

## AMENDED CLASS ACTION SETTLEMENT AGREEMENT

This Amended Class Action Settlement Agreement (“Amended Agreement”) is made by and between plaintiff Edgar Rivas (“Plaintiff”) and defendant Kember Flooring, Inc., (“Defendant” or “Kember Flooring”). This Amended Agreement shall replace and supersede the original Class Action Settlement Agreement entered into by and between the Parties on or around March 31, 2022. Plaintiff and Defendant collectively are referred to in this Agreement as the “Parties” and individually as a “Party.”

### **I. DEFINITIONS**

In addition to other terms defined in this Agreement, the terms below have the following meaning in this Agreement:

- A. “Action” means the Complaint and First Amended Complaint were filed in California state court and any amendments thereto, which is currently captioned *Edgar J. Beltran Rivas et al. v. Kember Flooring, Inc.*, Case No. 21STCV19215 pending in Superior Court of the State of California, County of Los Angeles.
- B. “Class” means all non-exempt hourly employees who work or worked for Defendant in California, during the four years immediately preceding the filing of the Complaint and until the conclusion of the Class Period. The “PAGA Group” is a sub-group of the Class. The PAGA Group or PAGA Group Member(s) means all individuals employed by Defendant during the PAGA Period as non-exempt hourly employees.
- C. “Class Counsel” means Joseph Lavi, Vincent C. Granberry, Pooja V. Patel, and Courtney M. Miller of Lavi & Ebrahimian, LLP; Arie Ebrahimian and David Lavi of E&L, LLP; and any and all lawyers affiliated with either firm.
- D. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean the amounts to be paid to Class Counsel as approved by the Court to compensate them for their legal work in connection with the Action.
- E. “Class Data” means, for each Class Member, his or her name; last-known mailing address; Social Security Number; his or her employee identification number; his or her dates of employment and/or number of workweeks worked during the Class Period as a Class Member and pay periods worked during the PAGA Period as a PAGA Group Member.
- F. “Class Member” is a member of the Class.
- G. “Class Notice Packet” means the Notice of Proposed Settlement of Class Action and Hearing Date for Final Court Approval, Request for Exclusion form, Objection form, substantively in the form attached hereto as Exhibit A and incorporated by reference into this Agreement.

- H. “Class Period” means the period of time from May 20, 2017 through the earlier of (a) April 20, 2022, or (b) the date on which the Court enters an Order granting preliminary approval of this Settlement. “PAGA Period” means the period of time from May 20, 2020 through the earlier of (a) April 20, 2022, or (b) the date on which the Court enters an Order granting preliminary approval of this Settlement.
- I. “Class Representative Service Payment” means the amount approved by the court to be paid to Plaintiff in addition to his Settlement Share.
- J. “Court” means the Superior Court of California, County of Los Angeles.
- K. “Defendant’s Counsel” means George S. Howard, Jr. and Matthew Mushamel of Paul, Plevin, Sullivan & Connaughton LLP.
- L. “Effective Date” means the date by which all of the following have occurred:
1. This Agreement is approved by the Court; and
  2. The Judgment becomes Final as defined in Section I(O) of this Agreement.
- M. “Request for Exclusion” means the written request by a Class Member to exclude himself or herself from the Settlement submitted in accordance with the instructions in the Class Notice.
- N. “Final” means the last of the following dates, as applicable:
1. If no objection to the Settlement is made, the date the Judgment is entered.
  2. If an objection to the Settlement is made and Judgment is entered, but no appeal is filed, the last date on which a notice of appeal from the Judgment may be filed and none is filed.
  3. If Judgment is entered and a timely appeal from the Judgment is filed, the date the Judgment is affirmed and is no longer subject to appeal.
- O. “Final Approval Hearing” means the hearing to be conducted by the Court to determine whether to approve finally and implement the terms of this Agreement and enter the Judgment.
- P. “Gross Settlement Amount” means One Million One Hundred Fifty Thousand Dollars (\$1,150,000.00) to be paid by Defendant as provided by this Agreement. This amount is without any reversion to Defendant and shall be inclusive of all payments of Settlement Shares to the Class Members, Settlement Administration Expenses, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class Representative Service Payment and the PAGA Payment contemplated in this Agreement, and excluding any employer payroll taxes due on the portion of the Settlement Shares allocated as wages, which shall not be paid from the Gross Settlement and shall be a separate additional obligation of Defendant.

- Q. “Judgment” means the Final Approval Order and the Judgment entered by the Court.
- R. “Net Settlement Amount” means the Gross Settlement Amount less the Court-approved amounts for the Class Representative Service Payment, the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, the PAGA Payment, and the Settlement Administration Expenses.
- S. “Non-Participating Class Member” means a Class Member who submits a valid and timely Request for Exclusion.
- T. “Participating Class Member” means a Class Member who does not submit a valid and timely Request for Exclusion.
- U. “Preliminary Approval of the Settlement” means the Court’s Order Granting Preliminary Approval of the Settlement.
- V. “Released Parties” means Defendant, together with all of Defendant’s current and former parents, subsidiaries, predecessors, successors, affiliates, and related entities, and its and their respective shareholders, officers, principals, directors, employees, trustees, agents, and benefit plans. The persons so released shall include Kember Kreative Interiors and Kember Hardwood Flooring, inc., and their officers, shareholders, principals, directors, employees, agents, trustees and benefit plans.
- W. “Settlement” means the disposition of the Action and all related claims effectuated by this Agreement.
- X. “Settlement Administrator” means Phoenix Class Action Administration Solutions, the administrator proposed by the Parties and appointed by the Court to administer the Settlement.
- Y. “Settlement Share” means each Participating Class Member’s share of the Net Settlement Amount as provided by this Agreement.

