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as an individual and on behalf of all employees similarly situated

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

KIMBERLY M. WILHELM, as an individual
and on behalf of all employees similarly situated,

Plaintiff,

v.

KEMPER SPORTS MANAGEMENT, LLC, a
Delaware Limited Liability Company; KEMPER
SPORTS MANAGEMENT HOLDINGS, LLC,
a Delaware Limited Liability Company, and
DOES 1 through 50, inclusive,

Defendants.

Case No.: 30-2024-01376524-CU-OE-CXC

[Assigned for all purposes to Hon. Randall J.
Sherman, Dept. CX105]

**CLASS AND PAGA REPRESENTATIVE
ACTION**

**DECLARATION OF LILIT TUNYAN IN
SUPPORT OF PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
AND PAGA REPRESENTATIVE ACTION
SETTLEMENT**

Reservation N: 74532524

Date: July 25, 2025

Time: 10 a.m.

Courtroom: Dept. CX105

Judge: Hon. Randall J. Sherman

Action Filed: January 30, 2024

Trial: Not Set

I, LILIT TUNYAN, declare as follows:

1. I am admitted, in good standing, to practice as an attorney in the State of California, the United States District Courts for the Central, Eastern, Southern and Northern Districts of California. I am the founding partner at the law firm of Tunyan Law, APC. I am a fully qualified, adult resident of the State of California, and, if called as a witness herein, I would testify truthfully to the matters set forth herein. All of the matters set forth herein are within my personal knowledge, except those matters that are stated to be upon information and belief. As to such matters, I believe them to be true. I am one of the attorneys of record for Plaintiff KIMBERLY M. WILHELM (“Plaintiff”).

2. This Declaration is submitted in support of Plaintiff's Motion for Preliminary Approval of Class and PAGA Representative Action Settlement.

3. On January 30, 2024, Plaintiff filed a putative Class Action alleging the following labelled causes of action: (1) failure to pay all wages; (2) failure to provide meal periods; (3) failure to provide rest periods; (3) failure to maintain and provide accurate itemized wage statements; (5) failure to indemnify necessary business expenses; (6) failure to timely pay all wages and final wages; (7) Unfair Business Practices in violation of Bus. & Prof. Code § 17200 et seq. On March 7, 2024, Defendants filed a Notice of Removal of this action to the United States District Court, Central District of California on the basis of the Class Action Fairness Act pursuant to 28 U.S.C. § 1441. On May 1, 2024, Plaintiff filed her First Amended Complaint adding the eighth case of action for civil penalties under the Labor Code Private Attorneys General Act of 2004 [Lab. Code § 2699, et seq.] (“PAGA”). On March 6, 2025, the Parties filed a joint stipulation seeking remand of this action to the Orange County Superior Court, which was granted on March 13, 2025, and this action was remanded to Orange County Superior Court (The “Action.”) In the Complaint, Plaintiff sought to represent all persons that worked for Defendants in California as an hourly-paid, non-exempt employee at any time during the period beginning four years before the filing of the initial complaint.

4. Plaintiff satisfied the administrative exhaustion requirement that is a prerequisite to filing a claim for Civil Penalties under the Labor Code Private Attorneys General Act of 2004 [Lab. Code §

1 2699, et seq.] (“PAGA”).

2 5. The Parties have conducted informal discovery and investigation of the facts and law.
3 Such discovery and investigation have included, inter alia, the exchange of data and discoverable
4 information in preparation for the mediation session. The Parties have analyzed payroll and other data
5 pertaining to Plaintiff and the Class during the relevant Settlement Period, including but not limited to the
6 numbers of former and current members of each purported subclass within the Class, average
7 workweeks, and average rate of hourly pay. In addition, Defendants also provided documents reflecting
8 their wage and hour policies and practices during the Class Period.

9 6. After reviewing documents regarding Defendants’ wage and hour policies and practices
10 and other information obtained during the exchange of discovery, Class Counsel were able to evaluate
11 the probability of class certification, success on the merits, and the reasonably obtainable maximum
12 monetary exposure for all claims. Class Counsel reviewed these records and prepared a damage analysis
13 prior to mediation. Class Counsel also investigated the applicable law regarding the claims and defenses
14 asserted in the litigation.

15 7. On January 18, 2025, the Parties mediated before a mediator, Steven Rottman, Esq., who
16 is a highly experienced and well-regarded mediator for wage and hour class action litigation. At the
17 mediation, the Parties discussed at length the burdens and risks of continuing with the litigation as well
18 as the merits of the claims and defenses. The Parties have been able to reach a settlement at the
19 mediation. The Parties have reached an agreement regarding the substantive terms of a class-wide
20 settlement, pending the Parties’ agreement on a long-form class settlement agreement. The Parties then
21 signed a long form settlement agreement (“Agreement”).

22 8. Plaintiff and Class Counsel are aware of the burdens of proof necessary to establish
23 liability for the claims asserted in the Action, both generally and in response to Defendants’ defenses
24 thereto. Plaintiff and Class Counsel have also taken into account Defendants’ agreement to enter into a
25 Settlement that confers substantial relief upon the Class.

26 9. Based on the foregoing, Plaintiff and Class Counsel have determined that the Settlement
27 set forth in this Agreement is a fair, adequate, and reasonable Settlement and is in the best interests of the
28 Class. Solely for the purpose of settling this case, the parties agree that the requirements for establishing

class action certification with respect to this class have been met and are met. If this Settlement is not approved by the Court for any reason, Defendants reserve its right to contest class certification. This Settlement, if approved by the Court, will result in the entry of the Judgment and the release of all Released Claims for all Class Members, including all within the class definition who have not elected to exclude themselves from the Settlement Class.

SUMMARY OF THE SETTLEMENT TERMS

10. Key provisions of the proposed settlement include the following:

- (a) Defendants agree not to oppose certification of a Class for purposes of Settlement only (Settlement, ¶ 19);
- (b) **Settlement Amount:** Defendants will pay a maximum of **\$1,500,000.00**, referred to as the Gross Settlement Amount (or GSA herein), resulting in an estimated average **gross** payment per Class Member of approximately **\$1,210.65** (Settlement, ¶ 26(c));
- (c) **Class Size:** Approximately **1,239** individuals as of January 18, 2025. (Tunyan Decl., ¶ 16.)
- (d) **PAGA Group Size:** Approximately **934** individuals as of January 18, 2025 (Tunyan Decl., ¶ 17);
- (e) **Escalator Clause:** Defendants represent that the number of Class Members was approximately 1,239 individuals as of January 18, 2025, and the number of workweeks worked in the Class Period for those Class Members was approximately 108,218 as of that date. If it is later determined that, the number of Covered Workweeks in the Class Period is more than 10% greater than the estimated number of workweeks as of January 18, 2025 (there are 119,040 or more Covered Workweeks), Defendants can either have the Gross Settlement Amount increased by 1% for each percent over the 10% threshold that the actual number of Covered Workweeks exceed the estimated number of workweeks (if the number of workweeks increases by 11%, the Gross Settlement will increase 1%), or have the Class Period end on the date that the estimated number of

Covered Workweeks exceed 10% threshold (the “Escalator Clause”).
(Settlement, ¶ 26(d).) *When the Class Period ends, prior to preliminary approval motion hearing date, Plaintiff’s counsel will provide additional information as to whether the Escalator Clause has been triggered, and whether the Class Period will be cut back prior to April 18, 2025.*

- (f) **Kullar/Munoz Analysis:** Plaintiff addresses the claims analysis herein, at Part V.B.3, and in more detail the Declaration of Tunyan, at Paragraph 17;
- (g) **No Reversion:** The Settlement is a non-reversionary settlement (Settlement, ¶ 26(e));
- (h) **Certification:** Plaintiff addresses certification requisites herein, at Part V.A., and in the Declaration of Tunyan, at Paragraphs 35-41;
- (i) **No Claim Form:** No claim form is required (Settlement., ¶ 26(f));
- (j) **Class Release:** The Settlement will release specified wage-and-hour claims for Class Members (those Class Members who do not opt out of the Settlement) (Settlement, ¶ 37);
- (k) **PAGA Release:** PAGA Employees are deemed to release the PAGA Claims set forth in this Action, that were identified in the Complaint and Plaintiff’s LWDA Notice Letter, regardless of whether they opt out of the class portion of the Settlement (Settlement, ¶ 37);
- (l) **Release Effective Date:** The Release is not active until Defendants tender all payments required under the Settlement to the Settlement Administrator (Settlement, ¶ 37);
- (m) **Net Settlement Amount Available to the Class:** After deducting Class Counsel’s attorneys’ fees and costs, service payment to Plaintiff, administration costs, and the payment to the LWDA, the remainder will be used to pay Settlement Class Payments to Class Members who do not opt out and PAGA Settlement Payments to PAGA Employees. For the Settlement Class Payments, each Class Member will receive a share based on the number of workweeks each

Class Member worked for Defendants within the Class Period. The Net Settlement Amount which also includes PAGA Settlement Payments to PAGA Employees is estimated to be at least **\$874,050.00**, resulting in an average net payment per Class Member of at least **\$705.45**. (Settlement, ¶ 26(g));

(n) **Tax Allocation**: The amounts distributed to Class Members will be characterized as 1/3 wages, and 2/3 interest and penalties, and PAGA Settlement Payments will be allocated as 100% penalties. (Settlement, ¶ 26(k));

(o) **Employer's Portion of Payroll Taxes Paid Separately**: Defendants' portion of payroll taxes (e.g., FICA, FUTA, etc.) owed on any settlement payments to Class Members that constitute wages will be paid separate and apart from the GSM (Settlement, ¶ 26(h));

(p) **Settlement Administrator**: The notice portion of the Settlement and distribution of funds will be administered by a third-party Administrator, ILYM Group, Inc., and the Parties estimated that the costs of administration should not reasonably exceed \$25,000.00. ILYM Group, Inc.'s low bid for settlement administration services in the amount of **\$15,950.00** was selected as the lowest bid from a competitive bidding process. (Settlement, ¶ 26(p));

(q) **Class Data for Administration**: The Settlement Administrator will receive the Class List within 15 calendar days of Preliminary Approval, use the NCOA database to update the Class List, and then use skip tracing on returned Notices (Settlement, ¶ 32(a));

(r) **Notice**: The Notice will issue within 14 days of receipt of the Class List (Settlement, ¶ 32(b)). The Notice describes how to dispute workweeks, submit and objection, or request exclusion (Settlement, ¶ 26(s)).

(s) **Notice Language**: Notice will issue in English and Spanish (Settlement, ¶ 26(t));

(t) **Objections**: Objections can be submitted to the Settlement Administrator in writing via the Objection Form, or at the Final Approval Hearing. (Settlement, ¶ 26(x));

- (u) **Exclusion Requests:** Requests for exclusion can be submitted to the Settlement Administrator in writing on the Request for Exclusion Form (Settlement, ¶ 26(w));
- (v) **PAGA Allocation:** From the GSA, **\$100,000.00** will be allocated to settle claims brought pursuant to the California Private Attorneys General Act, Labor Code § 2699 et seq. (“PAGA”), and seventy-five percent (75%), or **\$75,000.00** will be paid to the California Labor & Workforce Development Agency. (Settlement, ¶ 10.)
- (w) **Notice to LWDA:** Notice was provided prior to the filing of this Motion. Evidence is attached to Tunyan Declaration.
- (x) **Service Payment to Plaintiff:** Defendants will not oppose the application for Class Representative Service Payment of **\$5,000.00** to be paid from the GSA (Settlement, ¶ 26(n));
- (y) **Fees and Costs:** Defendants will not oppose Class Counsel’s application for fees not to exceed 33 1/3% of the GSA (**\$500,000.00**), and actual costs, in an amount not to exceed **\$30,000**, to be paid out of the GSA (Settlement, ¶ 26(m)).
- (z) Check Void Period: Settlement checks will be valid for 180 days (Settlement, ¶ 34);
- (aa) **Uncashed Checks:** Any settlement checks that are mailed to the Class Members and remain uncashed after 180 days of the date of issuance will be cancelled, and the moneys will be directed to the California State Controller’s Office for Unclaimed Property in the name of each Class Member who failed to cash their Settlement Payment (Settlement, ¶ 35);
- (bb) **Judgment Notice:** Judgment will be posted on the Settlement Administrator’s website after entry for 180 days (Settlement, ¶ 30);
- (cc) **Confidentiality Provisions:** Plaintiff and Class Counsel agree to keep settlement terms confidential prior to preliminary approval of the Settlement (Settlement ¶ 58).

1 11. A true and correct copy of the JOINT STIPULATION OF CLASS AND PAGA
2 REPRESENTATIVE ACTION SETTLEMENT is attached hereto as Exhibit “1.”

3 THE SETTLEMENT IS FAIR, JUST AND REASONABLE

4 12. Plaintiff and counsel have diligently investigated the claims of the Class Members.
5 Plaintiff and Class Counsel concluded, after taking into account the disputed factual and legal issues
6 involved in this Action, the substantial risks attending further prosecution, including risks related to the
7 outcome of certification and possible summary judgment efforts, and the substantial benefits to be
8 received pursuant to the compromise and settlement of the Action as set forth in the Settlement, that
9 settlement on the terms agreed to are in the best interest of Plaintiff and the putative Class and are fair
10 and reasonable. Plaintiff’s counsel brought to bear a great deal of experience with class actions in
11 negotiating the settlement of this case.

12 13. One fundamental purpose of the class action device is to promote efficiency. Resolution
13 at this time will forestall the need for additional expensive and time-consuming litigation that could very
14 well result in an outcome less satisfactory than that proposed under this settlement. But, before any other
15 consideration, we have agreed to this settlement because it is objectively reasonable. The potential for
16 resolution benefits the class members, since they do not have to wait additional years for a similar
17 recovery. The efficiency of this litigation benefits the Court, the parties and their counsel. A class-wide
18 resolution is the most realistic method for addressing the claims raised in this matter.

19 14. We have engaged in the necessary investigation in this case that made it possible for us to
20 exercise informed judgment in those aspects of the settlement process in which we were involved. The
21 exchange of time and wage data, wage and hour policy documents, and data about the composition of the
22 Class, were sufficient to permit us counsel to adequately evaluate the settlement. We had more than
23 enough information upon which to evaluate a fair and reasonable settlement amount.

24 15. We believe that the case was viable through to a trial. However, while Plaintiff assert a
25 belief that this is a viable case for trial, we realize that there are always significant risks associated with
26 certification and trials, and those risks cannot be eliminated in this case. Continued litigation of this
27 lawsuit presented Plaintiff and Defendants with substantial legal risks and costs that were (and continue
28 to be) difficult to assess. The risks in this matter include:

- the risk that Plaintiff would be unable to establish liability for allegedly unpaid straight time or overtime wages, see *Duran v. US Bank Nat'l Ass'n*, 59 Cal. 4th 1, 39 & fn. 33 (2014) ("*Duran*"), citing *Dilts v. Penske Logistics, LLC* 2014 WL 205039 (S.D. Cal. 2014);
- the risk that Defendants' meal and rest period policies might not ultimately support class certification or a class-wide liability finding, see *Duran*, 59 Cal. 4th at 14, n. 28 (citing Court of Appeal decisions favorable on class certification issue without expressing opinion as to ultimate viability of proposition);
- the risk that uncertainties pertaining to the ultimate legality of Defendants' policies and practices could preclude class-wide awards of statutory penalties under Labor Code §§ 203 and 226(e);
- the risk that individual differences between Class Members could be construed as pertaining to liability and not solely to damages, see *Duran*, 59 Cal. 4th at 19;
- the risk that any civil penalties award under the PAGA could be reduced by the Court in its discretion, see Labor Code § 2699(e)(1);
- the risk that class treatment could be deemed improper as to one or more claims, except for settlement purposes;
- the risk that lengthy appellate litigation could ensue.

These risks are non-exhaustive. While we remain confident that we possess credible strategies for responding to the legal and factual risks facing them, those risks cannot be disregarded. We carefully considered the risks created by all of these uncontrollable factors when evaluating the reasonableness of this proposed settlement. This Settlement provides a benefit to the Class Members that is very reasonable in light of these particular risks.

16. The Settlement is the product of arm's-length negotiations between the Parties occurring throughout the litigation. In light of the uncertainties of protracted litigation and the state of the law regarding the legal positions of the Parties, the settlement amount reflects the best feasible recovery for the Class Members. The settlement amount is, of course, a compromise figure. By necessity it took into account risks related to liability, damages, and the defenses asserted by Defendants. Moreover, each Class Member will be given the opportunity to opt-out of the Settlement, allowing those who feel they

1 have claims that are greater than the benefits they can receive under this Settlement to pursue their own
2 claims. For the approximately **1,239** members of the Class, the average **gross** recovery is at least
3 **\$1,210.65** per class member, and the estimated average **net** recovery for each Class Member is
4 approximately **\$705.45**. Given that Defendants could challenge certification and liability, this is a
5 significant sum to have achieved in settlement. Moreover, a Class Member who worked a greater
6 number of weeks for Defendants will receive a larger share of the Settlement than a Class Member who
7 worked for a shorter amount of time during the class period.

8 17. The Gross Settlement Amount of **\$1,500,000.00** is about 73% of the **\$2,051,489.32**
9 estimate of *risk-adjusted* recovery (excluding interest) at this stage in the litigation. This assessment is
10 based on a carefully constructed model of the current fair value of the case, using estimated risks,
11 average wage rates, numbers of employees, and the amount of time covered by the class period. While
12 Plaintiff would certainly have preferred to recover more (and Defendants would have preferred to pay
13 less), this outcome is in line with a carefully constructed estimate of the current fair value of the case. On
14 that basis, it would be unwise to pass up this settlement opportunity. My maximum calculated
15 reasonable exposure, after removing implausible or extreme estimated recoveries, is **\$12,880,497.10**,
16 *including* PAGA penalties.

