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Attorneys for Hector Vieyra on behalf of himself and all "Aggrieved Employees" pursuant to Labor Code § 2698 *et seq.*

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE, CIVIL COMPLEX CENTER**

HECTOR VIEYRA, on behalf of himself
and all "Aggrieved Employees" pursuant to
Labor Code § 2698 *et seq.*,

Plaintiffs,

v.

SPEARMAN CLUBS, INC., a Delaware
corporation, and DOES 1 through 10,
inclusive,

Defendants.

RAFAEL RAMIREZ,

Plaintiffs,

v.

SPEARMAN CLUBS, INC. DBA
LAGUNA NIGUEL RQCQUET CLUB, a
California corporation, and DOES 1
through 50, ALL INCLUSIVE,

Defendants.

CASE NO: 30-2020-01156371-CU-OE-CXC
and CASE NO: 30-2020-01141764-CU-WT-
CJC

*Assigned for all purposes to:
Hon. William Claster, Dept. CX104*

**DECLARATION OF DANIEL F. GAINES
IN SUPPORT OF MOTION FOR AN
ORDER AND JUDGMENT APPROVING
SETTLEMENT OF CLAIMS BROUGHT
PURSUANT TO THE PRIVATE
ATTORNEYS GENERAL ACT OF 2004,
AWARDING ATTORNEYS' FEES, COSTS,
ENHANCEMENT AWARDS AND
GENERAL RELEASE PAYMENT, AND
REIMBURSEMENT OF SETTLEMENT
ADMINISTRATION EXPENSES**

Date: June 18, 2021

Time: 9:00 a.m.

Dept.: CX104

Reservation ID #: 73530301

Dates Actions Filed: May 28, 2020 (Ramirez)
August 21, 2020 (Vieyra)

1 I, DANIEL F. GAINES, declare as follows:

2 1. I am an attorney duly admitted to the practice of law in the State of California.
3 I am a shareholder of Gaines & Gaines, APLC, counsel for Plaintiff Hector Vieyra in this
4 action. I have personal knowledge of the facts set forth herein and if called as a witness to
5 testify to them, could and would do so competently.

6 **Plaintiff Vieyra's Counsel's Experience and Recommendation:**

7 2. I obtained my BS degree from the University California at Berkeley in 2003.
8 I majored in Business Administration at the Haas School of Business.

9 3. Thereafter, I attended the University of Virginia School of Law. At Virginia,
10 I was a member of the editorial board of the Virginia Tax Review. I was also the recipient
11 of the Lacy Armour Scholarship, awarded to recognize academic excellence. At Virginia, I
12 focused my studies on tax and real estate. I earned my JD and became a member of the
13 California Bar in 2007.

14 4. Since becoming a member of the Bar, I have practiced law with my
15 partner/father, Kenneth, at Gaines & Gaines, APLC. Our practice specializes in litigation,
16 with an emphasis in business, real estate, and employment disputes like this one. Over 75%
17 of my practice is devoted to complex employment litigation similar to the instant action.

18 5. My firm has represented employees in complex employment matters such as
19 this one, with an emphasis in wage and hour issues. I have participated in and have been
20 certified as counsel in dozens of class and representative action matters since my admission
21 to the Bar. A list of cases in which I have been appointed as class and/or representative
22 counsel is attached hereto as **Exhibit A**.

23 6. Based on my years of experience and my own independent investigation and
24 evaluation, I am of the opinion that the recovery here for each aggrieved employee and the
25 State of California is on very fair, reasonable, and adequate terms. I am familiar with
26 representative action settlements involving employment wage and hour claims similar to
27

1 those at issue in this lawsuit. Based on my extensive experience, I am of the opinion that
2 the settlement reached here is on very fair and favorable terms.

3 7. Based on my experience, I believe that I have a strong understanding of the
4 trends in the value of settlements in these types of cases. My opinion takes into
5 consideration the amounts received in other similar representative actions, the risks inherent
6 in litigation of this genre, and the reasonable tailoring of each aggrieved employee's claim
7 to the amounts received. Based on that knowledge, I am of the opinion the settlement is fair,
8 reasonable and adequate and is in the best interests of the aggrieved employees and the State
9 of California.

10 **Background and Procedural History:**

11 8. Defendant operates Spearman Sports Clubs, offering tennis, swimming and
12 other outdoor fitness activities. Defendant maintains three locations in California: Irvine,
13 Laguna Niguel and Dana Point.

14 9. Defendant employed Plaintiff Vieyra from 2014 through May 2020.
15 Defendant employed Plaintiff Ramirez from July 2012 through May 2019. Both were
16 employed as non-exempt employees in Orange County, California and primarily performed
17 maintenance work. The Aggrieved Employees are all employees who were employed by
18 Defendant in California in a non-exempt position during the PAGA Period.

19 10. Plaintiffs assert claims under PAGA only that Defendant failed to pay all
20 minimum and overtime wages earned; failed to provide meal periods or one hour of
21 additional pay for missed meal periods; failed to provide rest periods or one hour of
22 additional pay for missed rest periods; failed to provide complete and accurate itemized
23 wage statements; failed to pay for all hours worked; failed to pay sick time, and failed to
24 timely pay wages owed during employment and upon termination of employment, pursuant
25 the corresponding alleged violations of the California Labor Code, including but not limited
26 to, sections 201-204, 226, 226.3, 226.7, 246, 510, 512, 558, 1174, 1194, 1197, 1197.1, 1198,
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1 1198.5, 2698, 2699, 2699.3 and the applicable IWC Wage Order. Plaintiffs assert these
2 claims under PAGA, seeking civil penalties for the alleged Labor Code violations.

3 11. On August 21, 2020, and after the LWDA declined to take action within the
4 statutorily permissible time with respect to Plaintiff Vieyra's June 11, 2020 letter, Plaintiff
5 Vieyra filed his representative action complaint in this Court. A true and correct copy of the
6 notice is attached hereto at **Exhibit B**.

7 **Plaintiffs' Counsel's Diligence In Advance of, and In Connection With, Settlement**
8 **Negotiations:**

9 12. My office and that of Farrah Mirabel engaged in targeted, informal discovery
10 of Defendant's employment policies, which was aimed specifically at evaluating the
11 strength and value of the PAGA claim in preparation for a resolution of this Action.

12 13. Our firms obtained and reviewed multiple documents, including (i) Plaintiffs'
13 employee files, time cards, and wage statements, (ii) policy documents relating to the
14 employment of Plaintiffs and other Aggrieved Employees, (iii) time cards and pay records
15 of a sample of Aggrieved Employees; (iv) data relating to the number of alleged violations
16 and the value of the recoverable penalties; and (v) financial documents reflecting
17 Defendant's financial condition.

18 14. Based on the information received, as well as through discussions with
19 Defendant's Counsel, we were able to (i) determine the total number of distinct individuals
20 falling within the definition of "Aggrieved Employee" for the relevant statutory period, and
21 (ii) construct a damage model that calculated the maximum realistic amount of PAGA
22 penalties that could be levied against Defendant within the PAGA Period. Defendant,
23 however, disputed Plaintiffs' claims and disputed both the existence of and extent of
24 liability as alleged by Plaintiffs.

25 15. Based on my firm's experience in litigating similar "representative" wage and
26 hour claims, the degree of investigation that was conducted, and the amount of data that was
27

1 obtained, was sufficient to determine the potential value of the PAGA claim, and to evaluate
2 the strength of this claim for purposes of settlement.

3 16. On March 12, 2021, the Parties participated in a Zoom mediation session with
4 respected mediator Lisa Klerman, Esq. During the mediation, the parties engaged in arm's-
5 length negotiations that successfully resulted in a resolution of the PAGA claims asserted in
6 the action.

