

## AMENDMENT AGREEMENT TO SETTLEMENT AGREEMENT

THIS AMENDMENT AGREEMENT (this “**Agreement**”) is an amendment to the Settlement Agreement, dated March 31, 2020 (the “**Settlement Agreement**”). This Agreement is entered into by the Parties, Samuel Berg, Lukas Walter, Travis McEvoy, Kyle O’Connor, and Thomas Gobeil and the defendants Canadian Hockey League, Ontario Hockey League, Western Hockey League, Québec Major Junior Hockey League and all of the Canadian CHL teams listed in Schedule A to the Settlement Agreement. This Agreement is dated effective as of the 2nd day of November 2022. Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Settlement Agreement.

WHEREAS the Parties reached an agreement to resolve the Class Actions following a two-day mediation with Joel Wiesenfeld on February 10 and 11, 2020 and subsequently entered into the Settlement Agreement on March 31, 2020;

WHEREAS a joint settlement approval hearing was conducted before the Alberta Court of King’s Bench, the Ontario Superior Court of Justice, and the Québec Superior Court of Justice (collectively “**the Courts**”) on September 15, 2020, pursuant to the Canadian Bar Association’s revised *Canadian Judicial Protocol for the Management of Multi-Jurisdictional Class Actions and the Provision of Class Action Notice*, with the result that the Settlement Agreement was not approved because the Courts refused to approve the release provisions of the Settlement Agreement;

WHEREAS the Parties renegotiated new release provisions and have agreed to amend the Settlement Agreement by amending sections 1(25) (the “**Released Matters Definition**”) and 5.1 (the “**Release of Releasees**”);

WHEREAS section 11.7 of the Settlement Agreement provides for modification of the Settlement Agreement in writing and on consent of all Parties hereto, and any such modification or amendment must be approved by the Court;

NOW THEREFORE THIS AGREEMENT WITNESSES THAT IN CONSIDERATION of the covenants and agreements contained in this Agreement, the Parties hereto agree with each other as follows:

### ARTICLE 1

#### AMENDMENTS

1.1 The Settlement Agreement is hereby amended as follows:

(a) Section 1(25) of the Settlement Agreement shall be deleted in its entirety and replaced with the following:

## 1. Definitions

(25) Released Matters means, up to the date of the execution of this Settlement Agreement, any and all actions, causes of action, suits, debts, claims (including any additional claims by the representative plaintiffs) and demands, howsoever arising, by the Releasors as the result of, relating to, or arising from the common issues as certified and the matters raised or advanced in the Class Actions. The certified common issues in the Class Actions are as follows:

### ***Berg et al. v. Canadian Hockey League et al., Ontario Court File No. CV-14-511423-00CP***

#### *Employment Status*

1. Are, or were, the Class Members employees of the Ontario Clubs, the OHL, and/or the CHL pursuant to (a) the *Employment Standards Act, 2000*, and/or (b) at common law?
2. Are, or were, the Class Members who played for the Ontario Clubs located in Ontario in "pensionable employment" of the Ontario Clubs located in Ontario, the OHL, and/or the CHL, pursuant to the *Canada Pension Plan*?
3. Are, or were, the Class Members who played for the Ontario Clubs located in Ontario in "insurable employment" of the Ontario Clubs located in Ontario, the OHL, and/or the CHL, pursuant to the *Employment Insurance Act*?

#### *Common Employer*

4. Are the Ontario Clubs, the OHL, and/or the CHL a common employer, either under statute or at common law?

#### *Statutory Requirements*

5. Do any or all of the Ontario Clubs, the OHL, and/or the CHL have an obligation to the Class Members under the *Employment Standards Act, 2000* to pay them minimum wage, overtime pay, holiday pay and/or vacation pay?

#### *Breach of Contract*

6. Are the minimum wage, overtime pay, holiday pay, and/or vacation pay requirements under the *Employment Standards Act, 2000* express or implied terms of contract between the Class Members and any or all of the Ontario Clubs, the OHL, and/or the CHL?
7. Did any or all of the Ontario Clubs, the OHL, and/or the CHL breach any of the contractual obligations found to exist above?

#### *Negligence*

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8. Did any or all of the Ontario Clubs, the OHL, and/or the CHL owe a duty of care to the Class Members to:
- ensure that Class Members are properly classified as employees;
  - advise Class Members of their entitlements under the *Employment Standards Act, 2000*;
  - ensure that Class Members' hours of work are monitored and accurately recorded; and
  - ensure that Class Members are compensated in accordance with their entitlements under the *Employment Standards Act, 2000*?
9. Did any or all of the Ontario Clubs, the OHL, and/or the CHL breach any of the duties of care found to exist above?