## **II. RECITALS**

- A. On May 20, 2021, Plaintiff filed the Action in the Superior Court of the State of California, County of Los Angeles, Case No. 21STCV19215. Plaintiff asserted claims for 1) Failure to pay minimum wages in violation of Labor Code §§ 1194 and 1197; 2) Failure to pay overtime wages in violation of California Labor Code § 510; 3) Failure to provide meal breaks in violation of California Labor Code §§ 226.7 and 512 and the applicable IWC Wage Order; 4) Failure to provide rest breaks in violation of California Labor Code §§ 226.7 and 512 and the applicable IWC Wage Order; 5) Failure to timely pay earned wages in violation of Labor Code § 204; 6) Failure to provide accurate itemized wage statements in violation of California Labor Code § 226; 7) Failure to timely pay all earned wages due at time of separation of employment in violation of Labor Code §§ 201, 202, and 203; 8)

and Unfair business practices in violation of Business and Professions Code § 17200.

- B. On May 24, 2021 Plaintiff submitted a Violations Notice to the California Labor and Workforce Development Agency with the same claims asserted in his Complaint.
- C. On or about December 20, 2021, Plaintiff filed his First Amended Complaint, to add claims for penalties under the PAGA.
- D. On January 13, 2022, the Parties and their counsel participated in an all-day mediation with Mark Rudy, Esq., an experienced and highly-regarded mediator of wage and hour class actions. After mediation, the Parties reached a settlement and executed a memorandum of understand regarding its terms.
- E. On January 19, 2022 Defendant filed an Answer to the First Amended Complaint.
- F. This Agreement shall supersede and replace any and all prior understandings, agreements or representations between the Parties.
- G. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or will be construed as an admission by Defendant that the claims in the Action of Plaintiff or the Class have merit or that Defendant bears any liability to Plaintiff or the Class with relation to those claims or any other claims, or as an admission by Plaintiff that Defendant's defenses in the Action have merit. The Parties agree to provisional certification of the Class for purposes of this Settlement only. If for any reason the Settlement does not become effective, Defendant reserves the right to contest certification of any class for any reason, and reserves all available defenses to the claims in the Action.

Based on these Recitals that are a part of this Agreement, the Parties agree as follows:

### III. SETTLEMENT TERMS AND CONDITIONS

- A. **Gross Settlement Amount.** Subject to the terms and conditions of this Agreement, the Gross Settlement Amount that Defendant will pay under this Settlement is One Million One Hundred Fifty Thousand Dollars (\$1,150,000.00). This amount is inclusive of all payments contemplated in this Settlement, excluding any employer-side payroll taxes on the portion of the Settlement Shares allocated as wages, which amount shall be separately paid by Defendant to the Settlement Administrator. All of the Gross Settlement Amount will be disbursed pursuant to this Agreement without the need to submit a claim form and none of the Gross Settlement Amount will revert to Defendant.
- B. **Payments from the Gross Settlement Amount.** Subject to the terms and conditions of this Agreement, the Settlement Administrator will make the following payments out of the Gross Settlement Amount:

1. **To Plaintiff:** In addition to the Settlement Share to be paid to Plaintiff, Plaintiff will apply to the Court for an award of not more than \$10,000 as a Class Representative Service Payment. Defendant will not oppose a Class Representative Service Payment of not more than \$10,000 for the Plaintiff. The Settlement Administrator will pay the Class Representative Service Payment approved by the Court out of the Gross Settlement Amount. If the Court approves a Class Representative Service Payment of less than \$10,000 for the Plaintiff, the remainder will be retained in the Net Settlement Amount for distribution to Participating Class Members. Payroll tax withholding and deductions will not be taken from the Class Representative Service Payment and instead a Form 1099 will be issued to the Plaintiff with respect to the payment. To receive the Class Representative Service Payment and the Settlement Share to be paid to Plaintiff, the Plaintiff agrees to a waiver of California Civil Code §1542 and a general release of all claims as set forth below.
2. **To Class Counsel:** Class Counsel will apply to the Court for an award of not more than One-Third of the Gross Settlement Amount, which is currently \$383,333.33 as their Class Counsel Fees Payment and an additional amount not more than \$25,000 for all litigation expenses incurred as their Class Counsel Litigation Expenses Payment. Defendant will not oppose their request for a Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment consistent with this Agreement and approved by the Court. The Settlement Administrator will pay the amounts approved by the Court (but not more than One-Third of the Gross Settlement Amount, which is currently \$383,333.33, and \$25,000, respectively) out of the Gross Settlement Amount. If the Court approves a Class Counsel Fees Payment or a Class Counsel Litigation Expenses Payment of less than One-Third of the Gross Settlement Amount, which is currently \$383,333.33, and \$25,000, respectively, the remainder will be retained in the Net Settlement Amount for distribution to Participating Class Members. Payroll tax withholding and deductions will not be taken from the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment and instead one or more Forms 1099 will be issued to Class Counsel with respect to those payments.
3. **To LWDA.** The Parties will seek approval from the Court for a PAGA Payment in the amount of \$50,000.00 out of the Gross Settlement Amount, which shall be allocated \$37,500.00 as the LWDA's share for the settlement of civil penalties paid under this Agreement pursuant to the PAGA (the "LWDA Payment") and \$12,500.00 for distribution to the PAGA Group Members who were employed during the PAGA Period (the "PAGA Group Amount"). If the Court approves a PAGA Payment of less than \$50,000.00 the remainder will be retained in the Net Settlement Amount for distribution to Participating Class Members.
4. **To the Settlement Administrator.** The Settlement Administrator will pay out of the Gross Settlement Amount to itself its reasonable fees and expenses that are documented and approved by the Court in an amount not

to exceed \$13,000.00 (“Settlement Administration Expenses”). To the extent the Settlement Administration Expenses that are documented and approved by the Court are less than \$13,000.00, the remainder will be retained in the Net Settlement Amount for distribution to Participating Class Members.