7 17. The Parties jointly prepared and executed the Stipulation and Agreement for
8 PAGA Representative Action Settlement (the "Settlement Agreement"). *See Exhibit C.* The
9 Settlement Agreement sets forth the terms of the Settlement reached by the Parties,
10 including the following key points:

11 18. The total sum available for payment of PAGA penalties shall be calculated by
12 deducting up to \$78,247.74 for the payment of Plaintiffs' Counsel's fees and costs (\$66,000
13 in fees and \$12,247.74 in costs), \$5,000 for the payment of Plaintiff Vieyra's enhancement
14 award and general Release Payment, \$2,500 for the payment of Plaintiff Ramirez's
15 enhancement award, and the costs of administration (up to \$5,000) from the \$200,000 Gross
16 Settlement Amount, yielding approximately \$109,252.26. Seventy-five percent (75%) of
17 this amount, or \$81,939.19, shall be distributed to the LWDA, and the remaining twenty-
18 five percent (25%) or \$27,313.07, shall be distributed to the Aggrieved Employees.

19 19. All employees who were employed by Defendant in California in a non-
20 exempt position during the PAGA Period will receive a pro rata share of the \$27,313.07
21 allocated to Aggrieved Employees which shall be distributed based on the number of pay
22 periods each PAGA Employee worked for Defendant in California during the PAGA Period.
23 Although these calculations will not be made until after approval, a rough estimation of the
24 value to the 89 individuals falling within the definition of "Aggrieved Employee" may be
25 gleaned from the fact that an equal division would provide about \$306.88 to each PAGA
26 Employee, net of payments to the LWDA, the Settlement Administrator, attorney's fees and
27 costs. The LWDA will be paid \$81,939.19.

20. Settlement administration, which is to be paid from the Gross Settlement Amount will not exceed \$5,000.

21. My office and that of Farrah Mirabel seek an award of attorneys' fees and litigation costs of a combined \$78,247.74; Plaintiff Vieyra seeks an enhancement award and general release payment of \$5,000; and Plaintiff Ramirez seeks an enhancement award of \$2,500.

22. The value of checks uncashed more than 180 days after issuance shall be voided and then shall be transmitted to the Controller of the State of California to be held pursuant to the Unclaimed Property Law in the names of each PAGA Employee who did not cash his or her settlement check until such time as he or she claims his or her property.

23. Plaintiffs submitted the Settlement Agreement, this Motion, and all supporting documents to the LWDA via online upload on May 19, 2021 concurrently with the filing of this Motion. Service of the LWDA is reflected in **Exhibit D**.

The Settlement is Fair, Reasonable and Adequate:

24. The Settlement is the result of extensive, arms-length negotiations. The Settlement for each Aggrieved Employee is fair, reasonable, and adequate given the inherent risks of litigation.

25. Fairness of the Settlement is demonstrated by the uncertainty and risks to the named Plaintiffs and the Aggrieved Employees in not prevailing on the cause of action or theories alleged in the Complaint or the Court imposing a reduced penalty award under PAGA. The Settlement takes these risks into account.

26. The Settlement is a good compromise for the damages of absent aggrieved employees and the State of California.

27. Prosecution of this case resulted in tangible benefits for the Settlement Aggrieved Employees in the following respects: (1) By this Settlement, Aggrieved Employees will receive their recoveries in a prompt manner as opposed to waiting additional time for the same, or possibly a worse, result; (2) The State of California and

1 Aggrieved Employees will receive a substantial (and guaranteed) result; and (3) Settlement
2 at this juncture will translate into significant savings in Aggrieved Employees' fees and
3 costs which inevitably would have increased had the case progressed through trial, appeals,
4 etc.

5 28. The value achieved by the Settlement may be gleaned from the fact that the
6 LWDA and the approximately 89 Aggrieved Employees encompassed by the Settlement
7 will receive no less than \$109,252.26 under the terms of the Settlement, which, pursuant to
8 the operative statute, shall be allocated "75 percent to the Labor and Workforce
9 Development Agency . . . and 25 percent to the Aggrieved Employees." See Cal. Lab. Code
10 § 2699(i). This is a reasonable recovery, not only because further litigation may have
11 resulted in a net-zero recovery based on the defenses asserted by Defendant, but because the
12 amount secured by Plaintiffs is sizable and in line with similar settlements of these types of
13 claims under PAGA. It is also important to underscore that all penalty amounts paid to
14 Aggrieved Employees will be an unexpected windfall, as employees typically do not bring
15 individual lawsuits asserting only PAGA penalties.

16 29. My office, together with that of Ms. Mirabel, conducted an extensive
17 investigation of the factual allegations involved in this case. We reviewed relevant
18 documents, analyzed survey information regarding the composition of the Aggrieved
19 Employees during the applicable time period, and engaged in meaningful discussions with
20 Defendant's counsel regarding the facts of this case and the legal merits of the
21 representative claims.

22 30. This case addresses violations of important employee protections embodied in
23 the California Labor Code – namely, that Defendant failed to pay all minimum and overtime
24 wages earned; failed to provide meal periods or one hour of additional pay for missed meal
25 periods; failed to provide rest periods or one hour of additional pay for missed rest periods;
26 failed to provide complete and accurate itemized wage statements; failed to pay for all hours
27 worked; failed to pay sick time, and failed to timely pay wages owed during employment

1 and upon termination of employment, pursuant the corresponding alleged violation of the
2 California Labor Code, including but not limited to, sections 201-204, 226, 226.3, 226.7,
3 246, 510, 512, 558, 1174, 1194, 1197, 1197.1, 1198, 1198.5, 2698, 2699, 2699.3 and the
4 applicable IWC Wage Order. Defendant's maximum theoretical exposure in this action and
5 with stacking of penalties, cumulative of all PAGA violations, is approximately \$934,850¹.

6 31. Defendant allegedly failed to pay Plaintiffs and Aggrieved Employees all
7 minimum wages and overtime wages due during the course of employment due to the
8 alleged rounding of Plaintiffs' and Aggrieved Employees' time, in violation of Labor Code
9 §§ 510 and 1194. Plaintiffs' expert deduced that the aggregate value of the alleged
10 underpaid wages for this claim was less than \$2,800, with very small underpayments (if any)
11 per pay period. 1,682 pay periods during the PAGA Period were affected by the rounding
12 claim, such that its maximum penalty value is \$168,200 (\$100 per pay period times 1,682
13 pay periods). The claim was also subject to a strong defense that Defendant's policy was
14 nearly neutral, which could defeat the claim altogether. The compromise is fair based on the
15 claim's strength and weaknesses.

16 32. Plaintiffs contend that Defendant failed to offer or authorize uninterrupted ten-
17 minute rest periods to Plaintiffs and Aggrieved Employees for every four hours worked or
18 major fraction thereof, but did not pay them premium wages in the amount of one hour's
19 pay for these denied rest periods, in violation of Labor Code § 226.7. Plaintiffs contend that
20 Defendant failed to maintain a legally compliant written rest period policy that accounted
21 for the "major fraction thereof" language required for rest breaks, such that for shift lengths
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23 ¹ This amount is based on the following violations for the relevant time period of June 11, 2019 through
24 March 8, 2021: \$100 x 54 terminated employees (\$5,400) for violation of Labor Code § 203; \$250 x 1,903
25 pay periods (\$475,750) for violation of Labor Code § 226.3; \$100 x 952 per pay periods (\$95,200) for
26 violation of Labor Code §§ 512/226.7 (meal breaks); \$100 x 1,903 pay periods (\$190,300) for violation of
Labor Code §§ 512/226.7 (rest breaks); and \$100 x 1,682 pay periods for violation of §§ 510/1194 (unpaid
wages/rounding) (\$168,200).