- 17 • A reasonably estimated exposure for unpaid off-the-clock work was calculated, with the
18 assistance of an expert, to be approximately **\$1,801,829.7** (108,218 workweeks x 1 hour of
19 unpaid wage per workweek, which is based on the hourly average rate of \$16.65 per hour)).
20 However, with the risk factor discounts for certification and liability proof, the value of that
21 claim is estimated by Plaintiff's counsel to be approximately **\$270,274.46** assuming
22 certification probability of 50% and merits success at 30%.
- 23 • A reasonably estimated exposure for rest break violations over the class period was
24 calculated at **\$1,801,829.7** (108,218 workweeks x 1rest period premium per workweek x
25 \$16.65), but with chances of certification and proof of liability (50% and 40% respectively)
26 for a risk-adjusted exposure of **\$360,365.94**.
- 27 • A reasonably estimated exposure for meal break violations over the class period was
28 calculated at **\$1,801,829.7** (108,218 workweeks x 1meal period premium per workweek x

\$16.65) with chances of certification and liability risks (60% and 40% respectively) resulting in a risk-adjusted exposure of **\$432,439.13**.

- Risk-adjusted penalty recoveries for wage statement and Labor Code § 203 penalties were estimated to be approximately **\$165,570.00** and **\$286,912.80**, respectively, on maximum exposures of **\$1,655,700.00** (562 initial violations x \$50 statutory penalty) + [16,276 subsequent violations x \$100 statutory penalty]) and **\$2,869,128.00** (718 employees terminated during the three-year statute of limitation x (30 days x hourly rate of \$16.65 x 8 hours), or approximately \$3,931.2 per individual, respectively), (50% and 20% respectively).
- A reasonably estimated exposure for unreimbursed expenses was calculated at **\$1,082,180.00** (108,218 workweeks x \$10 unreimbursed business expenses per workweek), with chances of certification and liability risks (50% and 30% respectively) resulting in a risk-adjusted exposure of **\$162,327.00**.
- Performing risk-adjusted valuations for all claims yields a total value in the range of **\$1,677,889.32**, excluding PAGA. (Id.)
- PAGA penalties were calculated as having a maximum realistic exposure of **\$1,868,000.00** (934 aggrieved employees estimated to have worked during one-year statutory period x \$2,000.00 civil penalties), but a risk adjusted value of **\$373,600.00**, after factoring in risks of reduction in penalties pursuant to Court discretion and the high risk of the inability to prove violations for all aggrieved employees.

As required under *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116 (2008) and *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*, 186 Cal. App. 4th 399 (2010), the maximum plausible and realistic recoveries versus the current risk-adjusted value of the claims are discussed in additional detail below:

(a) Key Class Data Elements at Time of Mediation:

- 1) Class Members: approximately 1,239
- 2) Work Weeks: approximately 108,218
- 3) PAGA Employees: approximately 934
- 4) Gross Settlement Amount: \$1,500,000.00

(b) **KULLAR/MUNOZ ANALYSIS: Unpaid Wages Due to Off-the-Clock Work**

- 1) Plaintiff's claims for unpaid wages due to off-the-clock work is based on Defendants' requirement for Class Members to arrive early to stay in line to clock in to work, to work off-the-clock after the end of their shifts to check their next shift schedules and to clock out for meal periods and continue working through meal periods not to create overtime without approval.
- 2) Defendants deny these allegations and contends they compensated for all time.
- 3) **Risk-adjusted Exposure Analysis:**

Calculated maximum recovery:	\$1,801,829.70
Estimated certification probability	50%
Estimated chance of prevailing on merits	30%
Max recovery × certification risk × chance or success on merits = Present Settlement Value	\$270,274.46

(c) **KULLAR/MUNOZ ANALYSIS: Meal Periods**

- 1) Plaintiff's claim for meal break violations is based on Defendants' deficient California non-compliant meal period policy which does not state Plaintiff's and Class Members' entitlement to second meal periods, the timing of first meal periods and hinder them from leaving premises without approval and Class Members missed, late and short meal periods based on the produced by Defendants meal period records. Employees are entitled to meal periods of at least 30 minutes before exceeding five hours of work and to second meal periods of not less than 30 minutes before exceeding 10 hours of work. For each meal period missed or taken late an employer must pay the employee an additional one hour of compensation. Labor Code § 226.7. This additional hour of compensation is referred to as "premium

pay.”

- 2) Defendants maintain that the obligation is simply to “provide” meal periods, not to “ensure” that they are taken. *Brinker v. Superior Court*, 53 Cal. App. 4th 1004, 1034-41 (2012) (rejecting “ensure” standard). Furthermore, Defendants contend that any failure to take meal periods, or to take late meal periods, was a result of employee choice, not of any policy or practice of Defendants. Finally, Defendants assert that Plaintiff’s meal period claims would not be amenable to class treatment, since individual inquires would need to be made with respect to each specific shift that each employee missed a meal or rest period, to determine why that specific employee missed that specific meal or rest period on that specific shift.

3) **Risk-adjusted Exposure Analysis:**

Calculated maximum recovery:	\$1,801,829.700
Estimated certification probability	60%
Estimated chance of prevailing on merits	40%
Max recovery × certification risk × chance or success on merits = Present Settlement Value	\$432,439.13

(d) **KULLAR/MUNOZ ANALYSIS: Rest Breaks**

- 1) Plaintiff’s claim for rest break violations is based on Defendants’ deficient rest period policy devoid of the language required by California labor code and applicable wage order that requires employers to provide ten-minute rest breaks for every four hours, or major fraction, worked and policy not allowing to leave premises during work without approval. Employees are entitled to a rest period of at least 10 minutes every four hours worked, or major fraction thereof. For each rest period missed or taken late an employer must pay the employee an additional one hour of compensation.

Labor Code § 226.7. This additional hour of compensation is referred to as “premium pay.”

- 2) Defendants maintain that the obligation is simply to “authorize and permit” rest periods, not to “ensure” that they are taken. *Brinker v. Superior Court*, 53 Cal. App. 4th 1004, 1034-41 (2012) (rejecting “ensure” standard). Furthermore, Defendants contend that any failure to take rest breaks was a result of employee choice, not of any policy or practice of Defendants. Finally, Defendants assert that Plaintiff’s rest breaks claims would not be amenable to class treatment, since individual inquires would need to be made with respect to each specific shift that each employee missed a rest period, to determine why that specific employee missed that specific rest break on that specific shift.

3) **Risk-adjusted Exposure Analysis:**

Calculated maximum recovery:	\$1,801,829.70
Estimated certification probability	50%
Estimated chance of prevailing on merits	40%
Max recovery × certification risk × chance or success on merits = Present Settlement Value	\$360,365.94

(e) **KULLAR/MUNOZ ANALYSIS: Late Pay Penalties Under Labor Code § 203**

- 1) Labor Code § 203 provides that if an employer fails to pay an employee all wages due at termination or within 72 hours of resignation, then that employee’s wages shall continue as a penalty until paid for a period of up to thirty (30) days from the date they were due. Because class members stopped working for Defendants but again were not paid their full compensation for the reasons discussed above, class members did not receive all wages due upon termination of employment.

2) Defendants argues that a good-faith belief in the legality of its employment practices precludes a finding that any withholding of wages was “willful.” See Cal. Code Regs. § 13520 [good-faith dispute exists to a claim for waiting time penalties “when an employer presents a defense, based in law or fact which, if successful, would preclude any recovery on the part of the employee. The fact that a defense is ultimately unsuccessful will not preclude a finding that a good faith dispute did exist.”].) Defendants further maintain that because of viable defenses in both law and fact that waiting-time penalties could not be awarded and, in any case, such penalties were subject to a three-year limitations period under Labor Code § 203(b).

3) **Risk-adjusted Exposure Analysis:**

Calculated maximum recovery:	\$2,869,128.00
Estimated certification probability	50%
Estimated chance of prevailing on merits	20%
Max recovery × certification risk × chance or success on merits = Present Settlement Value	\$286,912.80

(f) **KULLAR/MUNOZ ANALYSIS: Wage Statement Violations**

1) Plaintiff also alleged a cause of action under Labor Code § 226(a) for not including all wages, or meal and rest break premiums in the wage statements in Class Members wage statements. That section states that an employer must provide an accurate itemized wage statement twice a month or each time wages are paid, whichever is the more frequent. Failure to do so entitles employees to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) for each violation in a subsequent pay period, not

1 exceeding an aggregate penalty of four thousand dollars (\$4,000). *See*
2 Labor Code § 226(e).

- 3 2) Defendants contend that Labor Code § 226(e) penalties are not automatic.
4 Rather, the employee must show (1) that he or she suffered injury from the
5 employer’s failure to provide compliant wage statements and (2)
6 Defendants’ noncompliance was “knowing and intentional.” Defendants
7 contend that class members suffered no injury from any failure to issue
8 compliant wage statements and, furthermore, that any noncompliance was
9 not knowing and intentional. Further, because the damages for this cause
10 of action are penalties, the statute of limitations only runs from one year
11 prior to the filing of the original complaint. *See* Code Civ. Proc. § 340.
12 Moreover, Defendants maintain that Plaintiff’s derivative claim for wage
13 statement ‘penalties would fail for the same reasons that Plaintiff’s
14 underlying claims would fail. The parties discussed these issues, and in
15 light of these and other considerations Class Counsel factored in a
16 reduction of liability and damages for this cause of action.

17 3) **Risk-adjusted Exposure Analysis:**

18

Calculated maximum recovery:	\$1,655,700.00
Estimated certification probability	50%
Estimated chance of prevailing on merits	20%
Max recovery × certification risk × chance or success on merits = Present Settlement Value	\$165,570.00

23

24 (g) **KULLAR/MUNOZ ANALYSIS: Unreimbursed Expenses Under Labor**
25 **Code § 2802**

- 26 1) Plaintiff also alleged a cause of action under Labor Code § 2802 for
27 failure to reimburse all necessary expenses. Under Labor Code § 2802,
28 “an employer shall indemnify his or her employee for all necessary

expenditures... incurred by the employee in direct consequence of the discharge of his or her duties.” Lab. Code § 2802. Plaintiff’s claims for unreimbursed expenses are based upon claims that class members were required to use their personal cellular telephones to download and use an application titled “When I work” to check their schedules, request leaves and communicate with supervisors regarding the work assignments and usage of their personal vehicles to drive from Defendants’ one worksite to another worksite without reimbursement.

2) Defendants contend that most employees did not incur significant expenses, they reimburse for mileage and that usage of cell phones was voluntary.

3) **Risk-adjusted Exposure Analysis:**

Calculated maximum recovery:	\$1,082,180.00
Estimated certification probability	50%
Estimated chance of prevailing on merits	30%
Max recovery × certification risk × chance or success on merits = Present Settlement Value	\$162,327.00

(h) QUASI- KULLAR/MUNOZ ANALYSIS: PAGA

1) The Labor Code Private Attorneys General Act, Labor Code § 2699 *et seq.*, allows Plaintiff to obtain civil penalties on behalf of herself and other class members for Defendants’ violation of any provision of the Labor Code enumerated under Labor Code § 2699.5. Where civil penalties are provided in the statute, those civil penalties are recoverable; where no civil penalties are recoverable, Labor Code § 2699(f) establishes civil penalties of one (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation. Pursuant to Labor Code § 2699(i),

seventy-five (75) percent of the penalties recovered must be allocated to the Labor and Workforce Development Agency (LWDA), with the remaining twenty-five (25) percent allocated to the affected employees. The limitations period is one year prior to the filing of the complaint.

2) The provisions of the Labor Code potentially triggering PAGA penalties in this case include but are not limited to Labor Code §§ 203, 226(a), 226.7, and 510. Defendants asserted that if PAGA penalties were mandatory, an employer’s PAGA liability would be huge because of the possibility of collecting multiple civil penalties for a single violation, and thus such penalties would almost always dwarf the damages available under the causes of action proper. However, PAGA penalties are not mandatory but permissive. Labor Code § 2699(e)(2) states that “a court may award a lesser amount than the maximum civil penalty amount specified by this part if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.” *See also Thurman v. Bayshore Transit Management, Inc.*, 203 Cal. App. 4th 1112, 1135 (2012) [affirming reduction of PAGA penalties].) Defendants here maintains that they have a strong argument that it would be unjust to award maximum PAGA penalties.

3) Furthermore, PAGA penalties are also completely derivative of each and every other claim. Finally, under *Amaral v. Cintas Corp.*, 163 Cal. App. 4th 1157(2008), it can be argued that penalties under PAGA could, at best, be awarded only at the rates obtainable for initial violations under the applicable statutes, because Defendants had never been notified of the alleged violations. *Id.*, at 1208, 1209.

4) **Risk-adjusted Exposure Analysis:**

Calculated maximum recovery:	\$1,868,000.00
------------------------------	-----------------------

Discount reduction factor for risk of Court reduction and uncertainty of proof for all aggrieved employees	20%
Max recovery × risk reduction = Present Settlement Value	\$373,600.00

With the assistance of Class Counsel’s retained damages expert, Class Counsel estimated Defendants’ maximum total exposure on the PAGA claim at approximately **\$1,868,000.00**. This number presupposes underlying claims are proven at a plausible rate and that the Court awards the full base penalties for each. Class Counsel then applied discounts in light of the countervailing arguments with regard to the other causes of action, and the Court’s power to award “a lesser amount than the maximum civil liability.” Accordingly, due to the speculative nature of a valuation for this claim, a discount of **80%** was applied to account for the difficulty of prevailing on this claim.

- (i) **Kullar Summary:** Indulging the most optimistic estimates and improbably favorable outcomes, the maximum reasonable recovery is estimated to be approximately **\$12,880,497.10**, including PAGA. The settlement amount is about **12%** of that amount. The calculated current settlement value is **\$2,051,489.32** (calculated by adding the risk-adjusted amounts in the charts above together), and the settlement is **73%** of the current risk-adjusted settlement value. The bottom line is that the settlement is about **12%** of the *maximum* plausible recovery for the 1,596 Class Members, and it is a reasonable settlement, given that the full amount is very unlikely to be recovered.

18. This result here is fully supportable as reasonable. First, it is important to recognize the wilfulness finding required for Labor Code §§ 203 and 226 is challenging to establish. Second, rest break and meal period claims have been challenging to certify for many years, even after *Brinker*. Many risks are eliminated through settlement. And, with respect to those risks, certification rates in California

are **lower** than conventional wisdom holds. See, e.g., H. Scott Leviant, *Second Interim Report on class actions in California sheds new light on certification* (February 19, 2010), [www.thecomplexlitigator.com](http://www.thecomplexlitigator.com/post-data/2010/2/19/second-interim-report-on-class-actions-in-california-sheds-n.html), available at <http://www.thecomplexlitigator.com/post-data/2010/2/19/second-interim-report-on-class-actions-in-california-sheds-n.html>; see also, *Findings of the Study of California Class Action Litigation, 2000-2006*, available at <http://www.courtinfo.ca.gov/reference/documents/class-action-lit-study.pdf> (finding, at page 5, and in Table 9, at page 15, that only 21.4% of all class actions were certified either as part of a settlement **or** as part of a contested certification motion). Here, the estimated certification probabilities are **above** the average rate at which cases were certified in California over the study years, based upon data available through the California Courts websites. In sum, well *under* 20% of all cases filed as proposed class actions are ultimately certified by way of a *contested* motion. Since the recovery is roughly 12% of the maximum theoretical recovery (estimated to be approximately \$12,880,497.10, *including* PAGA), it meets the expected outcome under that metric. This Settlement achieves the goals of the litigation.

ESTIMATED SETTLEMENT PAYMENTS TO CLASS MEMBERS AND PAGA
EMPLOYEES

19. After deducting Class Counsel's attorneys' fees and costs, Service Payment to Plaintiff, administration costs, and the payment to the LWDA, the remainder will be used to pay Settlement Class Payments to Class Members who do not opt out and PAGA Settlement Payments to PAGA Employees. For the Settlement Class Payments, each Class Member will receive a share based on the number of workweeks each Class Member worked for Defendants within the Class Period. For PAGA individual settlement payment PAGA Employees will receive a share based on the number of pay periods each PAGA Employee worked for Defendants during the PAGA Period. The Net Settlement Amount is estimated to be at least **\$874,050.00 including** \$25,000.00 as the aggrieved employees' share of PAGA allocation, resulting in an estimated average gross payment per Class Member of approximately **\$1,210.65**. The estimated number of workweeks as of January 18, 2025 is 108,218. Based on the estimate provided by Defendants the lowest number of workweeks worked by class members is 1 workweek while the highest number of workweeks worked by class member is 260 workweeks. Therefore, the estimate of the lowest individual class payment is \$8.02, and the highest individual class

1 settlement payment is \$2,084.89. The amount to be designated as PAGA Penalties is **\$100,000.00**, which
2 will be distributed as 75% (\$75,000.00) to the LWDA and 25% (\$25,000.00) to the Aggrieved
3 Employees. The Aggrieved Employees group consists of 934 non-exempt employees who are or were
4 employed by Defendants within the State of California during the PAGA Period. It is estimated that
5 there are approximately 25,188 pay periods during the PAGA period. Based on information provided by
6 Defendants the lowest number of pay periods worked by PAGA employees during the PAGA Period is 1
7 pay period while the highest number of pay periods worked by PAGA employees during the PAGA
8 Period is 84 pay periods. The total PAGA portion of the Settlement Amount for PAGA Employees is
9 \$25,000.00. Therefore, the estimated lowest individual PAGA payment is \$0.90, and the estimated
10 highest individual PAGA settlement payment is \$75.50. In addition to Service Payment to be received
11 for representing class and PAGA employees in this action Plaintiff Kiberly M. Wilhelm will receive an
12 estimate of \$1,611.78 for 201 workweeks worked during the Class Period as individual class settlement
13 payment and an estimate of \$12.78 for 22 pay periods worked during the PAGA Period as individual
14 PAGA settlement payment. These numbers are estimates based on preliminary calculations made by
15 Defendants and might change after the final calculations based on the class period end date.

16 OTHER PENDING ACTIONS

17 20. I made reasonable inquiry of other members at Tunyan Law, APC, and I am not aware of
18 any class or other collective actions which assert claims similar to those asserted in the above-captioned
19 matter, on behalf of a class or group of individuals some or all of whom would be members of the class
20 defined in this action during the same class period. To the best of my knowledge, no Class Member has
21 refrained from bringing an action with claims similar to those raised in the Action, whether in reliance on
22 the Action or otherwise, and who thus might be prejudiced by entry of judgment in this Action.

23 THE EXPERIENCE OF CLASS COUNSEL

24 21. I am a founding partner of Tunyan Law, APC and has been engaged in the practice of
25 employment and labor law for five years and focused exclusively on Plaintiff's employment law and
26 wage-and-hour class actions and more than twenty-five years in practice of law in general. I have
27 handled hundreds of wage-related class actions.