C. **Payments From the Net Settlement Amount.** The Net Settlement Amount shall include the following payments after the deductions have been made from the Gross Settlement Amount as described in this Agreement. The Net Settlement Amount shall include the following:

1. **Settlement Share.** Subject to the terms and conditions of this Agreement, the Settlement Administrator will pay a Settlement Share from the Net Settlement Amount to each Participating Class Member. The submission of a claim form is not required for payment to a Participating Class Member. PAGA Group Members will also receive a share of the PAGA Group Amount regardless of whether they exclude themselves.
2. **Calculation.** The Settlement Share for each Participating Class Member will be calculated by (a) dividing the Net Settlement Amount by the total number of workweeks worked for all Participating Class Members that occurred during the Class Period and (b) multiplying the result by each individual Participating Class Member’s workweeks worked that occurred during the Class Period. In addition, each Participating Class Member who separated employment during the Class Period shall receive an additional five (5) workweeks credit in determining that Class Member’s Settlement Share; provided that any such employee who both separated employment and who was subsequently rehired during the Class Period shall not receive the credit of five (5) additional workweeks. The pro-rata shares for PAGA Group Members will be similarly determined by comparing the number of PAGA pay periods worked by each PAGA Group Member to the total number of PAGA Pay Periods for all PAGA Group Members worked during the PAGA Period. Payments to PAGA Group Members for their share of the PAGA Group Amount is referred to as the “Individual PAGA Share.”
3. **Withholding.**
  - a. Subject to approval by the Court, One-Third of each Participating Class Member’s Settlement Share is in settlement of wage claims (the “Wage Portion”). Accordingly, the Wage Portion is subject to wage withholdings, and shall be reported on IRS Form W-2 and shall be paid for from the Gross Settlement Amount. For the avoidance of doubt, the wage withholdings described in this Section III.C.3.a are taxes for which the Participating Class Member is solely responsible, and, as further described in this Agreement, employer payroll taxes shall not be paid from the Gross Settlement Amount and shall be a separate additional obligation of Defendant.

- b. Subject to approval by the Court, Two-Third of each Participating Class Member's Settlement Share is in settlement of claims for interest and claims for penalties allegedly due to employees ("Non-Wage Portion"). The Non-Wage Portion shall not be subject to wage withholdings and shall be reported on IRS Form 1099. Each Participating Class Member shall be solely responsible for the payment of income or other taxes attributable to the Non-Wage Portion payment.
      - c. Individual PAGA Share to PAGA Group Members shall not be subject to wage withholdings and shall be deemed 100% penalties and shall be reported on IRS Form 1099. Each PAGA Group Member shall be solely responsible for the payment of income or other taxes attributable to the Individual PAGA Share payment.
  - 4. **Effect of Non-Participating Class Members.** Non-Participating Class Members will receive no Settlement Share, and their Request for Exclusion will not reduce the Gross Settlement Amount. Their respective Settlement Shares will remain a part of the Net Settlement Amount for distribution to Participating Class Members on a *pro rata* basis relative to their Settlement Shares. Non-Participating Class Members who worked during the PAGA Period and are deemed PAGA Group Members will still receive an Individual PAGA Share.
  - 5. **Class Workweek Modification.** Defendant has represented that the total number of workweeks worked by class members from May 20, 2017 through December 31, 2021 is approximately 14,600 workweeks. In the event that the total number of workweeks in the Class Period exceeds by more than fifteen percent (15%) of that number (i.e. more than 16,790 workweeks), the Net Settlement Fund shall be increased by the percentage by which that actual number of workweeks exceeds 16,790 (example, if the actual workweeks in the Class Period are 17,126, then the Net Settlement Fund shall be increased by 2 percent) (17,126 divided by 16,790).
- D. **Appointment of Settlement Administrator.** The Parties have agreed to ask the Court to appoint Phoenix Class Action Administration Solutions as the qualified administrator, to serve as the Settlement Administrator, which, as a condition of appointment, will agree to be bound by this Agreement with respect to the performance of its duties and its compensation. The Settlement Administrator's duties will include preparing, printing, and mailing the Class Notice Packet to all Class Members; conducting a National Change of Address search to update Class Member addresses before mailing the Class Notice Packets; re-mailing Class Notice Packets that are returned to the Class Member's new address; setting up a toll-free telephone number to receive calls from Class Members; receiving and reviewing for validity completed Request for Exclusion; providing the Parties with weekly status reports about the delivery of Class Notice Packets and receipt of completed Request for Exclusion; calculating Settlement Shares and Individual PAGA Shares; issuing the checks to effectuate the payments due under the

Settlement; issuing the tax forms required under this Settlement; and otherwise administering the Settlement pursuant to this Agreement. The Settlement Administrator will have the authority to resolve all disputes concerning the calculation of a Participating Class Member's Settlement Share, subject to the dollar limitations and calculations set forth in this Agreement. The Settlement Administration Expenses, including the cost of printing and mailing the Class Notice Packet, will be paid out of the Gross Settlement Amount.

The Settlement Administrator shall have its own Employer Identification Number under Internal Revenue Service Form W-9 and shall use its own Employer Identification Number in calculating payroll withholdings for taxes and shall transmit the required employers' and employees' share of the withholdings to the appropriate state and federal tax authorities. The Settlement Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury Regulation section 468B-1.