1 between 3:30 and 3:59 hours, 7:00 and 7:59 hours, and 10:00 and 11:59 hours, rest periods
2 were not provided as required by law. Defendant adamantly contested and argued that it
3 provided proper rest periods at all times, notwithstanding its written policy. Plaintiffs
4 contend that due to the problematic policy, a large portion of rest breaks were not properly
5 provided, such that nearly every pay period – 1,903 in the aggregate during the PAGA
6 Period – would yield a \$100 PAGA civil penalty for this violation. As a result, the
7 maximum value of this claims is \$190,300 (1,903 pay periods times \$100 per pay period).
8 Due to the difficulties expected in prevailing on the merits on this claim, Plaintiffs were
9 required to discount the value of this claim for purposes of settlement at this juncture.

10 33. Plaintiffs also contend that Defendant maintained an illegal meal period policy
11 that failed to account for the timing of second meal periods, and, as a result, Plaintiffs and
12 Aggrieved Employees were not always properly provided meal periods to which they were
13 entitled. Plaintiffs also contend that when meal periods were provided, they were
14 oftentimes late or cut short. Based on Plaintiffs' expert's analysis of Defendant's time data,
15 Defendant's first meal period violation rate is 28.6% and its second meal period violation
16 rate is 100%. The value of this claim is estimated to be \$95,200 on a PAGA civil penalty
17 basis based upon 952 pay periods during the PAGA Period which exhibit one or more
18 alleged meal break violations. Due to the difficulties expected in prevailing on the merits on
19 this claim, including Defendant's anticipated waiver defense, Plaintiffs discounted it for
20 purposes of settlement at this juncture.

21 34. Plaintiffs also seek PAGA penalties for defective wage statements and waiting
22 time. Plaintiffs, however, faced the risk that because these are partially derivative claims
23 (e.g., Plaintiffs must prevail on their underlying unpaid wage and meal and rest period
24 claims to prevail on these penalty claims), they would not recover on these claims at all.
25 Some case law has suggested that wage statement penalties and waiting time penalties will
26 not stem from meal and rest period claims. The value of these claims were substantially
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1 discounted for settlement purposes in light of the fact that their recovery is highly
2 questionable.

3 35. Plaintiffs allege that Defendants also separately violated Labor Code §
4 226(a)(6), (a)(7), (a)(8), and (a)(9). This portion of the claim was a direct violation of Labor
5 Code §226(a) and was *not* derivative of any underlying claim. The maximum value of the
6 late pay claim is \$5,400 (54 separated employees times \$100 each, one violation per final
7 pay period) and the maximum value of the wage statement claim is \$475,750 (1,903 pay
8 periods times \$250 each). Of course, these penalties are substantial for technical and
9 derivative violations and were subject to multiple defenses, including good faith and lack of
10 willfulness. Due to the difficulties expected in prevailing on the merits on this claim,
11 Plaintiffs discounted it for purposes of settlement at this juncture.

12 36. Defendant contends it acted within the requirements of California law at all
13 times as to all Aggrieved Employees. Moreover, it maintained that even if the Court did
14 award penalties, the Court could and would *substantially* reduce the penalties awarded
15 based on the discretionary factors contained in PAGA.

16 37. Based on these disputes, which had the potential to completely eliminate
17 Plaintiffs' recovery, the range of realistic "litigation outcomes" on the Plaintiffs' PAGA
18 claim was defined by a "maximum possible liability" amount of approximately \$934,850,
19 and a net-zero recovery based on the defenses asserted by Defendant.

20 38. Notwithstanding the existence of such issues, the Settlement achieves a
21 significant benefit. As such, this factor weighs very heavily in favor of resolution by way of
22 the compromise set forth in the Settlement.

23 39. This result is exceptional, as settlement of PAGA claims impacting thousands
24 of individuals [versus 89 Aggrieved Employees in this case] have been approved as
25 reasonable for amounts less than the payment in this case.

26 40. The Settlement not only achieves a recovery that exceeds typical PAGA
27 awards routinely approved by the courts, it recovers significant monies for Aggrieved
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1 Employees which they otherwise would not receive. As such, this factor balances strongly
2 in favor of approval of the Settlement.

3 **The Risk, Expense, Complexity, and Likely Duration of Further Litigation:**

4 41. Based on my office's experience in dozens of wage and hour class and
5 representative actions, heavily litigated and strongly disputed representative action cases can
6 endure for years. It is our experience that if this case was not resolved by settlement,
7 litigation might extend for up to 2 more years.

8 42. The areas of law at issue in this case (e.g., California's wage and hour laws)
9 are dynamic and change frequently. Extended litigation equates to substantial risk for
10 Aggrieved Employees, some of whose individual claims do not have substantial value from
11 the onset. It is our opinion that the prompt and fair resolution of the claims alleged in
12 Plaintiffs' complaints, as is achieved through the proposed Settlement, is in the best interest
13 of the Aggrieved Employees in light of the likeliness of extended litigation and potential
14 changes in case law.

15 43. It is our experience that costs in these types of cases increase exponentially as
16 the case proceeds to trial. Through the conclusion of this litigation, and as detailed herein,
17 My office will have advanced over \$10,000 in costs. If this litigation continued for 2 more
18 years and experts were retained, costs would likely exceed \$25,000.

19 44. Plaintiffs have complied with PAGA's notice requirements [see Labor Code §
20 2699(1)(2)]; Plaintiffs transmitted the Settlement Agreement to the LWDA by online
21 submission concurrently with its submission to the Court on May 19, 2021.

22 **Attorneys' Fees:**

23 45. This Court can undoubtedly appreciate that litigating a representative action
24 case in dynamic, ever-changing areas of law is not appealing to most lawyers, particularly
25 when the plaintiff's lawyer undertakes the obligation to finance the litigation and effectively
26 bears the risk in the event of an unsuccessful outcome, at trial or otherwise. This case was
27 taken on a contingency basis with the real risk that plaintiff's counsel would receive no

1 compensation whatsoever for our efforts. The potential costs which we can be required to
2 advance in wage and hour representative actions like this one are substantial.

3 46. Even with my office's combined extensive experience litigating employment
4 cases, prosecuting these cases still carries a considerable amount of risk. There is the
5 significant risk that Plaintiffs would fail in obtaining relief for the Aggrieved Employees or
6 would not succeed in proving Defendant's liability at trial.

7 47. Our work also requires specialized learning and the willingness to take large
8 risks. We have extensive experience in class and representative action litigation,
9 particularly in the employment context, as detailed herein.

10 48. Furthermore, as described above, the Aggrieved Employees and the State of
11 California reaped significant benefits. The success achieved by the Settlement supports my
12 office's fee request.

13 49. A practice like ours, with only six attorneys, can only properly litigate a
14 limited number of cases at one time. The requirements of this case were significant. Had
15 we not reached a settlement with Defendant, the demands of this case would have required a
16 significant portion of our resources. We were precluded from taking other employment
17 cases due to the demands of litigating this case.

18 50. Plaintiffs' counsel is submitting an attorney fee request equaling \$66,000.
19 Based on a projected final lodestar of \$110,035, this yields a "negative multiplier" of 0.60
20 under the \$66,000 fee request. The billing rates used by my firm to compute the lodestar are
21 reasonable in view of the evidence submitted herewith.

