

STATE OF INDIANA) IN THE STEUBEN COUNTY _____ COURT
) SS:
COUNTY OF STEUBEN) CAUSE NO.

DUNHAM’S ATHLEISURE CORPORATION,

Plaintiff,

v.

PAYSERV, L.L.C., TODD C. SAYLOR, TRACI
SAYLOR, and HEATHER DAVID a/k/a
HEATHER MARCKEL,

Defendants.

**COMPLAINT FOR TEMPORARY RESTRAINING ORDER
AND INJUNCTIVE AND OTHER RELIEF**

Plaintiff Dunham’s Athleisure Corporation (“Dunham’s” or “Plaintiff”), by counsel, for its Complaint for Temporary Restraining Order and Injunctive and Other Relief against Defendants PayServ, L.L.C. (“PayServ”), Todd C. Saylor, Traci Saylor, and Heather David a/k/a Heather Marckel (collectively, “Defendants”), states as follows:

1. Dunham’s operates a chain of sporting goods stores in the Midwest. Based in Michigan, Dunham’s employs workers in the State of Indiana and operates stores in the State of Indiana.

2. PayServ is a payroll processing company located in Angola, Indiana. PayServ is led by its CEO, Defendant Todd Saylor (“Mr. Saylor”). Mr. Saylor’s wife, Traci Saylor (“Mrs. Saylor”), is a principal and employee of PayServ. Defendant Heather David (“Ms. David”) is PayServ’s CFO.

3. Since 2018, Dunham’s has engaged Defendant PayServ to process the payroll for thousands of Dunham’s employees. Dunham’s is PayServ’s biggest customer. Under the parties’ agreement, PayServ is entrusted with funds from Dunham’s that PayServ uses to cut checks to Dunham’s employees and to pay local, state, and federal taxes on Dunham’s behalf. Throughout

the course of the parties' six-year relationship, Dunham's has timely paid PayServ for its services and has never breached the parties' agreement.

4. Unbeknownst to Dunham's, the Defendants engaged in a multi-million dollar fraud that resulted in a shortfall of funds at PayServ. The Defendants pooled clients' payroll money and diverted it to other business ventures, using the money to pad balance sheets and to fund distributions to themselves. Upon information and belief, this practice has persisted over the course of Dunham's six-year relationship with PayServ.

5. To cover up that shortfall, in December 2024, the Defendants distributed Dunham's money to its other clients. That theft of Dunham's money left Dunham's with tax bills to federal, state, and local authorities—tax bills that PayServ should have used Dunham's money to pay on Dunham's behalf.

6. On December 10, 2024, at the direction of Mr. Saylor, Mrs. Saylor, and Ms. David, PayServ directed Dunham's to wire \$6,625,509.35 for Dunham's December 13, 2024 payroll date. Of that \$6.6 million, \$1,730,074.16 was allocated for the payment of federal, state, and local taxes. Specifically, \$1,529,657.66 was earmarked for the payment of federal taxes and \$200,416.50 was to be paid into a "floating fund" maintained by PayServ for Dunham's state and local tax obligations.

7. Relying on PayServ's request and statements, Dunham's wired \$6.6 million to PayServ on December 12 and December 13, 2024.

8. Between December 17, 2024 and December 18, 2024, PayServ's CEO, Todd Saylor, informed Dunham's that PayServ had "lost" a total of \$2,245,298.56 million intended for the payment of Dunham's taxes. PayServ, Mr. Saylor, and Mrs. Saylor, during several phone calls with Dunham's, blamed the shortfall on an "ex-employee" identified as PayServ's CFO, Defendant Heather David. Mr. Saylor stated that Ms. David had fraudulently diverted "millions of

dollars” of PayServ’s clients’ money that had been entrusted to PayServ. Mr. Saylor advised that Dunham’s would have to pay that amount to taxing authorities out of their own pocket.

9. But the \$2.25 million shortfall in PayServ’s funds—which funds were entrusted to it by Dunham’s and other businesses—was due to fraud and conversion by Heather David *at the direction* of Todd Saylor and Traci Saylor. The Saylor directed Ms. David to divert clients’ money to the Saylor’s other businesses. Then, in December 2024, the Saylor directed Ms. David to use Dunham’s money to pay other companies’ payroll to cover up the shortfall caused by their fraud.

10. When PayServ—upon the Saylor and Ms. David’s direction—emailed Dunham’s on December 10, 2024, directing Dunham’s to wire it \$6,625,509.35, the Defendants intended to use Dunham’s money to bankroll payroll tax obligations for other clients, leaving Dunham’s with the tax obligation shortfall.

11. In other words, when the Defendants accepted Dunham’s money on December 12 and 13, Defendants knew that they would not make any tax payments on behalf of Dunham’s. Defendants took Dunham’s money and immediately diverted it.

12. To avoid additional fines and penalties, Dunham’s paid the local, state, and federal taxes due out of its own pocket, even though it had already paid PayServ the amounts due.

13. Defendants PayServ, Ms. David, and the Saylor have never denied wrongdoing or contested the amount due and owing to Dunham’s. In fact, Mr. Saylor readily admitted it on several conference calls and provided spreadsheets detailing the amount Defendants took from Dunham’s. And Mr. Saylor even admitted that that he “knows” he “is going to jail.”

14. Shortly after the theft of Dunham’s money, on or about December 18, 2024, PayServ sent a notice to its clients that it was winding up its business and that, in breach of its existing agreements, it would no longer provide payroll services. The notice was signed by Mr. Saylor on behalf of PayServ. In line with PayServ’s conduct to date, the purported winding up of

PayServ's affairs will give PayServ and the Saylor's cover for transferring assets out of PayServ and the Saylor's names and into the numerous other entities that the Saylor's own.

15. Indeed, the Saylor's have sought to offload assets as quickly as possible following disclosure of the fraud. For example, the Saylor's reduced the listing price for their Florida mansion and primary residence by \$1 million within a few days of disclosing the fraud to Dunham's. Shortly thereafter, the Saylor's listed another property they own, and then dropped the price twice within a few days. Both properties are now under contract.

16. Moreover, Mr. Saylor has said on multiple occasions, to different people and to Dunham's, that he is "selling everything" which "could get [him] to \$6 million." Even though \$6 million would be more than enough to pay Dunham's for its losses, Mr. Saylor specifically told Dunham's that he would not promise to make Dunham's whole.

17. The impending mass transfer of PayServ and the Saylor's assets—coupled with the fact that PayServ has insufficient funds to even pay Dunham's compensatory damages—will cause immediate and irreparable harm to Dunham's. Without injunctive relief, the Saylor's and PayServ will have carte blanche to hide assets from a potential judgment, leaving Dunham's—the victim of fraud and theft—without any recourse.

18. Dunham's now seeks to hold PayServ and the Saylor's liable and seeks \$2,245,298.56 in compensatory damages and treble damages under the Indiana Crime Victims Relief Act (the "ICVRA"). In total, Dunham's seeks \$6,735,895.68 million in damages. In addition, Dunham's seeks a temporary restraining order, preliminary injunction, and permanent injunction to prevent the further diversion of assets and fraudulent transfers by PayServ, Todd Saylor, and Traci Saylor.

PARTIES, JURISDICTION AND VENUE

19. Dunham’s Athleisure Corporation is a Michigan corporation with its principal place of business at 5607 New King Drive, Suite 125, Troy, MI 48098.

20. PayServ LLC is an Indiana limited liability company with its principal place of business at 300 N. Wayne Street, Angola, IN 46703.

21. Defendant Todd C. Saylor is a citizen of the State of Florida. According to his website, Mr. Saylor is a “Entrepreneur, CEO, Speaker, Business Coach, Philanthropist, Leader, Visionary, and Author,” with a portfolio spanning “14 organizations, 5 brands, and an 8-figure net worth.” A screenshot of Mr. Saylor’s website, captured on December 14, 2024, is attached hereto as **Exhibit A**.

22. Defendant Traci Saylor is a citizen of the State of Florida. She is an employee and principal of PayServ.

23. Defendant Heather David a/k/a Heather Marckel is a citizen of the State of Indiana. At all relevant times, Ms. David was the Executive Vice President and CFO at PayServ until her termination in November or December 2024.

24. This Court has jurisdiction over the Defendants pursuant to the terms of the parties’ agreement. (Ex. B § 24.) In addition, the Court has general jurisdiction over PayServ LLC, an Indiana LLC which has its principal place of business in Indiana. The Court also has specific jurisdiction because the MSA was performed by PayServ LLC in the State of Indiana. The court has personal jurisdiction over Defendants Todd and Traci Saylor because: they frequently conduct business in the State of Indiana; they solicit relationships with customers in the State of Indiana; they travel into the State of Indiana; they own and operate multiple businesses in the State of Indiana; and they make business agreements subject to the laws and jurisdiction of the State of

Indiana. The court has personal jurisdiction over Heather David because she is a citizen and resident of the State of Indiana.

25. Venue is proper in this Court under Ind. R. Trial P. 75 because PayServ has its principal office in Steuben County, Indiana, and the acts and omissions upon which this Complaint is based occurred in Steuben County, Indiana.

THE PARTIES' AGREEMENT

26. On July 19, 2018, PayServ and Dunham's entered into a Master Services Agreement (the "MSA"), a true and accurate copy of which is attached hereto as **Exhibit B**. The MSA provided for automatically renewing one-year terms. (MSA § 2.)

27. The MSA was accompanied by Statement of Work ("SOW") and a Service Pricing Agreement ("SPA"). (Ex. B at 11, 15.)

28. Under the MSA, the SPA, and the SOW, PayServ was to provide a variety of services, including full payroll services, direct deposits, and payment tax services. PayServ also agreed to calculate and deduct local, state, and federal taxes from employee paychecks and "[h]old said funds in an account established by [PayServ] until such time as said amounts are due to the appropriate taxing authorities" and "[d]eposit said funds with the appropriate taxing authorities in a timely manner." (MSA §§ 13, 13(e).) PayServ was also obligated to prepare, sign and file with the proper taxing authorities all returns for such tax. (MSA § 13(e)(iv).)

29. When Dunham's deposits money with PayServ, the money is earmarked for three purposes: (1) as payroll for Dunham's employees; (2) for federal taxes associated with that payroll; and (3) as a contribution to PayServ's "floating fund," out of which PayServ pays Dunham's local and state taxes when they become due.

30. PayServ agreed to provide its services "in a commercially reasonable manner." (MSA § 6(a).)

31. PayServ also agreed to indemnify Dunham’s for, *inter alia*:
- i. Any negligent act or failure to act or willful misconduct or any violation of law by PAYSERV, its employees, officers or agents, or assigns,
 - ii. Any material breach of or failure to perform or to properly and accurately perform any of PAYSERV’s obligations, representations or covenants under this Agreement,

* * *

viii. Any violation of any law, statute, regulation or code by PAYSERV in the performance of its duties hereunder.

(MSA § 23.)

32. The MSA is governed by Indiana law. (MSA § 24.) It provides that “all claims relating to or arising out of” the MSA “shall likewise be governed by the laws of Indiana,” and that “[t]he parties agree jurisdiction and venue for any actions relating to” the MSA “will be in state court in Steuben County, Indiana.”

THEFT OF DUNHAM’S FUNDS AND BREACH OF THE MSA

33. As recently as November and/or December 2024, PayServ—at the direction of the Saylor and Ms. David—diverted millions of dollars of client money out of PayServ’s account, where it commingled clients’ money.

34. According to Mr. Saylor, PayServ maintained all of its clients’ money in a pooled, commingled fund. When clients deposited money for payroll and for federal, state, and local taxes, that money was commingled with other clients’ money.

35. At the direction of the Saylor, Ms. David routinely transferred PayServ’s client money to other of the Saylor’s business ventures, using the money to pad balance sheets and to fund distributions to themselves. Upon information and belief, and according to a PayServ employee, this practice persisted throughout Dunham’s six-year relationship with PayServ.

36. To cover up the shortfall caused by the fraud, the Defendants continued to solicit money from Dunham’s to pay off other clients.

37. On December 10, 2024, PayServ emailed Dunham's, instructing them to wire \$6,625,509.35 to PayServ in accordance with the MSA and the parties' course of dealing. A true and accurate copy of the December 10, 2024 email is attached hereto as **Exhibit C**. In the email, PayServ detailed exactly how Dunham's money was to be disbursed in a spreadsheet attached to the email.

38. Specifically, \$4,845,961.26 was to be paid directly to the employees for payroll, and \$1,730,074.16 was to be disbursed to numerous taxing authorities.¹

39. The December 10, 2024 email stated that \$6.6 million was "needed for this week's payroll," and that, if Dunham's made the payment, its "Remaining Tax Liability" would be "\$0.00." (Ex. C at 1, 4.)

40. In reliance on the December 10, 2024 email, which stated exactly how the money was to be used, Dunham's wired the money to PayServ on December 12 and 13, 2024, as requested.

41. As a result of the Defendants' fraudulent and illegal activity, prior to December 10, 2024, the Defendants—including Ms. David and the Saylor—knew that there would be a payroll shortfall for PayServ's clients. PayServ, Ms. David, and the Saylor did not inform Dunham's of the shortfall, or the fraud, until after Dunham's had handed over millions of dollars to PayServ.

42. Upon receiving Dunham's money, PayServ, at the direction of Ms. David and the Saylor, diverted Dunham's funds and used the money to pay the payroll taxes of its other clients to offset the shortfall created by Defendants' fraud and/or to pad the balance sheets of the Saylor's other businesses.

¹ \$1,529,657.66 was earmarked for the payment of federal taxes and \$200,416.50 was to be paid into a "floating fund" maintained by PayServ for Dunham's state and local tax obligations.

43. By December 13, 2024, at the direction of Ms. David and the Saylor, PayServ had used \$2,245,298.56 of Dunham's money to pay its other clients' payroll expenses and/or transferred Dunham's money to other businesses owned by the Saylor. The \$2,245,298.56 loss to Dunham's consists of \$1,529,657.66 allocated for federal taxes and paid to PayServ between December 12 and 13, 2024; \$200,416.50 allocated for contribution to the "floating fund" and paid to PayServ between December 12 and 13, 2024; and an additional \$515,224.40 out of the "floating fund" and paid to PayServ throughout 2024.

44. On or about December 17, 2024 and December 18, 2024, Mr. Saylor informed Dunham's that PayServ had lost \$2,245,298.56 of Dunham's money and that he would not promise to make Dunham's whole.

45. PayServ provided no notice to Dunham's of its financial condition or the fraud prior to December 17, 2024.

46. PayServ and the Saylor have admitted that Dunham's money was diverted due to fraud. PayServ and the Saylor have never contested that Dunham's is owed \$2.25 million, and PayServ's own records reflect that balance due and owing back to Dunham's. Nor has PayServ or the Saylor given any excuse for their breach of the MSA and their fraud.

47. Because the Defendants did not fulfill their obligations under the MSA, Dunham's was left with a balance due to federal, state, and local authorities in the amount of \$2.25 million.

48. Dunham's has performed all of its obligations under the terms of the MSA.

DUNHAM'S IRREPARABLE HARM

49. Without injunctive relief, Dunham's will be irreparably harmed. PayServ, acting through Ms. David and at the direction of the Saylor, has admitted that client funds were diverted because of fraud—so PayServ and the Saylor have already shown their eagerness to divert funds to hide themselves from creditors. On top of stealing clients' money, PayServ and the Saylor used

Dunham's money to pay off other clients, shielding them from claims of fraud from their other clients. Without injunctive relief to preserve the status quo, PayServ and the Saylor will be free to fraudulently transfer and dispose of assets to shield them from creditors, including Dunham's.

50. Alarmingly, during telephone conferences, PayServ and the Saylor told Dunham's that they were in the process of liquidating assets. Specifically, Mr. Saylor said: "I'm selling everything. It could get me to six million." Notably, Mr. Saylor did *not* say he would use that money to pay Dunham's. Instead, he said the opposite: "I am not going to promise you're gonna be whole."

51. Moreover, PayServ's own employees have informed Dunham's that Ms. David's diversion of client money to the Saylor's other business ventures was common practice, and that the Defendants used client money to pad the balance sheets of the Saylor's businesses and to pay distributions to the Saylor's.

52. For its part, PayServ was and is unable to pay the \$2.25 million in taxes due because of the fraud. PayServ, therefore, has little or no assets from which Dunham's can recover a judgment. Any disposition of PayServ's assets threatens Dunham's ability to collect on a judgment.

53. Indeed, PayServ, through Todd Saylor, circulated a notice to its clients on December 18, 2024, informing them that PayServ was "unable to continue providing payroll services as usual, effective immediately" (the "Termination Notice"). A true and accurate copy of the Termination Notice is attached hereto as **Exhibit D**.

54. The Termination Notice indicated that PayServ would stop providing services to all of its clients—and presumably cease operations—by the end of the year. The winding up of PayServ's affairs gives PayServ and the Saylor's the opportunity to dispose of and transfer all of Defendants' assets, ensuring that creditors like Dunham's will be without recourse.

55. Moreover, since the disclosure of the fraud to Dunham’s, Todd and Traci Saylor have taken active steps to transfer and liquidate assets. The Saylor’s are aware that their criminal actions have harmed their clients and customers and are seeking to prevent creditors from recovering.

56. Indeed, during a phone call, Mr. Saylor stated that he “know[s] [he] is going to jail.”² A PayServ employee told Dunham’s that Mr. Saylor believes he is going to jail because the stolen money was used to fund the Saylor’s myriad businesses—businesses from which the Saylor’s took distributions to fund their lavish lifestyle.

57. And it was during that same phone call that Mr. Saylor stated that he was liquidating \$6 million in assets. He also claimed that he had sold 5 properties in one day. Most notably, he indicated that he would not promise to make Dunham’s whole.

58. Publicly-available information supports Mr. Saylor’s claims: the Saylor’s are moving quickly dissipate their assets. For example, Todd Saylor owns real property located 10204 46th Avenue West, Bradenton, Florida 34210. The Saylor’s property has been listed for sale since June 14, 2024, for a list price of \$5.9 million. On December 19, 2024, after disclosure of the fraud, the Saylor’s dropped the price on the home by almost \$1 million to \$4,980,000. The property is currently under contract. A true and accurate copy of the listing for 10204 46th Avenue West, Bradenton, Florida 34210, along with the property record card, is attached hereto as **Exhibit E**.

59. On December 14, 2024, the Saylor’s listed another property located at 4532 103rd Street West, Bradenton, Florida 34210, for sale. The original listing price was \$305,000. The Saylor’s dropped the price of the property twice in December, on December 18, 2024—just four days after the listing—and on December 23, 2024. As of January 3, 2025, the property is under

² Mr. Saylor made this statement during one of his conference calls with Dunham’s. A number of Dunham’s employees were in attendance.

contract at \$295,000. A true and accurate copy of the listing for 4532 103rd Street West, Bradenton, Florida 34210, along with the property record card, is attached hereto as **Exhibit F**.

60. Todd and Traci Saylor also own dozens of other business and ventures through which they can divert assets. Records maintained by the Indiana Secretary of State detailing the Saylor's affiliate entities are attached hereto as **Exhibit G**. For example, they own, operate, control, or are affiliated with at least the following entities:

- a. Cory Business Systems LLC
- b. Cory Lake Business Systems LLC d/b/a Tom's Donuts Original
- c. Courtnee Capital LLC
- d. DNA Servstaff Inc.
- e. Handy Home Services, Inc.
- f. Kara Controls LLC
- g. Kendra Holdings LLC
- h. Lake Life Traditions LLC
- i. Meatz Businesses LLC
- j. Paygo Payroll, LLC
- k. PayGo Systems, Inc.
- l. Payserv Benefits LLC
- m. PayServ Financial Inc.
- n. PayServ Systems, Inc.
- o. PayServ Systems, Inc. d/b/a Wired Differently
- p. PayServ, LLC
- q. Prostaff Services Inc.
- r. Saylor Management Group Inc.
- s. Saylor Ventures Inc.
- t. Staffing Services Inc. d/b/a Tom's Donuts
- u. The Call of America Inc.
- v. Todd Saylor & Associates
- w. Todd Saylor Staffing Systems, Inc.
- x. Tom's Merch Company LLC
- y. Wired Differently Productions, Inc.
- z. You Matter Staffing Inc.

61. It was through these same entities that PayServ, acting through Ms. David and at the direction of the Saylor's, diverted client money.

62. The Saylor, therefore, have ample ability to divert their personal assets to other business entities. PayServ, which is controlled by the Saylor, can also divert its funds and assets to other of the Saylor's entities in order to shield itself from Dunham's claims.

63. PayServ's current inability to pay the amount due to Dunham's evidences that PayServ is already in peril. Any further transfer of its assets will significantly impede Dunham's recovery efforts. Not only will Dunham's be unable to recover the baseline minimum compensatory damages it is entitled to, but PayServ and the Saylor will be allowed to avoid the treble damages imposed under the Indiana Crime Victims Relief Act.

64. If PayServ and the Saylor become legally insolvent, Dunham's will have no legal recourse through which to recover the payments that were fraudulently diverted.

COUNT I — BREACH OF CONTRACT
(Against PayServ)

65. Dunham's incorporates each of the foregoing paragraphs as if fully set forth herein.

66. Under the MSA and associated SOW and SPA, PayServ was obligated to use a portion of Dunham's \$6 million payment to pay federal payroll taxes due on December 13, 2024.

67. PayServ failed to pay \$1,529,657.66 in federal taxes due on December 13, 2024.

68. Under the MSA and associated SOW and SPA—and the parties' course of dealing—PayServ was obligated to pay local and state taxes due after December 13, 2024, in the amount of \$715,640.90, out of a "floating fund" to which Dunham's contributed throughout the year.

69. PayServ's failure to pay the applicable local, state, and federal tax liabilities is a material breach of the MSA.

70. PayServ's diversion of Dunham's money to the Saylor's other businesses was a material breach of the MSA.

71. PayServ's diversion of Dunham's money to pay other customers was a material breach of the MSA.

72. PayServ has refused to indemnify Dunham's from the losses it suffered as a result of PayServ's actions.

73. PayServ failed to perform its services in a commercially reasonable manner.

74. All conditions precedent to the bringing of this action have been undertaken.

75. As a proximate result of PayServ's breaches of the MSA, Dunham's has suffered damages of no less than \$2,245,298.56 and will suffer immediate and substantial irreparable harm.

COUNT II — FRAUD
(Against all Defendants)

76. Dunham's incorporates each of the foregoing paragraphs as if fully set forth herein.

77. On December 10, 2024, PayServ—with the approval and at the direction of Heather David, Todd Saylor, and Traci Saylor—made a knowingly false statement to Dunham's. Specifically, PayServ requested payment to PayServ of \$6.6 million. PayServ, with the approval and at the direction of Heather David, Todd Saylor, and Traci Saylor, included an attachment to the December 10, 2024 email detailing that the \$6.6 million would be used to pay employee salaries, federal taxes, and to fund the "floating fund" for state and local taxes.

78. The December 10, 2024 stated that \$6.6 million was "needed for this week's payroll," and that, if Dunham's made the payment, its "Remaining Tax Liability" would be "\$0.00." (Ex. C at 1, 4.)

79. When PayServ sent the December 10, 2024 email, Heather David, Todd Saylor, and Traci Saylor knew that Dunham's money would be fraudulently diverted and not used to pay Dunham's tax obligations. When PayServ sent the December 10, 2024 email, Heather David, Todd Saylor, and Traci Saylor knew that PayServ had insufficient funds to pay all of its customers' payroll and tax obligations.

80. Dunham's reasonably relied on the Defendants' materially false statement and paid \$6.6 million into Dunham's account.

81. As a result of Defendants' fraud, Dunham's suffered damages in an amount no less than \$2,245,298.56.

82. Moreover, throughout the course of PayServ's relationship with Dunham's, Heather David, Todd Saylor, and Traci Saylor caused PayServ to solicit money from Dunham's, which money was ostensibly for the payment of Dunham's payroll obligations.

83. Heather David, Todd Saylor, and Traci Saylor knew that Dunham's money was being diverted to the Saylor's other businesses.

84. Despite that knowledge, Heather David, Todd Saylor, and Traci Saylor caused PayServ to repeatedly represent that Dunham's money was being used only for Dunham's own payroll obligations.

85. Dunham's reasonably relied on those false statements in sending money to PayServ.

86. The Defendants' fraud resulted in a shortfall of funds at PayServ.

87. The Defendants' fraud caused PayServ, through Heather David, Todd Saylor, and Traci Saylor, to attempt to cover up the fraud using Dunham's money. As a result of that conduct, Dunham's has been damaged in an amount no less than \$2,245,298.56.

COUNT III — CONVERSION
(Against all Defendants)

88. Dunham's incorporates each of the foregoing paragraphs as if fully set forth herein.

89. When PayServ received Dunham's payroll tax obligation money on December 12 and 13, 2024, PayServ, Heather David, Todd Saylor, and Traci Saylor knew that Dunham's money would be diverted and used to pay off other clients and/or transferred to other entities. PayServ,

Heather David, Todd Saylor, and Traci Saylor intentionally and unlawfully received a sum certain of Dunham's personal property.

90. The Defendants diverted Dunham's personal property for their own use.

91. The Defendants exerted unauthorized control over Dunham's funds and did not use Dunham's funds for their intended purpose.

92. The Defendants exerted the control over Dunham's funds with the intent of depriving Dunham's of the funds.

93. Dunham's has been damaged by the conversion of Dunham's property in an amount no less than \$2,245,298.56.

COUNT IV — CONSTRUCTIVE FRAUD

(Against all Defendants)

94. Dunham's incorporates each of the foregoing paragraphs as if fully set forth herein.

95. PayServ was obligated to deal fairly with Dunham's because of the special and/or fiduciary relationship arising out of the MSA and the parties' course of dealing. Specifically, PayServ had a special and/or fiduciary relationship with Dunham's because Dunham's entrusted PayServ with funds that were intended to be used to pay Dunham's employees.

96. Heather David, Todd Saylor, and Traci Saylor were obligated to deal fairly with Dunham's because of the fiduciary relationship arising out of their fraud. If a director or officer of a company has committed fraud or deceit, he or she will be treated as a fiduciary for the company's creditors. Here, Heather David, Todd Saylor, and Traci Saylor are fiduciaries for Dunham's.

97. PayServ, acting through Heather David, Todd Saylor, and Traci Saylor, had an obligation to inform Dunham's that PayServ would not have sufficient funds to satisfy all of its clients' payroll. Instead, Defendants were silent in the face of an obligation to speak in order to induce Dunham's to wire money to PayServ.

98. Dunham's reasonably relied on Defendants' silence in wiring money to PayServ on December 12 and 13, 2024.

99. Defendants took advantage of Dunham's special relationship with PayServ by remaining silent on PayServ's state and inducing Dunham's to wire \$6.6 million to PayServ.

100. Dunham's has been damaged by Defendants' acts and/or omissions in an amount no less than \$2,245,298.56.

COUNT V — INDIANA CRIME VICTIM'S RELIEF ACT
(Against all Defendants)

101. Dunham's incorporates each of the foregoing paragraphs as if fully set forth herein.

102. The Indiana Crime Victim's Relief Act allows plaintiffs to recover treble damages, plus costs and attorneys' fees, if a plaintiff has been a victim of a property crime. I.C. § 34-24-3-1.

103. Defendants' conduct, as more fully described in the foregoing paragraphs, violates I.C. §§ 35-43-4-3, 35-43-5-4, and 35-43-4-2.

104. Defendants committed criminal and intentional conversion under I.C. § 35-43-4-3 by exerting unauthorized control over Dunham's personal property.

105. Defendants committed criminal and intentional fraud under I.C. § 35-43-5-4 by intentionally causing Dunham's to submit \$6.6 million into Defendants' care and by using that money to pay off other of Defendants' clients.

106. Defendants committed criminal and intentional theft under I.C. § 35-43-4-2 by knowingly and intentionally exerting unauthorized control over the property of Dunham's with the intent to deprive Dunham's the use and value of that property.

107. As a result of Defendants' unlawful conduct, Dunham's is entitled to treble damages of not less than \$6,735,895.68 million and all costs and attorneys' fees.

COUNT VI — REQUEST FOR INJUNCTIVE RELIEF (TEMPORARY RESTRAINING ORDER, PRELIMINARY INJUNCTION, AND PERMANENT INJUNCTION)

(Against PayServ, Todd Saylor, and Traci Saylor)

108. If Defendants' conduct is not restrained and injunctive relief does not issue, Dunham's will suffer immediate, irreparable harm for which there is no adequate remedy at law, as Defendants will continue their pattern of diverting client money for personal use. Therefore, injunctive relief is a more practical and efficient remedy for these harms.

109. As more fully described in the foregoing paragraphs, Defendants have diverted client money and demonstrated that they are rapidly liquidating assets. Without the Court's intervention, Defendants will take steps to ensure that Dunham's cannot collect on a judgment.

110. Defendant PayServ is already insolvent and lacks the funds to pay Dunham's the \$2,245,298.56 that PayServ and the Saylor's acknowledge is owed. Allowing the additional diversion of funds and assets from PayServ will make it impossible for Dunham's to collect on a judgment against PayServ.

111. The Saylor's are taking steps to liquidate their assets. The Saylor's' access to dozens of other business entities—combined with the timing of their liquidation, their preexisting fraud, Mr. Saylor's statement that he is "selling everything" and that he would not promise to make Dunham's whole—demonstrates that they, too, are taking steps to ensure that Dunham's will be unable to collect on a judgment against either of the Saylor's.

112. Dunham's therefore requests that the Court restrain all Defendants from disposing of any assets; that the Court restrain PayServ from winding down its affairs and dissolving; and that the Court otherwise preserve the status quo pending the outcome of this case.

WHEREFORE, Dunham's prays the Court enter judgment in its favor and against Defendants and award the following relief:

- i. That Dunham's be awarded a temporary restraining order, preliminary injunction, and permanent injunction directing Defendants PayServ, Todd Saylor, and Traci Saylor to

place into escrow the proceeds of any currently-pending real estate sale transactions or any real estate transactions that have occurred since December 1, 2024;

- ii. That Dunham's be awarded a temporary restraining order, preliminary injunction, and permanent injunction enjoining Defendants PayServ, Todd Saylor, and Traci Saylor from transferring, liquidating, selling, gifting, or otherwise disposing of any assets, including but not limited to real estate, vehicles, yachts, cash (other than as reasonably necessary for day-to-day living expenses), investments, stocks, bonds, cryptocurrency, or any other asset, except as provided in (i), above;
- iii. That Dunham's be awarded a temporary restraining order, preliminary injunction, and permanent injunction directing Defendants PayServ, Todd Saylor, and Traci Saylor to maintain the status quo with respect to their finances and all assets, including but not limited to real estate, vehicles, yachts, cash (other than as reasonably necessary for day-to-day living expenses), investments, stocks, bonds, cryptocurrency, or any other asset, except as provided in (i), above;
- iv. That Dunham's be awarded compensatory damages in an amount no less than \$2,245,298.56;
- v. That Dunham's be awarded treble damages under I.C. § 34-24-3-1 for a total of \$6,735,895.68 in damages;
- vi. That Dunham's be awarded pre- and post-judgment interest as permitted by applicable law;
- vii. That Dunham's be awarded its costs and attorney's fees in this matter under I.C. § 34-24-3-1 and applicable law;
- viii. That the Court issue an order directing that Dunham's may collect damages from the Defendants and from any individual or entity affiliated with the Defendants that Defendants used in furtherance of Defendants' fraud; and
- ix. That Dunham's be awarded such other and further relief as the Court deems necessary.

Respectfully submitted,

ICE MILLER LLP

/s/ George A. Gasper

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Counsel for Plaintiff Dunham's Athleisure Corporation

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing has been sent via certified mail, postage prepaid, on the 21st day of January, 2025, and addressed to:

PayServ LLC
c/o Todd C. Saylor, Registered Agent
300 N. Wayne Street
Angola, IN 46703

Todd C. Saylor
300 N. Wayne Street
Angola, IN 46703

-and-

-and-

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The undersigned further certifies that a courtesy copy was also e-mailed to:

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