28 22. Prior to establishing my own practice, I was an associate attorney at Moon & Yang, APC and

1 Mahoney Law Group, APC. Since I was admitted to the California Bar, my practice has focused mainly
2 on labor and employment class action lawsuits involving California and federal labor laws. Along with
3 those firm's other attorneys I have successfully settled more than 50 class action and PAGA matters
4 during that time span and was routinely appointed lead or co-lead class counsel in courts in California
5 including by way of motion for class certification. I have additionally successfully settled about 25 class
6 and PAGA matters during the last two years prior to filing this motion.

7 23. I received my Juris Doctorate from the State Yerevan University and my LL.M. from
8 University of Minnesota Law School. Prior to moving to California and starting to practice law in
9 California I practiced law in Armenia for about twenty years as a licensed attorney. I have been general
10 counsel and head of legal department for big telecommunication and financial corporations in Armenia
11 for the last 12 years prior to moving to California. I managed corporate legal department and corporate
12 legal and regulatory affairs and handled complex litigation matters as well as complex transactions for
13 many years.

14 24. I am a current member of the California Employment Lawyers Association (CELA). I
15 have been an active member of the State Bar of California in good standing.

16 25. I am experienced in prosecuting employment matters, particularly class actions, and I focused
17 a substantial percentage of my practice on wage, hour, and working conditions violations. In addition to
18 the present case, I represented Plaintiff and the class members and have extensively worked on many
19 wage-and-hour class cases and have been appointed as class or PAGA counsel myself or along with
20 other counsel and co-counsel for wage-and-hour class action lawsuits in various counties throughout
21 California such as: *Segovia v. Shelter Island, Inc.*, Case N 37-2024-00005168-CU-OE-CTL, San Diego
22 Superior Court; *Rodriguez v. TFC Manufacturing, Inc.*, Los Angeles Superior Court, Case N
23 24STCV02351; *Garcia v. C&R Restaurant Group, L.P.*, Los Angeles Superior Court, Case N
24 23STCV19037; *Oregel v. Diablo Range Framing, Inc.*, Contra Costa County Superior Court, Case N
25 C23-00697; *Rodriguez, et al. v. Roy Miller Painting, Inc.*, Orange County Superior Court, Case N 30-
26 2023-01314830-CU-OE-CXC; *Athey v. Walker Evans Enterprises*, Riverside County Superior Court,
27 Case N CVRI2301534; *Camposeco v. Smarte Carte, Inc.*, Los Angeles Superior Court, Case N
28 23STCV07897; *Bazan v. Casa Martin, LLC, et al.*, Los Angeles Superior Court, Case N 23STCV04670;

1 *Powers v. Mario's Place Inc.*, Riverside County Superior Court, Case N CVRI2301652; *Viveros v. D*
2 *and T Restaurants, Inc., at al.*, Los Angeles Superior Court, Case N 23STCV10019; *Empy v. 24*
3 *Windward Ave LLC*, Los Angeles County Superior Court, Case N 23STCV18608; *De Martinez v.*
4 *Facility Services Partners, Inc.*, Riverside County Superior Court, Case N CVRI2304625; *Hernandez v.*
5 *Caliber Aerospace, LLC, et al.*, Los Angeles Superior Court, Case N 23STCV20323; *Mejia v. KF*
6 *Casitas, LLC*, Los Angeles Superior Court, Case N 23STCV06090; *White v. SGB Ventures, LLC*, Tulare
7 County Superior Court, Case N VCU296946; *Galvan v. Western Sky Dairy, LLC*, Kern Country
8 Superior Court, Case N BCV-23-100992; *Rocke v. Pink Chicku LLC*, Santa Clara County Superior
9 Court, Case N23CV41357; *Gonzalez v. RV Retailer San Diego, LLC, et al.*, Riverside County Superior
10 Court, Case N CVRI2301403; *Evans, et al. v. Downtown Women's Center*, Los Angeles County
11 Superior Court, Case N 22STCV06578 (class certification motion granted in part); *Sanchez v.*
12 *Anodizing Industries, Inc.*, Los Angeles County Superior Court, Case N 21STCV30722; *Godoy v.*
13 *Intertrade Industries, LTD*, Orange County Superior Court, Case No. 30-2020-01151921-CU-OE-CXC;
14 *Fuentes v. Actron Manufacturing Inc.*, Los Angeles Superior Court, Case N 20STCV31099; *Gonzalez v.*
15 *Community Health Systems, Inc.*, San Bernardino County Superior Court, Case N CIVDS2015678;
16 *Rodriguez v. Progress Lighting, Inc. et al.*, San Bernardino County Superior Court, Case N
17 CIVDS2023894; *Castillo v. Gibson Overseas, Inc.*, San Bernardino Superior Court, Case N
18 CIVDS2022537; *Mumphrey v. People's Care Northern California, Inc. et al.*, San Joaquin County
19 Superior Court, Case N STK-CV-UOE-2019-0016397; *Ochoa v. Orlando Spring Corp*, Los Angeles
20 Superior Court, Case N 20STCV343129; *Findley v. USC, et al.*, Los Angeles Superior Court, Case
21 N 20STCV47290; *Maldonado v. Techmer PM, LLC*, Los Angeles Superior Court, Case N
22 20STCV21918; *Huerta v. IRS*, Los Angeles Superior Court, Case N 20STCV09163; *Mata v.*
23 *Marukai Corporation*; Los Angeles Superior Court, Case N 20STCV00959; *Tapia v. Home &Body*;
24 Orange County Superior Court, Case N 30-2020-01155185-CU-OE-CXC; *Ruvalcaba v. Quinn*
25 *Group, Inc.*, Los Angeles Superior Court, Case N 20STCV41323; *Bravo v. FIDM*, Los Angeles
26 Superior Court, Case N 19STCV25338; *Lomeli v. Plaskolite et al.*, Los Angeles Superior Court,
27 Case N 21STCV14611; *Alcantar v. Classic Salads LLC*, Santa Cruz County Superior Court, Case N
28 21CV002309; *Casas v. Freedom Solar Services, et al.*, Los Angeles Superior Court, Case N

1 21STCV20233; *Serrano v. Barstow Community Hospital*, San Bernardino Superior Court, Case N
2 CIVDS2006967; *Lopez v. Fairway Staffing Services*, et al., Los Angeles Superior Court, Case N
3 21STCV26640; *Linden v. Marugame Udon USA, LLC*, Los Angeles Superior Court, Case No.
4 20STCV00728; *Salter v. U.S. Reports*, et al., Los Angeles Superior Court, Case N 19STCV30384;
5 *Perez v. Torn & Glasser, Inc.*, Los Angeles Superior Court, Case N 21STCV43614; *Gomez v. Arya*
6 *Ice Cream Distributing Co., Inc*, Los Angeles Superior Court, Case N 21STCV31170; *Herrera v.*
7 *Coastal Construction & Lumber*, Santa Cruz County Superior Court, Case N 22CV394683; *Garcia*
8 *v. San Jose Water Company*, Santa Clara County Superior Court, Case No. 22CV396328; *Ramirez v.*
9 *Partners Personnel Management Services LLC*, Los Angeles Superior Court, Case N
10 21STCV31253; *Ramirez v. Merrill Gardens LLC*, Eastern District Court of California, Case N1:22-
11 cv-00542-DAD-SAB; *Garcia v. Tri-Valley Plastering, Inc.*, Fresno County Superior Court, Case N
12 22CECG00591; *Garcia v. South Valley Companies, Inc.*, Kern County Superior Court, Case N
13 BCV-22-100465; *Morales v. Wiseguys Custom Home Theater, LLC*, San Diego Superior Court, Case
14 N37-2019-00070151-CU-OE-CTL.

15 26. Artur Tunyan is another partner and attorney at Tunyan Law, APC. He received his Juris
16 Doctorate from the State Yerevan University and his LL.M. from the American University of Armenia
17 and University of Illinois Chicago, School of Law. Prior to moving to California and starting to practice
18 law in California he practiced law in Armenia for about twenty-five years. He oversaw international
19 donor-funded projects for the judiciary and managed public-private partnership initiatives in sectors such
20 as energy, banking, finance, and aviation. He managed complex transactions and litigation matters for
21 many years.

22 27. My current contingent billing rate is consistent with my practice area, legal market and
23 accepted hourly rates considering also that I practiced law in another country for additional 20 years
24 which brings a total of almost 26 years of experience practicing law. The 2024-2025 Adjusted Laffey
25 Matrix states that an attorney with 4 to 7 years experience can reasonably charge \$581 per hour. See
26 <http://www.laffeymatrix.com/see.html>.5

27 REASONABLENESS OF THE REQUESTED FEE AWARD

28 28. When this case was taken on a contingent fee basis, with the firm agreeing to assume

responsibility for litigation costs, the ultimate result was far from certain. In the course of this litigation, Tunyan Law, APC, paid filing fees, Westlaw fees, copy charges and mailing, telephone and express mail charges. Mediation and expert fees. There was never a guarantee that Tunyan Law, APC, would recoup those expenditures. The firm took on this case, which necessarily required the firm to forego other opportunities, given finite resources to devote to cases.

29. Because of the uncertainty of the outcome in this and other wage and hour litigation undertaken by Tunyan Law, APC, we took this case with the expectation that a risk enhancement, either in the form of a lodestar multiplier or a percentage of the fund award equivalent thereto, would be available if we prevailed. This expectation stems from the fact that many cases we undertake as putative class actions do not resolve successfully.

30. Class Counsel's experience in employment class actions was integral in evaluating the strengths and weaknesses of the case against Defendants and the reasonableness of the settlement. Practice in the narrow fields of wage and hour litigation requires skill and knowledge concerning the rapidly evolving substantive law (state and federal), as well as the procedural law of class action litigation.

31. In the past four years, I have settled many wage-and-hour class actions. Just as the Court in *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66, n.11 (2008) observed, it has been my experience, that attorney fee awards of one-third of a common settlement fund are the rule, rather than the exception. Here, Class Counsel agrees that they will seek no more than one third of the settlement amount in fees. This is consistent with common practice, consistent with Ninth Circuit practice, consistent with California law approving the percentage of the fund method to award fees from a common fund, *Laffitte v. Robert Half Intern. Inc.*, 1 Cal. 5th 480, 503 (2016), and not inappropriate in light of the many hours expended by attorneys and paralegals performing work for Plaintiff before and after the filing of this matter. That work includes:

- (a) Numerous interviews with Plaintiff and review of documents provided by Plaintiff;
- (b) Investigation of the matter and exploring the corporate structure of Defendants;
- (c) Legal research and investigation regarding the Defendants' practices at numerous points in the litigation;

- (d) Legal research regarding claims in this action;
- (e) Preparation of multiple drafts of the original class action complaint and finalization and filing of the original class action complaint;
- (f) Review of an amended complaint that added Plaintiff' PAGA claim, and finalization of that complaint;
- (g) Drafting the LWDA Notice letter;
- (h) Drafting joint statements and joint stipulations;
- (i) Review of payroll and time data;
- (j) Review of Defendants' policy documents;
- (k) Extensive "meet and confer" efforts with Defendants' counsel regarding the sample size and to obtain relevant documents and information through informal discovery;
- (l) Selecting a mediator and mediation date;
- (m) Conducting informal discovery;
- (n) Review of the records produced by Defendants in response to informal discovery;
- (o) Working with opposing counsel for the receipt of a representative sampling and analyzing the same with the aid of expert consultants and Plaintiff to perform analyses of liability and exposure prior to attendance of the mediation;
- (p) Preparation of a damages model with the aid of a statistics expert, analysis of the audit/analysis results;
- (q) Communicate with Plaintiff who requested updates or other information regarding this matter;
- (r) Research and preparation of the mediation brief;
- (s) Attendance at mediation;
- (t) Drafting, negotiating, and reviewing multiple drafts of the Settlement Agreement and attachments; and
- (u) Preparation of the initial motion for preliminary approval and multiple revisions thereafter.

32. I anticipate that Class Counsel will spend an additional 45 hours on this matter, appearing at the hearing of preliminary approval, answering class member calls, working with the administrator to finalize documents in mailing format, conferring with counsel over any notice issues, drafting the final approval motion and motion for fees and costs, appearing at the final approval hearing, and resolving any post-approval issues that may arise, and appearing at a final accounting hearing. Class Counsel has also incurred costs in this matter that will be detailed at the time final approval is sought. Class Counsel has agreed to a cap on recoverable costs of \$30,000, and if total incurred costs exceed the cap, Class Counsel will request no more than the agreed-upon cap.

THE CONTRIBUTION OF PLAINTIFF AND THE REASONABLENESS OF THE REQUESTED
SERVICE PAYMENT

33. Here, Plaintiff seeks a Service Payment of **\$5,000.00**. This amount is very reasonable given the risks undertaken by Plaintiff for involvement in the Action. Taking the risk of filing a lawsuit against an employer deserves recognition, especially in light of the settlement achieved by Plaintiff. Additionally, Plaintiff were actively involved in the litigation and settlement negotiations of this Action, expending considerable effort in advancing the interests of the Class. Plaintiff provided information to counsel before the filing of this matter; assisted with the settlement process (which included conferring with counsel during the preparation of Plaintiff's mediation brief) and regularly conferred with counsel regarding the case whenever questions arose. I estimate that Plaintiff contributed dozens of hours of time to the prosecution of this matter. Plaintiff's Declaration also confirms that Plaintiff was an active participant in the filing and settlement of this case.

THE THIRD-PARTY ADMINISTRATOR

34. The parties have agreed that administration will be handled by a third-party administrator. In counsel's experience as class counsel in similar wage-and-hour actions with a similar number of employees, ILYM Group, Inc. is fully capable of administering the settlement at a competitive and reasonable cost and should be approved by the Court to administer the settlement notice process. Phoenix was selected because it submitted a low bid in the amount of **\$15,950.00** for administration services. ILYM Group, Inc.. has also provided a declaration confirming its experience and its implementation of measures designed to protect Class Member data and Class Settlement funds.

CLASS CERTIFICATION

35. The class is ascertainable by objective criteria. The Class Members are: All individuals employed by Defendants in California and classified as “non-exempt” at any time during the Class Period and who did not sign arbitration agreements with class waivers (the “Class Period” is from January 30, 2020 through the date the Court grants preliminary approval of the Settlement or 90 days after January 18, 2025, whichever is earlier). “Settlement Class Members” are those Class Members who do not submit timely exclusion requests to the Settlement Administrator. (Settlement, ¶¶ 3-4.)

36. The class is sufficiently numerous. Based upon Defendants’ records, Defendants represented that there are approximately 1,239 Class Members as of January 18, 2025. Plaintiff’s counsel believes that the data is reliable.

37. Plaintiff is typical of the Class. Plaintiff was an employee of Defendants. Plaintiff worked during the class period. Plaintiff’s claims are typical of the claims of the Class proposed in this settlement. Like other class members, Plaintiff experienced work under policies and procedures impacting wage and hour compliance. No unique defenses applicable to Plaintiff has been identified that do not also exist as to other Class Members.

38. Common *issues* exist. Here, Class Members have shared a common interest in determining whether Defendants violated wage and hour requirements under state and related federal law, including the following issues: i. Whether or not Defendants paid proper wages to the Class; ii. Whether or not Defendants provided meal periods to the Class; iii. Whether or not Defendants provided rest periods to the Class; iv. Whether or not Defendants paid compensation timely upon separation of employment to former Class Members; v. Whether or not Defendants paid compensation timely throughout Class Members’ employment; vi. Whether or not Defendants provided accurate itemized wage statements to the Class; vii. Whether or not waiting-time penalties are available to the Class for violation of California Labor Code § 203; viii. Whether or not Defendants reimbursed for necessary business expenses pursuant to California Labor Code § 2802; ix. Whether or not Defendants engaged in unlawful or unfair business practices affecting the Class in violation of California Business and Professions Code §§ 17200-17208; and x. Whether or not Plaintiff and the Class are entitled to penalties pursuant to PAGA.

39. From our review of the documentation provided, we determined that for purposes of these claims, Defendants' policies and practices are either identical, or sufficiently similar, to raise the same questions of liability, and applied to all Class Members. Because Class Members would have to prove the same issues of law and fact to prevail, and because their potential legal remedies are identical, it would be preferable to resolve all Class Members' claims by means of the Settlement than to require each Class Member to litigate his or her individual claims. Therefore, common questions predominate over any questions that may be unique to individual Class Members, and class-wide settlement is superior to any other method of resolution.

40. My Declaration, in Paragraphs above, summarizes the firm's experience that establishes its adequacy to represent the Class. Plaintiff's counsel has no known conflicts of interest with absent Class Members. Plaintiff have demonstrated, through participation in this action, a willingness to serve as a representative for the Class. Plaintiff has no known conflicts of interest with absent Class Members and has agreed to place the class interests above Plaintiff's own. Plaintiff's actions also demonstrate adequacy.

41. By consolidating all of these potential individual actions into one proceeding, this Court's use of the class action device enables it to manage this litigation in a manner that serves the economics of time, effort and expense for the litigants and the judicial system. Absent class treatment, similarly-situated employees with small but potentially meritorious claims for damages would, as a practical matter, have no means of redress because of the time, effort and expense required to prosecute individual actions. Moreover, in the context of settlement, superiority concerns are almost non-existent, since case management is controlled and a methodology for trial need not be identified.

EXHIBITS

42. As noted above, a true and correct copy of the JOINT STIPULATION OF CLASS AND PAGA REPRESENTATIVE ACTION SETTLEMENT is attached hereto as **Exhibit “1.”** The Settlement includes Exhibit A (the “Notice”).

43. Attached hereto as **Exhibit “2”** is a Proof of Service of the proposed settlement papers to the Department of Industrial Relations, through its online submission portal.

PAGA SETTLEMENT NOTIFICATION TO DIR

44. Counsel for Plaintiff provided notice of the requested approval of the PAGA settlement through the online submission portal.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct. Executed this 10th day of April 2025, at Glendale, California.



LILIT TUNYAN, "Declarant"

Exhibit “1”

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Attorneys for Plaintiff KIMBERLY M. WILHELM

(Defense counsel information on next page)

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE

KIMBERLY M. WILHELM, as an individual
and on behalf of all employees similarly situated,

Plaintiff,

v.

KEMPER SPORTS MANAGEMENT, LLC, a
Delaware Limited Liability Company; KEMPER
SPORTS MANAGEMENT HOLDINGS, LLC,
a Delaware Limited Liability Company, and
DOES 1 through 50, inclusive,

Defendants.

Case No.: 30-2024-01376524-CU-OE-CXC

[Assigned for all purposes to Hon. Randall J.
Sherman, Dept. CX105]

**JOINT STIPULATION OF CLASS AND
PAGA REPRESENTATIVE ACTION
SETTLEMENT**

Action Filed: January 30, 2024
Trial Date: Not set

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10 Attorneys for Defendants KEMPER SPORTS MANAGEMENT, LLC;
11 KEMPER SPORTS MANAGEMENT HOLDINGS, LLC
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JOINT STIPULATION OF CLASS AND PAGA REPRESENTATIVE ACTION
SETTLEMENT

This Joint Stipulation of Class and PAGA Representative Action Settlement (“Settlement Agreement” or “Settlement” or “Agreement”) is made and entered into by and between Plaintiff KIMBERLY M. WILHELM, individually, and on behalf of all others similarly situated, (“Plaintiff” or “Class Representative”), and Defendants KEMPER SPORTS MANAGEMENT, LLC; KEMPER SPORTS MANAGEMENT HOLDINGS, LLC and KEMPER SPORTS MANAGEMENT, INC.¹ (“Defendants”). Plaintiff and Defendants are collectively referred to herein as “the Parties.”

THE PARTIES STIPULATE AND AGREE as follows:

DEFINITIONS

1. “Action” means Plaintiff’s lawsuit alleging wage and hour violations against Defendants entitled *Kimberly M. Wilhelm v. Kemper Sports Management, LLC, et. al.*, United States District Court, Central District of California, Case No. 8:24-cv-00501 – RGK-DFM, is referred to herein as the “Action.”
2. “Complaint” refers to the operative complaint, which is the First Amended Complaint.
3. “Class Period” means the period from January 30, 2020 through the date the Court grants preliminary approval of the Settlement or 90 days after January 18, 2025, whichever is earlier.
4. “Class” or “Class Members” consist of: All persons who are or previously were employed by defendant Kemper Sports Management, LLC and/or Kemper Sports Management, Inc., defendant Kemper Sports Management Holdings, LLC, in California and classified as non-exempt employees at any time during the Class Period and who did not sign arbitration agreements with class waivers. “Settlement Class Members” are those Class Members who do not submit timely exclusion requests to the Settlement Administrator. Defendants’ best estimate is that the Class included approximately 1,239 individuals as of January 18, 2025.
5. “Class Counsel” means TUNYAN LAW, APC and THE SENTINEL FIRM, APC.

¹ Plaintiff named Kemper Sports Management, LLC and Kemper Sports Management Holdings, LLC as defendants. However, within Class and PAGA periods Plaintiff and other class and PAGA group members worked for both Kemper Sports Management, Inc., which is no longer existing as a legal entity and later Kemper Sports Management LLC which was the legal entity which continued employing Kemper Sports Management, Inc. employees after Kemper Sports Management, Inc. was terminated.

6. “Class Representative” or “Plaintiff” means Plaintiff KIMBERLY M. WILHELM.

7. “Covered Workweeks” means the number of weeks during which Class Members performed work for Defendants in California during the Class Period.

8. “Response Deadline” means sixty (60) days after the Settlement Administrator initially mails the Notice Packet to Settlement Class Members and the last date on which Settlement Class Members may submit a request for exclusion or written objection to the Settlement. In the case of a re-mailed Notice Packet, the Response Deadline will be the later of 60 calendar days after initial mailing or 14 calendar days from re-mailing. The Response Deadline may be extended only as expressly described herein.

9. “Defendants’ Counsel” means SEYFARTH SHAW LLP.

10. “PAGA Allocation” means the amount that the Parties have agreed to allocate to resolution of the claim for violation of the Labor Code Private Attorneys General Act of 2004 (Cal. Lab. Code §§ 2698, *et seq.*, “PAGA”). The Parties have agreed that the PAGA Allocation will be \$100,000.00 from the Gross Settlement Amount. Pursuant to PAGA, Seventy Five Percent (75%), or \$75,000.00, of the PAGA Allocation will be paid to the LWDA (“PAGA Penalty Payment”), and Twenty Five Percent (25%), or \$25,000.00, of the PAGA Allocation will be included in the Net Settlement Amount for PAGA Employees (“PAGA Settlement Payment”).

11. “PAGA Period” means the period from January 30, 2023 through the date the Court grants preliminary approval of the Settlement or 90 days after January 18, 2025, whichever is earlier.

12. “PAGA Employees” means all persons who are or previously were employed by defendant Kemper Sports Management, LLC and/or Kemper Sports Management, Inc., defendant Kemper Sports Management Holdings, LLC, in California and classified as non-exempt employees at any time during the PAGA Period. PAGA Employees cannot opt out of the settlement of the PAGA claim.

13. “PAGA Pay Periods” means the number of pay periods PAGA Employees worked during the PAGA Period.

14. “Released Class Claims” means the claims being released as described in Paragraph 37 below.

15. “Released PAGA Claims” means the claims being released as described in Paragraph 37

below.

16. “Settlement Payments” means all of the payments to Settlement Class Members (“Settlement Class Payments”) and all of the payments to the PAGA Employees (“PAGA Settlement Payments”).

STIPULATED BACKGROUND

17. On January 30, 2024, Plaintiff filed a putative Class Action alleging the following labelled causes of action: (1) failure to pay all wages; (2) failure to provide meal periods; (3) failure to provide rest periods; (3) failure to maintain and provide accurate itemized wage statements; (5) failure to indemnify necessary business expenses; (6) failure to timely pay all wages and final wages; (7) Unfair Business Practices in violation of Bus. & Prof. Code § 17200 et seq. On March 7, 2024, Defendants filed a Notice of Removal of this action to the United States District Court, Central District of California on the basis of the Class Action Fairness Act pursuant to 28 U.S.C. § 1441. On May 1, 2024, Plaintiff filed her First Amended Complaint adding the Private Attorneys General Act (“PAGA”) cause of action. In the Complaint, Plaintiff sought to represent all persons that worked for Defendants in California as an hourly-paid, non-exempt employee at any time during the period beginning four years before the filing of the initial complaint and ending when Notice to the Class is sent.

18. Plaintiff satisfied the administrative exhaustion requirement that is a prerequisite to filing a claim for Civil Penalties under the Labor Code Private Attorneys General Act of 2004 [Lab. Code § 2699, et seq.] (“PAGA”) by submission of the notice to the LWDA and Defendants on January 30, 2024.

19. Solely for purposes of settling this case, the Parties and their respective counsel stipulate and agree that the requisites for establishing class certification with respect to the Class Members have been met and are met.

20. Should, for whatever reason, the Settlement not become effective, class certification as part of the Settlement shall have no bearing on, and shall not be admissible in connection with whether Class Members and/or the class claims should be certified in a non-Settlement context in this Action or in any other lawsuit. Defendants expressly reserve their right to oppose class certification in this or any other action should this Settlement not become effective.

21. Defendants deny any liability or wrongdoing of any kind whatsoever associated with the

claims alleged in the Action, and Defendants further deny that, for any purpose other than settling this lawsuit, the action is appropriate for class or representative treatment. Defendants contend, among other things, that they have complied at all times with the California Labor Code and the applicable Wage Orders of the Industrial Welfare Commission. Furthermore, with respect to all claims, Defendants contend that they have complied at all times with the California Business and Professions Code.

22. It is the desire of the Parties to fully, finally, and forever settle, compromise, and discharge all disputes and claims arising from or related to the Complaint.

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

24. The Parties agree to cooperate and take all steps necessary and appropriate to obtain preliminary and final approval of this Settlement. Class Counsel is responsible for preparing the motion for preliminary approval of the Settlement as well as any motion for final approval. Good faith efforts will be made to have the preliminary approval hearing within 60 days after counsel for Defendants provide Class Counsel with the draft of the final settlement agreement. Both Class Counsel and Defendants' Counsel shall provide a declaration in support of approval motion informing the court as to whether the parties, after making reasonable inquiry, are aware of any class, representative or other collective action in any other court that asserts claims similar to those asserted in the action being settled. If any such actions are known to exist, the declarations shall also state the name and case number of any such case and the procedural status of that case and describe the impact of the settlement on that case.

25. The Parties agree to stay all proceedings in the Action, except such proceedings necessary to implement and complete the Settlement, pending the Final Approval hearing to be conducted by the

1 Court.

2 **PRIMARY TERMS OF SETTLEMENT**

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

5 (a) It is agreed by and among the Settlement Class, PAGA Employees, and
6 Defendants that this case and any claims, damages, or causes of action arising out
7 of the disputes which are the subject of this case, be settled and compromised as
8 between the Settlement Class, PAGA Employees, the LWDA, and Defendants,
9 subject to the terms and conditions set forth in this Settlement and the approval of
10 the Court.

11 (b) Effective Date: The "Effective Date" of the Settlement will be the date
12 upon which all of the following have occurred: (i) the Parties stipulate to seek
13 remand to state court and the Action is remanded; (ii) the state court grants final
14 approval of the Settlement and (iii) the state court's Judgment approving the
15 Settlement becomes Final. Final shall mean the latest of: (a) if no Class Member
16 objects to the Settlement, the day the Court enters Judgment; (b) if one or more
17 Class Members file timely objection to the Settlement, the later of: (1) the date
18 on which the time for all appeals relating to objections to Settlement and the
19 final approval order has expired; or (2) if an appeal, review or writ is sought, the
20 date on which the highest reviewing court renders its decision denying any
21 petition (where the immediately lower court affirmed the judgment) or
22 affirming the judgment; or (c) if there is an appeal of the Court's Judgment, the
23 date the Judgment is affirmed on appeal, the date of dismissal of such appeal, or
24 the expiration of the time to file a petition for review with any appellate court
25 that has jurisdiction, or, (d) if a petition for review is filed, the date of denial of
26 the petition, or the date the Court's Judgment is entered, pursuant to such
27 petition. Provided, however, if the California Labor & Workforce Development
28 Agency ("LWDA") has commenced an investigation or issued a Citation prior

1 to the Effective Date, as determined under the forgoing definition, the Effective
2 Date will be extended to the date that the LWDA concludes its investigation or
3 resolves the Citation (whichever is later), or if the LWDA objects to the
4 Settlement, the date when the LWDA's objection to the Settlement is resolved
5 and no longer appealable.

6 (c) Gross Settlement Amount: Defendants' maximum total payment under the
7 Settlement, including all attorney's fees and costs, the Service Payment to Class
8 Representative, the costs of settlement administration, the PAGA Allocation, and
9 any other payments provided by this Settlement, is One Million and Five Hundred
10 Thousand Dollars (\$1,500,000.00) ("Gross Settlement Amount"), subject to the
11 Escalator Clause and except that, to the extent that any portions of the Class
12 Members' Settlement Payments constitute wages, Defendants will be separately
13 responsible for any employer payroll taxes required by law, including the employer
14 FICA, FUTA, and SDI contributions.

15 (d) Escalator Clause: Defendants represent that the number of Class Members was
16 approximately 1,239 individuals as of January 18, 2025, and the number of
17 workweeks worked in the Class Period for those Class Members was
18 approximately 108,218 as of that date. If it is later determined that, the number of
19 Covered Workweeks in the Class Period is more than 10% greater than the
20 estimated number of workweeks as of January 18, 2025 (there are 119,040 or more
21 Covered Workweeks), Defendants can either have the Gross Settlement Amount
22 increased by 1% for each percent over the 10% threshold that the actual number of
23 Covered Workweeks exceed the estimated number of workweeks (if the number of
24 workweeks increases by 11%, the Gross Settlement will increase 1%), or have the
25 Class Period end on the date that the estimated number of Covered Workweeks
26 exceed 10% threshold (the "Escalator Clause").

27 (e) Non-reversionary Settlement: No portion of the Gross Settlement Amount will
28 revert to Defendants.

- (f) No Claims Required: Class Members will not be required to submit a claim to receive their Settlement payment.
- (g) Net Settlement Amount: The Net Settlement Amount shall be calculated by deducting from the Gross Settlement Amount the following sums, subject to approval by the Court: (1) attorney's fees (not to exceed 33 and 1/3% of the Gross Settlement Amount, or \$500,000.00); (2) reasonable litigation costs (not to exceed \$30,000.00); (3) the Service Payment to Class Representative (not to exceed \$5,000.00); (4) the PAGA Penalty Payment in the amount of \$75,000.00 (which is 75% of the PAGA Allocation); and (5) costs of settlement administration (estimated not to exceed \$25,000). Settlement Payments to the Class Members and PAGA Employees will be calculated by the Settlement Administrator and paid out of the Net Settlement Amount as set forth below.
- (h) Payroll Taxes and Required Withholdings: To the extent that any portions of the Settlement Class Members' Settlement Payments constitute wages, Defendants will be separately responsible for any **employer** payroll taxes required by law, including the employer FICA, FUTA, and SDI contributions. Except for any employer payroll taxes, it is understood and agreed that Defendants' maximum total liability under this Settlement shall not exceed the Gross Settlement Amount. The Settlement Administrator will calculate and submit the Defendants' employer share of payroll taxes after advising Defendants of the total amount owed, in aggregate, as employer-side payroll taxes and receiving a lump sum payment from Defendants in that amount when the Gross Settlement Amount is delivered to the Settlement Administrator.
- (i) Settlement Class Payments (Excludes PAGA Payments): Settlement Class Payments will be paid out of the Net Settlement Amount. Each Settlement Class Member (i.e., those Class Members who do not opt out of the Class Settlement, as defined above) will be paid a pro-rata share of the Net Settlement Amount, less the PAGA Settlement Payments totalling \$25,000.00, as calculated by the Settlement

1 Administrator. The pro-rata share will be determined by comparing the individual
2 Settlement Class Member's Covered Workweeks employed during the Class
3 Period in California to the total Covered Workweeks of all the Settlement Class
4 Members during the Class Period as follows: [Workweeks worked by a Settlement
5 Class Member] ÷ [Sum of all Covered Workweeks worked by all Settlement Class
6 Members] × [Net Settlement Amount – all PAGA Settlement Payments] =
7 individual Settlement Payment for a Settlement Class Member. Settlement Class
8 Payments in the appropriate amounts will be distributed by the Settlement
9 Administrator by mail to the Settlement Class Members. Uncashed, unclaimed or
10 abandoned checks, shall be transmitted to the California Controller's Office, as set
11 forth below.

12 (j) PAGA Payments: PAGA Settlement Payments will be paid out of the Net
13 Settlement Amount. Each PAGA Employee will be paid a pro-rata share of the
14 PAGA Employees' PAGA Settlement Payment, as calculated by the Settlement
15 Administrator. Class Members will not be permitted to exclude themselves from
16 this portion of the Settlement. The pro-rata share will be determined by comparing
17 the individual PAGA Employees' PAGA Pay Periods during the PAGA Period to
18 the total PAGA Pay Periods of all the PAGA Employees during the PAGA Period
19 as follows: [PAGA Pay Periods worked by a PAGA Employee] ÷ [Sum of all
20 PAGA Pay Periods worked by all PAGA Employees] × [PAGA Settlement
21 Payment to Employees, i.e. \$25,000.00] = individual PAGA Employee's portion of
22 the PAGA Settlement Payment. PAGA Settlement Payments to PAGA
23 Employees in the appropriate amounts will be distributed by the Settlement
24 Administrator by mail to the PAGA Employees at the same time Settlement Class
25 Payments issue to the Settlement Class. Uncashed, unclaimed or abandoned
26 checks, shall be transmitted to the California Controller's Office, as set forth
27 below. The LWDA's PAGA Penalty Payment will issue to the LWDA at the same
28 time Settlement Payments issue to the Settlement Class.

1 (k) Allocation of Settlement Payments: The Parties have agreed that Settlement Class
2 Payments will be allocated as follows: 1/3 wages, and 2/3 interest and penalties.
3 The PAGA Settlement Payment shares to PAGA Employees will be entirely
4 allocated to penalties. Appropriate federal, state and local withholding taxes will
5 be taken out of the wage allocations, and each Class Member will receive an IRS
6 Form W-2 with respect to this portion of the Settlement Payment. The employer's
7 share of payroll taxes and other required withholdings will be paid as set forth
8 above, including but not limited to the Defendants' FICA and FUTA contributions,
9 based on the payment of claims to the Class Members. IRS Forms 1099 will be
10 issued to each Class Member reflecting the payments for penalties and interest.
11 Class Members are responsible to pay appropriate taxes due on the Settlement
12 Payments they receive. To the extent required by law, IRS Forms 1099 and W-2
13 will be issued to each Class Member with respect to such payments. All PAGA
14 Settlement Payments will be allocated as 100% penalties.

15 (l) Settlement Payments Do Not Give Rise to Additional Benefits: All Settlement
16 Payments to individual Class Members shall be deemed to be paid to such Class
17 Member solely in the year in which such payments actually are received by the
18 Class Member. It is expressly understood and agreed that the receipt of such
19 Settlement Payments will not entitle any Class Member to additional compensation
20 or benefits under any company bonus, contest or other compensation or benefit
21 plan or agreement in place during the period covered by the Settlement, nor will it
22 entitle any Class Member to any increased retirement, 401(k) benefits or matching
23 benefits or deferred compensation benefits. It is the intent that the Settlement
24 Payments provided for in this Settlement are the sole payments to be made by
25 Defendants to the Class Members, and that the Class Members are not entitled to
26 any new or additional compensation or benefits as a result of having received the
27 Settlement Payments (notwithstanding any contrary language or agreement in any
28 benefit or compensation plan document that might have been in effect during the

period covered by this Settlement).

- (m) Attorney's Fees and Costs: Subject to approval by the Court, Defendants will not object to Class Counsel's application for attorney's fees not to exceed 33 and 1/3% of the Gross Settlement Amount (\$500,000.00) and reimbursement of litigation costs and expenses not to exceed \$30,000.00. Approved attorney's fees and litigation costs shall be paid at the same time Settlement Payments issue to the Settlement Class.
- (n) Service Payment: Subject to Court approval, Defendants will not object to Class Counsel's application for an additional payment of up to \$5,000.00 to Plaintiff for service as a Class Representative, ("Service Payment"). It is understood that the Service Payment is in addition to the individual Settlement Payment to which a Class Representative is entitled to along with the other Class Members.
- (o) Defendants or the Settlement Administrator will issue an IRS Form 1099 for the Service Payment to Plaintiff. Plaintiff will be individually responsible for correctly characterizing this compensation on personal income tax returns for tax purposes and for paying any taxes on the amounts received. Plaintiff agrees not to opt out or object to the Service Payment as the Class Representative.
- (p) Settlement Administrator: The Settlement Administrator will be ILYM Group, Inc. Settlement Administration Costs are estimated not to exceed \$25,000. The costs of the Settlement Administrator for work done shall be paid regardless of the outcome of this Settlement. ILYM Group, Inc. has been selected as the Administrator, based upon its "not to exceed" bid of \$15,950.00.
- (q) Funding of Settlement Account: Defendants will fund the Gross Settlement Amount within twenty-one (21) days after the Effective Date. Defendants shall also fund the amounts necessary to fully pay Defendants' share of payroll taxes by transmitting the funds to the Settlement Administrator with Gross Settlement Amount.
- (r) Distribution and Mailing of Settlement Payments: The Settlement

1 Administrator shall mail checks for Individual Settlement Class Payments and
2 Individual PAGA Settlement Payments and distribute the Class Counsel's Fees
3 and Costs, Service Payment to Plaintiff, LWDA's PAGA Penalty Payment, and
4 the Settlement Administration Costs no later than fourteen (14) calendar days
5 after Defendants fund the Gross Settlement Amount.

6 (s) Notice of Settlement: Each Class Member will be mailed a notice setting forth the
7 material terms of the proposed Settlement, along with instructions about how to
8 object or request exclusion from the proposed class action Settlement ("Notice")
9 attached to this Agreement as **Exhibit B** as well as Objection Form and Exclusion
10 Form attached to this Agreement as **Exhibits C and D** (together with "Notice
11 ""Notice Packet"). For each Class Member, there will be pre-printed information
12 on the mailed Notice, based on Defendants' records, stating the Class Member's
13 Covered Workweeks during the Class Period and the estimated total Settlement
14 Payment under the Settlement, including the Settlement Class Payment and the
15 PAGA Settlement Payment that will be distributed irrespective of any exclusion
16 request.

17 (t) Settlement Notice Language: The Notice Packet will issue in English and Spanish.

18 (u) Class Members Cannot Exclude Themselves from the Released PAGA Claims:
19 Class Members submitting a Request for Exclusion will nevertheless receive their
20 pro-rata share of the PAGA Settlement Payment. If the Court approves the
21 compromise of the PAGA Claim, all Class Members are bound by the Court's
22 resolution of the PAGA Claim. Plaintiff shall serve a notice of settlement on the
23 California Labor and Workforce Development Agency at or before the time
24 Plaintiff files the motion for preliminary approval.

25 (v) Resolution of Covered Workweeks Disputes: Defendants' records will be
26 presumed determinative, absent credible evidence to rebut the accuracy of the
27 Covered Workweeks credited to a Class Member based thereon. If a Class
28 Member disputes the Covered Workweeks credited to him or her, as stated in the

1 Notice, the Class Member must submit written correspondence to the Settlement
2 Administrator that is postmarked no later than the Response Deadline explaining
3 the basis for the dispute and including any supporting documentation showing that
4 the Covered Workweeks credited to him or her is inaccurate. If a Class Member
5 disputes the accuracy of Defendants' records used to calculate Covered
6 Workweeks, the Settlement Administrator will evaluate the evidence submitted by
7 the Class Member and make an initial decision as to which figures should be
8 applied. The parties shall file with the Court all Workweeks Disputes submitted by
9 Class Members together with the evidence submitted by Class Members, and the
10 decision made based on that evidence. Although the Settlement Administrator may
11 make the initial decision regarding the Covered Workweeks disputes, the Court
12 may review any decision made by the Settlement Administrator regarding Covered
13 Workweeks' disputes.

14 (w) Right of Class Members to Request Exclusion from the Settlement: Any
15 Class Member may request to be excluded from the Class by returning a
16 completed "Request for Exclusion" form to the Settlement Administrator
17 within the Response Deadline. The form of Request for Exclusion that
18 will accompany the Notice is attached hereto as **Exhibit "C."** The
19 Request for Exclusion Form accompanying the Notice will be pre-printed with
20 the Class Member's name and address to facilitate identification by the
21 Settlement Administrator. To be complete, the Class Member must sign and
22 date the Request for Exclusion Form and include the last four digits of their
23 social security number. The name and last four digits of the Social Security
24 number provided by the Class Member on the Request for Exclusion Form must
25 match Defendants' records as provided to the Settlement Administrator, or
26 match Defendants' records for that particular Class Member. The name and
27 Social Security number provided by the Class Member will be deemed to match
28 Defendants' records only if: (1) both the first name and the last name and the

1 last four digits of the Social Security number provided by the Class Member
2 match Defendants' records; (2) the first name and the last four digits of the
3 Social Security number provided by the Class Member match Defendants'
4 records and it appears the last name has been changed as a result of a change in
5 marital status or is a shortened or lengthened version of the name that appears in
6 Defendants' records; or (3) the last four digits of the Social Security number and
7 last name match Defendants' records and the first name provided is either a
8 nickname or a shortened or lengthened version of the name that appears in
9 Defendants' records. Each Class Member who does not submit a Request for
10 Exclusion Form in compliance with this paragraph will be deemed to be a
11 Settlement Class Member. Settlement Class Members will be bound by all
12 terms of the Settlement Agreement and the final approval order and final
13 judgment. Any Class Member who submits a Request for Exclusion Form will
14 not be a Settlement Class Member, will not be entitled to receive any Settlement
15 Class Payment, and will not be bound by the Released Class Claims or have any
16 right to object, appeal, or comment thereon. No later than thirty (30) calendar
17 days before the final approval hearing, the Settlement Administrator shall
18 provide counsel for the Parties with a complete list of all Class Members who
19 have submitted a complete, valid, and timely Request for Exclusion Form. All
20 Requests for Exclusion shall be submitted to the court.

- 21 (x) Right of Settlement Class Member to Object to The Settlement: Any Class
22 Member may object to the Settlement. To object, the Class Member may (1)
23 appear in person (including through an audio or video call appearance as allowed
24 by the Court) at the Final Approval Hearing to explain any objection, (2) have an
25 attorney object for the Class Member, or (3) submit a simple written brief or
26 statement of objection to the Settlement Administrator in the form attached hereto
27 as **Exhibit "D"**. If any Class Member chooses to submit a written objection not in
28 the form attached hereto as Exhibit "D", the written objection must include: (1) the

1 objector's full name, address, last four digits of his or her Social Security number,
2 and signature; (2) the case name and number. Class Counsel shall ensure that any
3 written objections are transmitted to the Court for the Court's review (either by
4 Class Counsel or as an attachment to declaration from the Settlement
5 Administrator). Regardless of the form, an objection alone will not satisfy the
6 requirement that a Settlement Class Member must either make a timely complaint
7 in intervention before final judgment or by file a motion to set aside and vacate the
8 class judgment under Code of Civil Procedure § 663 to have standing to appeal
9 entry of judgment approving this Settlement, as is required under the California
10 Supreme Court decision of *Hernandez v. Restoration Hardware*, 4 Cal. 5th 260
11 (2018). If the objecting Class Member does not formally intervene in the action or
12 move to set aside any judgment and/or the Court rejects the Class Member's
13 objection, the Class Member will still be bound by the terms of this Agreement.
14 Class Counsel and Defendants' Counsel may, at least five (5) calendar days (or
15 some other number of days as the Court shall specify) before the final approval
16 hearing, file responses to any written objections submitted to the Court.

17 (y) Remand to Superior Court: As a condition of settlement, the Parties will execute
18 and file Stipulation and Proposed order requesting remand the Action to the
19 Superior Court of California, County of Orange for the purposes of the settlement
20 approval process within five (5) days after the full execution of this Agreement.
21 Counsel for Plaintiff will draft and submit the Stipulation and Proposed Order for
22 review to Defendants' counsel 10 days prior to filing the Stipulation and Proposed
23 Order.

24 **THE SETTLEMENT ADMINISTRATOR'S PRIMARY DUTIES**

25 27. Subject to the Court's approval, and subject to reconsideration by the Parties after a
26 competitive bidding process, the Parties have agreed to the appointment of ILYM Group, Inc. to perform
27 the customary duties of Settlement Administrator. The Settlement Administrator will mail the Notice
28 Packet, both in English and Spanish, to the Class Members.

1 28. The Settlement Administrator will independently review the Covered Workweeks
2 attributed to each Class Member and will calculate the estimated amounts due to each Class Member and
3 the actual amounts due to each Settlement Class Member in accordance with this Settlement. The
4 Settlement Administrator shall report, in summary or narrative form, the substance of its findings. The
5 Settlement Administrator shall be granted reasonable access to Defendants's records in order to perform its
6 duties.

7 29. In accordance with the terms of this Settlement, and upon receipt of Gross Settlement
8 Amount from Defendants, the Settlement Administrator will issue and send out the Settlement Payment
9 checks to the Class Members. Tax treatment of the Settlement Payments will be as set forth herein, and in
10 accordance with state and federal tax laws. All disputes relating to the Settlement Administrator's
11 performance of its duties shall be referred to the Court, if necessary, which will have continuing
12 jurisdiction over the terms and conditions of this Settlement until all payments and obligations
13 contemplated by this Settlement have been fully carried out.

14 30. The Settlement Administrator will post the First Amended Complaint, the notice letter to
15 LWDA, the Settlement Agreement, the court orders granting preliminary and final approval of the
16 Settlement and final judgment approving the Settlement, the Notice Packet on the Settlement
17 Administrator's website for a period of not less than 180 calendar days after the final judgment is entered.
18 The address of that website will be included in the Notice.

19 **ATTORNEY'S FEES AND COSTS**

20 31. In consideration for resolving this matter and in exchange for the release of all claims by
21 the Class Members, including Plaintiff, and subject to approval by the Court, Defendants will not object to
22 Class Counsel's application for attorney's fees not to exceed 33 and 1/3% of the Gross Settlement Amount
23 (\$500,000.00 of \$1,500,000.00) and litigation costs not to exceed \$30,000.00. The amounts set forth
24 above will cover all work performed and all fees and costs incurred to date, and all work to be performed
25 and all fees and costs to be incurred in connection with the approval by the Court of this Settlement and
26 administration of the Settlement. Should the Court approve a lesser amount(s) of attorney's fees and/or
27 attorneys' costs, the difference between the lesser amount(s) and the maximum amount set forth above
28 shall be added to the Net Settlement Amount. Class Counsel shall disclose to the Court any fee sharing

1 agreements in existence.

2 **THE NOTICE PROCESS**

3 32. A Notice in approximately the form attached hereto as **Exhibit “B”**, the Request for
4 Exclusion in approximately the form attached hereto as **Exhibit “C”** and the Objection Form in
5 approximately the form attached hereto as **Exhibit “D”** (referred to jointly below as the “Notice packet”)
6 and as approved by the Court, shall be sent by the Settlement Administrator to the Class Members by first
7 class mail. The Notice packet shall be translated into Spanish so that Spanish and English language
8 versions of the Notice packet are included in the mailing. Any returned envelopes from this mailing with
9 forwarding addresses will be utilized by the Settlement Administrator to forward the Notices to the Class.

- 10 (a) Within 15 calendar days from the date the Court enters the order granting
11 preliminary approval of this Settlement, Defendants shall provide to the Settlement
12 Administrator a class database containing the following information for each Class
13 Member: (1) name; (2) last known address; (3) social security number; and (4)
14 dates of employment at Defendants’ location in California. This database shall be
15 based on Defendants’ payroll and other business records and shall be provided in a
16 format acceptable to the Settlement Administrator. Defendants agree to consult
17 with the Settlement Administrator prior to the production date to ensure that the
18 format will be acceptable to the Settlement Administrator. The Settlement
19 Administrator will run a check of the Class Members’ addresses against those on
20 file with the U.S. Postal Service’s National Change of Address List; this check will
21 be performed only once per Class Member by the Settlement Administrator.
22 Absent mutual written agreement of counsel for the Parties or Court order, the
23 Settlement Administrator will keep this database confidential and secure and use it
24 only for the purposes described herein, and will return this database to Defendants
25 upon final approval of the settlement or destroy electronic records containing the
26 database after the Settlement is final and all payments are distributed as required
27 under this Agreement. However, Plaintiff’s Counsel shall be entitled to review
28 anonymized data showing the workweeks worked by each Class Member, with

Class Member identity concealed through use of an employee number or number assigned by the Settlement Administrator.

- (b) Within 14 calendar days after the Class database is provided to the Settlement Administrator, the Settlement Administrator will mail the Notices to the Class Members by First Class United States mail.
- (c) Notices returned to the Settlement Administrator as non-deliverable on or before the initial Response Deadline shall be resent to the forwarding address, if any, on the returned envelope. A returned Notice will be forwarded by the Settlement Administrator any time that a forwarding address is provided with the returned mail. If there is no forwarding address, the Settlement Administrator will do a computer search for a new address using the Class Member's social security number or other information. In any instance where a Notice is re-mailed, that Class Member will have until the extended Response Deadline as described above. A letter prepared by the Settlement Administrator will be included in the re-mailed Notice in that instance, stating the extended Response Deadline if different than the original Response Deadline. Upon completion of these steps by the Settlement Administrator, Defendants and the Settlement Administrator shall be deemed to have satisfied their obligations to provide the Notice to the affected Class Member. The affected Class Member shall remain a member of the Settlement Class and shall be bound by all the terms of the Settlement and the Court's Order and Final Judgment.
- (d) Class Counsel shall provide to the Court, at least five calendar days prior to the final approval hearing, or such other date as set by the Court, a declaration by the Settlement Administrator of due diligence and confirming mailing of the Notices.

DISPOSITION OF SETTLEMENT PAYMENTS AND UNCASHED CHECKS

33. As set forth above, each Class Member will have until the expiration of the applicable Response Deadline to submit to the Settlement Administrator any challenge or dispute to the Class Member's Covered Workweek information on the Notice. No disputes will be honored if they are

submitted after the Response Deadline, unless the Parties mutually agree to accept the untimely dispute. Each Class Member is responsible to maintain a copy of any documents sent to the Settlement Administrator and a record of proof of mailing.

34. The Settlement Administrator shall cause the Settlement Payments to be mailed to the Settlement Class Members and PAGA Employees as provided herein. Settlement Class Payments and PAGA Payments may be combined into one check. Settlement Payment checks shall remain valid and negotiable for 180 calendar days from the date of their issuance. Settlement Payment checks will automatically be cancelled by the Settlement Administrator if they are not cashed by the Class Member within that time, and the Class Member's relevant claims will remain released by the Settlement. Settlement Payment checks which have expired will not be reissued.

35. Funds from uncashed or abandoned Settlement Payment checks, based on a 180-day void date, shall be transmitted to the California State Controller's Office for Unclaimed Property in the name of each Class Member who failed to cash their Settlement Payment check prior to the void date.

36. Upon completion of its calculation of Settlement Payments, the Settlement Administrator shall provide Class Counsel and Defendants' Counsel with a report listing the amounts of all payments to be made to Class Members (to be identified anonymously by employee number or other identifier). A Declaration attesting to completion of all payment obligations will be provided to Class Counsel and Defendants' Counsel and filed with the Court by Class Counsel.

RELEASE BY THE PLAINTIFF AND THE SETTLEMENT CLASS

37. Upon the final approval by the Court of this Settlement and Defendants' payment of all sums due pursuant to this Settlement, and except as to such rights or claims as may be created by this Settlement, the Class Representative, the Class and each Class Member who has not submitted a valid and timely request for exclusion as to claims other than the PAGA claim, will release claims as follows:

- (a) **Identity of Released Parties.** The released parties are Defendants and any of their past, present, and future direct or indirect parents, subsidiaries, predecessors, successors, and affiliates, as well as each of their past, present, and future officers, directors, employees, partners, members, shareholders and agents, attorneys, insurers, reinsurers, and any individual or entity which could be jointly liable with

Defendants (collectively “Released Parties”).

(b) **Date Release Becomes Effective.** The Released Claims will be released upon the later of (1) the Settlement’s Effective Date, or (2) the satisfaction of Defendants’ obligation to provide to the Settlement Administrator a sum in the amount required to satisfy all required payments and distributions pursuant to this Settlement and the Order and Judgment of final approval. Class Members will not release the Released Class Claims or Released PAGA Claims until both the Effective Date of the Settlement has occurred, and Defendants have paid all amounts owing under the Settlement.

(c) **Claims Released by Plaintiff and Settlement Class Members.** Plaintiff and each and every Settlement Class Member, on behalf of himself or herself and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, unless he or she has submitted a timely and valid Request for Exclusion (which will not effectuate an opt-out from the release of Released PAGA Claims), hereby releases Released Parties from the following claims for the entire Class Period:

- 1) all claims that were alleged, or reasonably could have been alleged, based on the facts stated in the Complaint, without limitation, claims for (1) failure to pay minimum wages; (2) failure to pay overtime wages; (3) failure to provide meal periods or pay a premium in lieu thereof; (4) failure to authorize and permit rest periods or pay a premium in lieu thereof; (5) failure to timely pay wages including at the time of termination/end of employment; (6) failure to furnish accurate itemized wage statements; (7) failure to reimburse employees for business expenses; (8) unfair business practices; (9) failure to pay vacation and/or sick pay wages; and, (10) claims for violation of California Labor Code sections 201-204, 210, 218.5, 218.6, 226, 226.3, 226.7, 227.3, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2802 and

1 California Business and Professions Code section 17200 et seq. (arising
2 from violations of the labor code listed above) or any applicable IWC
3 Wage Order (“Released Class Claims”). Class Members do not
4 release any claims that cannot be released by law including, without
5 limitation, claims for vested benefits, wrongful termination, violation of
6 the Fair Employment and Housing Act, unemployment insurance,
7 disability, social security, workers’ compensation, or claims based on
8 facts occurring outside the Class Period.