22 51. I have spent, and expect to spend, a total of 18 hours on this matter. Our of
23 counsel, Alex P. Katofsky, will spend a total of 29 hours on this matter. Our associate
24 Sepideh Ardestani has spent 17.9 hours on this matter. Our associate Evan S. Gaines has
25 spent 6.3 hours on this matter. Our of counsel, Miriam L. Schimmel, has spent 3.7 hours on
26 this matter. Attached hereto as **Exhibit E** is a summary of the hours spent (and anticipated
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1 to be performed by members of our firm through the conclusion of this matter) in
2 connection with this litigation.

3 52. Over the past year, several California courts have approved the attorney
4 hourly rates proffered here as reasonable. My reasonable hourly rate is \$650. This is the
5 rate prevailing in the community for similar work performed by attorneys of comparable
6 skill, experience, and reputation, and has been approved as reasonable by several California
7 state and federal courts over the past nine months. Based on my education and experience
8 as detailed above, this rate is reasonable.

9 53. Mr. Katofsky is a highly skilled and experienced litigator with over 20 years
10 of experience. He earned his J.D. in 1999 from the University of the Pacific McGeorge
11 School of Law. His hourly rate of \$700 is reasonable based on his education and experience
12 and comports to the market rate; it has been approved as reasonable by other California
13 courts.

14 54. Ms. Ardestani is an eight-year lawyer with experience in litigation matters,
15 including employment law and class and representative actions. She is a 2004 graduate of
16 University of California, Los Angeles (B.A.), a 2009 graduate of Whittier School of Law
17 (J.D.), and a 2010 graduate of Santa Clara School of Law (L.L.M.). Her hourly rate of \$550
18 is reasonable based on her education and experience and comports to the market rate; it has
19 been approved as reasonable by other California courts.

20 55. Mr. Evan S. Gaines is a 2012 graduate of Michigan State University College
21 of Law. He graduated from the University of California, Santa Barbara in 2005. Evan's
22 reasonable hourly rate is \$550, which is based on his education and experience. This rate
23 comports to the market rate and has been approved by other California courts as reasonable.

24 56. Ms. Schimmel is also a highly skilled and experienced litigator, with over 21
25 years of experience, primarily representing employees and employers in employment-
26 related litigation. She earned her Juris Doctor in 1996 from Loyola Law School, Los
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1 Angeles. Her hourly rate of \$750 is reasonable based on her education and experience and
2 comports to the market rate; it has been approved as reasonable by other California courts.

3 **Plaintiffs' Counsel's Costs:**

4 57. In the course of this litigation, my office will incur out-of-pocket costs that
5 total \$12,247.74 – which is less than the \$15,000 permitted pursuant to the Settlement
6 Agreement. The incurred costs included filing fees, mediation fees, photocopy charges,
7 service of process fees, expert analysis fees, research expenses, and mailing charges. A true
8 and correct copy of an itemized list of costs incurred by my office in this action is attached
9 hereto as **Exhibit F**. These costs were reasonably incurred in litigating this matter.

10 I declare, under penalty of perjury under the laws of the State of California, that the
11 foregoing is true and correct. Executed on May 18, 2021 at Calabasas, California.

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13 DANIEL F. GAINES
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EXHIBIT A

Adams v. Newell Rubbermaid, USDC – Central District of California (Los Angeles), Case No. EDCV 08-1499 JTM (CTx)

Adams v. Sam's West, Inc., San Bernardino County Superior Court, Case No. CIVDS1403987

Agredano v. GS Brothers, Inc., Los Angeles County Superior Court, Case No. BC445561

Allen v. Toms Sierra Company, Nevada County Superior Court, Case No. CU18-082823

Allen v. Valley Inventory Service, Inc., Solano County Superior Court, Case No. FCS034682

Alvarez v. Pilot Travel Centers, LLC, San Joaquin County Superior Court, Case No. STK-CV-UOE-2018-4605

Alonzo v. Camblin Steel Service, Inc., Placer County Superior Court, Case No. SCV0034165

Amenhotep v. Google, Inc., Santa Clara County Superior Court, Case No. 17CV311528

Anaya v. Progressive Logistics Services, LLC, Riverside County Superior Court, Case No. RIC1308270

Andre v. Newell Rubbermaid, Inc., San Bernardino County Superior Court, Case No. CIVVS1200282

Anduha v. ABC Phones of North Carolina, Inc., Stanislaus County Superior Court, Case No. 2022729

Anslow v. Wellington Energy, Inc., USDC – Northern District of California (San Francisco), Case No. CV11-1596-JCS

Aranda, et al. v. Universal Lumpers of California, Inc., San Joaquin County Superior Court, Case No. STK-UOE-2017-7826

Armendariz v. Integrated Pain Management Medical Group, Inc., Kern County Superior Court, Case No. BCV-19-100267-SDS

Barrow, et al. v. Desmond Foods, L.P., Sacramento County Superior Court, Case No. 34-2015-00187227

Batmanghelich v. Sirius XM Radio Inc., USDC – Central District of California (Los Angeles), Case No. CV 09-9190 VBF (JCx)

Bosser v. Hooked on Solar, Yolo County Superior Court, Case No. CVCV-2016-876

Bourland v. Horizon Personnel Services, Inc., Sacramento County Superior Court, Case No. 34-2014-00161365-CU-OE-GDS

Bowen v. IMI Material Handling Logistics, Inc., San Joaquin County Superior Court, Case No. STK-CV-UOE-2016-0000192

Branson v. Mladen Buntich Construction, San Bernardino County Superior Court, Case No. CIVDS1609129

Brandt v. Sacramento Auto Insurance Center, Inc., San Joaquin County Superior Court, Case No. 39-2009-00202938-CU-OE-STK

Brown v. 22nd District Agricultural Association, United States District Court, Southern District of California, Case No. 15-cv-2578-DHB

Brown v. Sierra Central Credit Union, Sutter County Superior Court, Case No. CVCS18-0002161

Burgess v. Blue Cross and Blue Shield of South Carolina, San Joaquin County Superior Court, Case No. 39-2012-00277449-CU-BT-STK

Burgess v. Strategic Retail Solutions, LLC, Los Angeles County Superior Court, Case No. BC413791

Calhoun v. Celadon Trucking Services, Inc., USDC – Central District of California (Los Angeles), Case No. 5:16-cv-01351-PSG-FFM

Caporicci v. Owens & Minor Distribution, Inc., San Joaquin County Superior Court, Case No. 39-2013-00295662-CU-OE-STK

Carl v. Advanced Call Center Technologies, LLC, Sacramento County Superior Court, Case No. 34-2013-00148310

Carlisle, et al. v. Professional Technical Security Services, Inc., Case No. CGC18569791

Carrete v. Gamestop, Inc., Imperial County Superior Court, Case No. ECU08501

Carrillo v. Bimbo Bakeries, Inc., San Bernardino County Superior Court, Case No. CIVDS1606813

Caudillo v. Aegis Treatment Centers, LLC, Merced County Superior Court, Case No. 18CV-0744

Cerami v. Metlife, Inc., USDC – Central District of California (Orange County), Case No. 11-CV-00681-CJC (MLGx)

Charles v. Aaron's Inc., Los Angeles County Superior Court, Case No. BC431468

Charles v. Nursefinders, LLC, Imperial County Superior Court, Case No. ECU07422

Cheifer v. JetBlue Airways Corporation, Los Angeles County Superior Court, Case No. BC451887

Cheifer, et al. v. WHGM, Inc., Los Angeles County Superior Court, Case No. LC104900

Chong, et al. v. Crescent Northwoods Inn, Inc., Del Norte County Superior Court, Case No. CVUJ-2018-1133

Church v. GameStop, Inc., et. al., USDC – Central District of California (Los Angeles), Case No. 11-CV-00132-VAP-RZ

