAL
ACT SETTLEMENT**

Complaint Filed: March 12, 2021

FAC Filed: July 1, 2021

Trial Date: None Set

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THE PARTIES STIPULATE AND AGREE as follows:

2. On or about July 1, 2021, Plaintiff filed his First Amended Complaint in the Action to add an additional cause of action seeking civil penalties pursuant to the California Labor Code Private Attorneys General Act (“PAGA”).

4. In this Action, Plaintiff seeks to represent all current and former non-exempt, hourly employees of Defendant – whether employed directly by TYR Sport, Inc. or supplied to TYR Sport, Inc. by any temporary staffing agency – who worked at Defendant’s California facilities at any time from March 12, 2017, through March 20, 2023, or the date of preliminary approval, whichever date is sooner (“Class Period”). Plaintiff further seeks to represent all current and former non-exempt, hourly employees of Defendant – whether employed directly by TYR Sport, Inc. or supplied to TYR Sport, Inc. by any temporary staffing agency – who worked at Defendant’s California facilities at any time from March 12, 2020, through March 20, 2023, or the date of preliminary approval, whichever date is sooner (“PAGA Period”).

5. For purposes of this Settlement, the “Settlement Class” or “Settlement Class Members” consist of: all current and former non-exempt, hourly employees of Defendant – whether employed

1 directly by TYR Sport, Inc. or supplied to TYR Sport, Inc. by any temporary staffing agency – who
2 worked at Defendant’s California facilities at any time during the Class Period.

3 6. For purposes of this Settlement, “Class Counsel” means MOON & YANG, APC.

4 7. For purposes of this Settlement, “Covered Workweeks” means the number of workweeks
5 a Class Member worked at Defendant’s California facilities during the Class Period.

6 8. For purposes of the Settlement, “Defendant’s Counsel” means JACKSON LEWIS, P.C.

7 9. Solely for purposes of settling this case, the Parties and their respective counsel
8 conditionally stipulate and agree that the requisites for establishing class certification with respect to the
9 Settlement Class have been met and are met. More specifically, the Parties conditionally stipulate and
10 agree that:

11 a. The Settlement Class is ascertainable and so numerous as to make it impracticable to join
12 all Settlement Class Members.

13 b. There are common questions of law and fact including, but not limited to, the following:

14 i. Whether Defendant provided legally compliant meal periods to the Settlement
15 Class, or paid meal period premiums in lieu thereof;

16 ii. Whether Defendant provided legally compliant paid rest periods to the Settlement
17 Class, or paid rest period premiums in lieu thereof;

18 iii. Whether Defendant paid proper minimum and regular rate wages to the
19 Settlement Class;

20 iv. Whether Defendant paid proper overtime compensation to the Settlement Class;

21 v. Whether Defendant timely paid final compensation upon separation of
22 employment to Settlement Class Members who are former employees;

23 vi. Whether Defendant timely paid compensation to Settlement Class Members
24 throughout Settlement Class Members’ employment;

25 vii. Whether Defendant maintained reasonable work area temperatures throughout
26 Settlement Class Members’ employment;

27 viii. Whether Defendant provided Settlement Class Members with access to potable
28 drinking water throughout their employment;

ix. Whether Defendant provided accurate itemized wage statements to the Settlement Class;

x. Whether Defendant engaged in unlawful or unfair business practices affecting the Settlement Class in violation of California Business and Professions Code §§ 17200-17208;

xi. Whether Plaintiff and the Settlement Class are entitled to penalties pursuant to PAGA.

c. Plaintiff's claims are typical of the claims of the Settlement Class Members.

d. Plaintiff and Class Counsel will fairly and adequately protect the interests of the Settlement Class.

e. The prosecution of separate actions by individual members of the Settlement Class would create the risk of inconsistent or varying adjudications, which would establish incompatible standards of conduct.

f. With respect to the Settlement Class, questions of law and fact common to the members of the Settlement Class predominate over any questions affecting any individual member in such Settlement Class, and that a class action is superior to other available means for the fair and efficient adjudication of the controversy.

10. Defendant denies any liability or wrongdoing of any kind whatsoever associated with the claims alleged in the First Amended Complaint, and Defendant further denies that, for any purpose other than settling this lawsuit, the action is appropriate for class or representative treatment. With respect to Plaintiff's claims, Defendant contends, among other things, that Plaintiff and the Settlement Class Members have been provided legally compliant meal periods (or paid meal period premiums in lieu thereof), have been provided legally compliant paid rest periods (or paid rest period premiums in lieu thereof), have been paid proper minimum, regular rate and overtime wages, have been timely paid final wages upon separation of employment, have been timely paid throughout employment, have been provided with accurate itemized wage statements, and have been provided potable drinking water and reasonable work area temperatures, in accordance with applicable law. Defendant contends, among other things, that it has complied at all times with the California Labor Code and the applicable Wage Orders of the Industrial Welfare Commission, and all other applicable laws. Furthermore, with respect

1 to all claims, Defendant contends that it has complied at all times with the California Business and
2 Professions Code.