- 9 2) in addition, all PAGA Employees are deemed to release, on behalf of
10 themselves and their respective former and present representatives, agents,
11 attorneys, heirs, administrators, successors, and assigns, the Released
12 Parties from all claims for PAGA penalties that were alleged, or reasonably
13 could have been alleged during the PAGA Period, based on the facts stated
14 in the Complaint and the PAGA Notice attached to this Agreement as
15 **Exhibit A** including, without limitation, claims for PAGA penalties arising
16 from (1) failure to pay minimum wages; (2) failure to pay overtime wages;
17 (3) failure to provide meal periods or pay a premium in lieu thereof; (4)
18 failure to authorize and permit rest periods or pay a premium in lieu
19 thereof; (5) failure to timely pay wages including at the time of
20 termination/end of employment; (6) failure to furnish accurate itemized
21 wage statements; (7) failure to reimburse employees for business expenses;
22 (8) failure to pay vacation and/or sick pay wages; (9) claims for penalties
23 under the Private Attorneys General Act for violation of California Labor
24 Code sections 201-204, 210, 218.5, 218.6, 226, 226.3, 226.7, 227.3, 510,
25 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2802, and 2698,
26 et seq. (“PAGA”), or any applicable IWC Wage Order (“Released PAGA
27 Claims”).
28

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

2 38. The Parties shall submit this Settlement Agreement to the Court in support of Plaintiff's
3 unopposed motion for preliminary approval for determination by the Court as to its fairness, adequacy, and
4 reasonableness. Upon execution of this Settlement Agreement, Plaintiff shall apply to the Court for the
5 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 attorney's fees and costs, and the Class
8 Representative's service payment, should be finally approved as fair, reasonable,
9 and adequate as to the members of the Class;
- 10 (b) Certifying the Class;
- 11 (c) Approving as to form and content the proposed Notice Packet;
- 12 (d) Directing the mailing of the Notice Packet;
- 13 (e) Preliminarily approving the Settlement, subject only to the objections of Class
14 Members as to the Class Settlement and final review by the Court;
- 15 (f) Conditionally appointing Plaintiff and Class Counsel as representatives of the
16 proposed Class Members; and,
- 17 (g) Appointing LYM Group, Inc. as the Settlement Administrator, and order the
18 Settlement Administrator to issue Notices as outlined above.

19 39. Defendants and their counsel agree to cooperate to obtain approval of the Settlement,
20 pursuant to the terms set forth herein.

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

22 40. In conjunction with the hearing of a motion for final approval by the Court of the
23 Settlement provided for in this Settlement Agreement, Class Counsel will provide to Defendants' Counsel
24 for review and approval and then submit to the Court a proposed final order and judgment containing
25 provisions sufficient to accomplish the following:

- 26 (a) Approving the Settlement, adjudging the terms thereof to be fair, reasonable and
27 adequate, and directing consummation of its terms and provisions;
- 28 (b) Approving Class Counsel's application for an award of attorney's fees and costs;

- (c) Approving the Service Payment to the Class Representative;
- (d) Adjudging the Settlement Administrator has fulfilled its initial notice and reporting duties under the Settlement.
- (e) Adjudging Plaintiff and Class Counsel may adequately represent the Settlement Class for the purpose of entering into and implementing the Agreement;
- (f) Entering a final judgment in the action as to all PAGA and Class Claims and related issues;
- (g) Adjudging that notwithstanding the submission of a timely request for exclusion, Class Members are still bound by the settlement and release of the Released PAGA Claims or remedies under the Judgment pursuant to *Arias v. Superior Court*, 46 Cal. 4th 969 (2009), as requests to be excluded from the Settlement do not apply to the Released PAGA Claims, and further affirms that the State's claims for civil penalties pursuant to PAGA are also extinguished;
- (h) Directing the posting of the settlement documents provided in Paragraph 30 and final judgment on a website maintained by the Settlement Administrator for a period of not less than 180 calendar days after entry of final judgment.

Any revised final judgments will also be provided to Defendants' Counsel for review and approval before they are submitted to the Court.

NULLIFICATION AND TERMINATION

41. This Settlement will be null and void if any of the following occur: (a) the Court should for any reason fail to certify a class for settlement purposes; (b) the Court should for any reason fail to preliminarily or finally approve of this Settlement in the form agreed to by the Parties, other than adjustments made to the attorney's fees and costs or granting of Service Payment or settlement money distribution terms; (c) the Court should for any reason fail to enter the final judgment; (d) the final judgment is reversed, modified, or declared or rendered void; or (e) the Settlement does not become final for any other reason.

42. If 10% or more of the Class Members opt out of this Settlement, then Defendants in their sole discretion may terminate, nullify and void this Settlement. The Settlement Administrator shall

1 provide Defendants' Counsel with the information necessary to effectuate this provision on a regular basis,
2 but no less frequently than bi-weekly basis. To terminate this Settlement under this paragraph,
3 Defendants' Counsel must give Plaintiff's Counsel written notice, by facsimile, e-mail, or mail, no later
4 than sixteen (16) court days prior to the date of the Final Approval hearing. If this option is exercised by
5 Defendants, Defendants shall be solely responsible for the costs incurred by the Settlement Administrator
6 for the settlement administration.

7 43. In the event this Settlement is nullified or terminated as provided above: (i) this Settlement
8 shall be considered null and void, (ii) neither this Settlement nor any of the related negotiations or
9 proceedings shall have any force or effect and no party shall be bound by any of its terms, and (iii) all
10 Parties to this Settlement shall stand in the same position, without prejudice, as if the Settlement and
11 Stipulation for Remand had been neither entered into nor filed with the Courts.

12 **PARTIES' AUTHORITY**

13 44. The signatories hereto hereby represent that they are fully authorized to enter into this
14 Settlement and bind the Parties hereto to the terms and conditions thereof.

15 **MUTUAL FULL COOPERATION**

16 45. The Parties agree to fully cooperate with each other to accomplish the terms of this
17 Settlement including, but not limited to, execution of such documents and taking such other action as
18 reasonably may be necessary to implement the terms of this Settlement. The Parties to this Settlement
19 shall use their best efforts, including all efforts contemplated by this Settlement and any other efforts that
20 may become necessary by order of the Court, or otherwise, to effectuate this Settlement and the terms set
21 forth herein. As soon as practicable after execution of this Settlement, Class Counsel shall, with the
22 assistance and cooperation of Defendants and Defendants' Counsel, take all necessary steps to secure the
23 Court's preliminary and final approval of this Settlement.

24 **NO PRIOR ASSIGNMENTS**

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

1 **NO ADMISSION OF LIABILITY**

2 47. Nothing contained herein, nor the consummation of this Settlement, is to be construed or
3 deemed an admission of liability, culpability, negligence, or wrongdoing on the part of Defendants.
4 Defendants deny all the claims and contentions alleged by the Plaintiff in this case. Defendants have
5 entered into this Settlement solely with the intention to avoid further disputes and litigation with the
6 attendant inconvenience and expenses.

7 **ENFORCEMENT ACTIONS**

8 48. The Parties agree that following entry of the Final Approval Order and Judgment, this
9 Agreement shall be enforceable by the Court and the Court shall retain exclusive and continuing
10 jurisdiction of the Action over all parties and the Class Members to interpret and enforce the terms,
11 conditions, and obligations of the Agreement pursuant to California Code of Civil Procedure section
12 664.6. In the event that one or more of the Parties to this Settlement institutes any legal action or other
13 proceeding against any other party or parties to enforce the provisions of this Settlement or to declare
14 rights and/or obligations under this Settlement, the successful party or parties shall be entitled to recover
15 from the unsuccessful party or parties reasonable attorney's fees and costs, including expert witness fees
16 incurred in connection with any enforcement actions.

17 **NOTICES**

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

22 Class Counsel:

23 Lilit Tunyan
24 ltunyan@tunyanlaw.com
25 Artur Tunyan
26 atunyan@tunyanlaw.com
27 **TUNYAN LAW, APC**
28 535 N. Brand Blvd., Suite 285
Glendale, California 91203
Telephone: (323) 410-5050

Seung Yang

Counsel for Defendants:

Michael J. Burns
mburns@seyfarth.com
Andrew M. McNaught
amcnaught@seyfarth.com
SEYFARTH SHAW LLP
560 Mission Street, 31st Floor
San Francisco, California 94105
Telephone: (415) 397-2823
Facsimile: (415) 397-8549

Laura E. Heyne

seung.yang@thesentinelfirm.com
Tiffany Hyun
tiffany.hyun@thesentinelfirm.com
THE SENTINEL FIRM, APC
355 S. Grand Ave., Suite 1450
Los Angeles, California 90071
Telephone: (213) 985-1150
Facsimile: (213) 985-2155

lheyne@seyfarth.com
SEYFARTH SHAW LLP
2029 Century Park East, Suite 3500
Los Angeles, CA 90067-3021
Telephone: (310) 277-7200
Facsimile: (310) 201-5219

CONSTRUCTION

50. The Parties hereto agree that the terms and conditions of this Settlement are the result of lengthy, intensive arms-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 his, her or its counsel participated in the drafting of this Settlement.

CAPTIONS AND INTERPRETATIONS

51. 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

52. This Settlement may not be changed, altered, or modified, except in writing and signed by the Parties hereto, 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.

INTEGRATION CLAUSE

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

WAIVER OF APPEALS

54. The Parties agree to waive appeals and to stipulate to class certification for purposes of implementing this Settlement only, with the exception that Class Counsel retains the right to appeal the amount awarded as attorney's fees.

1 **BINDING ON ASSIGNS**

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

4 **CLASS COUNSEL SIGNATORIES**

5 56. It is agreed that because the members of the Class are so numerous, it is impossible or
6 impractical to have each member of the Class execute this Settlement. The Notice will advise all Class
7 Members of the binding nature of the Released Claims and Released PAGA Claims, and the release shall
8 have the same force and effect as if this Settlement were executed by each member of the Class.

9 **COUNTERPARTS**

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

14 **CONFIDENTIALITY & PUBLIC COMMENT**

15 58. Plaintiff, Class Counsel, Defendants and Defendants' Counsel separately agree that, until
16 the motion for preliminary approval of Settlement is filed, they and each of them will not disclose,
17 disseminate and/or publicize, or cause or permit another person to disclose, disseminate or publicize, any
18 of the terms of the Agreement directly or indirectly, specifically or generally, to any person, corporation,
19 association, government agency, or other entity except: (1) for purposes of enforcement of this Settlement;
20 (2) for purposes of approval of the Settlement including posting the Settlement and motion papers on
21 LWDA website; (3) to the Parties' attorneys, accountants, or spouses, all of whom will be instructed to
22 keep this Agreement confidential; (4) to the extent necessary to report income to appropriate taxing
23 authorities; (5) in response to a court order or subpoena; or (6) in response to an inquiry or subpoena
24 issued by a state or federal government agency. Each Party agrees to immediately notify each other Party
25 of any judicial or agency order, inquiry, or subpoena seeking such information. Plaintiff, Class Counsel,
26 Defendants and Defendants' Counsel separately agree not to, directly or indirectly, initiate any
27 conversation or other communication, before the filing of the motion for preliminary approval, any with
28 third party regarding this Agreement or the matters giving rise to this Agreement except to respond only

that “the matter was resolved,” or words to that effect. If counsel for any party receives an inquiry about the Settlement from the media, counsel may respond only after the motion for preliminary approval of the settlement has been filed and only by confirming the accurate terms of the Settlement. This paragraph does not restrict Class Counsel’s communications with Class Members in accordance with Class Counsel’s ethical obligations owed to Class Members.

FINAL JUDGMENT

59. The Parties agree that, upon final approval of the Settlement, final judgment of this Action will be made and entered in its entirety. The final judgment may be included in the Order granting Final Approval of the Settlement.

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

IT IS SO STIPULATED.

Plaintiff & Class Representative:

Dated: 03 / 27 / 2025

By: 
KIMBERLY M. WILHELM

Plaintiff’s Counsel:

Dated: 03 / 27 / 2025

TUNYAN LAW, APC

By: 

Lilit Tunyan
Artur Tunyan

Attorneys for Plaintiff Kimberly M. Wilhelm

Dated: 03 / 27 / 2025

THE SENTINEL FIRM, APC

By: 

Tiffany Hyun
Seung Yang

Attorneys for Plaintiff Kimberly M. Wilhelm

Defendants:

1 Dated: March 27, 2025

KEMPER SPORTS MANAGEMENT, LLC

2 By: Stephen Kelly

3 Print Name

4 [Signature]

5 Signature

6 General Counsel

7 Title

8 Dated: March 27, 2025

KEMPER SPORTS MANAGEMENT, INC.

9 By: Stephen Kelly

10 Print Name

11 [Signature]

12 Signature

13 Authorized Signatory

14 Title

15 Dated: March 27, 2025

KEMPER SPORTS MANAGEMENT HOLDINGS, LLC

16 By: Stephen Kelly

17 Print Name

18 [Signature]

19 Signature

20 General Counsel

Title

21 **Defendants' Counsel, as to Form and Content Only:**

22 Dated: March 27, 2025

SEYFARTH SHAW LLP

23 By: [Signature]

24 Laura E. Heyne

Andrew M. McNaught

25 Attorneys for Defendants KEMPER SPORTS
26 MANAGEMENT, LLC; KEMPER SPORTS
27 MANAGEMENT HOLDINGS, LLC
28

Exhibit “A”



535 N Brand Blvd. Suite 285
Glendale, CA 91203
Tel: (323) 410-5050
ltunyan@tunyanlaw.com

January 30, 2024

VIA ONLINE SUBMISSION

Labor & Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612
PAGAFilings@dir.ca.gov

VIA CERTIFIED MAIL

Return Receipt Requested

Kemper Sports Management, LLC
Kemper Sports Management Holdings, LLC
500 Skokie Boulevard, Suite 444
Northbrook, IL 60062

VIA CERTIFIED MAIL

Return Receipt Requested

Agent for Service of Process for
Kemper Sports Management, LLC
Kemper Sports Management Holdings, LLC
CSC-Lawyers Incorporating Service
Registered Corporate 1505 Agent
2710 Gateway Oaks Drive, Suite 150N
Sacramento, California 95833-3505

**NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO
LABOR CODE SECTION § 2698 ET SEQ.**

Re: Wilhelm v. Kemper Sports Management, LLC, et al.

To Whom It May Concern:

Please be advised that The Sentinel Firm, APC has been retained by Kimberly M. Wilhelm ("Plaintiff") to pursue a Labor Code Private Attorney General Act (PAGA) representative action (Cal. Lab. Code §§ 2699, *et seq.*) against her former employers Kemper Sports Management, LLC and Kemper Sports Management Holdings, LLC ("Defendants"). Pursuant to the joint prosecution and fee sharing agreement entered between Tunyan Law, APC and The Sentinel

Firm, APC and Plaintiff's written consent to joint prosecution and fee sharing agreement, Tunyan Law, APC and The Sentinel Firm, APC will be jointly prosecuting Plaintiff's action against Defendants. The purpose of this letter is to comply with PAGA and set forth the facts and theories of California Labor Code violations which Plaintiff alleges Defendants engaged in with respect to Plaintiff and all of Defendants' aggrieved employees.

Plaintiff wishes to pursue a PAGA representative action on behalf of herself as an aggrieved employee, on behalf of the State of California, and on behalf of all other current and former aggrieved employees who worked for Defendants in California as an hourly paid, non-exempt employee at any time within the applicable statutory period ("the Aggrieved Employees").

Plaintiff and the Aggrieved Employees of Defendants suffered the Labor Code violations described below.

Factual Background Regarding Plaintiff's Employment with Defendants

Defendants own and operate an industry, business, and establishment within the State of California, including Orange County. As such, Defendants are subject to the California Labor Code and the Wage Orders issued by the Industrial Welfare Commission ("IWC").

Plaintiff worked for Defendants as a bartender/server from approximately May 2017 to December 1, 2023, primarily in Orange County. Defendants classified Plaintiff as non-exempt from overtime. During the time period that Plaintiff was employed by Defendants, Plaintiff typically worked 5 days per week and over 8 hours each workday.

Throughout Plaintiff's employment, Defendants committed numerous labor code violations under state law. As discussed below, Plaintiff's experience working for Defendants was typical and illustrative.

Failure to Pay for All Hours Worked, Including Overtime

Under California law, an employer must pay for all hours worked by an employee. "Hours worked" is the time during which an employee is subject to the control of an employer and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In addition, Labor Code § 510 provides that employees in California shall not be employed more than eight (8) hours in any workday or forty (40) hours in a workweek unless they receive additional compensation beyond their regular wages in amounts specified by law.

Labor Code §§ 1194 and 1198 also provide that employees in California shall not be employed more than eight hours in any workday unless they receive additional compensation beyond their regular wages in amounts specified by law. Additionally, Labor Code § 1198 states that the

employment of an employee for longer hours than those fixed by the Industrial Welfare Commission is unlawful.

Throughout the statutory time period, Defendants maintained a policy and practice of failing to pay Plaintiff and the Aggrieved Employees for all hours worked. Defendants maintained a policy and practice of requiring Plaintiff and the Aggrieved Employees to perform work “off-the-clock”. During the statutory period Defendants regularly required Plaintiff and the Aggrieved Employees to arrive early to stay in line to clock in to work but did not compensate for that time. Plaintiff and the Aggrieved Employees were often times also required to clock out for meal periods but continue working off-the-clock. Additionally, Plaintiff and the Aggrieved Employees were required to check their next shift schedules using an application on their personal cell phones after the scheduled shift hours. In maintaining a practice of not paying all wages owed, Defendants failed to maintain accurate records of the hours Plaintiff and the Aggrieved Employees worked. In doing so, Defendants also failed to maintain accurate records of the hours Plaintiff and the Aggrieved Employees worked.

As a result, Defendants are liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, 1197.1, and 2699(f)(2) for failing to pay for all hours worked, including overtime.

Failure to Provide Meal Periods

Under California law, employers have an affirmative obligation to relieve employees of all duty in order to take their first 30-minute, duty-free meal periods no later than the start of sixth hour of work in a workday, and to allow employees to take their second 30-minute, duty-free meal period no later than the start of the eleventh hour of work in the workday. Further, employees are entitled to be paid one hour of additional wages for each workday they were not provided with all required meal period(s).

Despite these legal requirements, Defendants wrongfully failed to provide Plaintiff and the Aggrieved Employees with legally compliant meal periods. Defendants regularly required Plaintiff and the Aggrieved Employees to work in excess of five consecutive hours a day without providing a 30-minute, continuous and uninterrupted, duty-free meal period for every five hours of work, or without compensating Plaintiff and the Aggrieved Employees for meal periods that were not provided by the end of the fifth hour of work or tenth hour of work. Plaintiff and the Aggrieved Employees would often times miss or have late, interrupted or short meal periods because of the lack of coverage by other employees during the meal periods. Plaintiff and the Aggrieved Employees would often times clock out for meal periods but continue working. Accordingly, Defendants’ policy and practice was to not provide meal periods to Plaintiff and the Aggrieved Employees in compliance with California law.

Plaintiff and the Aggrieved Employees are thus entitled to be paid one hour of additional wages for each workday he or she was not provided with all required meal period(s). Defendants,

however, regularly failed to pay Plaintiff and the Aggrieved Employees the additional wages to which they were entitled for meal periods and that were not provided.

As a result, Defendants are liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, and 2699(f)(2) for failing to provide meal periods and pay meal period premium wages.

Failure to Authorize and Permit Rest Periods

Employers are required by California law to authorize and permit breaks of 10 uninterrupted minutes for each four hours of work or major fraction of four hours (i.e. more than two hours). Thus, for example, if an employee's work time is 6 hours and ten minutes, the employee is entitled to two rest breaks. Each failure to authorize rest breaks as so required is itself a violation of California's rest break laws.

Defendants, however, wrongfully failed to authorize and permit Plaintiff and the Aggrieved Employees to take timely and duty-free rest periods. Defendants regularly required Plaintiff and the Aggrieved Employees to work in excess of four consecutive hours a day without Defendants authorizing and permitting them to take a 10 minute, continuous and uninterrupted, rest period for every four hours of work (or major fraction of four hours), or without compensating Plaintiff and the Aggrieved Employees for rest periods that were not authorized or permitted. Plaintiff and the Aggrieved Employees would often times miss their first and second rest periods or have interrupted or short rest periods. Accordingly, Defendants' policy and practice was for Plaintiff and the Aggrieved Employees to work through rest periods and to not authorize or permit them to take any rest periods.

Plaintiff and the Aggrieved Employees are thus entitled to be paid one hour of additional wages for each workday he or she was not authorized and permitted to take all required rest period(s). Defendants, however, regularly failed to pay Plaintiff and the Aggrieved Employees the additional wages to which they were entitled for rest periods and that they were not authorized and permitted to take.

As a result, Defendants are liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, and 2699(f)(2) for failing to authorize and permit rest periods and pay rest period premium wages.

Failure to Maintain Accurate Records of Hours Worked

Plaintiff seeks penalties under Labor Code § 1174(d). Pursuant to Labor Code § 1174.5, any person, including any entity, employing labor who willfully fails to maintain accurate and complete records required by Labor Code § 1174 is subject to a penalty under § 1174.5. Pursuant to the applicable IWC Order § 7(A)(3), every employer shall keep time records

showing when the employee begins and ends each work period. Meal periods and total hours worked daily shall also be recorded.

Defendants, however, failed to maintain accurate records of hours worked and meal periods taken or missed by Plaintiff and the Aggrieved Employees.

Defendants' failure to provide and maintain records required by the Labor Code IWC Wage Orders deprived Plaintiff and the Aggrieved Employees the ability to know, understand and question the accuracy and frequency of meal periods, and the accuracy of their hours worked stated in Defendants' records. Therefore, Plaintiff and the Aggrieved Employees had no way to dispute the resulting failure to pay wages, all of which resulted in an unjustified economic enrichment to Defendants. As a direct result, Plaintiff and the Aggrieved Employees have suffered and continue to suffer, substantial losses related to the use and enjoyment of such wages, lost interest on such wages and expenses and attorney's fees in seeking to compel Defendants to fully perform its obligation under state law, all to their respective damage in amounts according to proof at trial. As a result of Defendants' knowing failure to comply with the Labor Code and applicable IWC Wage Orders, Plaintiff and the Aggrieved Employees have also suffered an injury in that they were prevented from knowing, understanding, and disputing the wage payments paid to them.

As a result, Defendants are liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 1174.5 for failing to maintain accurate records of hours worked and meal periods.

Failure to Reimburse and Indemnify Expenses

California Labor Code § 2802 requires employers to reimburse employees for their necessary expenditures and losses incurred as a direct consequence of the discharge of their duties or of their obedience to the directions of the employer.

Throughout the statutory period, Defendants wrongfully required Plaintiff and the Aggrieved Employees to pay expenses that they incurred in direct discharge of their duties for Defendants without reimbursement. Plaintiff and the Aggrieved Employees were required to use their personal vehicles to drive from Defendants' one worksite to another worksite but were not reimbursed for mileage. Plaintiff and the Aggrieved Employees were also required to use their personal cell phones to download an application on their personal cell phones to check their next shift schedules and to communicate with supervisors regarding schedules and work but were not compensated for that. Plaintiff and the Aggrieved Employees would also use their personal cell phones to look for recipes. Plaintiff and the Aggrieved Employees incurred these substantial expenses as a direct result of performing their job duties for Defendants, and Defendants has failed to indemnify Plaintiff and the Aggrieved Employees for these employment-related expenses.

Failure to Timely Pay All Wages at Termination

Labor Code §§ 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

Within the applicable statute of limitations, the employment of Plaintiff and many Aggrieved Employees ended, i.e. was terminated by quitting or discharge, and the employment of others will be. However, during the relevant time period, Defendants failed, and continue to fail to pay to Plaintiff and the Aggrieved Employees, without abatement, all wages required to be paid by Labor Code sections 201 and 202 either at the time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ. These unpaid wages include wages for unpaid work time, missed meal periods, and missed rest periods.

Defendants' conduct violates Labor Code §§ 201 and 202. Labor Code § 203 provides that if an employer willfully fails to pay wages owed, in accordance with sections 201 and 202, then the wages of the employee shall continue as a penalty wage from the due date, and at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

Accordingly, Plaintiff and the Aggrieved Employees are entitled to recover from Defendants their additionally accruing wages for each day they were not paid, at their regular hourly rate of pay, up to 30 days maximum pursuant to Labor Code § 203.

Moreover, Defendants are liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 2699(f)(2) for failing to timely pay all wages at termination.

Failure to Furnish Accurate Itemized Wage Statements

Labor Code § 226(a) provides that every employer shall furnish each of his or her employees an accurate itemized wage statement in writing showing nine pieces of information, including: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each

hourly rate by the employee. An employee is presumed to suffer an injury if this information is missing. Lab. Code § 226(e)(2)(B)(iii).

The statute further provides: “An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney’s fees.” Lab. Code § 226(e)(1).

Defendants intentionally and willfully failed to provide employees with complete and accurate wage statements. The deficiencies include, among other things, the failure to correctly list gross wages earned, the failure to list the true net wages earned, including wages for meal periods that were not provided in accordance with California law, wages for rest periods that were not authorized and permitted to take in accordance with California law, and correct wages earned for all hours worked.

As a result of Defendants violating Labor Code § 226, Plaintiff and similarly Aggrieved Employees suffered injury and damage to their statutorily protected rights.

Accordingly, Plaintiff and the Aggrieved Employees are entitled to recover from Defendants the greater of their actual damages caused by Defendants’ failure to comply with Labor Code § 226(a), or an aggregate penalty not exceeding \$4,000 dollars per employee.

Moreover, Defendants are liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 226.3 for failing to furnish accurate itemized wage statements.

Failure to Pay All Earned Wages Twice Per Month

Based on its failure to pay Plaintiff and the Aggrieved Employees for all wages as discussed above, Defendants also violated Labor Code § 204.

Labor Code § 204 requires employers to pay employees all earned wages two times per month on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. Lab. Code § 204(a). The requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period. Lab. Code § 204(d).

Throughout the statute of limitations period applicable to this cause of action, employees were also entitled to be paid twice a month at their regular rates, including all meal period premium

wages owed, rest period premium wages owed, and wages owed for hours worked. However, during all such times, Defendants systematically failed and refused to pay the employees all wages due, and failed to pay those wages twice a month, in that employees were not paid all wages for all meal periods not provided by Defendants, all wages for all rest periods not authorized and permitted by Defendants, and all wages for all hours worked. As a result, Defendants owe employees the legally required wages for unpaid wages, and Plaintiff and the Aggrieved Employees suffered damages in those amounts.

Moreover, Defendants are liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 210 for failing to pay all earned wages twice per month.

Action for Civil Penalties Under PAGA

In light of the above, Plaintiff alleges that Defendants violated the following provisions of the Labor Code with respect to the Aggrieved Employees:

1. Labor Code § 204, 510, 1194, 1197, and 1198 by failing to pay for all hours worked, including minimum wages, straight time wages and overtime wages;
2. Labor Code § 226.7, 512 and applicable Wage Orders by failing to provide meal periods;
3. Labor Code § 226.7 and applicable Wage Orders by failing to authorize and permit rest periods;
4. Labor Code § 1174.5 and applicable Wage Orders by failing to maintain accurate records of hours worked and meal periods taken or missed;
5. Labor Code § 2802 by failing to reimburse and indemnify employees for expenses and losses in the direct consequence and discharge of their duties;
6. Labor Code §§ 201 to 203 by willfully failing to pay all wages owed at termination;
7. Labor Code § 226 by failing to provide accurate itemized wage statements;
8. Labor Code § 204 by failing to pay all earned wages two times per month.

Therefore, on behalf of all Aggrieved Employees, Plaintiff seeks applicable penalties related to the violations alleged above pursuant to the PAGA. These include, but are not limited to, penalties under Labor Code §§ 210, 558, 1174.5, 1197.1, 2802, 2699(f)(2).

Plaintiff has placed Defendants on notice by mailing a certified copy of this correspondence to its corporate address and address of the agent for service as indicated on the first page.

The facts and claims contained herein are based on the information available at the time of this writing. Therefore, if through discovery and/or expert review, Plaintiff becomes aware of

additional compensation owed or losses incurred by Plaintiff or by any other aggrieved employee of Defendants or any additional facts, Plaintiff expressly reserves the right to revise these facts and/or add any new claims by amending the claim letter or by adding applicable causes of action to the complaint which will relate back to the date of this letter.

Thank you for your attention to this matter. If you have any questions, please do not hesitate to contact me.

Sincerely,



Lilit Tunyan, Esq.
TUNYAN LAW, APC

Exhibit “B”

NOTICE OF PROPOSED CLASS AND PAGA REPRESENTATIVE ACTION SETTLEMENT

Kimberly M. Wilhelm v. Kemper Sports Management, LLC, et. al.
Orange County Superior Court Case No. 30-2024-01376524-CU-OE-CXC

A Court authorized this Notice. This is not a solicitation by a lawyer. You are not being sued.

IF YOU ARE OR WERE A NON-EXEMPT EMPLOYEE OF KEMPER SPORTS MANAGEMENT, LLC and/or KEMPER SPORTS MANAGEMENT, INC.; KEMPER SPORTS MANAGEMENT HOLDINGS, LLC (“DEFENDANTS” or “KEMPER SPORTS”) WHO WORKED IN CALIFORNIA AT ANY TIME BETWEEN JANUARY 30, 2020 and [REDACTED] (THE “CLASS PERIOD”) AND DID NOT SIGN AN ARBITRATION AGREEMENT WITH CLASS WAIVER, THIS PROPOSED CLASS AND PAGA REPRESENTATIVE ACTION SETTLEMENT MAY AFFECT YOUR RIGHTS.

Purpose of this Notice

A proposed settlement (the “Settlement”) has been reached in a proposed class and PAGA action lawsuit brought by Plaintiff Kimberly M. Wilhelm (“Plaintiff”) against Defendants, entitled *Kimberly M. Wilhelm v. Kemper Sports Management, LLC, et. al.* Orange County Superior Court Case No. 30-2024-01376524-CU-OE-CXC (the “Action”). The purpose of this Notice of Proposed Class and Private Attorneys General Act of 2004 (“PAGA”) Representative Action Settlement (“Notice”) is to briefly describe the Action and to inform you of your rights and options in connection with the Action and the proposed Settlement.

You are receiving this notice because KEMPER SPORTS’s records indicate that you worked for KEMPER SPORTS as a non-exempt employee in California for some time between January 30, 2020 and [REDACTED] (“Class Period”) and did not sign an arbitration agreement with class waiver. This means you are a potential Class Member, and you have a right to know about the proposed Settlement.

In addition, you are also a PAGA Employee if you are currently or were formerly employed as a non-exempt employee of KEMPER SPORTS who worked for KEMPER SPORTS within California at any time during the period from January 30, 2023 to [REDACTED] (“PAGA Period”).

This Notice advises you of your options under this Settlement, which include how you can participate in this Settlement and receive your share of the Settlement proceeds, how you can exclude yourself from the class Settlement, or how you can object to the class Settlement.

What is the case about?

On January 30, 2024, Plaintiff filed a putative class action. On May 25, 2023, Plaintiff filed a First Amended Complaint alleging the following claims against Defendants: (1) failed to pay all wages; (2) failed to provide meal periods; (3) failed to authorize and permit rest periods; (4) failed to timely pay all wages at termination; (5) failed to furnish accurate itemized wage statements; (6) failure to indemnify necessary business expenses; (7) violated California’s Unfair Competition Law, California Business and Professions Code § 17200 *et seq.*; and (8) violated provisions of the Labor Code giving rise to civil penalties under the Labor Code Private Attorneys General Act of 2004 [Lab. Code § 2699, *et seq.*] (“PAGA”).

PAGA allows employees to file a representative action on behalf of themselves, other current and former employees, and the State of California to seek recovery of civil penalties for alleged Labor Code violations.

The Action seeks unpaid wages for a class of all current and former non-exempt employees of KEMPER SPORTS who worked in California at any time during the Class Period (the “Class” or “Class Members”). The Action also seeks penalties under PAGA for all current and former non-exempt employees of KEMPER SPORTS who worked in California at any time during the PAGA Period (“PAGA Employees”).

Defendants deny each and every allegation in the Action, deny any liability or wrongdoing of any kind, and believe that they treated, and continue to treat, their employees fairly and in full compliance with the law.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:

DO NOTHING – GET MONEY	If you do nothing, you will be considered a “Settlement Class Member” in the Settlement and will receive your individual settlement share under the Settlement if the Court finally approves the Settlement. You will also give up rights to assert the Released Claims against Defendant as explained more fully below.
EXCLUDE YOURSELF FROM THE CLASS SETTLEMENT. DEADLINE TO EXCLUDE YOURSELF: <<RESPONSE DEADLINE>>	You have the option to exclude yourself from the Class Settlement. If you choose to do so, you must mail to the Administrator, in writing, a completed Request for Exclusion Form. If you exclude yourself, you will NOT receive any payment under the Settlement (other than based on the PAGA Claim, if applicable). Request for Exclusion Forms must be submitted by <<RESPONSE DEADLINE>>.
OBJECT TO THE SETTLEMENT. DEADLINE TO SUBMIT WRITTEN OBJECTIONS: <<RESPONSE DEADLINE>>	To object to the Class Settlement, you must either mail a written explanation of why you do not agree with the Settlement to the Settlement Administrator by completing and submitting the Objection Form, appear at the Final Approval Hearing, or hire an attorney at your expense to object for you. This option is available only if you do <u>not</u> exclude yourself from the Settlement. Do <u>not</u> submit a Request for Exclusion Form if you wish to object. <i>Written</i> objections must be submitted by <<RESPONSE DEADLINE>>.

What are the Settlement terms?

Subject to final Court approval, Defendants will pay a maximum total payment under the Settlement of \$1,500,000.00 (the “Gross Settlement Amount”) for: (a) individual Settlement Class Payments to Settlement Class Members; (b) the Service Payment to Plaintiff (up to \$5,000.00); (c) attorneys’ fees (not to exceed 33 and 1/3% of the Gross Settlement Amount, \$500,000.00) and litigation costs to Class Counsel (not to exceed \$30,000) (“Class Counsel’s Fees and Costs”); (d) the amount of \$100,000.00 allocated toward civil penalties under the PAGA (the “PAGA Allocation”), of which the LWDA will be paid 75% (i.e. \$75,000.00 (“PAGA Penalty Payment”) and the remaining 25% (i.e. \$25,000.00) will be distributed to PAGA Employees (the “PAGA Settlement Payments”); and (e) payment to the Settlement Administrator for settlement administration services (estimated to be no more than \$-----) (“Administrative Expenses”).

The “Net Settlement Amount” will be calculated by deducting from the Gross Settlement Amount the Class Counsel’s Fees and Costs, the Service Payment to Plaintiff, the PAGA Penalty Payment, and the Administrative Expenses. Settlement Class Payments and PAGA Settlement Payments (defined below) will be paid from the Net Settlement Amount.

Class Members who do not timely and properly request to be excluded from the Settlement (the “Settlement Class Members”) will receive a pro-rata share of the Net Settlement Amount, less the PAGA Settlement Payments totaling \$25,000.00, based upon the total number of workweeks worked by the Settlement Class Member during the Class Period (the “Settlement Class Payment”). The portion of the Net Settlement Amount paid to a Settlement Class Member = Net Settlement Amount (minus \$25,000.00 set aside for all PAGA Settlement Payment) × (the work weeks worked by a Settlement Class Member ÷ the work weeks worked by all Settlement Class Members).

PAGA Employees will receive a pro-rata share of the \$25,000.00 from the PAGA Settlement allocated to PAGA Employees (the “PAGA Settlement Payment”) based upon the total number of pay periods worked by each PAGA Employee during the PAGA Period, regardless of whether they request exclusion from the Settlement. The portion of the PAGA Settlement Payment paid to a PAGA Employee = \$25,000.000 × the pay periods worked by a PAGA Employee (during the PAGA Period) ÷ the pay periods worked by all PAGA Employees (during the PAGA Period).

The total payment to an individual, including their Settlement Class Payment and PAGA Settlement Payment, is their "Individual Settlement Payment". Your estimated Individual Settlement Payment is <<Estimated Payment>>, which includes your payment from the Class settlement in the estimated amount of <<Estimated Individual Settlement Class Payment>> and your payment from the PAGA settlement in the estimated amount of <<Estimated Individual PAGA Settlement Payment>>. This is just an estimate. Your final share will be determined by the Settlement Administrator.