Clothier v. Spar Marketing Services, Inc., Alameda County Superior Court, Case No: RG12-639317

Coleman v. Wireless Lifestyle, Inc., USDC – Western District of Missouri, Case No. 4:12-cv-00855-ODS

Colombo-Beyeler, et al. v. Viking River Cruises, Inc., San Bernardino County Superior Court, Case No. CIVDS1611608

Conlee v. Clark Pacific Corporation, Yolo County Superior Court, Case No. CV14-1409

Contreras v. Osmose Utilities Services, Inc., San Bernardino County Superior Court, Case No. CIVDS1513998

Contreras v. West American Service Corporation, Kings County Superior Court, Case No. 14C0280

Corona v. Yosemite Meat & Locker Service, Inc., Stanislaus County Superior Court, Case No. 2006828

Cortellessa v. Dotnext, Inc., Alameda County Superior Court, Case No. RG09429971

County v. Ingram Mirco, Inc., San Bernardino Superior Court, Case No. CIVRS 1304445

Covarrubias, et al. v. Petersendean Builder Group, Inc., Kern County Superior Court, Case No. BCV-16-101122

Cowen, et al. v. Evergreen Alliance Golf Limited, L.P., d/b/a Arcis Golf, San Bernardino County Superior Court, Case No. CIVDS1719283

Cruz-Garcia v. Lemonade Restaurant Group, LLC, Los Angeles County Superior Court, Case No. BC478205

Cunningham v. Performance Contracting, Inc., Contra Costa County Superior Court, Case No. C16-02157

Dabney v. Coneybeare, LLC, et al., Orange County Superior Court, Case No. 30-2018-00999989-CU-OE-CXC

Dabney, et al. v. Panera, LLC., San Bernardino County Superior Court, Case No. CIVDS1516030

Diaz, et al. v. Seaworld Entertainment, Inc., Imperial County Superior Court, Case No. ECU10046

Diggs v. Western Waterproofing Company, Inc., San Francisco County Superior Court, Case No. CGC-14-539281

Dismuke v. Rhodes Retail Services, Inc., Sacramento County Superior Court, Case No. 34-2011-00105001

Dorsette v. TA Operating, LLC, USDC – Central District of California (Los Angeles), Case No. EDCV 09-1350 PA (RZx)

Duran v. The Image of California, Inc., Kern County Superior Court, Case No. S-1500-CV-284056 DRL

Edwards v. Trans World Entertainment Corp., San Diego County Superior Court, Case No. 37-2010-00095123-CU-OE CTL

Esakhani v. Central Valley Gaming, Stanislaus County Superior Court, Case No. 2020667

Escobar v. SMSSI of California, Inc., San Francisco Superior Court, JCCP No. 4776

Espinosa v. Taltech Construction, et al., Los Angeles County Superior Court, Case No. BC590176

Espinosa v. Bodycote Thermal Processing, Inc., Los Angeles County Superior Court, Case No. BC501617

Espinoza v. Pabco Building Products, LLC, Los Angeles County Superior Court, Case No. VC065660

Estrada v. Net Source Communications, Inc., Los Angeles County Superior Court, Case No. BC431169

Estrada v. OS Restaurant Services, LLC, Santa Clara County Superior Court, Case No. 16CV293249

Estupinan v. Global Development Strategies, Inc., Santa Clara County Superior Court, Case No. 110CV178898

Fadhl. v. Siemens Healthcare Diagnostics Inc., Sacramento County Superior Court, Case No. 34-2017-00209518

Fernandez v. The Regents of the University of California, Los Angeles County Superior Court, Case No. BC656256

Ferrer v. Dish Network Corporation, Los Angeles County Superior Court, Case No. BC441354

Findora v. Barry Callebaut USA LLC, Napa County Superior Court, Case No. 19CV000219

Flores v. Cintas Corporation, Los Angeles County Superior Court, Case No. BC400422

Friel v. Midwest Construction Services, Inc., San Joaquin County Superior Court, Case No. 39-2015-00329204-CU-OE-STK

Gagnon v. Banc of California, Contra Costa County Superior Court, Case No. C 15-00196

Galarza v. Bayou Well Services, LLC, Kern County Superior Court, Case No. S-1500-CV-279372 DRL

Galarza v. C & H Testing Service LLC, Kern County Superior Court, Case No. BCV-15-100008 SPC

Garcia v. Old Dominion Freight Line, Inc., San Bernardino County Superior Court, Case No. CIVDS1404636

Geer v. Applied Aerospace Structures Corp., San Joaquin County Superior Court, Case No. 39-2014-00313702-CU-OE-STK

Getz v. California Cinema Investments, Inc., Ventura County Superior Court, Case No. 56-2013-00437706-CU-MC-VTA

Gibbs v. M. Lehmann Enterprises, Orange County Superior Court, Case No. 30-2013-00678538-CU-OE-CXC

Gilles v. Schaefer Ambulance Service Inc., Imperial County Superior Court, Case No. ECU07970

Goldman, et al. v. Defender's, Inc., San Joaquin County Superior Court, Case No. STK-CV-UOE-2018-0009973

Gomez v. Low Desert Empire Pizza, Inc., San Bernardino County Superior Court, Case No. CIVVS900392

Gomez v. Pizza Hut of Southeast Kansas, Inc., San Bernardino County Superior Court, Case No. CIVVS900679

Gonzalez v. Harris Farms, Inc., USDC – Eastern District of California (Fresno), Case No. 1:14-cv-00038-LJO-SAB

Guerrero v. Main Electric Supply Company LLC, Ventura County Superior Court, Case No. 56-2019-00525427-CU-OE-VTA

Gutierrez v. Asset Management Specialists, Inc., Fresno County Superior Court, Case No. 12CECG03577

Gutierrez v. Linkus Enterprises, Inc., Madera County Superior Court, Case No. MCV065774

Gutierrez v. Shiekh, LLC, San Bernardino County Superior Court, Case Nos. CIVRS1206525, CIVRS1303408

Hairston v. Stanislaus Surgical Hospital, Stanislaus County Superior Court, Case No. CV-19-000651

Hindman v. Service Quick, Inc., San Bernardino County Superior Court, Case No. CIVDS1724229

Hogan v. iMobile of CA LLC, San Bernardino County Superior Court, Case No. CIVDS1409263

Hogan v. Wireless Evolution Inc., Riverside County Superior Court, Case No. MCC1300669

Hogan v. Wireless That's It! LLC, Riverside County Superior Court, Case No. RIC1201997

Holmes v. Bottling Group, LLC, Stanislaus County Superior Court, Case No. 2022584

Hooper, et al. v. URS Midwest, Inc., et al., San Bernardino Superior Court, Case No. CIVDS1607489

Humphrey v. Freedomroads, LLC, Shasta County Superior Court, Case No. 178228

Hurtado v. Rush Truck Centers of California, Inc., Los Angeles County Superior Court, Case No. BC427672

Hyde v. Dent Wizard International Corporation, Sacramento County Superior Court, Case No. 34-2015-00173882

Ibrihim v. Imperfect Foods, Inc., San Joaquin County Superior Court, Case No. STK-VI-UOE-2019-0000846

Id-deen v. Educational Services of America, Solano County Superior Court, Case No. FCS040803

Isherwood v. Mason Dixon Intermodal, Inc., San Joaquin County Superior Court, Case No. 39-2012-00279891-CU-OC-STK

Jahanbin v. Pacific Mercantile Bank, Orange County Superior Court, Case No. 30-2011-00480705CU-OE-CXC