**E. Procedure for Approving Settlement.**

**1. Motion for Preliminary Approval of Settlement by the Court.**

- a. After execution of this Agreement, Plaintiff will file a Preliminary Approval Motion with the Court for an order giving Preliminary Approval of the Settlement, setting a date for the Final Approval Hearing, and approving the Class Notice (the "Motion for Preliminary Approval").
- b. Plaintiff's Motion for Preliminary Approval will request that the Gross and Net Settlement Amounts be funded, administered and disbursed in two phases, as more particularly described in section III(E)(9) below.
- c. At the hearing on Motion for Preliminary Approval, the Parties will appear, support the granting of the motion, and submit an Order granting Preliminary Approval of the Settlement.
- d. Should the Court decline to preliminarily approve material aspects of the Settlement (including but not limited to the scope of releases, to be granted by Participating Class Members, the two-phased funding and distribution feature, or the binding effect of the Settlement on Participating Class Members), the Parties shall work together in good faith to address any concerns raised by the Court and propose a revised Settlement for the Court's approval, if necessary.

2. **Notice to Class Members.** After the Court enters an Order Granting Preliminary Approval of the Settlement, every Class Member will be sent the Class Notice Packet (which will include the Class Notice completed to reflect the Order Granting Preliminary Approval of the Settlement and showing the Class Member's Settlement Share) as follows:



- a. No later than seven (7) business days after the Court enters an Order Granting Preliminary Approval of the Settlement, Defendant will provide to the Settlement Administrator an electronic database containing each Class Member's Class Data. Class Data will otherwise remain confidential and will not be disclosed to anyone, except as required to applicable taxing authorities, in order to carry out the reasonable efforts described in section III.E.2.c., pursuant to Defendant's express written authorization or by order of the Court, or to Class Counsel in order to carry out their fiduciary duties to the Class. All Class Data will be used for settlement notification and settlement administration and shall not be used for any other purpose by Class Counsel.
- b. The Settlement Administrator will mail the Class Notice Packets to all Class Members via first-class regular U.S. Mail no later than seven (7) calendar days after receiving the Class Data, using the mailing address information provided by Defendant. Prior to mailing the Class Notice Packet to Class Members, the Settlement Administrator shall run a check of the addresses in the Class Data against any reported address changes in the National Change of Address Database ("NCOA") maintained by the U.S. Postal Service. The Class Data will be updated for any known and located address changes prior to the initial mailing. The Class Notice Packets will be distributed to Class Members in English and Spanish.
- c. If a Class Notice Packet is returned because of an incorrect address and without a forwarding address, the Settlement Administrator will promptly, and not longer than ten (10) days from receipt of the returned packet, search for a more current address using a skip trace or similar method for the Class Member and re-mail the Class Notice Packet to the Class Member within three (3) business days. The Settlement Administrator will use the Class Data and otherwise work with Defendant to find that more current address. If a Class Notice Packet is returned with a forwarding address, the Settlement Administrator will promptly re-mail the Class Notice Packet to the forwarding address within three (3) business days. The Settlement Administrator will be responsible for taking reasonable steps, consistent with its agreed-upon job parameters, Court orders, and fee, as agreed to with Class Counsel and according to the following deadlines, to trace the mailing address of any Class Member for whom a Class Notice Packet is returned by the U.S. Postal Service as undeliverable. These reasonable steps shall include, at a minimum, the tracking of all undelivered mail; performing address searches for all mail returned without a forwarding address; and promptly re-mailing to Class Members for whom new addresses are found. If the Class Notice Packet is re-mailed, the Settlement Administrator will note for its own records and notify Class Counsel and Defendant's Counsel of the date and address of each such re-

mailing as part of a weekly status report provided to the Parties. In the case of a remailed Notice Packet, the Class Member will receive an additional ten (10) calendar days from the Response Deadline to respond to the Notice Packet. The remailed Notice Packet will reflect the extended Response Deadline.

- d. As part of its weekly status report, the Settlement Administrator will inform Class Counsel and Defendant's Counsel of the number of Request for Exclusion it receives (including the numbers of valid and deficient), and number of objections received.
- e. Not later than twenty (20) days before the date by which the Plaintiff files the motion for final approval of the Settlement, the Settlement Administrator will provide Class Counsel a declaration of due diligence setting forth its compliance with its obligations under this Agreement and detailing the number of valid and timely opt outs and objections received. Prior to the Final Approval Hearing, the Settlement Administrator will supplement its declaration of due diligence if any material changes occur from the date of the filing of its prior declaration.

3. **Objections to Settlement; Disputes as to Workweeks allocated to Class Members; Objections to Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment; Request for Exclusion.** Participating Class Members may submit objections to the Settlement and objections to Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment. Class Members may also submit disputes as to workweeks allocated to them and Request for Exclusion pursuant to the following procedures:

- a. **Objections to Settlement and Disputes as to Workweeks.** The Class Notice will provide that only Participating Class Members who wish to object to the Settlement may object to the proposed Settlement, either in writing or orally at the Final Approval Hearing. Objections in writing must be submitted to the Settlement Administrator no later than forty-five (45) days after the Settlement Administrator mails the Class Notice Packets ("Response Deadline") and must set forth the grounds for the objection and comply with the instructions in the Class Notice. The Response Deadline will be extended ten (10) calendar days for those Class Members whose Notice Packet is returned and subsequently remailed. A Participating Class Member who does not submit an oral and/or a written objection in the manner and by the deadline specified above will be deemed to have waived any objection and will be foreclosed from making any objection (whether by appeal or otherwise) to the Settlement. Non-Participating Class Members shall have no ability to comment on or object to the Settlement.