The above estimates are based on Defendants' records showing you worked _____ Workweeks during the Class Period and worked ____ Pay Periods during the PAGA Period. You may seek to dispute the number of your workweeks. Such challenges must: (i) be in writing; (ii) state your full name; (iii) include a statement that you are seeking to challenge your estimated Individual Settlement Payment set forth in this Class Notice; (iv) state the number of workweeks you believe you have worked during the Class Period; and (v) be mailed to the Settlement Administrator with a postmark date on or before <<**RESPONSE DEADLINE**>> (the "Response Deadline") at:

You must produce documentary evidence supporting your contention. The Settlement Administrator will evaluate the evidence submitted and make an initial decision as to which figures should be applied. The parties shall file with the Court all Workweeks Disputes submitted by Class Members together with the evidence submitted by Class Members, and the decision made based on that evidence. Although the Settlement Administrator may make the initial decision regarding the Workweeks Disputes, the court may review any decision made by the Settlement Administrator regarding Workweeks Disputes.

For tax reporting purposes, the payments to Class Members will be allocated 1/3 wages, and 2/3 interest and penalties. All PAGA Settlement Payments will be allocated as 100% penalties. The wage portion of the Individual Settlement Payments shall be subject to the withholding of applicable local, state, and federal taxes, and the Settlement Administrator shall deduct applicable employee-side payroll taxes from the wage portion of the Individual Settlement Payments. The portion of the Individual Settlement Payments allocated as civil penalties, and interest shall be classified as other miscellaneous income and reported on IRS Form 1099-MISC if required by governing tax laws. Any taxes owed on that other miscellaneous income will be the responsibility of Class Members receiving those payments. The employer's share of any payroll taxes will be separately paid by Defendants.

All checks for Individual Settlement Payments paid to Class Members will remain valid and negotiable for one hundred eighty (180) days from the date of the checks' issuance and shall thereafter automatically be void if not claimed or negotiated by a Class Member within that time. Any Individual Settlement Payment that is not claimed or negotiated by a Class Member within one hundred eighty (180) days of issuance shall be transmitted to the California State Controller's Office to be held as unclaimed property in the name of each check recipient who is the payee of the check. Even if the Individual Settlement Payment is not cashed, claimed or negotiated by the Class Member within the one hundred eighty (180) days from the date of the checks' issuance, the Settlement Class Member shall remain bound by the Released Class Claims, unless the Class Member submitted a timely and valid Request for Exclusion Form.

The "Effective Date" of the Settlement will be the date upon which all of the following have occurred: (i) the Parties stipulate to seek remand to state court and the Action is remanded; (ii) the state court grants final approval of the Settlement and (iii) the state court's Judgment approving the Settlement becomes Final. Final shall mean the latest of: (a) if no Class Member objects to the Settlement, the day the Court enters Judgment; (b) if one or more Class Members file timely objection to the Settlement, the later of: (1) the date on which the time for all appeals relating to objections to Settlement and the final approval order has expired; or (2) if an appeal, review or writ is sought, the date on which the highest reviewing court renders its decision denying any petition (where the immediately lower court affirmed the judgment) or affirming the judgment; or (c) if there is an appeal of the Court's Judgment, the date the Judgment is affirmed on appeal, the date of dismissal of such appeal, or the expiration of the time to file a petition for review with any appellate court that has jurisdiction, or, (d) if a petition for review is filed, the date of denial of the petition, or the date the Court's Judgment is entered, pursuant to such petition. Provided, however, if the California Labor & Workforce Development Agency ("LWDA") has commenced an investigation or issued a Citation prior to the Effective Date, as determined under the forgoing definition, the Effective Date will be extended to the date that the LWDA concludes its investigation or resolves the Citation (whichever is later), or if the LWDA objects to the Settlement, the date when the LWDA's objection to the Settlement is resolved and no longer appealable. Defendants will fund the Gross Settlement Amount within

twenty-one (21) days after the Effective Date. The Settlement Administrator shall mail checks no later than fourteen (14) calendar days of receipt of the Gross Settlement Amount from Defendants.

PLEASE BE PATIENT AND UPDATE THE SETTLEMENT ADMINISTRATOR WITH YOUR NEW ADDRESS IF YOU MOVE AFTER RECEIVING THIS NOTICE OR YOU RECEIVED THIS NOTICE AS FORWARDED MAIL.

None of the Parties or their attorneys make any representations concerning the tax consequences of this Settlement or your participation in it. Class Members should consult with their own tax advisors concerning the tax consequences of the Settlement. Class Counsel is unable to offer advice concerning the state or federal tax consequences of payments to any Class Member.

What claims are being released by the proposed Settlement?

Released Class Claims. Those Class Members who do not submit a timely and valid Request for Exclusion Form to the Settlement Administrator (i.e. Settlement Class Members), and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, upon full payment of Gross Settlement Amount, shall fully and finally release and discharge Defendants and any of their past, present, and future direct or indirect parents, subsidiaries, predecessors, successors, and affiliates, as well as each of their past, present, and future officers, directors, employees, partners, members, shareholders and agents, attorneys, insurers, reinsurers, and any individual or entity which could be jointly liable with Defendants (“Released Parties”) from the Released Class Claims.

Released Class Claims are defined as all claims that were alleged, or reasonably could have been alleged, based on the facts stated in the Complaint, without limitation, claims for (1) failure to pay minimum wages; (2) failure to pay overtime wages; (3) failure to provide meal periods or pay a premium in lieu thereof; (4) failure to authorize and permit rest periods or pay a premium in lieu thereof; (5) failure to timely pay wages including at the time of termination/end of employment; (6) failure to furnish accurate itemized wage statements; (7) failure to reimburse employees for business expenses; (8) unfair business practices; (9) failure to pay vacation and/or sick pay wages; and, (10) claims for violation of California Labor Code sections 201-204, 210, 218.5, 218.6, 226, 226.3, 226.7, 227.3, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2802 and California Business and Professions Code section 17200 et seq. (arising from violations of the labor code listed above) or any applicable IWC Wage Order (“Released Class Claims”). Class Members do not release any claims that cannot be released by law including, without limitation, claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers’ compensation, or claims based on facts occurring outside the Class Period.

Released PAGA Claims. In addition, upon full payment of Gross Settlement Amount, all PAGA Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged during the PAGA Period, based on the facts stated in the Complaint and the PAGA Notice including, without limitation, claims for PAGA penalties arising from (1) failure to pay minimum wages; (2) failure to pay overtime wages; (3) failure to provide meal periods or pay a premium in lieu thereof; (4) failure to authorize and permit rest periods or pay a premium in lieu thereof; (5) failure to timely pay wages including at the time of termination/end of employment; (6) failure to furnish accurate itemized wage statements; (7) failure to reimburse employees for business expenses; (8) failure to pay vacation and/or sick pay wages; (9) claims for penalties under the Private Attorneys General Act for violation of California Labor Code sections 201-204, 210, 218.5, 218.6, 226, 226.3, 226.7, 227.3, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2802, and 2698, et seq. (“PAGA”), or any applicable IWC Wage Order (“Released PAGA Claims”).

What are my options in this matter?

You have two options under this Settlement, each of which is further discussed below. You may: (A) remain in the Class and receive an Individual Settlement Payment; or (B) exclude yourself from the Settlement. If you choose option (A), you may also object to the Settlement, as explained below.

OPTION A. Remain in the Class. If you wish to remain in the Class and be eligible to receive an Individual Settlement Payment, **you do not need to take any action.** By remaining in the Class and receiving settlement monies to resolve your class claims, you consent to the release of the Class Released Claims as described above.

If you are a PAGA Employee, you will automatically be included and issued your PAGA Settlement Payment. This means you will release the PAGA Released Claims.

Any amount paid to Settlement Class Members will not count or be counted for determination of eligibility for, or calculation of, any employee benefits (for example, vacations, holiday pay, retirement plans, non-qualified deferred compensation plans, etc.), or otherwise modify any eligibility criteria under any employee pension benefit plan or employee welfare plan sponsored by Defendants, unless otherwise required by law.

Objecting to the Settlement: If you are a Class Member, and you do not request exclusion from the Settlement, you may object to the Settlement before final approval of the Settlement by the Court by submitting a written objection or presenting your objection at the Final Approval Hearing.

To assert an objection to the Settlement, a Settlement Class Member must submit an Objection Form to the Settlement Administrator by first class U.S. mail at the address specified on the Notice in the Objection Form not later than _____. If you choose not to submit a written objection using the Objection Form, the written objection must include: (1) your full name, address, and last four digits of your Social Security number; (2) your signature; (3) the case and number (*Kimberly M. Wilhelm v. Kemper Sports Management, LLC, et. al.*, Orange County Superior Court Case No. 30-2024-01376524-CU-OE-CX); and (4) be postmarked on or before <<RESPONSE DEADLINE>> and submitted to the Settlement Administrator at the address listed above. Any Class Member who fails to timely submit their written objections in the manner specified above may still appear and object at the Final Approval Hearing. **Even if you submit an objection, you will be bound by the terms of the Settlement, including the release of Released Class and PAGA Claims as set forth above, unless the Settlement is not finally approved by the Court.**

Regardless of the form, an objection alone will not satisfy the requirement that a Class Member must formally intervene and become a party of record in the action to appeal a Judgment entered following an Order finally approving this Settlement, as is required under the California Supreme Court decision of *Hernandez v. Restoration Hardware*, 4 Cal. 5th 260 (2018).

OPTION B. Request to Be Excluded from the Class and Receive No Money from the Class Action Portion of the Settlement (PAGA Employees Still Will Receive Their Share of the PAGA Employee Payment). You may not seek exclusion from the PAGA portion of this Settlement. However, if you do not want to be part of the Class Settlement, you must complete and return the included Request for Exclusion Form to the Settlement Administrator. In order to be valid, your Request for Exclusion form must be signed, dated, and include the last four digits of your social security number (to confirm your identity and make certain that only persons requesting exclusion are removed from the settlement).

The Request for Exclusion Form (to remove you from the Class Settlement) must be postmarked on or before <<RESPONSE DEADLINE>>. If you do not submit a Request for Exclusion form on time (as evidenced by the postmark), your request to be excluded from the Settlement will be rejected, you will be deemed a Settlement Class Member, and you will be bound by the release of Released Claims as described above and all other terms of the Settlement. If you submit a Request for Exclusion Form by the deadline to request exclusion, you will not be issued an Individual Settlement Payment, will not be bound by the Class Settlement (and the release of Released Class Claims), and will not have any right to object to, appeal, or comment on the Class Settlement. PAGA Employees cannot opt out or exclude themselves from the PAGA Settlement Payment and will still be issued a PAGA Settlement Payment and be bound by the Released PAGA Claims, irrespective of whether they submit a Request for Exclusion Form and irrespective of whether they cash their Individual Settlement Payment.

IMPORTANT: DO NOT SUBMIT A REQUEST FOR EXCLUSION FORM IF YOU WISH TO BE INCLUDED IN THE CLASS SETTLEMENT AND RECEIVE YOUR SHARE OF THE MONEY AVAILABLE TO YOU AS PART OF THE SETTLEMENT.

What is the next step in the approval of the Settlement?

The Court will hold a Final Approval Hearing on <<FINAL APPROVAL HEARING DATE & TIME>>, in Department CX105 of the Orange County Superior Court, located at 751 W. Santa Ana Boulevard, Santa Ana, California 92701. As described above, If you wish to attend the Final Approval Hearing remotely, you can do it through the court's online check-in process available through the court's website at <https://www.occourts.org/media-relations/civil.html>. If you wish to attend the Final Approval Hearing in person, you can attend it at Orange County Superior Court, 751 W. Santa Ana Boulevard, Santa Ana, California 92701.

The Final Approval Hearing may be continued without further notice to Class Members. You are not required to attend the Final Approval Hearing to receive an Individual Settlement Payment.

If the Court grants Final Approval of the Settlement, the Order granting Final Approval and entering a Judgment, the First Amended Complaint, the notice letter to the LWDA, the Settlement Agreement, and this Notice will be posted on a website by the Settlement Administrator for a period of at least 180 days following the entry of that Order in the Court record. That website is: <<[website](#)>>.

Who are the attorneys representing the Parties?

The attorneys representing the Parties in the Action are:

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How can I get additional information?

This Notice summarizes the Action and the basic terms of the Settlement. More details are in the Joint Stipulation of Class and PAGA Representative Action Settlement attached to the Declaration of Lilit Tunyan in Support of Plaintiff's Motion for Preliminary Approval. The Joint Stipulation of Class and PAGA Representative Action Settlement and all other records relating to the Action are available for inspection and/or copying at the Civil Records Office of the Orange County Superior Court. You may also view documents filed in this case on the Court's website at: <https://www.occourts.org/media-relations/civil.html>. You may need the case number to access and view case documents (30-2024-01376524-CU-OE-CXC). NOTE: If you choose to access documents online, the Court will charge you a fee for access.

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

Exhibit “C”

REQUEST FOR EXCLUSION FORM

**Superior Court of California for the County of Orange
Kimberly M. Wilhelm v. Kemper Sports Management, LLC, et. al.
Case No. 30-2024-01376524-CU-OE-CXC**

If you want to receive a Class Settlement Payment, you should not fill out this form. You are not required to do anything at this time. This form is to be used only if you want to exclude yourself from the Settlement.

If you decide to exclude yourself from the Settlement: (1) you will not receive any payment under the Settlement (except as to the PAGA Claim, if applicable); (2) you will not be able to object to the Settlement; and (3) you will not be bound by the class settlement or the class release if it is ultimately approved by the Court.

To be excluded from the Settlement, you must complete this Request for Exclusion Form and mail it to the Settlement Administrator at the address listed below, postmarked no later than [Response Deadline--60 days following the date of mailing].

[INSERT NAME OF SETTLEMENT
ADMINISTRATOR]
[INSERT INFO]

Request for Exclusion

I hereby certify that I am or was employed by Defendants as a non-exempt, hourly employee in California for some period of time between January 30, 2020 and -----.

I have received the Notice of Class Action Settlement ("Notice") in the Action, and I request to be excluded from the Settlement. I understand that by submitting this Request for Exclusion Form, I will not be bound by the class settlement, including the Released Class Claims, as described in the Notice and in the Settlement Agreement on file with the Court, and I will not receive a payment from the class settlement. I understand that I cannot exclude myself from the PAGA Settlement Payment and that I will still receive a pro-rata share of the PAGA Settlement Amount and will be bound by the Released PAGA Claims regardless of whether I exclude myself from the Class Settlement Payment.

Full Name: _____

Street Address: _____

City, State, Zip Code: _____

Telephone Number: (____) _____

Last four digits of your SSN: _____

Signature of Class Member (or Legal Representative): _____

Date: _____

Exhibit “D”

Superior Court of California for the County of Orange
Kimberly M. Wilhelm v. Kemper Sports Management, LLC, et. al.
Case No. 30-2024-01376524-CU-OE-CXC

If you do not wish to object to the Class Settlement, you should NOT fill out this form. You do not need to take any action.

TBD

I wish to object to the Class Settlement on the following grounds:

This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and extend across the width of the page. There are no margins, text, or other markings on the paper.

Exhibit “2”

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA)
3) ss
4 COUNTY OF LOS ANGELES)

5 I am employed in the county of Los Angeles, State of California. I am over the age of 18
6 and not a party to the within action; my business address is 535 N Brand Blvd. Suite 285
7 Glendale, CA 91203.

8 On the date indicated below, I served the documents described as: **1. PLAINTIFF'S NOTICE
9 OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS AND PAGA
10 REPRESENTATIVE ACTION SETTLEMENT; MEMORANDUM OF POINTS AND
11 AUTHORITIES IN SUPPORT THEREOF; 2. [PROPOSED] ORDER GRANTING
12 PRELIMINARY APPROVAL OF CLASS AND PAGA REPRESENTATIVE ACTION
13 SETTLEMENT; 3. DECLARATION OF LILIT TUNYAN IN SUPPORT OF
14 PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS AND PAGA
15 REPRESENTATIVE ACTION SETTLEMENT; 4. DECLARATION OF PLAINTIFF IN
16 SUPPORT OF PLAINTIFF'S MOTION FOR APPROVAL OF CLASS AND PAGA
17 REPRESENTATIVE ACTION SETTLEMENT; 5. DECLARATION OF LISA MULLINS
18 ON BEHALF OF ILYM GROUP, INC. (PROPOSED SETTLEMENT
19 ADMINISTRATOR); 6. DECLARATION OF SEUNG YANG IN SUPPORT OF
20 PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS AND PAGA
21 REPRESENTATIVE ACTION SETTLEMENT; 7. DECLARATION OF ANDREW
22 MCNAUGHT IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY
23 APPROVAL OF CLASS AND PAGA REPRESENTATIVE ACTION SETTLEMENT; 8.
24 JOINT STIPULATION OF CLASS AND PAGA REPRESENTATIVE ACTION
25 SETTLEMENT** on the interested parties in this action by sending a true copy thereof to
26 interested parties as follows and as stated on the attached service list:

27 Labor & Workforce Development Agency
28 Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612
PAGAFilings@dir.ca.gov

29 ☒ **BY ONLINE SUBMISSION:** I hereby certify that these documents were served from
30 Glendale, California, by online submission to Labor & Workforce Development Agency
31 portal using the link <https://dir.tfaforms.net/315>.

32 I declare under penalty of perjury under the laws of the State of California that the above is
33 true and correct.

34 Executed on April 10, 2025 at Glendale, California.

35 Lilit Tunyan
36 Name



37 Signature

STATE OF CALIFORNIA)
) ss
COUNTY OF LOS ANGELES)

On the date indicated below, I served the document described as: **DECLARATION OF LILIT TUNYAN IN SUPPORT OF PLAINTIFF’S MOTION FOR PRELIMINARY APPROVAL OF CLASS AND PAGA REPRESENTATIVE ACTION SETTLEMENT** on the interested parties in this action by sending a true copy thereof to interested parties as follows and as stated on the attached service list:

Attorneys for Defendants KEMPER SPORTS MANAGEMENT, LLC, KEMPER SPORTS
MANAGEMENT HOLDINGS, LLC