*Breach of Duty of Honesty, Good Faith and Fair Dealing*

10. Did any or all of the Ontario Clubs, the OHL and/or the CHL owe a duty, in contract or otherwise, to the Class Members, to act in good faith and to deal with them in a manner characterized by candour, reasonableness, honest and/or forthrightness in respect of its obligations to:
- ensure that Class Members are properly classified as employees;
  - advise Class Members of their entitlements under the *Employment Standards Act, 2000*;
  - ensure that Class Members' hours of work are monitored and accurately recorded; and
  - ensure that Class Members are compensated in accordance with their entitlements under the *Employment Standards Act, 2000*?
11. Did any or all of the Ontario Clubs, the OHL, and/or the CHL breach their good faith duties in any of the respects found to exist above?

*Conspiracy*

12. Did any or all of the Ontario Clubs, the OHL, and/or the CHL conspire to violate the *Employment Standards Act, 2000*? If so, when, where, and how?

*Waiver of Tort*

13. Are any or all of the Ontario Clubs, the OHL, and/or the CHL liable to the Class Members in waiver of tort?

*Unjust Enrichment*

14. Were any or all of the Ontario Clubs, the OHL, and/or the CHL unjustly enriched by failing to compensate the Class Members with minimum wage, overtime pay, vacation pay, and/or holiday pay owed to them in accordance with the *Employment Standards Act, 2000* and/or failing to make the required employer payroll contributions on behalf of the Class Members?

*Damages, Costs and Interest*

15. Is this an appropriate case for any or all of the Ontario Clubs, the OHL, and/or the CHL to disgorge profits?
16. Can any or all of the claims be assessed on an aggregate basis?
17. Are any or all of the Ontario Clubs, the OHL, and/or the CHL liable for punitive damages?
18. Should any or all of the Ontario Clubs, the OHL, and/or the CHL pay prejudgment and postjudgment interest, and, if so, at what annual interest rate?
19. Should any or all of the Ontario Clubs, the OHL, and/or the CHL pay the costs of administering and distributing any monetary judgment and/or the costs of determining eligibility and/or the individual issues? If yes, who should pay what costs, why, and in what amount?

***Walter et al. v. Western Hockey League et al., Alberta Court File No. 1410-11912***

1. Are, or were, the class members employees of the Defendant Clubs, the WHL and/or the CHL pursuant to (a) the applicable employment standards legislation of British Columbia, Alberta, Saskatchewan, and Manitoba and/or (b) at common law?
2. Are, or were, the class members who played for the Defendant Clubs in "pensionable employment" of the defendant clubs, the WHL and/or the CHL, pursuant to the Canada Pension Plan?
3. Are, or were, the class members who played for the Defendant Clubs in "insurable employment" of the defendant clubs, the WHL and/or the CHL, pursuant to the *Employment Insurance Act*?
4. If the answers to common issues #1, #2 & #3 are yes:
  - a. does being in a relationship of "guidance, supervision, development and education" negate the class members' employee status, absent any formal exemption to this effect?
  - b. do the Class Members qualify for an "amateur athlete" status which negates their employee status, absent any formal exemption to this effect?

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- c. do the Class Members qualify for any applicable trainee or intern exemption to employment status?
  - d. does *The Employment Standards Regulations*, R.R.S. c. S-15.1, Reg. 5, s. 3(1) apply retroactively?
  - e. does the *Employment Standards Regulation*, B.C. Reg. 396/95, s. 37.16 apply retroactively?
5. If the answers to common issues #1, #2 & #3 are yes, are the CHL and/or the WHL a common employer with the Defendant Clubs, under statute and/or at common law?
6. Are the minimum wage, overtime pay, holiday pay, and/or vacation pay requirements under the applicable employment standards legislation express or implied terms of the contracts between the class members and any or all of the Defendant Clubs, the WHL and/or the CHL?
7. If the answer to common issue #6 is yes, did any or all of the Defendant Clubs, the WHL, and/or the CHL breach any of the contractual obligations found to exist?
8. Do the Defendant Clubs, the WHL, and/or the CHL owe a duty, in contract or otherwise, to Class Members to act in good faith and to deal with them in a manner characterized by candour, reasonableness, honesty and/or forthrightness in respect to their obligations to:
  - a. ensure that the Class Members are properly classified as employees;
  - b. advise Class Members of their entitlements under the applicable employment standards legislation of British Columbia, Alberta, Saskatchewan, and Manitoba;
  - c. ensure that Class Members' hours of work are monitored and accurately recorded; and/or
  - d. ensure that Class Members are compensated in accordance with their entitlements under the applicable employment standards legislation of British Columbia, Alberta, Saskatchewan, and Manitoba?
9. If the answer to common issue #8 is yes, did any or all of the Defendant Clubs, the WHL and/or the CHL breach their good faith duties with respect to any of the factors listed above?
10. Do any or all of the Defendant Clubs, the WHL and/or the CHL have an obligation to the class members under the applicable employment standards legislation of British Columbia, Alberta, Saskatchewan, and Manitoba to pay them minimum wage, overtime pay, holiday pay and/or vacation pay?

