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Attorneys for Plaintiff EDGAR J. BELTRAN RIVAS
on behalf of himself and others similarly situated.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES—SPRING STREET COURTHOUSE

EDGAR J. BELTRAN RIVAS, on behalf of
himself and others similarly situated,

Plaintiff,

vs.

KEMBER FLOORING, INC.; and DOES 1 to
100, inclusive,

DEFENDANTS.

Case No.: 21STCV19215

CLASS ACTION

*[Assigned to the Hon. Yvette M. Palazuelos
in Dept. SSC 9]*

**JOINT STIPULATION TO AMEND THE
COURT'S NOVEMBER 30, 2022
PRELIMINARY APPROVAL ORDER
AND APPROVE ADDITIONAL NOTICE
PROCEDURE; ~~[PROPOSED]~~ ORDER**

**JOINT STIPULATION TO AMEND COURT'S NOVEMBER 30, 2022 PRELIMINARY APPROVAL
ORDER AND APPROVE ADDITIONAL NOTICE PROCEDURE; ~~[PROPOSED]~~ ORDER**

FILED
Superior Court of California
County of Los Angeles

04/07/2023

David W. Slayton, Executive Officer / Clerk of Court

By: R. Arraiga Deputy

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Attorneys for Defendant KEMBER FLOORING, INC.

1 Plaintiff Edgar J. Beltran Rivas (“Plaintiff”) and Defendant Kember Flooring, Inc.
2 (“Defendant”) (collectively, the “Parties”) by and through their respective counsel of record
3 jointly request that the Court through this Joint Stipulation amend the November 30, 2022 Order
4 Granting Preliminary Approval of Class Action Settlement and approve an additional notice
5 procedure. The defined terms used herein shall have the same meaning and effect as those
6 defined in the operative Amended Class Action Settlement Agreement (“Settlement
7 Agreement”).

8 WHEREAS, on April 1, 2022, Plaintiff filed a Motion for Preliminary Approval of Class
9 Action Settlement (“Motion for Preliminary Approval”);

10 WHEREAS, on November 9, 2022, Plaintiff filed supplemental briefing in support of
11 his Motion for Preliminary Approval to address the Court’s concerns as expressed in the July 5,
12 2022 order;

13 WHEREAS, on November 30, 2022, the Court entered an Order Granting Preliminary
14 Approval of Class Action Settlement thereby approving the form and content of the Class Notice
15 Packet and the plan for administration of the settlement including providing notice to the Class;

16 WHEREAS, on December 23, 2022, the Settlement Administrator, Phoenix Class
17 Action Administration Solutions, mailed the Notice of Proposed Settlement of Class Action
18 (“Notice”) to 388 Class Members;

19 WHEREAS, the Settlement Agreement, and the Court’s November 30, 2022 Order
20 granting preliminary approval, provided for a “Class Notice Packet” to be distributed to the
21 Class, which included an Exclusion Form and Objection Form which were attached to the
22 Settlement Agreement as Exhibit A;

23 WHEREAS, on or around March 27, 2023, in reviewing the Settlement Administrator’s
24 declaration in preparation of filing the motion for final approval of class action settlement,
25 Plaintiff’s counsel discovered that the Notice of Proposed Settlement of Class Action which was
26 mailed to the Class inadvertently did not include the necessary and Court-approved Exclusion
27 Form and Objection Form;

1 WHEREAS, the Parties have reviewed the sequence of events and determined the error
2 was inadvertent and the result of a collective oversight by the Settlement Administrator and the
3 Parties;

4 WHEREAS, the deadline for the Class to object, opt out, or dispute their workweeks
5 was February 6, 2023;

6 WHEREAS, to date, the Settlement Administrator has not received any written
7 correspondence from the Class requesting to exclude themselves or to object to the Settlement;

8 WHEREAS, the Settlement Administrator has also confirmed that no Class Members
9 emailed or called the Settlement Administrator to inquire how to opt out or object;

10 WHEREAS, given the oversight, the Parties agree that it is in the best interest of the
11 Class to receive a new Notice with the Exclusion Form and Objection Form and provide them
12 with an additional thirty (30) calendar days to submit an Exclusion Form or Objection Form;

13 WHEREAS, the costs of the re-mailing to the Class will not exceed the Settlement
14 Administration Expenses of \$13,000 as provided for in the Settlement Agreement and which
15 was preliminarily approved by the Court;

16 WHEREAS, the Parties agree that in order to conduct a re-mailing, the currently
17 scheduled Final Approval Hearing date should be continued to June 30, 2023 or a date and time
18 convenient to the Court thereafter;

19 **NOW, THEREFORE, THE PARTIES STIPULATE AND AGREE AS FOLLOWS:**

20 1. The Court approves the re-mailing of the Class Notice Packet attached to the
21 Stipulation as **Exhibit 1**.

22 2. The Class Notice Packet shall be mailed by the Settlement Administrator within
23 ten (10) calendar days of the entry of the order granting this Stipulation.

24 3. Class Members shall have thirty (30) calendar days from the date of the mailing
25 of the Class Notice Packet to submit an Exclusion Form, Objection Form, or workweeks dispute
26 to the Settlement Administrator.

27 ///

1 4. The Final Approval Hearing shall be continued to June 30, 2023 at 10:00 a.m. or
2 a date and time convenient to the Court thereafter.

3 5. Plaintiff's motion for final approval of class action settlement and motion for
4 attorneys' fees, costs, and enhancement payment shall be filed sixteen (16) court days before
5 the Final Approval Hearing.

6 **IT IS SO STIPULATED:**

7
8
9 Dated: April 3, 2023

Respectfully submitted,
LAVI & EBRAHIMIAN, LLP
E&L, LLP

11 By: /s/ Melissa A. Huether
12 Joseph Lavi, Esq.
13 Vincent C. Granberry, Esq.
14 Melissa A. Huether, Esq.
Arie Ebrahimiian, Esq.
David Lavi, Esq.

15 Attorneys for Plaintiff Edgar J. Beltran
16 Rivas, on behalf of himself and others
similarly situated

17 Dated: April 3, 2023

PAUL, PLEVIN, QUARLES

19 By: /s/ George S. Howard
20 George S. Howard, Esq.
Matthew N. Mushamel, Esq.

21 Attorneys for Defendant Kember Flooring,
22 Inc.

~~[PROPOSED]~~ ORDER

1. The Court approves the re-mailing of the Class Notice Packet attached to hereto as **Exhibit 1**.

2. The Class Notice Packet shall be mailed by the Settlement Administrator within ten (10) calendar days of the entry of this Order.

3. Class Members shall have thirty (30) calendar days from the date of the mailing of the Class Notice Packet to submit an Exclusion Form, Objection Form, or workweeks dispute to the Settlement Administrator.

4. The Final Approval Hearing shall be continued to August 29, 2023 at 10:00 a.m. ~~or June 30, 2023 at 10:00 a.m. or a date and time convenient to the Court thereafter.~~

5. Plaintiff's motion for final approval of class action settlement and motion for attorneys' fees, costs, and enhancement payment shall be filed by July 31, 2023. ~~sixteen (16) court days before the Final Approval Hearing.~~

6. The Non-Appearance Case Review set for July 10, 2023 is continued to August 7, 2023.

IT IS SO ORDERED.

Date: 04/07/2023



Hon. Yvette M. Palazuelos
Judge of the Superior Court

The signing of this order is not approval of increased administrator fees or attorney costs.

Plaintiff to give notice.

Exhibit 1

RIVAS V. KEMBER FLOORING, INC.
Los Angeles County Superior Court Case Number 21STCV19215

NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION

If you are or were a non-exempt hourly employee who works or worked for Defendant Kember Flooring, Inc. in California, a class action settlement may affect your rights.

*A court authorized this Notice in the matter of Rivas v. Kember Flooring, Inc., et al.
Los Angeles County Superior Court, Case No. 21STCV19215*

Your legal rights may be affected by this Settlement. Please read this Notice carefully.

Plaintiff Edgar Rivas (“Plaintiff”), on behalf of himself and other similarly situated employees, sued Defendant Kember Flooring, Inc. (“Defendant”) on a class basis for (i) failure to pay minimum wages; (ii) failure to pay overtime wages; (iii) failure to provide meal periods; (iv) failure to provide rest periods; (v) failure to timely pay wages during employment; (vi) failure to provide complete and accurate wage statements; (vii) failure to timely pay all earned wages due at time of separation of employment; (viii) unfair business practices in violation of California Business & Professions Code §§ 17200, *et seq.*; and (ix) civil penalties under Labor Code §2699 (“Action”). Defendant strongly denies any and all claims alleged in the Action and denies any and all wrongdoing and liability. The proposed Settlement is not a concession or admission by Defendant that the Action has any merit whatsoever. The Court has not ruled on the merits of Plaintiff’s claims.

The Court has preliminarily approved the Settlement in this Action and determined that there is sufficient evidence to suggest that the proposed Settlement is fair, adequate, and reasonable. If you qualify as a Class Member, you may receive money from the Settlement. A final determination will be made by the Court at a Final Approval/Settlement Fairness Hearing.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
DO NOTHING	You will be paid your Settlement Share in exchange for releasing the Released Class Claims against Defendant and Released Parties (see Section 11), subject to Court approval.
EXCLUDE YOURSELF	You will not be paid your Settlement Share, and you will retain any rights to sue for the Released Class Claims against Defendants. You will not be able to object to the Settlement. If you are a PAGA Group Member, you will receive your Individual PAGA Share regardless of whether you exclude yourself from the Settlement.
DISPUTE THE NUMBER OF WORKWEEKS OR INDIVIDUAL SETTLEMENT AMOUNT	If you dispute the listed number of workweeks that you worked as an hourly non-exempt employee of Defendant in California during the period from May 20, 2017 through [END DATE], you may contact the Settlement Administrator to provide additional information and resolve the dispute. You will be paid your Settlement Share, or an adjusted amount.
OBJECT	You will tell the Court why you don’t agree with the Settlement, following the procedures described more fully below in Section 13. The Court may or may not agree with your objection. However, if the Court does not agree with your

	objection, you may still be paid your Settlement Share in exchange for releasing the Released Class Claims against Defendant and Released Parties.
HOW MUCH CAN I GET?	The number of workweeks that you worked as a Class Member is [REDACTED]. Your estimated Settlement Share, subject to mandatory withholdings and deductions, is \$ [REDACTED]. You [are/are not] a PAGA Group Member. [Your Individual PAGA Payment is \$ [REDACTED].]

1. Why Did I Get This Notice?

You are not being sued. Plaintiff sued Defendant in a class and representative action on behalf of all non-exempt hourly employees who work or worked for Defendant in California, during the period from May 20, 2017 through [END DATE] (“the Class Period”). You are receiving this notice because, based on Defendant’s records, you may have worked for Defendant as a non-exempt hourly employee in California during the Class Period.

You received this Notice because you have a right to know about a proposed Settlement and your options before the Court decides whether to approve the Settlement. If the Court approves the Settlement, and after any objections and appeals are resolved, the Settlement Administrator appointed by the Court will make all payments approved by the Court. This Notice explains the Action, the Settlement, your legal rights, what benefits are available, who is eligible to receive them, and how to receive payment.

2. What Is This Action About?

Plaintiff is a former non-exempt hourly employee of Defendant who worked in California during the Class Period. On May 20, 2021, Plaintiff filed his original Class Action Complaint against Defendant. On December 20, 2021, Plaintiff filed a First Amended Complaint against Defendant adding a cause of action pursuant to the Private Attorneys General Act of 2004 (“PAGA”). The parties reached an agreement to resolve Plaintiff’s claims. The Court has preliminarily approved Plaintiff to represent the Class. However, the Court has not made any findings with respect to the merits of Plaintiff’s claims.

3. Do I Need to Hire an Attorney?

You do not need to hire your own attorney. The Court has already preliminarily appointed Class Counsel (see Section 15). However, you may hire your own attorney at your own expense if you choose to do so.

4. What Is Defendant’s Position?

Defendant denies any wrongdoing or liability whatsoever and deny that wages, damages, or penalties are owed, or that they acted contrary to California law. Defendant believes that it has valid defenses to Plaintiff’s claims. By agreeing to settle, Defendant is not admitting liability on any of the factual or legal allegations in the Action, or that the Action can proceed as a class or representative action. Defendant has agreed to settle the Action as a compromise with Plaintiff and Class Counsel.

5. Why Is There a Settlement?

The Court did not decide in favor of Plaintiff or Defendant. After a thorough investigation into the facts of this Action, the parties agreed to the Settlement following a mediation session with a neutral third-party mediator. The Action settled because Class Counsel and Plaintiff believe that the amount of the Settlement is fair, adequate, and reasonable in light of the strengths and weaknesses of the claims and other factors present and potential in this Action.

6. What Does the Settlement Provide?

Class Members who do not timely send a valid request for exclusion to the Settlement Administrator will receive Settlement Shares from the Net Settlement Amount. The Net Settlement Amount is the portion of the Gross Settlement Amount available for distribution to Class Members, after deductions ordered by the Court in its final approval, as discussed below.

The Gross Settlement Amount is \$1,150,000. From the Gross Settlement Amount, Class Counsel will ask the Court to award attorneys' fees in the amount of \$383,333.33, which represents 1/3 of the Gross Settlement Amount, and actual litigation costs of up to \$25,000. Class Counsel will also ask the Court to authorize a Service Payment to be paid to Plaintiff from the Gross Settlement Amount in the amount of \$10,000, to compensate him for the risks, time, and expense of his involvement in the Action. These payments are in addition to any Settlement Share that Plaintiff is otherwise entitled to as Class Members. The Settlement Administrator will also be paid for the expense of notifying the Class Members of the Settlement, processing forms and requests for exclusions, distributing all payments, and completed all tasks related to the administration of this Settlement. Settlement Administration Costs are currently estimated to be \$13,000, to be paid from the Gross Settlement Amount. Finally, Class Counsel will ask the Court to approve an allocation in the amount of \$50,000, for claims released under the California Private Attorneys General Act of 2004 ("PAGA"), with 75% of the allocation (\$37,500), to be awarded to the California Labor and Workforce Development Agency, and 25% of the allocation (\$12,500), to be awarded to all individual employed by Defendant during the PAGA Period as non-exempt hourly employees ("PAGA Group Members").

7. What Can I Get From the Settlement?

Class Members (who do not request to be excluded) will be paid from the Net Settlement Amount; one-third of each Settlement Share will be designated for alleged unpaid wages, for which an IRS Form W-2 shall be issued; two-thirds will be designated for penalties and interest, for which an IRS Form 1099 shall be issued, as appropriate. Settlement Shares from the Net Settlement Amount are subject to any applicable tax withholdings. The amount of tax withholding from your Settlement Share may or may not be sufficient to cover your applicable tax obligations to the Internal Revenue Service. Please consult your tax adviser, as needed. Neither the named parties nor any counsel in this Action make any representations as to the tax treatment of Settlement Shares provided by the Settlement.

8. How Was My Individual Payment Amount Calculated?

Based on its records, Defendant will calculate the total number of weeks worked by each Class Member ("workweeks") and the total number of workweeks worked by all Class Members during the Class Period. In addition, each Class Member who separated employment during the Class Period shall receive an additional five (5) workweeks credit in determining that Class Member's Settlement Share; provided that any such employee who both separated employment and who was subsequently rehired during the Class Period shall not

receive the credit of five (5) additional workweeks. To determine each Class Member's Settlement Share, the Settlement Administrator will use the following formula:

Settlement Share = (Net Settlement Amount ÷ total workweeks of Class Members) x individual Class Members workweeks.

Each Settlement Share will be reduced by any legally mandated deductions (e.g., payroll taxes, garnishments or withholdings, or support orders, etc.).

Class Members who submit valid and timely requests for exclusion will not be entitled to receive Settlement Shares. The estimated Settlement Shares allocated to those individuals will be redistributed to other Class Members, as calculated by the Settlement Administrator to reflect proportionally increases to the payments for Class Member who do not request exclusion such that the aggregate of settlement payout to Class Members equals 100% of the Gross Settlement Amount.