3 11. It is the desire of the Parties to fully, finally, and forever settle, compromise, and
4 discharge all disputes and claims arising from or related to the First Amended Complaint. In order to
5 achieve a full and complete release of Defendant, Plaintiff, on behalf of himself and each participating
6 Settlement Class Member, acknowledges that this Settlement is intended to include in its effect all
7 claims and/or causes of action arising from or related to the First Amended Complaint under any federal,
8 state or local law or administrative order that were pled in the First Amended Complaint, or that could
9 have been pled, based on the facts alleged in the First Amended Complaint or which arise out of or
10 directly or indirectly relate to such facts, whether known or unknown, including but not limited to the
11 failure to pay minimum and regular rate wages, the failure to pay overtime compensation, the failure to
12 provide timely, uninterrupted meal periods (or meal period premiums in lieu thereof), the failure to
13 provide timely, uninterrupted paid rest periods (or rest period premiums in lieu thereof), the failure to
14 provide accurate itemized statements, the failure to timely pay wages throughout employment, the
15 failure to timely pay all wages upon separation of employment, the failure to pay waiting-time penalties,
16 the failure to maintain reasonable work area temperatures, the failure to provide potable drinking water,
17 and any other claims whatsoever that were alleged in the First Amended Complaint or which arise out of
18 or directly or indirectly relate to such facts, including without limitation all related claims for restitution
19 and other equitable relief under Business and Professions Code § 17200 *et seq.*, conversion, liquidated
20 damages, punitive damages, and penalties, for the duration of the Class Period, and arising from their
21 work at Defendant's California facilities ("Class Released Claims"); and, for all Settlement Class
22 Members (regardless whether they opt out) who worked at Defendant's California facilities at any time
23 during the PAGA Period, all claims for civil penalties under the PAGA based on the aforementioned
24 claims, arising during their work at Defendant's California facilities during the PAGA Period ("PAGA
25 Released Claims").

26 12. It is the intention of the Parties that the release in this Settlement includes in its effect all
27 present and former parent companies, subsidiaries, related or affiliated companies, shareholders,
28 officers, directors, employees, agents, attorneys, insurers, and successors and assigns of Defendant, and

any individual or entity which could be jointly liable with Defendant and its respective present and former parent companies, subsidiaries, related or affiliated companies, shareholders, officers, directors, employees, agents, attorneys, insurers, and successors and assigns (“Released Parties”).

13. Class Counsel has conducted a thorough investigation into the facts of the First Amended Complaint, including an extensive review of relevant documents and data, and has diligently pursued an investigation of the claims of the Settlement Class against Defendant. Based on its own independent investigation and evaluation, Class Counsel is of the opinion that the Settlement with Defendant for the consideration and on the terms set forth in this Joint Stipulation of Settlement is fair, reasonable, and adequate and is in the best interest of the Settlement Class in light of all known facts and circumstances, including the risk of significant delay, the risk the Settlement Class will not be certified by the Court, defenses asserted by Defendant, and numerous potential appellate issues. Defendant and its counsel also agree that the Settlement is fair and in the best interest of the Settlement Class.

14. The Parties agree to cooperate and take all steps necessary and appropriate to obtain preliminary and final approval of this Settlement.

15. This Settlement provides for a non-reversionary process requiring Defendant to issue payments to Settlement Class Members according to a specified formula based on Covered Workweeks. The maximum total payment under the Settlement, including all attorneys’ fees and costs, the Service Payment to the named Plaintiff, and any other payments provided by this Settlement, is \$480,000 (“Gross Settlement Amount” or “GSA”).

16. In addition to the Gross Settlement Amount, Defendant agrees to pay its share of employer’s payroll taxes required by law. It is understood and agreed that the employer’s share of payroll taxes required by law shall not be paid out of the Gross Settlement Amount. It is further understood and agreed that Defendant’s maximum total liability under this Settlement shall not exceed the sum of the Gross Settlement Amount and the employer’s share of payroll taxes required by law.

TERMS OF SETTLEMENT

17. NOW THEREFORE, in consideration of the mutual covenants, promises and agreements set forth herein, the Parties agree, subject to the Court’s approval, as follows:

a. It is agreed by and among the Parties that the First Amended Complaint, and any

claims, damages, or causes of action arising out of the disputes which are the subject of the First Amended Complaint, be settled and compromised as between the Settlement Class and Defendant, subject to the terms and conditions set forth in this Settlement and the approval of the Court.

b. Effective Date: The terms of settlement embodied in this Settlement shall become effective when all of the following events have occurred: (i) this Joint Stipulation of Settlement has been executed by all Parties and their respective counsel; (ii) the Court has given preliminary approval to the Settlement; (iii) the notice has been given to the Class, providing them with an opportunity to dispute information contained in the Notices of Settlement Payment, to opt out of the Settlement, or to object to the Settlement; (iii) the Court has held a final approval hearing and entered a final order and judgment certifying the Class and approving this Settlement; and (iv) the later of the following events: sixty-five (65) days after final approval; or if any appeal, writ or other appellate proceeding opposing this Settlement has been filed within sixty-five (65) days following entry of the Court's final order approving the Settlement, then when any appeal, writ or other appellate proceeding opposing the Settlement has been resolved finally and conclusively with no right to pursue further remedies or relief. In this regard, it is the intention of the Parties that the Settlement shall not become effective until the Court's order approving the Settlement is completely final, and there is no further recourse by an appellant or objector who seeks to contest the Settlement.

c. Net Settlement Amount: Subject to the Court's approval, attorneys' fees (of up to one-third of the GSA, i.e., \$159,984), costs (not to exceed \$20,000), a class representative service enhancement payment of \$5,000 ("Service Payment"), amounts payable to the LWDA (i.e., \$30,000) from the PAGA Payment (as defined in paragraph 17(j) below), the PAGA Amount (as defined in paragraph 17(d) below) payment portion to be distributed to the Settlement Class (i.e., \$10,000), and settlement administration costs (not to exceed \$8,900) will be deducted from the GSA to calculate the Net Settlement Amount ("Net Settlement Amount" or "NSA") to be distributed to participating Class members (i.e. those who do not request exclusion). Settlement payments to the Settlement Class Members will be calculated by the Settlement Administrator and paid out of the Net Settlement Amount as set forth below.

d. Settlement Payments: Settlement Payments will be paid out of the NSA as

1 follows. First, the Settlement Administrator will distribute the \$10,000 “PAGA Amount,” which is 25%
2 of the \$40,000 total allocated to PAGA penalties, to all Settlement Class Members (regardless whether
3 they opt out) who worked at Defendant’s California facilities at any time during the PAGA Period. The
4 PAGA Amount will be distributed to all such Settlement Class Members, proportionally based on the
5 number of pay periods each worked at Defendant’s California facilities during the PAGA Period. The
6 remainder of the NSA (“NSA Remainder”) will be paid to all participating Settlement Class Members,
7 proportionally based on the number of Covered Workweeks worked by each participating Settlement
8 Class Member during the Class Period. Specifically, each participating Settlement Class Member’s pro-
9 rata share of the NSA Remainder will be determined by comparing the individual Settlement Class
10 Member’s Covered Workweeks during the Class Period to the total Covered Workweeks worked by all
11 participating Settlement Class Members during the Class Period. Settlement Class Members will be paid
12 Settlement Payments based on the shares as calculated by the Settlement Administrator. Settlement
13 Payments in the appropriate amounts will be distributed by the Settlement Administrator by First-Class
14 U.S. mail to the Settlement Class Members. Un-cashed, unclaimed or abandoned checks will be
15 distributed in accordance with paragraph 24, as set forth below.

16 e. Tax Allocation of Settlement Payments: The Parties have agreed that all
17 payments from the PAGA Amount will be allocated as 100% penalties, while all payments from the
18 NSA Remainder will be allocated as follows: (1) wages: 20%; (2) interest: 40%; and (3) penalties,
19 including waiting-time penalties: 40%. Appropriate federal, state and local withholding taxes will be
20 taken out of the wage allocations, and each Settlement Class Member will receive an IRS Form W-2
21 with respect to this portion of the Settlement Payment. The employer’s share of payroll taxes and other
22 required withholdings will be paid separately by Defendant as set forth above, including but not limited
23 to Defendant’s respective FICA and FUTA contributions. IRS Forms 1099 will be issued to each
24 Settlement Class Member reflecting the payments for penalties and interest. Settlement Class Members
25 are responsible to pay appropriate taxes due on the Settlement Payments they receive.

26 f. Settlement Payments Do Not Trigger Additional Benefits: All Settlement
27 Payments to individual Settlement Class Members shall be deemed to be paid to such Settlement Class
28 Member solely in the year in which such payments actually are received by the Settlement Class

1 Member. It is expressly understood and agreed that the receipt of such Settlement Payments will not
2 entitle any Settlement Class Member to additional compensation or benefits under any company bonus,
3 contest or other compensation or benefit plan or agreement in place during the period covered by the
4 Settlement, nor will it entitle any Settlement Class Member to any increased retirement, 401(k) benefits
5 or matching benefits or deferred compensation benefits. It is the intent that the Settlement Payments
6 provided for in this Settlement are the sole payments to be made by Defendant to the Settlement Class
7 Members, and that the Settlement Class Members are not entitled to any new or additional compensation
8 or benefits as a result of having received the Settlement Payments (notwithstanding any contrary
9 language or agreement in any benefit or compensation plan document that might have been in effect
10 during the period covered by this Settlement).

11 g. Attorneys' Fees and Costs: Subject to approval by the Court, Defendant will not
12 object to Class Counsel's application for attorneys' fees of up to one-third of the GSA, currently
13 estimated at \$159,984 and reasonable litigation costs, to be paid by the Settlement Administrator within
14 fourteen (14) calendar days of the Effective Date of the Settlement.

15 h. Service Payment for Class Representative: Subject to Court approval, Defendant
16 will not object to Class Counsel's application for a Service Payment of \$5,000 for Plaintiff for his
17 service as a Class Representative in exchange for a general release of all claims. It is understood that the
18 Service Payment is in addition to the Individual Settlement Payment to which Plaintiff is entitled along
19 with the other Settlement Class Members. The Settlement Administrator will issue an IRS Form 1099
20 for the Service Payment to the Class Representative. The Class Representative will be individually
21 responsible for correctly characterizing this compensation on his personal income tax returns for tax
22 purposes and for paying any taxes on the amounts received. Should the Court approve a Service
23 Payment to the Class Representative in an amount less than that set forth above, the difference between
24 the lesser amount approved by the Court and the Service Payment amount set forth above shall be added
25 to the Net Settlement Amount. The Settlement Administrator will pay the court-approved Class
26 Representative Service Payment within fourteen (14) calendar days of the Effective Date of the
27 Settlement.

28 i. Settlement Administrator: The Settlement Administrator will be ILYM Group,

1 Inc., or such other settlement administrator as may be mutually agreeable to the Parties and approved by
2 the Court. Settlement administration costs are estimated not to exceed \$8,900, and the Settlement
3 Administrator shall be authorized to pay itself the Court-approved settlement administration costs after it
4 has mailed Settlement Payments to the Settlement Class.

5 j. PAGA Payment: As noted above, \$40,000 of the GSA has been allocated as
6 PAGA civil penalties, subject to Court approval. Seventy-five percent (75%) of this amount, or
7 \$30,000, will be paid to the LWDA within fifty (50) calendar days of the Effective Date of the
8 Settlement, and the remaining 25%, or \$10,000, will be paid to certain Settlement Class Members as the
9 PAGA Amount as described above.

10 k. Funding of Settlement Account: Defendant will fund the settlement account
11 within seven (7) calendar days of the Effective Date of the Settlement.

12 l. Mailing of Settlement Payments: The Settlement Administrator shall cause the
13 Settlement Payments to be mailed to the Settlement Class Members within fourteen (14) calendar days
14 of the Effective Date of the Settlement.

15 m. Parties' Approval of Settlement Payments: Before making any of the payments
16 described above, the Settlement Administrator will circulate its Settlement payment calculations and
17 obtain approval from counsel for the Parties of the payments to be distributed.

18 n. Notice of Settlement Payment: For each Settlement Class Member, there will be
19 pre-printed information on the Notice of Settlement Payment mailed to the Settlement Class Member,
20 based on Defendant's records, stating the Settlement Class Member's Covered Workweeks during the
21 Class Period and number of pay periods worked during the PAGA Period. The pre-printed information
22 based on Defendant's records shall be presumed to be correct. A Settlement Class Member may dispute
23 the pre-printed information on the Notice of Settlement Payment as to his or her Covered Workweeks
24 during the Class Period or number of pay periods during the PAGA Period. Class Members have sixty
25 (60) calendar days from the original date of mailing the Notice of Settlement Payment (the "Response
26 Deadline") to dispute the information on the Notice of Settlement Payment as to his or her Covered
27 Workweeks or PAGA pay periods. Unless a disputing Settlement Class Member submits documentary
28 evidence in support of his or her dispute, the records of Defendant will be determinative.

1 o. Resolution of Disputes: If a Settlement Class Member disputes the accuracy of
2 Defendant's records, and the Parties' counsel cannot resolve the dispute informally, the matter will be
3 referred to the Settlement Administrator. The Settlement Administrator will review Defendant's records
4 and any information or documents submitted by the Settlement Class Member and issue a non-
5 appealable decision regarding the dispute. The Settlement Class Member must submit information or
6 documents supporting his or her position to the Settlement Administrator prior to the expiration of the
7 Response Deadline. Information or documents submitted after the Response Deadline will not be
8 considered by the Settlement Administrator, unless otherwise agreed to by the Parties.

9 p. Right Of Settlement Class Member To Request Exclusion From The Settlement:
10 Except with respect to the settlement of the PAGA claim, any Settlement Class Member who wishes to
11 opt-out of the Settlement must complete and mail a Request for Exclusion Form to the Settlement
12 Administrator prior to the expiration of the Response Deadline. Any Request for Exclusion must be in
13 the form attached hereto as Exhibit "C," and as approved by the Court, postmarked on or before the
14 Response Deadline.

15 Any Settlement Class Member who timely and validly requests exclusion in compliance with
16 these requirements (i) shall not participate in the class portion of this Settlement; (ii) shall not be entitled
17 to receive any Settlement Payments under this Settlement (except for any payment from the PAGA
18 Amount, if applicable); and (iii) shall not be bound by this Settlement or the Court's Order and Final
19 Judgment (except for terms related to the PAGA portion of the Settlement).

20 At no time will the Parties or their counsel seek to solicit or otherwise encourage any Settlement
21 Class Member to object to the Settlement or opt-out of the Settlement Class or encourage any Settlement
22 Class Member to appeal from the final judgement.

23 q. Right of Settlement Class Members To Object To The Settlement: Any
24 Settlement Class Member who does not request exclusion may object to the Settlement. To object, the
25 Settlement Class Member must submit a written objection and (if applicable) a notice of intention to
26 appear at the final approval hearing to the Settlement Administrator, on or before the Response
27 Deadline. The Settlement Administrator shall forward all objections received to counsel for the Parties,
28 who shall file a single packet of all objections with the Court. Absent good cause found by the Court,

1 Settlement Class Members who fail to timely submit written objections in the manner specified above
2 shall be deemed to have waived any objections and shall be foreclosed from making any objection
3 (whether by appeal or otherwise) to the Settlement. Class Counsel and Defendant's Counsel may, at
4 least five (5) calendar days before the final approval hearing, file responses to any written objections.

5 **SETTLEMENT ADMINISTRATION**

6 18. Subject to the Court's approval, the Parties have agreed to the appointment of ILYM
7 Group, Inc. to perform the customary duties of Settlement Administrator; provided, however, the Parties
8 shall have the right to select or substitute a different Settlement Administrator by mutual agreement,
9 subject to Court approval. The Settlement Administrator will mail the Notice of Class Action Settlement
10 and Notice of Settlement Payment (together, the "Notice Packet") to the Class Members, in English and
11 Spanish. There will be a sixty (60) day period from the date the Settlement Administrator mails the
12 Notice Packet for Settlement Class Members to dispute the information contained in the Notice of
13 Settlement Payment, to submit an objection, or to request exclusion (opt-out) from the Settlement.

14 19. The Settlement Administrator will calculate the amounts due to each Settlement Class
15 Member in accordance with this Settlement, based on the data provided to it by Defendant. The
16 Settlement Administrator shall report, in summary or narrative form, the substance of its findings to the
17 Parties' counsel for approval before mailing Notice Packets. The Settlement Administrator shall be
18 granted reasonable access to Defendant's records in order to perform its duties. The Settlement
19 Administrator and the Parties shall work together to resolve any Covered Workweeks or PAGA pay
20 period calculation discrepancies.

21 20. In accordance with the terms of this Settlement, and upon receipt of funds from
22 Defendant, the Settlement Administrator will issue and send out the Settlement Payment checks to the
23 Settlement Class Members. Tax treatment of the Settlement Payments will be as set forth herein, and in
24 accordance with state and federal tax laws. All disputes relating to the Settlement Administrator's
25 performance of its duties shall be referred to the Court, if necessary, which will have continuing
26 jurisdiction over the terms and conditions of this Settlement until all payments and obligations
27 contemplated by this Settlement have been fully carried out.

28 **ATTORNEYS' FEES AND COSTS**

1 21. Subject to approval by the Court, Defendant will not object to Class Counsel's
2 application for attorneys' fees of one-third of the GSA, currently estimated at \$159,984, and reasonable
3 litigation costs not to exceed \$20,000. The amounts set forth above will cover all work performed and
4 all fees and costs incurred to date, and all work to be performed and all fees and costs to be incurred in
5 connection with the approval by the Court of this Settlement and administration of the Settlement.
6 Should Class Counsel request a lesser amount and/or the Court approves lesser amount(s) of attorneys'
7 fees and/or attorneys' costs, the difference between the lesser amount(s) and the maximum amount set
8 forth above shall be added to the Net Settlement Amount. The attorneys' fees and costs approved by the
9 Court shall be paid to Class Counsel within fifty (50) calendar days following the Effective Date of the
10 Settlement.

11 **NOTICE TO THE CLASS & NOTICE OF SETTLEMENT PAYMENT**

12 22. A Notice of Class Action Settlement in approximately the form attached hereto as
13 Exhibit "A," and as approved by the Court, shall be sent by the Settlement Administrator to the
14 Settlement Class Members by first class mail. In addition, a Notice of Settlement Payment in
15 approximately the form attached hereto as Exhibit "B," and as approved by the Court, shall also be sent
16 by the Settlement Administrator to the Settlement Class Members by first class mail. Lastly, a Request
17 for Exclusion in approximately the form attached hereto as Exhibit "C," and as approved by the Court,
18 shall also be sent by the Settlement Administrator to the Settlement Class Members by first class mail.
19 Any returned envelopes from this mailing with forwarding addresses will be utilized by the Settlement
20 Administrator to forward the Notices to the Settlement Class. For any returned envelopes without a
21 forwarding address, the Settlement Administrator will perform a "skip trace" to locate a new address for
22 the Settlement Class Member, and re-mail the Notice Packet to the address, if any, located through the
23 skip trace. If the Notice Packet is returned a second time, or if no new address is found after performing
24 a skip trace, the Settlement Administrator need not mail the Notice Packet a further time. If a Notice
25 Packet is re-mailed, the Settlement Administrator will note for its own records the date and address of
26 each re-mailing. Those Settlement Class Members who receive a re-mailed Notice Packet, whether by
27 skip-trace or forwarded mail, will have their Response Deadline to postmark a Request for Exclusion
28 form, or mail an objection to the Settlement, extended by ten (10) calendar days from the original

1 Response Deadline. The Settlement Administrator shall mark on the envelope whether the Notice Packet
2 is a re-mailed notice. In addition to mailing the Notice Packet to Settlement Class Members, the
3 Settlement Administrator will post the Notice of Class Action Settlement to a website which the
4 Settlement Administrator will create for this matter. Upon completion of these steps by the Settlement
5 Administrator, Defendant and the Settlement Administrator shall be deemed to have satisfied their
6 obligations to provide the Notice of Class Action Settlement and Notice of Settlement Payment to the
7 affected Settlement Class Member. The affected Settlement Class Member shall remain a member of the
8 Settlement Class and shall be bound by all the terms of the Settlement and the Court's Order and Final
9 Judgment.

10 a. Within thirty (30) calendar days from the date of preliminary approval of this
11 Settlement by the Court, Defendant shall provide to the Settlement Administrator a class database
12 containing the following information for each Settlement Class Member: (1) name; (2) last known
13 address; (3) last known telephone number; (4) social security number; (5) dates of employment; (6)
14 Covered Workweeks during the Class Period; and (7) pay periods worked during the PAGA Period. This
15 database shall be based on Defendant's business records and shall be provided in a format acceptable to
16 the Settlement Administrator. Defendant agrees to consult with the Settlement Administrator prior to the
17 production date to ensure that the format will be acceptable to the Settlement Administrator. The
18 Settlement Administrator will run a check of the Settlement Class Members' addresses against those on
19 file with the U.S. Postal Service's National Change of Address List; this check will be performed only
20 once per Settlement Class Member by the Settlement Administrator. Absent mutual written agreement
21 of counsel for the Parties or Court order, the Settlement Administrator will keep this database
22 confidential and use it only for the purposes described herein, and will return this database to Defendant
23 upon final approval of the Settlement.

24 b. Within fifteen (15) calendar days after the Class database is provided to the
25 Settlement Administrator, the Settlement Administrator will mail the Notice Packets, in English and
26 Spanish, by first class United States mail.

27 c. Class Counsel shall provide to the Court, at least five (5) calendar days prior to
28 the final approval hearing, a declaration by the Settlement Administrator of due diligence and proof of

mailing with regard to the mailing of the Notice Packets.

ADMINISTRATION OF SETTLEMENT PAYMENTS

23. As noted above, the Settlement Administrator shall cause the Settlement Payments to be mailed to the Settlement Class Members within fourteen (14) calendar days of the Effective Date of the Settlement. Settlement Payment checks shall remain valid and negotiable for one hundred eighty (180) calendar days from the date of their issuance. Settlement checks will automatically be cancelled by the Settlement Administrator if they are not cashed by the Settlement Class Member within that time, and the Settlement Class Member's claims will remain released by the Settlement. Settlement checks which have expired will not be reissued.

24. Funds from un-cashed, unclaimed or abandoned checks, based on a 180-day void date, shall be transmitted to the California Unclaimed Property Fund, in the name(s) of the Settlement Class Member(s) whose checks were not cashed.

25. Upon completion of its calculation of Settlement Payments, the Settlement Administrator shall provide Class Counsel and Defendant's Counsel with a report listing the amount of all payments to be made to each Settlement Class Member. Upon completion of the settlement disbursement, the Settlement Administrator shall provide a disbursement declaration to the Parties, which the Parties shall file with the Court.

RELEASE BY THE CLASS

26. Upon the Effective Date of the Settlement and the Settlement being fully funded by Defendant, and except as to such rights or claims as may be created by this Settlement, the Class Representative and each Settlement Class Member who has not submitted a valid and timely request for exclusion, shall each fully release and discharge the Released Parties from the Class Released Claims, as those terms are defined *supra*. In addition, all Settlement Class Members (regardless whether they opt out) who worked at Defendant's California facilities at any time during the PAGA Period, shall release the Released Parties from the PAGA Released Claims, as those terms are defined *supra*.

CLASS REPRESENTATIVES INDIVIDUAL RELEASE

27. The Class Representative agrees that the consideration set forth in this Settlement, including the Service Payment set forth above, represents full settlement of all claims that were or could

1 have been raised against the Released Parties arising from his employment with Defendant.

2 28. The Class Representative, individually and on behalf of his respective heirs,
3 representatives, successors, assigns, and attorneys, hereby compromises, releases, resolves, relinquishes,
4 discharges and settles any and all claims of any nature whatsoever he has or may have for any acts
5 occurring on or before the date of preliminary approval of the Settlement against the Released Parties
6 arising from his employment with Defendant, and he agrees that he will not institute any action or cause
7 of action (in law, in equity or administratively), suits, debts, liens, or claims, known or unknown, fixed
8 or contingent, which he may have or claim to have in state or federal court, or with any state, federal or
9 local government agency, except the EEOC or DFEH, or with any administrative or advisory body
10 against the Released Parties arising from his employment with Defendant ("Plaintiff's Released
11 Claims").

12 29. The Class Representative specifically acknowledges that he is aware of and familiar with
13 the provisions of California Civil Code § 1542, which provides as follows:

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

20 30. The Class Representative, being aware of this section, hereby expressly waives and
21 relinquishes all rights and benefits he may have under this section as well as any other statutes or
22 common law principles of a similar effect. The Class Representative may hereafter discover facts in
23 addition to or different from those which he now knows or believes to be true, but he stipulates and
24 agrees that, upon the Effective Date and the Settlement being fully funded, the Class Representative
25 shall and hereby do fully, finally and forever settles and releases any and all claims against Defendant,
26 known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed
27 or hidden, which now exist, or heretofore have existed, upon any theory of law or equity and without
28 regard to the subsequent discovery or existence of such different or additional facts.

1 **DUTIES OF THE PARTIES PRIOR TO COURT APPROVAL**

2 31. The Parties shall submit this Joint Stipulation of Settlement to the Court in support of
3 Plaintiff's unopposed motion for preliminary approval for determination by the Court as to its fairness,
4 adequacy, and reasonableness. Upon execution of this Joint Stipulation of Settlement, the Parties shall
5 apply to the Court for the entry of an order:

- 6 a. Scheduling a final approval and fairness hearing on the question of whether the
7 proposed Settlement, including payment of attorneys' fees and costs, and the Class Representative's
8 Service Payment, should be finally approved as fair, reasonable, and adequate as to the Settlement Class;
- 9 b. Certifying the Settlement Class for purposes of this Settlement;
- 10 c. Approving as to form and content the proposed Notice of Class Action
11 Settlement;
- 12 d. Approving as to form and content the proposed Notice of Settlement Payment;
- 13 e. Approving as to form and content the proposed Request for Exclusion form;
- 14 f. Directing the mailing of the Notice Packets; and
- 15 g. Preliminarily approving the Settlement subject only to the objections of
16 Settlement Class Members and final review by the Court.

17 **DUTIES OF THE PARTIES FOLLOWING FINAL COURT APPROVAL**

18 32. Following final approval by the Court of the Settlement provided for in this Joint
19 Stipulation of Settlement, Class Counsel will submit a proposed judgment and final order:

- 20 a. Approving the Settlement, adjudging the terms thereof to be fair, reasonable and
21 adequate, and directing consummation of its terms and provisions;
- 22 b. Approving Class Counsel's application for an award of attorneys' fees and costs
23 and administration costs to the Settlement Administrator;
- 24 c. Approving the Service Payment to the Class Representative;
- 25 d. Approving the PAGA Payment to the LWDA; and
- 26 e. Entering a final judgment in the action.

27 **NULLIFICATION AND TERMINATION**

28 33. This Settlement will be null and void if any of the following occur: (a) the Court should

1 for any reason fail to certify a class for settlement purposes; or (b) the Court should for any reason fail to
2 preliminarily or finally approve of this Settlement in the form agreed to by the Parties, other than
3 adjustments made to the attorneys' fees and costs or granting of Service Payment; (c) the Court should
4 for any reason fail to enter the final judgment; (d) the final judgment is reversed, modified, or declared
5 or rendered void; or (e) the Settlement does not become final for any other reason.

6 34. If 5% or more of the Settlement Class Members validly and timely request exclusion
7 from this Settlement, then Defendant in its sole discretion may terminate, nullify and void this
8 Settlement. The Settlement Administrator shall provide Defendant's Counsel with the information
9 necessary to effectuate this provision on a regular basis, but no less frequently than on a monthly basis.
10 To terminate this Settlement under this paragraph, Defendant's Counsel must give Class Counsel and
11 the Settlement Administrator written notice no later than ten (10) business days after the Response
12 Deadline.

13 35. In the event this Settlement is nullified or terminated as provided above: (i) this
14 Settlement shall be considered null and void, (ii) neither this Settlement nor any of the related
15 negotiations or proceedings shall have any force or effect and no party shall be bound by any of its
16 terms, and (iii) all Parties to this Settlement shall stand in the same position, without prejudice, as if the
17 Settlement had been neither entered into nor filed with the Court. Plaintiff is prohibited from opting out
18 of this Settlement.

19 **PARTIES' AUTHORITY**

20 36. The signatories hereto hereby represent that they are fully authorized to enter into this
21 Settlement and bind the Parties hereto to the terms and conditions thereof.

22 **MUTUAL FULL COOPERATION**

23 37. The Parties agree to fully cooperate with each other to accomplish the terms of this
24 Settlement including, but not limited to, execution of such documents and taking such other action as
25 reasonably may be necessary to implement the terms of this Settlement. The Parties to this Settlement
26 shall use their best efforts, including all efforts contemplated by this Settlement and any other efforts
27 that may become necessary by order of the Court, or otherwise, to effectuate this Settlement and the
28 terms set forth herein. As soon as practicable after execution of this Settlement, Class Counsel shall,

1 with the assistance and cooperation of Defendant and its counsel, take all necessary steps to secure the
2 Court's preliminary and final approval of this Settlement.

3 **NO PRIOR ASSIGNMENTS**

4 38. The Parties and their respective counsel represent, covenant, and warrant that they have
5 not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber
6 to any person or entity any portion of any liability, claim, demand, action, cause of action or rights
7 herein released and discharged except as set forth herein.

8 **NO ADMISSION OF LIABILITY**

9 39. Nothing contained herein, nor the consummation of this Settlement, is to be construed or
10 deemed an admission of liability, culpability, negligence, or wrongdoing on the part of Defendant.
11 Defendant denies all the claims and contentions alleged by Plaintiff in this case. Defendant has entered
12 into this Settlement solely with the intention to avoid further disputes and litigation with the attendant
13 inconvenience and expenses.

14 **ENFORCEMENT ACTIONS**

15 40. The Orange County Superior Court shall maintain jurisdiction over this Settlement
16 pursuant to Cal. Code Civ. Proc. § 664.6. In the event that one or more of the Parties to this Settlement
17 institutes any legal action or other proceeding against any other party or parties to enforce the provisions
18 of this Settlement or to declare rights and/or obligations under this Settlement, the successful party or
19 parties shall be entitled to recover from the unsuccessful party or parties reasonable attorneys' fees and
20 costs, including expert witness fees incurred in connection with any enforcement actions.

21 **NOTICES**

22 41. Unless otherwise specifically provided herein, all notices, demands or other
23 communications given hereunder shall be in writing and shall be deemed to have been duly given as of
24 the third business day after mailing by United States registered or certified mail, return receipt
25 requested, addressed as follows:

26 **Class Counsel:**

27 Kane Moon (SBN 249834)
Lilit Ter-Astvatsatryan (SBN 320389)
28 **MOON & YANG, APC**
1055 W. Seventh St., Suite 1880

Los Angeles, California 90017
Telephone: (213) 232-3128
Facsimile: (213) 232-3125
E-mail: kane.moon@moonyanglaw.com
E-mail: lilit@moonyanglaw.com

Defense Counsel:

Kathy A. Le (SBN 279690)
JACKSON LEWIS P.C.
200 Spectrum Center Drive, Suite 500
Irvine, CA 92618
Tel: (949) 885-1360
Fax: (949) 885-1380
E-mail: kathy.le@jacksonlewis.com

Attorneys for Defendant
TYR SPORT, INC.

CONSTRUCTION

42. The Parties hereto agree that the terms and conditions of this Settlement are the result of lengthy, intensive arm's-length negotiations between the Parties, and this Settlement shall not be construed in favor of or against any party by reason of the extent to which any party or her or its counsel participated in the drafting of this Settlement.

CAPTIONS AND INTERPRETATIONS

43. Paragraph titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Settlement or any provision hereof. Each term of this Settlement is contractual and not merely a recital.

MODIFICATION

44. This Settlement may not be changed, altered, or modified, except in writing and signed by the Parties hereto, or by counsel for the Parties, and approved by the Court. This Settlement may not be discharged except by performance in accordance with its terms or by a writing signed by the Parties hereto and/or their counsel.

INTEGRATION CLAUSE

45. This Settlement contains the entire agreement between the Parties relating to the Settlement and transaction contemplated hereby, and all prior or contemporaneous agreements, understandings, representations, and statements, whether oral or written and whether by a party or such

1 party's legal counsel, are merged herein. No rights hereunder may be waived except in writing.

2 **BINDING ON ASSIGNS**

3 46. This Settlement shall be binding upon and inure to the benefit of the Parties hereto and
4 their respective heirs, trustees, executors, administrators, successors and assigns.

5 **CLASS COUNSEL SIGNATORIES**

6 47. It is agreed that because the members of the Settlement Class are so numerous, it is
7 impossible or impractical to have each member of the Settlement Class execute this Settlement. The
8 Notice of Class Action Settlement, Exhibit "A" hereto, will advise all Settlement Class Members of the
9 binding nature of the release, and the release shall have the same force and effect as if this Settlement
10 were executed by each member of the Settlement Class.

11 **COUNTERPARTS**

12 48. This Settlement may be executed in counterparts and by electronic or facsimile
13 signatures, and when each party has signed and delivered at least one such counterpart, each counterpart
14 shall be deemed an original, and, when taken together with other signed counterparts, shall constitute
15 one Settlement, which shall be binding upon and effective as to all Parties.

16 **PUBLIC COMMENT**

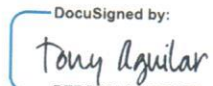
17 49. The Class Representatives and Class Counsel agree they will not make any disparaging
18 comments about Defendant relating to this Settlement of this class action or disclose the negotiations of
19 the Settlement. The Class Representative and Class Counsel shall only disclose matters of public record.
20 The Class Representative and Class Counsel agree they will keep this Settlement confidential until the
21 filing of Plaintiff's preliminary approval motion. Thereafter, the Parties agree to make no comments to
22 the media or otherwise publicize the terms of the Settlement, other than in court filings. Class Counsel
23 will take all steps necessary to make the Class Representative aware of the restrictions against any
24 public disclosure of the Settlement.

25 IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this Joint
26 Stipulation of Class Action Settlement between Plaintiff and Defendant as set forth below:

27 IT IS SO STIPULATED.
28

1 **Plaintiff & Class Representative**

2 DATED: 6/21/2023, 2023

DocuSigned by:

B5DCB8A6A1CC48D
TONY AGUILAR

4 **Plaintiff's Counsel**

5 DATED: 6/21/2023, 2023

MOON & YANG, APC

7 By 
8 KANE MOON
9 Attorneys for Plaintiff TONY AGUILAR
and all others similarly situated

10 **Defendant**

11 DATED: 6/28, 2023

TYR SPORT, INC.

13 By 
14 STEVEN LOCKE
Its: COO

15 **Defendant's Counsel**

16 DATED: June 26, 2023

JACKSON LEWIS P.C.

18 By 
19 KATHY A. LE
20 Attorneys for Defendant
21 TYR SPORT, INC.
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