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11. If the answer to common issue #10 is yes, did any or all of the Defendant Clubs, the WHL and/or the CHL breach the applicable employment standards legislation of British Columbia, Alberta, Saskatchewan, and Manitoba by failing to pay the class members minimum wage, over-time pay, holiday pay and/or vacation pay?
12. Did any or all of the Defendant Clubs, the WHL and/or the CHL conspire to violate the applicable employment standards legislation of British Columbia, Alberta, Saskatchewan, and Manitoba? If so when, where, and how?
13. Were any or all of the Defendant Clubs, the WHL and/or the CHL unjustly enriched by failing to compensate the class members with minimum wage, overtime pay, vacation pay and/or holiday pay owed to them in accordance with the applicable employment standards legislation of British Columbia, Alberta, Saskatchewan, and Manitoba and/or failing to make the re-quired Employer Payroll Contributions on behalf of the Class Members?
14. Are any or all of the Defendant Clubs, the WHL and/or the CHL liable to the class members in waiver of tort?
15. Did any or all of the Defendant Clubs, the WHL and/or the CHL owe a duty of care to the class members to;
  - a. ensure that Class Members are properly classified as employees;
  - b. advise Class Members of their entitlements under the applicable employment standards legislation of British Columbia, Alberta, Saskatchewan, and Manitoba;
  - c. ensure that Class Members' hours of work are monitored and accurately recorded; and/or
  - d. ensure that Class Members are compensated in accordance with their entitlements under the applicable employment standards legislation.

***Walter c. Ligue de Hockey Junior Majeur du Québec Inc. et al, Quebec Court File No. 500-06-000716-148***

1. Were the Class Members employees within the meaning of the applicable employment standards legislation<sup>\*\*1</sup>?

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<sup>1</sup> \*\* To ensure equal treatment of all class members and Respondents, “applicable employment standards legislation” means An Act Respecting Labour Standards, C.Q.L.R. c. N-1.1, Employment Standards Act, S.N.B. 1982, c.E-7.2, Labour Standards Code, R.S.N.A. 1989, c. 246, Employment Standards Act, R.S.P.E.I. 1988, c. E-6.2, Me. Rev. Stat. tit. 26, §664 as well as common law or civil law causes of action based on the material facts pleaded in the Quebec case.

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2. Did the Defendants conspire to require the Class Members to agree to the contracts, and the contracts only, while knowing that they were unlawful? If so, when, where, and how?
3. Are the Class Members entitled to punitive damages?

(b) Section 5.1 of the Settlement Agreement shall be deleted in its entirety and replaced with the following:

### **5.1 Release of Releasees**

1. The Releasors covenant, represent and warrant that, as of the date of the execution of the Settlement Agreement, they have no further claims against the Releasees for, or arising out of, the Released Matters. In the event that the Releasors have made or should make any claims or demands or commence or threaten to commence any actions, claims or Class Actions or make any complaints against the Releasees arising out of the Released Matters, this Release may be raised as an estoppel and complete bar to any such claim, demand, action, Class Actions or complaint.
2. The Releasors agree and undertake that they will not make any claim or commence or maintain any Class Actions, complaint, action or claim against any Person in which any claim could arise against the Releasees for contribution or indemnity or any other relief over in respect of any of the actions, causes of action, claims, debts, suits or demands of any nature or kind that has been released by this Release. In the event that the Releasors make any claim or commence any proceeding in respect of the Released Matters against any person or entity which might make a claim, whether for contribution or indemnity or declaratory or other relief, from the Releasees or any of them, or which might result in a claim, whether for contribution or indemnity or declaratory or other relief, being made against the Releasees or any of them, this Release may be raised as an estoppel and complete bar to any such claim, demand, action, proceeding or complaint.
3. This release does not apply to and shall not foreclose the claims made in (i) the action brought by Daniel Carcillo and Garrett Taylor against the Defendants or certain of the Defendants in the Ontario Superior Court of Justice, Court File number CV-20-00642705; and (ii) the action brought by James Johnathon McEwan against certain of the Defendants in the Supreme Court of British Columbia, Registry number S-100264.
4. This release is conditional upon approval of the Settlement Agreement by each of the three Courts. In the event that this Settlement Agreement is not approved by Final Order of any of the Courts, the Releasors will not be bound by the terms of this Release.