If you are also a PAGA Group Member, you will receive part of the PAGA Group Amount (your "Individual PAGA Payment"). The PAGA Group Amount is the 25% share of the PAGA Payment allocated to all individuals employed by Defendant during the period from May 20, 2020 to [END DATE] as non-exempt hourly employees. Individual PAGA Payment will be calculated based on the number of pay periods each PAGA Group Member worked in comparison to the total number of pay periods all of the PAGA Group Members worked during the PAGA Period.

9. How Can I Get Payment?

You do not need to take any action to qualify for payment. However, if you dispute the number workweeks, you may contact the Settlement Administrator with the details of your dispute, including any supporting information or documentation, no later than [date]. If you do nothing, you will receive your Settlement Share calculated based on the workweeks as identified in this Notice and be bound by the terms of the Settlement (including the Released Class Claims described in Section 11).

10. When Would I Get My Payment?

The Court will hold the Final Approval/Settlement Fairness Hearing on [DATE], at [TIME], in Department 9 of the California Superior Court for the County of Los Angeles, located at 312 N. Spring Street, Los Angeles, CA 90012, to decide whether to grant final approval of the Settlement and enter final judgment. This hearing date is subject to continuance without further notice. If the Court grants final approval of the Settlement, your Settlement Share will be mailed approximately 90 days after entry of Final judgment, unless there are objections, appeals, or other challenges to the Settlement, the Final Judgment or otherwise.

11. What Rights Do I Give Up If I Participate or Do Nothing?

Unless you submit a timely and valid request for exclusion from the Settlement, you will remain a Class Member, and you will be bound by the terms of the Settlement, including releasing the Released Claims against Defendant and the Released Parties. It also means that all of the Court's orders will apply to you and legally bind you. If you are a PAGA Group Member, you will also release the Released PAGA Claims regardless of whether you request exclusion from the Settlement or not.

As of the date the Judgment becomes Final and upon the full payment of the Gross Settlement Amount and associated employee's payroll taxes, Defendant and the other Released Parties shall be entitled to a release of

any and all claims, debts, liabilities, demands, actions or causes of action arising in or based upon events during the Class Period, which are alleged, or reasonably could have been alleged based on the facts and claims asserted in the First Amended Complaint, including all claims for restitution and other equitable relief, claims for unpaid minimum and overtime wages, timeliness of earned wages, liquidated damages, meal and rest period premiums, waiting time penalties, unfair business practices, and failure to provide accurate wage statements (“Released Class Claims”), and all claims for civil or statutory penalties arising out of the Participating Class Members’ Released Claims. The Released Claims expressly exclude all other claims, including claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers’ compensation, and claims arising outside of the Class Period.

As of the date the Judgment becomes Final and upon the full payment of the Gross Settlement Amount and associated employee’s payroll taxes, Defendant and the other Released Parties shall be entitled to a release of any and all claims, debts, liabilities, demands, actions or causes of action arising in or based upon events during the PAGA Period, which are alleged, or reasonably could have been alleged based on the facts and claims asserted in the notice to the LWDA on May 24, 2021 (“Released PAGA Claims”).

“Released Parties” means Defendant, together with all of Defendant’s current and former parents, subsidiaries, predecessors, successors, affiliates, and related entities, and its and their respective shareholders, officers, principals, directors, employees, trustees, agents, and benefit plans. The persons so released shall include Kember Kreative Interiors and Kember Hardwood Flooring, inc., and their officers, shareholders, principals, directors, employees, agents, trustees and benefit plans.

12. How Do I Exclude Myself from the Settlement?

If you do not wish to participate in the Settlement, you may exclude yourself by completing and submitting the attached Request for Exclusion Form. The Request for Exclusion signed and must be postmarked no later than [date] and returned to the Settlement Administrator and received by the Settlement Administrator at the address listed below.

Settlement Administrator

Address

Phone: (***) ***-****

If you submit a valid and timely Request for Exclusion form, you shall be barred from participating in the Settlement. You may not object and will not receive a Settlement Share. You will retain all rights you may have against Defendant.

If you opt out or exclude yourself from the Settlement, you will not receive a Settlement Share but will still receive an Individual PAGA Share if you are a PAGA Group Member.

13. How Do I Object to the Settlement and Appear at the Final Approval and Fairness Hearing?

- A. You can submit a valid and timely completed Objection Form to the Settlement Administrator listed in Section 12, no later than [date]. The Objection Form must be signed by the Class Member and contain all information necessary including the specific reason including any legal grounds for the class members objection. The postmark date will be deemed the exclusive means for determining that. If you send an Objection, you do not have to come to Court to talk about it.
- B. You may appear at the Final Approval and Fairness Hearing (see section 14 below) and object orally to the terms of the Settlement.

- C. You may also appear at the Final Approval Hearing remotely through LACourtConnect. LACourtConnect is part of the Court's Here For You | Safe For You initiative and provides a convenient, safe option for appearing in court without having to come to court. The site is for use by those with an active role in a hearing: litigants, attorneys, and witnesses. The fee to appear remotely is \$15 for audio and \$23 for video. All remote appearance fees must be paid through the LACourtConnect scheduling system. Remote appearances are free for participants whose Fee Waiver Application or other order has been granted by the Court. To schedule a remote appearance using LACourtConnect, please visit the website here: <https://www.lacourt.org/lacc/>.

14. When Is the Final Approval and Fairness Hearing?

The Court will hold a Final Approval/Settlement Fairness Hearing in Department 9 of the California Superior Court for the County of Los Angeles, located at 312 N. Spring Street, Los Angeles, CA 90012, on **[date]** at **[time]**, to determine whether the Settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. The Court will also be asked to approve Class Counsel's request for attorneys' fees and litigation costs, Plaintiff's Service Payment, Settlement Administration Costs, and the PAGA Payment.

The hearing may be continued without further notice to you. It is not necessary for you to appear at this hearing, but you may do so at your own expense. Notice of the final judgment will be on file with the Clerk of the Court and posted on **[settlement administrator website]**.

15. How Do I Get Additional Information?

This Notice provides a summary of the basic terms of the Settlement. For the precise terms and conditions of the Settlement, you should consult the Class Action Settlement Agreement, which is on file with the Clerk of the Court. Additionally, the pleadings and other records in this Action may be examined at any time during regular business hours at the Office of the Clerk. If you have any questions, you may contact the Settlement Administrator or Class Counsel.

Settlement Administrator

TPA NAME
ADDRESS
PHONE NUMBER
FAX
EMAIL

Class Counsel

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**PLEASE DO NOT CONTACT THE COURT FOR INFORMATION REGARDING THIS
SETTLEMENT.**

BY ORDER OF THE COURT.

RIVAS V. KEMBER FLOORING, INC.
Los Angeles County Superior Court Case Number 21STCV19215

EXCLUSION FORM

If you do not want to be part of the Settlement, you must submit this written request by mail or fax to be excluded from the Settlement ("Request for Exclusion") to the Settlement Administrator at *Rivas v. Kember Flooring, Inc.*, [address], [City], [State] [Zip], postmarked or faxed on or before [Response Deadline] at:

Rivas v. Kember Flooring, Inc. Settlement Administrator

c/o _____

FAX NUMBER: _____

If you do not submit a timely and valid Request for Exclusion, you will be deemed a Participating Class Member, you will receive a settlement payment, and you will be bound by the Released Class Claims and release the Released Class Claims as described in the Notice and all other terms of the Settlement, whether favorable or not.

If you submit this Request for Exclusion Form, you will retain the right to bring an individual claim, and you will not be entitled to any benefits as a result of the Class Action Settlement Agreement and will not be entitled to or permitted to assert an objection to the Settlement.

By submitting this form, you are stating: "I wish to exclude myself from the settlement reached in the matter of *Rivas v. Kember Flooring, Inc.* I understand the consequences of excluding myself and understand I will not receive a Settlement Share but I will have the option to pursue legal action against Defendant."

In order to be valid, you must provide the following information and sign below:

Full name: _____

Address: _____

City, State, Zip Code: _____

Last four digits of your social security number or Employee ID: _____

Your Signature: _____