Each Class Member shall also have until the Response Deadline to dispute the number of workweeks which the Class Notice allocates to them during the Class Period. Any Notice of Dispute shall be directed to the Settlement Administrator. In the event of any such dispute, the employment, time and payroll records of Defendant shall be entitled to a presumption of accuracy and any Class Member asserting a dispute shall have the burden to prove the accuracy of his or her claim. Any dispute as to this allocation shall be resolved by the Settlement Administrator. In resolving any such dispute, the Settlement Administrator may request additional information from Defendant's Counsel and/or Class Counsel.

- b. **Request for Exclusion.** The Class Notice also will provide that Class Members who wish to exclude themselves from the Settlement must mail to the Settlement Administrator not later than Response Deadline, a signed Request for Exclusion. To be valid, a Request for Exclusion must be timely and must comply with the instructions in the Class Notice. If a question is raised about the authenticity of a signed Request for Exclusion, the Settlement Administrator will have the right to demand additional proof of the Class Member's identity and will give the Class Member notice of the deficiency and the opportunity to cure. The Response Deadline will be extended ten (10) calendar days for those Class Members whose Notice Packet is returned and subsequently remailed. A Non-Participating Class Member will not participate in or be bound by the Settlement and the Judgment. Defendant will remain free to contest any claim brought by the Class Member that would have been barred by this Agreement, and nothing in this Agreement will constitute or be construed as a waiver of any defense Defendant has or could assert against such a claim. In the event of any claim brought by a Non-Participating Class Member, nothing in this Agreement, nor in the proceedings that resulted in the Settlement, nor in the mediation referenced above, or in any other aspect connected with the Settlement, shall be offered as evidence for any purpose. A Class Member who does not complete and mail a timely Request for Exclusion in the manner and by the deadline specified above will automatically become a Participating Class Member and be bound by all terms and conditions of the Settlement, including the Released Class Claims by the Participating Class Members, if the Settlement is approved by the Court, and by the Judgment, regardless of whether he or she has objected to the Settlement. Persons who submit a Request for Exclusion shall not be permitted to file objections to the Settlement or appear at the Final Approval Hearing to voice any objections to the Settlement.

All Participating Class Members who do not submit a valid and timely Request for Exclusion will receive a Settlement Share, without the need to file a claim form, and will be bound by all of the

terms of the Settlement, including without limitation, the release of the Released Class Claims by the Participating Class Members set forth in this Agreement. The Settlement Administrator shall withhold from the Settlement Share of any Participating Class Member any amount necessary to comply with any lawful withholding order (such as orders for child support, garnishments, tax liens, or the like).

c. **Report.** Not later than ten (10) days after the deadline for submission of Request for Exclusion, the Settlement Administration will provide the Parties with a complete and accurate list of all Participating Class Members and all Non-Participating Class Members.

4. **Right of Defendant to Reject Settlement.** If more than seven percent (7%) of the Class Members timely submit valid Request for Exclusion, Defendant will have the right, but not the obligation, to void the Settlement and the Parties will have no further obligations under the Settlement, including any obligation by Defendant to pay the Gross Settlement Amount, or any amounts that otherwise would have been owed under this Agreement, except that Defendant will pay the Settlement Administration Expenses incurred as of the date that Defendant exercises the right to void the Settlement. Defendant will notify Class Counsel and the Court whether it is exercising this right to void the Settlement not later than five (5) days after the Settlement Administrator notifies the Parties of the number of valid Requests for Exclusion it has received.

5. **No Solicitation and No Publicity.** The Parties and their counsel represent that neither the Parties nor their respective counsel have or will solicit or otherwise encourage, directly or indirectly, any Class Member to object to the Settlement, appeal from the Judgment, or elect not to participate in the Settlement. If a Class Member submits a Request for Exclusion, Class Counsel will not solicit, represent, or otherwise encourage that Non-Participating Class Member to participate in separate litigation against Defendant. Further, the Parties and their counsel shall hold the Settlement and its terms in confidence and will not disclose its proposed terms to third parties, other than experts and Defendant's financial or legal professionals, until a Motion for Preliminary Approval is filed with the Court.

6. **Additional Briefing and Final Approval.**

a. Class Counsel will file with the Court their motion for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and Class Representative Service Payment no later than the date the Plaintiff files the motion for final approval, and the application will be scheduled to be heard by the Court at the Final Approval Hearing.

- b. Not later than sixteen (16) court days before the Final Approval Hearing, the Plaintiff will file with the Court a motion for final approval of the Settlement.
- c. If any opposition is filed, then not later than five (5) court days before the Final Approval Hearing, both Parties may file a reply or replies in support of the motion for final approval of the Settlement, and Plaintiff and Class Counsel may also file a reply in support of their motions for the Class Representative Service Payment, the Class Counsel Fees Payment, and the Class Counsel Litigation Expenses Payment.
- d. If the Court does not grant final approval of the Settlement or grants final approval conditioned on any material change to the Settlement (including, but not limited to, the scope of release to be granted by Participating Class Members), then the Parties shall work together in good faith to address any concerns raised by the Court and propose a revised Settlement for the Court's approval. However, an award by the Court of a lesser amount than that sought by Plaintiff and Class Counsel for the PAGA Payment, Class Representative Service Payment, the Class Counsel Fees Payment, or the Class Counsel Litigation Expenses Payment, will not constitute a material modification to the Settlement within the meaning of this paragraph.
- e. Upon final approval of the Settlement by the Court at or after the Final Approval Hearing, the Parties will present for the Court's approval and an order and Judgment. After entry of the Judgment, the Court will have continuing jurisdiction over the Action and the Settlement solely for purposes of (i) enforcing this Agreement, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as may be appropriate under court rules or applicable law. The Settlement Administrator will also post the judgment on its website.

7. **Waiver of Right to Appeal.** Provided that the Judgment is consistent with the terms and conditions of this Agreement, Plaintiff and Participating Class Members who did not timely submit an objection to the Settlement, Defendant, and their respective counsel hereby waive any and all rights to appeal from the Judgment, including all rights to any post-judgment proceeding and appellate proceeding, such as, but not limited to, a motion to vacate judgment, a motion for new trial, and any extraordinary writ. The Judgment therefore will become non-appealable at the time it is entered. The waiver of appeal does not include any waiver of the right to oppose any appeal, appellate proceedings or post-judgment proceedings. If an appeal is taken from the Judgment, the time for consummation of the Settlement (including making payments under the Settlement) will be suspended until such time as the appeal is finally resolved and the Judgment becomes Final.

8. **Vacating, Reversal, or Material Modification of Judgment on Appeal or Review.** If, after a notice of appeal, a petition for review, or a petition for *certiorari*, or any other motion, petition, or application, the reviewing Court vacates, reverses, or modifies the Judgment such that there is a material modification to the Settlement (including, but not limited to, the scope of release to be granted by Participating Class Members), and that Court's decision is not completely reversed and the Judgment is not fully affirmed on review by a higher court, then the Parties shall work together in good faith to address any concerns raised by the reviewing court and propose a revised Settlement for the approval of the court not later than fourteen (14) days after the reviewing court's decision vacating, reversing, or materially modifying the Judgment becomes Final. A vacation, reversal, or modification of the Court's award of the Class Representative Service Payment or the Class Counsel Fees Payment or Class Counsel Litigation Expenses Payment will not constitute a vacation, reversal, or material modification of the Judgment within the meaning of this paragraph, provided that Defendant's obligation to make payments under this Settlement will remain limited by the Gross Settlement Amount.
9. **Timing of Provision of Settlement Shares and Other Payments.** Defendant shall fund the gross settlement amount or One Million One Hundred Fifty Thousand Dollars (\$1,150,000.00) and the amount necessary to pay Defendant's share of payroll taxes within 14 days after all of the following have occurred: (1) The court gives final approval to the proposed settlement; (2) The court enters final judgment; and (3) The time within which to appeal any final judgment has expired. Notwithstanding the foregoing, if any appeal is taken, Defendant will not be required to fund the settlement until all appeals have been resolved and the judgment is no longer subject to appeal. Within fifteen (15) days after Defendant funds the Gross Settlement Amount, the Settlement Administrator will pay to Participating Class Members, their Settlement Shares; to PAGA Group Members, their Individual PAGA Shares; to the LWDA, the LWDA Payment; to Plaintiff, the Class Representative Service Payment; to Class Counsel, their Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment; and to the Settlement Administrator, the Settlement Administration Expenses.
10. **Uncashed Settlement Share Checks.** A Participating Class Member and/or PAGA Group Members must cash his or her Settlement Share checks within 180 days after it is mailed to him or her. If a check is returned to the Settlement Administrator, the Settlement Administrator will make all reasonable efforts to re-mail it to the Participating Class Member at his or her correct address. If the check remains uncashed by the expiration of the 180-day period after it is mailed to the Participating Class Member, the funds from such uncashed checks will be paid to the California State Controller's Unclaimed Property Fund in the name of the Participating Class Member, and the Participating Class Member will remain bound by the Settlement.

11. **Final Report by Settlement Administrator to Court.** Within ten (10) days after final disbursement of all funds from the Gross Settlement Amount, the Settlement Administrator will serve on the Parties and file with the Court a declaration proving a final report on the disbursements of all funds from the Gross Settlement Amount.

F. **Release of Claims.**

1. **Participating Class Members.** As of the date the Judgment becomes Final and upon the full payment of the Gross Settlement Amount and associated employee's payroll taxes, Defendant and the other Released Parties shall be entitled to a release of any and all claims, debts, liabilities, demands, actions or causes of action arising in or based upon events during the Class Period, which are alleged, or reasonably could have been alleged based on the facts and claims asserted in the First Amended Complaint, including all claims for restitution and other equitable relief, claims for unpaid minimum and overtime wages, timeliness of earned wages, liquidated damages, meal and rest period premiums, waiting time penalties, unfair business practices, and failure to provide accurate wage statements ("Released Class Claims"), and all claims for civil or statutory penalties arising out of the Participating Class Members' Released Claims. The Released Claims expressly exclude all other claims, including claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers' compensation, and claims arising outside of the Class Period.
2. **PAGA Group Members.** As of the date the Judgment becomes Final and upon the full payment of the Gross Settlement Amount and associated employer's payroll taxes, Defendant and the other Released Parties shall be entitled to a release of any and all claims, debts, liabilities, demands, actions or causes of action arising in or based upon events during the PAGA Period, which are alleged, or reasonably could have been alleged based on the facts and claims asserted in the notice to the LWDA on May 24, 2021 ("Released PAGA Claims").
3. **Plaintiff.** As of the date the Judgment becomes Final and upon the full payment of the Gross Settlement Amount and associated employee's payroll taxes, Plaintiff hereby fully and finally releases Defendant and the other Released Parties from any and all claims, losses, debts, charges, damages, demands, obligations, causes of action, lawsuits, liabilities, breaches of duty, misfeasance, malfeasance, promises, controversies, contracts, judgments, awards, penalties, costs, and expenses of every nature and description whatsoever, known or unknown, asserted or that might have been asserted, whether in tort, contract, or for violation of any local, state, or federal statute, rule, regulation, ordinance or common law, including but not limited to those claims raised in the Action and/or that could have been raised in the Action, and those arising from or related to his work with Defendant ("Plaintiff's Released Claims") and the Released Claims, as set

forth above. This release excludes only the release of claims not permitted by law.

4. **Plaintiff's Waiver of Rights Under California Civil Code Section 1542.** As partial consideration for the Class Representative Service Payment, the Plaintiff's Released Claims shall include all such claims, whether known or unknown by the Plaintiff. Thus, even if Plaintiff discovers facts and/or claims in addition to or different from those that he now knows or believes to be true with respect to the subject matter of the Plaintiff's Released Claims, those claims will remain released and forever barred. Therefore, with respect to Plaintiff's Released Claims, Plaintiff expressly waives and relinquishes the provisions, rights and benefits of section 1542 of the California Civil Code, which reads:

**A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.**

5. **Class Counsel.** As of the date the Judgment becomes Final, and except as otherwise provided by this Agreement and the Judgment, Class Counsel and any counsel associated with Class Counsel waive any claim to costs and attorneys' fees and expenses against Defendant arising from or related to the Action.
- G. **No Effect on Other Benefits.** The Settlement Shares will not result in any additional benefit payments (such as 401(k) or bonus) beyond those provided by this Agreement to Plaintiff or Participating Class Members, and Plaintiff and Participating Class Members will be deemed to have waived all such claims, whether known or unknown by them, as part of their release of claims under this Agreement.
- H. **Limitation on Public Statements About Settlement.** Plaintiff and Class Counsel represent that they have not and will not issue any press, publications, or other media releases about the Settlement (including, but not necessarily limited to advertising or marketing materials or on social media) or have any communication with the press or media or anyone else regarding the Settlement. This provision shall not prohibit Class Counsel from communicating with Class Members after preliminary approval is granted for the sole purpose of administering the Settlement. This provision also does not limit Class Counsel from complying with ethical obligations or from posting court-filed documents on their website for viewing by Class Members.
- I. **Miscellaneous Terms.**
1. **No Admission of Liability or Class Certification for Other Purposes.**



- a. Defendant and the Released Parties deny that they have engaged in any unlawful activity, have failed to comply with the law in any respect, have any liability to anyone under the claims asserted in the Action, or that but for the Settlement a class should be certified in the Action. This Agreement is entered into solely for the purpose of compromising highly disputed claims. Nothing in this Agreement is intended or will be construed as an admission of liability or wrongdoing by Defendant or the Released Parties, or an admission by Plaintiff that any of the claims were non-meritorious or any defense asserted by Defendant was meritorious. This Settlement and the fact that Plaintiff and Defendant were willing to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (other than solely in connection with effectuating the Settlement pursuant to this Agreement).
  - b. Whether or not the Judgment becomes Final, neither the Settlement, this Agreement, any document, statement, proceeding or conduct related to the Settlement or this Agreement, nor any reports or accounting of those matters, will be (i) construed as, offered or admitted in evidence as, received as, or deemed to be evidence for any purpose adverse to Plaintiff or Defendant or any of the Released Parties, including, but not limited to, evidence of a presumption, concession, indication or admission by any of the Released Parties of any liability, fault, wrongdoing, omission, concession or damage; or (ii) disclosed, referred to or offered in evidence against any of the Released Parties, in any further proceeding in the Action, or any other civil, criminal or administrative action or proceeding except for purposes of effectuating the Settlement pursuant to this Agreement.
  - c. This section and all other provisions of this Agreement notwithstanding, any and all provisions of this Agreement may be admitted in evidence and otherwise used in any and all proceedings for the limited purpose of enforcing any or all terms of this Agreement or defending any claims released or barred by this Agreement.
2. **Integrated Agreement.** After this Agreement is signed and delivered by all Parties and their counsel, this Agreement and its exhibits will constitute the entire agreement between the Parties relating to the Settlement, and it will then be deemed that no oral representations, warranties, covenants, or inducements have been made to any Party concerning this Agreement or its exhibits other than the representations, warranties, covenants, and inducements expressly stated in this Agreement and its exhibits.
  3. **Attorney Authorization.** Class Counsel and Defendant's Counsel warrant and represent that they are authorized by Plaintiff and Defendant, respectively, to take all appropriate action required or permitted to be taken

by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Agreement including any amendments to this Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to effect the implementation of the Settlement. In the event the Parties are unable to reach agreement on the form or content of any document needed to implement the Settlement, or on any supplemental provisions that may become necessary to effectuate the terms of this Agreement, the Parties will seek the assistance of the mediator for resolution.

4. **No Prior Assignments:** The Parties 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 and portion of any liability, claim, demand, action, cause of action, or right released and discharged in this Settlement.
5. **No Tax Advice:** Neither Class Counsel nor Defendant's Counsel intend anything contained in this Settlement to constitute advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.
6. **Modification of Agreement.** Except as set forth in III.I.3 hereinabove this Agreement, and any and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their authorized representatives.
7. **Agreement Binding on Successors.** This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
8. **Applicable Law.** All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the laws of the State of California.
9. **Cooperation in Drafting.** The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
10. **Fair Settlement.** The Parties and their respective counsel believe and warrant that this Agreement reflects a fair, reasonable, and adequate settlement of the Action and have arrived at this Agreement through arms-length negotiations, taking into account all relevant factors, current and potential.
11. **Headings.** The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.

12. **Use and Return of Documents and Data.** All originals, copies, and summaries of documents and data provided to Class Counsel by Defendant in connection with the mediation or other settlement negotiations in this matter may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule. Within thirty (30) days after the Judgment becomes Final, Class Counsel will confirm in writing to Defendant the destruction of all such documents and data including those provided by Class Counsel to experts and third parties for mediation or other settlement purposes.
13. **Notice.** All notices, demands or other communications given under this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, addressed as follows:

*To Plaintiff and the Class:*

Joseph Lavi, Esq.  
Vincent C. Granberry, Esq.  
Pooja V. Patel  
Courtney M. Miller  
LAVI & EBRAHIMIAN, LLP  
8889 West Olympic Boulevard, Suite 200  
Beverly Hills, California 90211  
Tel: (310) 432-0000; Facsimile: (310) 432-0001  
Emails: jlavi@lelawfirm.com  
vgranberry@lelawfirm.com  
ppatel@lelawfirm.com  
wht1@lelawfirm.com

Arie Ebrahimian, Esq.  
David Lavi, Esq.  
E&L, LLP  
8889 West Olympic Boulevard, 2nd Floor  
Beverly Hills, CA 90211  
Tel: (213) 213-0000; Fax: (213) 213-0025  
Emails: arie@ebralavi.com  
dlavi@ebralavi.com

*To Defendant:*

George S. Howard, Jr.  
Matthew N. Mushamel  
Paul, Plevin, Sullivan & Connaughton LLP  
101 West Broadway, Ninth Street  
San Diego, CA 92101  
Tel.: (619) 237-5200  
Fax: (619) 615-0700  
Emails: ghoward@paulplevin.com  
mmushamel@paulplevin.com

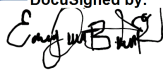
- 14. **Execution in Counterparts.** This Agreement may be executed in one or more counterparts by facsimile, electronically or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument provided that counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.
- 15. **Stay of Litigation.** The Parties agree that upon the signing of this Agreement by the Parties hereto the continuing litigation of the Action shall be stayed including but not limited to any outstanding written discovery requests, and the time to bring the Action to trial shall be extended pending the outcome of the settlement process.
- 16. **Continuing Jurisdiction.** The Court shall retain continuing jurisdiction over the Action to ensure the continuing implementation of this Agreement.

**IV. EXECUTION BY PARTIES AND COUNSEL**

The Parties and their counsel hereby execute this Agreement.

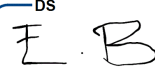
Dated: November 04/1 2022

By:

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EDGAR RIVAS  
 Plaintiff on behalf of himself and all others  
 similarly situated

DS  


Dated: November 4\_\_, 2022

**LAVI & EBRAHIMIAN, LLP  
E&L, LLP**

By: 871E0169FCF244D...

\_\_\_\_\_  
JOSEPH LAVI  
ARIE EBRAHIMIAN  
Attorneys for Plaintiff Edgar Rivas

Dated: November \_\_\_\_, 2022

**KEMBER FLOORING, INC.**

By: \_\_\_\_\_  
TOM HESCOTT  
President

Dated: November \_\_\_\_, 2022

**PAUL, PLEVIN, SULLIVAN & CONNAUGHTON LLP**

By: \_\_\_\_\_  
GEORGE S. HOWARD, JR.  
MATTHEW N. MUSHAMEL  
Attorneys for Kember Flooring, Inc.

Dated: November \_\_\_\_, 2022

**LAVI & EBRAHIMIAN, LLP  
E&L, LLP**

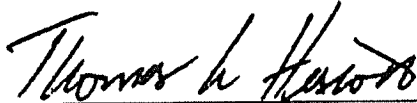
By:

\_\_\_\_\_  
JOSEPH LAVI  
ARIE EBRAHIMIAN  
Attorneys for Plaintiff Edgar Rivas

Dated: November 2, 2022

**KEMBER FLOORING, INC.**


By:

  
\_\_\_\_\_  
TOM HESCOTT  
President

Dated: November 2, 2022

**PAUL, PLEVIN, SULLIVAN & CONNAUGHTON LLP**

By:

  
\_\_\_\_\_  
GEORGE S. HOWARD, JR.  
MATTHEW N. MUSHAMEL  
Attorneys for Kember Flooring, Inc.

# **EXHIBIT A**

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

**NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION**

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

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

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

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

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

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



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

### 1. Why Did I Get This Notice?

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

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

### 2. What Is This Action About?

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

### 3. Do I Need to Hire an Attorney?

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

### 4. What Is Defendant’s Position?

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

## 5. Why Is There a Settlement?

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

## 6. What Does the Settlement Provide?

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

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

## 7. What Can I Get From the Settlement?

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

## 8. How Was My Individual Payment Amount Calculated?

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

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

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

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

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

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

## 9. How Can I Get Payment?

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

## 10. When Would I Get My Payment?

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

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

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

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

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

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

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

**12. How Do I Exclude Myself from the Settlement?**

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

Settlement Administrator  
Address  
Phone: (\*\*\*) \*\*\*-\*\*\*\*

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

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

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

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

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

#### 14. When Is the Final Approval and Fairness Hearing?

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

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

#### 15. How Do I Get Additional Information?

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

##### Settlement Administrator

TPA NAME  
ADDRESS  
PHONE NUMBER  
FAX  
EMAIL

##### Class Counsel

Joseph Lavi, Esq.  
Vincent C. Granberry, Esq.  
Pooja P. Patel, Esq.  
Courtney M. Miller, Esq.  
**Lavi & Ebrahimian, LLP**  
8889 West Olympic Boulevard,  
Suite 200  
Beverly Hills, California 90211  
Telephone: (310) 432-0000  
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Arie Ebrahimian, Esq. (SBN 274961)  
arie@ebralavi.com  
David Lavi, Esq. (SBN 277604)  
dlavi@ebralavi.com  
**E&L, LLP**  
8889 W. Olympic Boulevard, 2nd Floor  
Beverly Hills, CA 90211

Phone: (213) 213-0000

Fax: (213) 213-0025

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

**BY ORDER OF THE COURT.**

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

**EXCLUSION FORM**

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

Rivas v. Kember Flooring, Inc. Settlement Administrator

c/o \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

**FAX NUMBER:** \_\_\_\_\_

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

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

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

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

Full name: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip Code: \_\_\_\_\_

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

Your Signature: \_\_\_\_\_