## **ARTICLE 2**

### **GENERAL PROVISIONS**

- 2.1 Continuing Effect of Settlement Agreement. Other than as outlined in this Agreement, the Parties hereto confirm that all other provisions of the Settlement Agreement remain in full force and effect.

2.2 Time. Time is of the essence of this Agreement.

2.3 Counterparts. This Agreement, or any amendment to it, may be executed in multiple counterparts, either in original form or by electronic transmission, each of which will be deemed an original agreement. All counterparts shall be construed together and shall constitute one and the same agreement.

2.4 Governing Law. This Agreement and all matters arising hereunder will be governed in accordance with the governing laws as defined in section 11.5 of the Settlement Agreement.

2.5 Severability. If any part of this Agreement is declared invalid or unenforceable, then such part shall be deemed to be severable from this Agreement and will not affect the remainder of this Agreement or the Settlement Agreement.

2.6 Further Acts. The Parties will perform and cause to be performed such further and other acts and things and execute and deliver or cause to be executed and delivered such further and other documents as necessary or desirable to carry out the terms and intent of this Agreement.

*[Remainder of page intentionally left blank—signature page follows]*



IN WITNESS WHEREOF this Agreement is executed as of the day and year first above written.

**Class Counsel**

May 23, 2023  
Date

By: Theodore Charney  
Name: Theodore Charney  
Title:

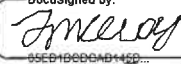
**Samuel Berg on his own behalf, as representative plaintiff in the Ontario Action and on behalf of the Class**

5/10/2023  
Date

By:   
Name: Sam Berg  
Title: Plaintiff

**Travis McEvoy on his own behalf, Kyle O'Connor on his own behalf, and as representative plaintiffs in the Alberta Action and on behalf of the Class**

5/10/2023  
Date

By:   
Name: Travis McEvoy  
Title: Plaintiff

5/9/2023  
Date

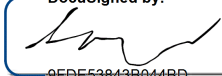
By:   
Name: Kyle O'Connor  
Title: Plaintiff

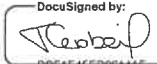
**Lukas Walter on his own behalf,  
Thomas Gobeil on his own behalf, and as  
representative plaintiffs in the Quebec  
Action and on behalf of the Class**

\_\_\_\_\_  
Date

5/9/2023

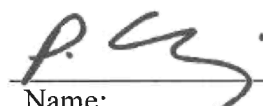
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DocuSigned by:  
  
By: \_\_\_\_\_  
Name: Lukas Walter  
Title: Plaintiff

DocuSigned by:  
  
By: \_\_\_\_\_  
Name: Thomas Gobeil  
Title: M

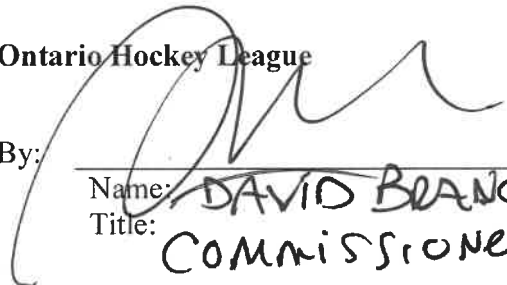
May 25, 2023

\_\_\_\_\_  
Date

**Canadian Hockey League**  
By:   
Name: \_\_\_\_\_  
Title: Dan MacKenzie  
President


25 MAY '23

\_\_\_\_\_  
Date

**Ontario Hockey League**  
By:   
Name: DAVID BRANCH  
Title: COMMISSIONER

May 25, 2023

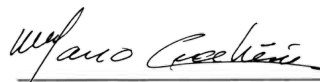
\_\_\_\_\_  
Date

**Western Hockey League**  
By:   
Name: Ron Robison  
Title: Comissioner

**Quebec Major Junior Hockey League**

May 25, 2023

Date

By: 

Name:

Title: