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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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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.

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[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 allpersons 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

Court.

PRIMARY TERMS OF SETTLEMENT

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

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

(b) Effective Date: 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.

(c) Gross Settlement Amount: Defendants' maximum total payment under the Settlement, including all attorney's fees and costs, the Service Payment to Class Representative, the costs of settlement administration, the PAGA Allocation, and any other payments provided by this Settlement, is One Million and Five Hundred Thousand Dollars ($1,500,000.00) ("Gross Settlement Amount"), subject to the Escalator Clause and except that, to the extent that any portions of the 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.

(d) 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").

(e) Non-reversionary Settlement: No portion of the Gross Settlement Amount will 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 no 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

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

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

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

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

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

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

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

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

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

Notice, the Class Member must submit written correspondence to the Settlement Administrator that is postmarked no later than the Response Deadline explaining the basis for the dispute and including any supporting documentation showing that the Covered Workweeks credited to him or her is inaccurate. If a Class Member disputes the accuracy of Defendants' records used to calculate Covered Workweeks, the Settlement Administrator will evaluate the evidence submitted by the Class Member 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 Covered Workweeks disputes, the Court may review any decision made by the Settlement Administrator regarding Covered Workweeks' disputes.

(w) Right of Class Members to Request Exclusion from the Settlement: Any Class Member may request to be excluded from the Class by returning a completed "Request for Exclusion" form to the Settlement Administrator within the Response Deadline. The form of Request for Exclusion that will accompany the Notice is attached hereto as **Exhibit "C."** The Request for Exclusion Form accompanying the Notice will be pre-printed with the Class Member's name and address to facilitate identification by the Settlement Administrator. To be complete, the Class Member must sign and date the Request for Exclusion Form and include the last four digits of their social security number. The name and last four digits of the Social Security number provided by the Class Member on the Request for Exclusion Form must match Defendants' records as provided to the Settlement Administrator, or match Defendants' records for that particular Class Member. The name and Social Security number provided by the Class Member will be deemed to match Defendants' records only if: (1) both the first name and the last name and the last four digits of the Social Security number provided by the Class Member match Defendants' records; (2) the first name and the last four digits of the Social Security number provided by the Class Member match Defendants' records and it appears the last name has been changed as a result of a change in marital status or is a shortened or lengthened version of the name that appears in Defendants' records; or (3) the last four digits of the Social Security number and last name match Defendants' records and the first name provided is either a nickname or a shortened or lengthened version of the name that appears in Defendants' records. Each Class Member who does not submit a Request for Exclusion Form in compliance with this paragraph will be deemed to be a Settlement Class Member. Settlement Class Members will be bound by all terms of the Settlement Agreement and the final approval order and final judgment. Any Class Member who submits a Request for Exclusion Form will not be a Settlement Class Member, will not be entitled to receive any Settlement Class Payment, and will not be bound by the Released Class Claims or have any right to object, appeal, or comment thereon. No later than thirty (30) calendar days before the final approval hearing, the Settlement Administrator shall provide counsel for the Parties with a complete list of all Class Members who have submitted a complete, valid, and timely Request for Exclusion Form. All Requests for Exclusion shall be submitted to the court.

(x) Right of Settlement Class Member to Object to The Settlement: Any Class Member may object to the Settlement. To object, the Class Member may (1) appear in person (including through an audio or video call appearance as allowed by the Court) at the Final Approval Hearing to explain any objection, (2) have an attorney object for the Class Member, or (3) submit a simple written brief or statement of objection to the Settlement Administrator in the form attached hereto as **Exhibit "D".** If any Class Member chooses to submit a written objection not in the form attached hereto as Exhibit "D", the written objection must include: (1) the objector's full name, address, last four digits of his or her Social Security number, and signature; (2) the case name and number. Class Counsel shall ensure that any written objections are transmitted to the Court for the Court's review (either by Class Counsel or as an attachment to declaration from the Settlement Administrator). Regardless of the form, an objection alone will not satisfy the requirement that a Settlement Class Member must either make a timely complaint in intervention before final judgment or by file a motion to set aside and vacate the class judgment under Code of Civil Procedure § 663 to have standing to appeal entry of judgment approving this Settlement, as is required under the California Supreme Court decision of *Hernandez v. Restoration Hardware*, 4 Cal. 5th 260 (2018). If the objecting Class Member does not formally intervene in the action or move to set aside any judgment and/or the Court rejects the Class Member's objection, the Class Member will still be bound by the terms of this Agreement. Class Counsel and Defendants' Counsel may, at least five (5) calendar days (or some other number of days as the Court shall specify) before the final approval hearing, file responses to any written objections submitted to the Court.

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

THE SETTLEMENT ADMINISTRATOR'S PRIMARY DUTIES

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

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

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

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

ATTORNEY'S FEES AND COSTS

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

agreements in existence.

THE NOTICE PROCESS

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

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

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.

2) in addition, 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 attached to this Agreement as **Exhibit A** 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").

DUTIES OF THE PARTIES PRIOR TO COURT APPROVAL

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

(a) Scheduling a final approval and fairness hearing on the question of whether the proposed Settlement, including payment of attorney's fees and costs, and the Class Representative's service payment, should be finally approved as fair, reasonable, and adequate as to the members of the Class;

(b) Certifying the Class;

(c) Approving as to form and content the proposed Notice Packet;

(d) Directing the mailing of the Notice Packet;

(e) Preliminarily approving the Settlement, subject only to the objections of Class Members as to the Class Settlement and final review by the Court;

(f) Conditionally appointing Plaintiff and Class Counsel as representatives of the proposed Class Members; and,

(g) Appointing LYM Group, Inc. as the Settlement Administrator, and order the Settlement Administrator to issue Notices as outlined above.

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

DUTIES OF THE PARTIES FOLLOWING FINAL COURT APPROVAL

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

(a) Approving the Settlement, adjudging the terms thereof to be fair, reasonable and adequate, and directing consummation of its terms and provisions;

(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

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

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

PARTIES' AUTHORITY

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

MUTUAL FULL COOPERATION

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

NO PRIOR ASSIGNMENTS

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

NO ADMISSION OF LIABILITY

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

ENFORCEMENT ACTIONS

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

NOTICES

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

Class Counsel:

Lilit Tunyan
ltunyan@tunyanlaw.com
Artur Tunyan
atunyan@tunyanlaw.com
TUNYAN LAW, APC
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.

BINDING ON ASSIGNS

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

CLASS COUNSEL SIGNATORIES

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

COUNTERPARTS

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

CONFIDENTIALITY & PUBLIC COMMENT

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

Dated: March 27, 2025 **KEMPER SPORTS MANAGEMENT, LLC**

By: Stephen Kelly
Print Name

Signature

General Counsel
Title

Dated: March 27, 2025 **KEMPER SPORTS MANAGEMENT, INC.**

By: Stephen Kelly
Print Name

Signature

Authorized Signatory
Title

Dated: March 27, 2025 **KEMPER SPORTS MANAGEMENT HOLDINGS, LLC**

By: Stephen Kelly
Print Name

Signature

General Counsel
Title

Defendants' Counsel, as to Form and Content Only:

Dated: March 27, 2025 **SEYFARTH SHAW LLP**

By: ______________________

Laura E. Heyne
Andrew M. McNaught

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

Exhibit "A"

TUNYAN LAW

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.

<u>Failure to Reimburse and Indemnify Expenses</u>

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 ------------------- (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 ------------- ("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 -------- ("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 not exclude yourself from the Settlement. Do not submit a Request for Exclusion Form if you wish to object. *Written* 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 <<**<u>Estimated Payment</u>**>>, which includes your payment from the Class settlement in the estimated amount of <<**<u>Estimated Individual Settlement Class Payment</u>**>> and your payment from the PAGA settlement in the estimated amount of <<**<u>Estimated Individual PAGA Settlement Payment</u>**>>. 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.

<u>Objecting to the Settlement</u>: 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. <u>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)</u>. 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: <u>DO NOT</u> 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"

<u>REQUEST FOR EXCLUSION FORM</u>

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**

<u>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.</u>

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]**

<u>Request for Exclusion</u>

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”

<u>OBJECTION FORM</u>

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

USE AND RETURN THIS FORM ONLY IF YOU WISH TO OBJECT TO THE CLASS SETTLEMENT.

<u>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</u>.

<u>If you wish to object to the Class Settlement</u>, you must write your name, address, and last four digits of your Social Security number, sign on the following page, and return this form by mail or delivery to the Settlement Administrator, at the following mailing address, postmarked or delivered on or before [**RESPONSE DEADLINE--60 days following the date of mailing**].

TBD
[INSERT MAILING ADDRESS]

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

Full Name: ___________________________________

Street Address: ____

City, State, Zip Code: ____

Telephone Number: (____ ____ ____) ____ ____ ____ ____ ____ ____ ____

Last four digits of your SSN: __________________________________

Signature of Class Member (or Legal Representative): ____

Date: ___________________