Jenkins v. Sedgwick Claims Management Services, Inc., Los Angeles Superior Court, Case No. LC101648

Job v. California Security Services, Yuba County Superior Court, Case No. 14-0000820

Johnson v. The Goodyear Tire & Rubber Company, USDC – Northern District of California (San Francisco), Case No. 3:13-cv-01069-MMC

Jolin v. Bay Cities Recovery, Inc., El Dorado County Superior Court, Case No. PC20100458

Jordan v. Sutter Memorial Hospital, Stanislaus County Superior Court, Case No. 2023344

Keebaugh v. Mike Thompson Recreational Vehicles, San Bernardino County Superior Court, Case No. CIV-DS-1500718

Kelly v. Robin's Enviro Vac, Inc., Kern County Superior Court, Case No. S-1500-CV-282277
DRL

King v. Levy Premium Foodservice Limited Partnership, Alameda County Superior Court, Case No. HG15786353

Kunsman v. Punch Bowl Sacramento, LLC, et al., Sacramento County Superior Court, Case No. 34-2018-00243175

LaFear v. Encore Education Corporation, San Bernardino County Superior Court, Case No. CIVDS1802251

Lanzarin v. AWI Management Corporation, Solano County Superior Court, Case No. FCS041809

Lee, et al. v. Foster Dairy Farms, Stanislaus County Superior Court, Case Nos. 2006542, 2015679

Lemus, et al. v. Eastridge Workforce Technology, Inc., San Bernardino County Superior Court, Case No. CIV-DS-1611470

Lewis v. American Casino & Entertainment Properties LLC, San Bernardino County Superior Court, Case No. CIVDS1719094

Lemus v. On Assignment Staffing Services, San Bernardino County Superior Court, Case No. CIV-DS-1600497

Leon v. Piercey West Inc., Los Angeles County Superior Court, Case No. BC656874

Lopez v. Creative Communication Technologies, Inc., Imperial County Superior Court, Case No. ECU07851

Lopez v. Go Green Auto Spa Franchise, Inc., et al., Los Angeles County Superior Court, Case No. BC 562212

Lopez v. Truck Accessories Group, LLC, Yolo County Superior Court, Case No. CV13798

Ludlow v. Prince Telecom, LLC, Stanislaus County Superior Court, Case No. 684239

Luna v. Express Locations, LLC, Imperial County Superior Court, Case No. ECU09779

Macias v. American Tire Distributors, Inc., Kern County Superior Court, Case No. BCV-18-101586

Maldonado v. Hardwood Flooring Liquidators, Inc., Los Angeles County Superior Court, Case No. BC642170

Mansfield v. Cambridge Real Estate Services, Inc., Butte County Superior Court, Case No. 160175

Martinez v. DPI Specialty Foods West, San Joaquin County Superior Court, Case No. 39-2015-00327311-CU-OE-STK

Martinez v. Styles For Less, Inc., San Bernardino County Superior Court, Case No. CIVVS1203057

Mayne v. John Muir Behavioral Health, Contra Costa County Superior Court, Case No. C17-00998

Maze v. Bulldog Freightway, Inc., Imperial County Superior Court, Case No. ECU08716

McCormick v. G & O Body Shop, Inc., El Dorado Superior Court, Case No. PC20130291

McCrary v. Campbell Soup Supply Company, San Joaquin County Superior Court, Case No. 39-2013-00297698-CU-OE-STK

McDaniel v. Vancary, Inc., Tulare County Superior Court, Case No. 268036

Melgar-Farela v. Guardian Compliance, Inc., Los Angeles County Superior Court, Case No. BC481865

Mendiola v. Tyco Electronics Corporation, Riverside County Superior Court, Case No. RIC1400721

Mettler v. Les Schwab Tire Centers of California, Inc., San Joaquin County Superior Court, Case No. STK-CV-UOE-2018-476

Miller v. California Subshine, Inc., Los Angeles County Superior Court, Case No. BC637754

Miller v. Southwest Airlines Co., USDC – Northern District of California (San Francisco), Case No. 3:12-cv-05978-CRB

Mitchell v. Crossmark, Inc., USDC – Central District of California (Los Angeles), Case No. CV 11-2818-JAK (FMOx)

Moghrabi v. Vitaligent, Inc., San Joaquin County Superior Court, Case No. STK-CV-UOE-2018-1650

Molina v. Berkshire Hathaway Energy Company, et al., Imperial County Superior Court, Case No. ECU000522

Moore v. Horizon Solar Power, Inc., San Bernardino County Superior Court, Case No. CIVDS1410001

Murray v. Select Media Services, LLC, Los Angeles County Superior Court, Case No. BC424506

Myles v. Central Transport LLC, San Bernardino County Superior Court, Case No. CIVDS1401434

Navarro v. Mariana Packing Co., Inc., Solano County Superior Court, Case No. FCS045935

Nehrlich, et al. v. RPM Mortgage, Inc., Orange County Superior Court, Case No. 30-2013-00666783-CU-OE-CXC

Overton v. Hat World, Inc., USDC – Eastern District of California (Sacramento), Case No. 2:11-CV-01645-LKK-KJN

Perez v. Alcatel-Lucent USA Inc., Imperial County Superior Court, Case No. ECU07977

Perez v. Major Gloves and Safety, Inc., San Bernardino County Superior Court, Case No. CIVDS1710445

Perry v. Cardinal Health 200, LLC, Solano County Superior Court, Case No. FCS035303

Phraxayavong-Briones v. RSM, Inc., Sacramento County Superior Court, Case No. 34-2012-00117524

Pugh v. Wi Spa, LLC, Imperial County Superior Court, Case No. ECU07932

Quist v. Knight Transportation, Inc., San Bernardino Superior Court, Case No. CIVDS 1615414

Quitco v. Aviation Fuel Systems Repair, Inc., San Bernardino Superior Court, Case No. CIVRS1302311

Rambeau v. C.C.M. Corporation, et al., Sacramento County Court, Case No. 34-2018-00244842

Rankins v. Roman Empire Living Skills, Inc., Los Angeles County Superior Court, Case No. BC713399

Rees v. Advantel, Incorporated, Santa Clara County Superior Court, Case No. 16-CV-292219

Renfrow v. Janra Enterprises, Inc., Sacramento County Superior Court, Case No. 3402010-00080471

Reynolds v. Diamond Pet Food Processors of Ripon, San Joaquin County Superior Court, Case No. 39-2014-00310818

Richard v. A-Para Transit Corp., Alameda County Superior Court, Case No. HG17870373

Richardson v. TEC Equipment, Inc., et al., Los Angeles County Superior Court, Case No. VC065536

Robles v. North County Health Project Incorporated, San Diego Superior Court, Case No. 37-2014-00001751-CU-OE-NC

Rodas v. Monetary Management of California, Inc., USDC – Eastern District of California (Sacramento), Case No. 2:14 cv 01389 TLN AC

Rodriguez v. 20/20 Plumbing & Heating, Inc., San Bernardino County Superior Court, Case No. CIVDS1705362

Rodriguez v. Commerce Distribution Company, Los Angeles County Superior Court, Case No. BC656259

Rodriguez v. Valley Oak, San Joaquin County Superior Court, Case No. STK-CV-UOE-2016-7980

Roden v. Service Champions, San Bernardino County Superior Court, Case No. CIVDS1613183

Russell v. Bradshaw International, Imperial County Superior Court, Case No. ECU00853

Rutledge, et al. v. Healthport Technologies, LLC, Alameda County Superior Court, Case No. RG16835813

Sabala v. Econtactlive, Inc., Stanislaus County Superior Court, Case No. 684981

Sabatier v. Picture Perfect Installation, Inc., Riverside County Superior Court, Case No. RIC10004953

Salameh v. Sonomaidence OPCO, LLC, Sonoma County Superior Court, Case No. SVC264228

Salazar v. Tag-3 Medical Investment Group, LLC, Los Angeles County Superior Court, Case No. BC527698

Salbeck v. Ingredion Incorporated, San Joaquin County Superior Court, Case No. STK-UOE-2017-0012622

Sampson v. Healthnet of California Inc., Sacramento County Superior Court, Case No. 34-2015-00183785-CU-OE-GDS

Sanchez v. Don Roberto Jewelers, Inc., Imperial County Superior Court, Case No. ECU06819

Sanders v. Lionakis, Sacramento County Superior Court, Case No. 34-2017-00223601

Santana v. United Staffing Associates, LLC, Tulare County Superior Court, Case No. 249338

Schrader v. Adidas Promotional Retail Operations, Inc., Los Angeles County Superior Court, Case No. BC414168

Sebrell v. Pomeroy IT Solutions, San Bernardino County Superior Court, Case No. CIVDS1721560

Seymour v. Quest Service Group, LLC, Sacramento County Superior Court, Case No. 34-2017-00206917

Silva v. Trical, San Benito County Superior Court, Case No. CU-16-00218

Simler v. Polly's Inc., Riverside County Superior Court, Case No. RIC 1117862

Sipin, Scott v. Salesforce.com, Inc., San Joaquin County Superior Court, Case No. STK-CV-UOE-2019-0004629

Skuro v. BMW of North America, LLC, USDC – Central District of California (Los Angeles), Case No.: CV 10-8672-GW (FFMx)

Smith v. Steelcase, Inc., San Bernardino County Superior Court, Case No. CIVDS1725850

Sohal v. Foster Poultry Farms, Stanislaus County Superior Court, Case No. 2026605

Solomon v. City of Los Angeles, Los Angeles County Superior Court, Case No. BC570345

Solano v. Vozzcom, Inc., Imperial County Superior Court, Case No. ECU09519

Smith, et al. v. Sente Development, Inc., Sacramento County Superior Court, Case No. 34-2016-00196614

Solorzano v. FDS Manufacturing Corporation, Los Angeles County Superior Court, Case No. BC542532

Solowitz v. BakeMark USA LLC, Los Angeles County Superior Court, Case No. BC467838

Spampinato v. Wind & Sea Restaurants, Inc., San Bernardino County Superior Court, Case No. CIVVS1205154

Spitzer, et al. v. FRHI Hotels & Resorts (Canada) Inc., San Bernardino County Superior Court, Case No. C IVDS1712220

Stephens v. C.S., Inc., Riverside County Superior Court, Case No. PSC1301224

Stevenson v. Harvest Management Sub LLC, Ventura County Superior Court, Case No. 56-2011-00397420-CU-OE-SIM

Thompson v. Continental Labor Resources, Inc. d/b/a Continental Labor & Staffing Resources, Kern County Superior Court, Case No. S-1500-CV-278751-DRL

Thompson v. Sidhu Truck Line, Inc., Kern County Superior Court, Case No. BCV-15-101308-DRL

Tigas v. Ajilon Communications, Los Angeles County Superior Court, Case No. BC409737

Torres v. Coastal Employment Inc., Los Angeles County Superior Court, Case No. BC529207

Tran v. CSP Fiber Services, San Bernardino County Superior Court, Case No. CIVDS172758

Tripp v. California Guest Services, Inc., Plumas County Superior Court, Case No. CV16-00036

Valdez v. Diamond Landscaping, Inc., Los Angeles County Superior Court, Case No. BC497097

Valencia v. American Team Managers, Inc., Orange County Superior Court, Case No. 30-2016-00857365-CU-CR-CXC

Van Son v. Rush Truck Centers of California, Inc., Los Angeles County Superior Court, Case No. BC494747

Vasquez v. Schurman Fine Papers, San Joaquin County Superior Court, Case No. STK-CV-LMC-2015-10035

Velasquez v. Modesto Ventures, LLC, Sacramento County Superior Court, Case No. 32-2012-00126159

Victoria v. Bali Limousines Inc., San Mateo County Superior Court, Case No. CIV507774

Victorian v. Vision X, Inc., Los Angeles County Superior Court, Case No. BC400333

Wade v. Frito Lay, Kern County Superior Court, Case No. BCV-17-102014

Walls v. E. & J. Gallo, Stanislaus County Superior Court, Case No. 2015874

Warner v. Waterdrops Express Car Wash, LLC, Tulare County Superior Court, Case No. 265708

Waybright v. EAH, Inc., Stanislaus County Superior Court, Case No. 2011677

Weiss v. C.A.R. Enterprises, Inc., Riverside County Superior Court, Case No. RIC1113165

White v. Sally Beauty Supply, LLC, Imperial County Superior Court, Case No. ECU08177

Williams v. Dennis Dillon RV, LLC, San Bernardino County Superior Court, Case No. CIVDS 16006879

Williams v. Closet World, Inc., Los Angeles County Superior Court, Case No. BC400178

Williams v. Progress Rail Services Corporation, Kern County Superior Court, Case No. S-1500-CV-280236 DRL

Wing v. Three Group, Inc., Los Angeles County Superior Court, Case No. BC643883

Wilson v. ALSCO, Inc., Imperial County Superior Court, Case No. ECU07406

Wilson v. Michael C. Stead, Inc., Contra Costa Superior Court, Case No. C1400135

Winningham v. Storer Transportation Service, San Joaquin County Superior Court, Case No. 39-2015-00324708-CU-STK

Woody v. WBN Home Design, San Bernardino County Superior Court, Case No. CIVDS1613367

Woods, et al. v. F&B Innovations, LLC, San Bernardino County Superior Court, Case No. CIVDS1717765

Woodyard v. Bellus ALC Acquisition, LLC, USDC – Central District of California (Los Angeles), Case No. 2:13-cv-05285 SJO AGRx

Wright v. Social Vocational Services, Inc., Kern County Superior Court, Case No. BCV-15-101264

Ybarra v. New Legend, Inc., Sutter County Superior Court, Case No. CVCS-16-2097

Zaragoza v. Center Automotive, Inc., Los Angeles Superior Court, Case No. BC505194

EXHIBIT B

GAINES & GAINES

A PROFESSIONAL LAW CORPORATION

WWW.GAINESLAWFIRM.COM

27200 AGOURA ROAD, SUITE 101
CALABASAS, CALIFORNIA 91301

PHONE (818) 703-8985
FAX (818) 703-8984

June 11, 2020

Via Certified Mail

Labor & Workforce Development Agency
By online submission

Spearman Clubs, Inc.
23500 Clubhouse Drive
Laguna Nigel, CA 92677

Defendant mailed certified #70190700000201200131

Agent for Service of Process:
Cecil E. Spearman, Jr.
23500 Clubhouse Drive
Laguna Nigel, CA 92677

Agent mailed certified #70190700000201200124

Re: ***Labor Code Violations of Spearman Clubs, Inc. – Compliance Letter of California Labor Code § 2698 - Private Attorneys General Act***

Dear LWDA:

This office represents Hector Vieyra, a former non-exempt California employee of Spearman Clubs, Inc. ("Defendant"). The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698 *et seq.*

Herein, we set forth the facts and theories of California Labor Code violations which we allege Defendant engaged in with respect to our client and other of its California employees ("Aggrieved Employees").

Our client alleges that Defendant failed to pay all minimum and overtime wages earned during the course of employment, in violation of Labor Code §§ 510, 558 and 1194, when it rounded down the hours reflected on our client's and other non-exempt Aggrieved Employees' time records to pay fewer hours than were actually worked. On a weekly basis, this rounding deprived our client and other non-exempt Aggrieved Employees of significant hours worked and wages due. These failures to pay all minimum and overtime wages due constitute violations of Labor Code §§ 510, 558 and 1194.

Our client also alleges that Defendant failed to pay premium wages to him and other non-exempt Aggrieved Employees who were denied rest periods, in violation of Labor Code §§ 226.7, 558 and IWC Wage Order No. 4-2001. Our client and non-exempt Aggrieved Employees were routinely unable to take a 10-minute rest period for every four (4) hours of work or major fraction thereof, but were not paid premium wages of one hour's pay for each missed rest period. When they were able to take a rest period, they were oftentimes late, cut short or on-duty, in violation of Labor Code §§ 226.7, 558 and IWC Wage Order No. 4-2001.

Labor & Workforce Development Agency
Spearman Clubs, Inc.
Cecil E. Spearman, Jr.
June 11, 2020
Page 2

Defendant failed to pay premium wages to our client and other non-exempt Aggrieved Employees who were denied proper meal periods, in violation of Labor Code §§ 226.7, 512, 558 and IWC Wage Order 4-2001. Our client and non-exempt Aggrieved Employees were routinely denied, and not authorized to take, a proper, timely, uninterrupted, 30-minute meal period for every shift worked that exceeded five hours, or a second proper, timely, uninterrupted, 30-minute meal period for every shift worked that exceeded ten hours, but were not paid premium wages of one hour's pay for each missed first or second meal period. When they were able to take a meal period, they were oftentimes, late, cut short, or on-duty, in violation of Labor Code §§ 226.7, 512 and 558 and IWC Wage Order 4-2001.

Our client further alleges that Defendant failed to provide him and all other non-exempt Aggrieved Employees with wage statements that fully and accurately itemized the requirements set forth in Labor Code § 226(a). Our client and other non-exempt Aggrieved Employees were not paid all wages due, as stated above. As such, the wage statements provided by Defendant failed to accurately state all gross wages earned, in violation of Labor Code §§ 226(a)(1) and 226.3, total hours worked, in violation of Labor Code §§ 226(a)(2) and 226.3, net wages earned, in violation of Labor Code §§ 226(a)(5) and 226.3, and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate, in violation of Labor Code §§ 226(a)(9) and 226.3. Separately, Defendant failed to issue accurately itemized wage statements to our client and other Aggrieved Employees. The wage statements failed to set forth the inclusive dates of the period for which the employee was paid, in violation of Labor Code §§ 226(a)(6) and 226.3, because they failed to list the pay period start date. The wage statements list our client's entire social security number, instead of only the last four digits of his social security number or an employee identification number, in violation of Labor Code §§ 226(a)(7) and 226.3. The wage statements also failed to list the address of the legal entity that employed our client and other Aggrieved Employees, in violation of Labor Code §§ 226(a)(8) and 226.3. The wage statements also failed to list the overtime rate of pay, in violation of Labor Code §§ 226(a)(9) and 226.3.

Our client further alleges that Defendant failed to pay him all wages due at the separation of his employment based on the time frames required by Labor Code §§ 201 and 202. As stated above, our client and other non-exempt Aggrieved Employees were not paid all wages due during the course of their employment and, as a result of this failure, they were not timely paid all wages due at the separation of their employment. This violates Labor Code §§ 201-202 and is alleged on behalf of our client and certain non-exempt Aggrieved Employees.

The \$75 PAGA filing fee has been mailed to the LWDA concurrently with the transmission of this letter.

We invite Defendant or its attorney to contact our office to discuss this matter, including whether an early resolution of the claims can be reached.

Labor & Workforce Development Agency
Spearman Clubs, Inc.
Cecil E. Spearman, Jr.
June 11, 2020
Page 3

Our office awaits your response.

Very truly yours,

GAINES & GAINES
A Professional Law Corporation

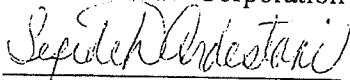
By: 
SEPIDEH ARDESTANI

EXHIBIT C

1 RUTAN & TUCKER, LLP
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2 mstearns@rutan.com
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3 ccollins@rutan.com
611 Anton Boulevard, Suite 1400
4 Costa Mesa, California 92626-1931
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5 Facsimile: 714-546-9035

6 Attorneys for Defendant
SPEARMAN CLUBS, INC.

7

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF ORANGE, CIVIL COMPLEX CENTER
10

11 HECTOR VIEYRA, on behalf of himself and
all "aggrieved employees" pursuant to Labor
12 Code §2698 *et seq.*,

13 Plaintiffs,

14 vs.

15 SPEARMAN CLUBS, INC., a Delaware
corporation; and DOES 1 through 10, inclusive,

16 Defendants.
17

18 RAFAEL RAMIREZ,

19 Plaintiffs,

20 vs.

21 SPEARMAN CLUBS, INC. DBA LAGUNA
NIGUEL RACQUET CLUB, a California
22 Corporation; and DOES 1-50 ALL
INCLUSIVE,

23 Defendants.
24

25

26

27

28

Case No. 30-2020-01156371-CU-OE-CXC
and Case No. 30-2020-01141764-CU-WT-CJC

ASSIGNED FOR ALL PURPOSES TO:
HON. WILLIAM CLASTER, DEPT. CX104

**STIPULATION AND AGREEMENT FOR
PAGA REPRESENTATIVE ACTION
SETTLEMENT**

Dates Action Filed: May 28, 2020 (Ramirez);
August 21, 2020 (Vieyra)
Trial Date: Not Yet Scheduled

1 This Stipulation and Agreement for Settlement of PAGA Representative Action is made
2 and entered into by and between plaintiff Hector Vieyra ("Vieyra"), plaintiff Rafael Ramirez
3 ("Ramirez") and defendant Spearman Clubs, Inc. ("Defendant") (collectively, the "Parties") and is
4 made in compromise of disputed claims. The Parties agree that the above-entitled representative
5 actions shall be settled on the terms and conditions set forth in this Stipulation, subject to the
6 approval of the Court pursuant to Section 2699(1)(2) of the California Labor Code Private
7 Attorneys General Act of 2004, Labor Code section 2698, *et. seq.* ("PAGA").

8 **DEFINITIONS**

9 1. **"Aggrieved Employees"** means all employees who were employed by Defendant
10 in California in a non-exempt position during the PAGA Period.

11 2. The terms **"Agreement," "Settlement,"** and **"Settlement Agreement"** mean this
12 Stipulation and Agreement for Settlement of PAGA Representative Action, which the Parties
13 acknowledge sets forth all material terms and conditions of the Settlement between them, and
14 which is subject to Court approval pursuant to Section 2699(1)(2) of the California Labor Code
15 Private Attorneys General Act of 2004, Labor Code section 2698, *et seq.*

16 3. **"Court"** means the California Superior Court, County of Orange.

17 4. **"Defendant"** means Spearman Clubs, Inc.

18 5. **"Effective Date"** of this Agreement shall be the later of (i) if no person or entity
19 objects to the Settlement, the date after service of notice of entry of the Final Order and Judgment;
20 (ii) if any person or entity objects to the Settlement and the Court nonetheless approves the
21 Settlement, the 61st day after service of notice of entry of the Final Order and Judgment, if no
22 appeal, review, writ, or other challenge has been filed; or (iii) if an appeal, review, writ, or other
23 challenge is sought from the Final Order and Judgment, the day after the Final Order and
24 Judgment is affirmed or the appeal, review, writ, or other challenge is dismissed or denied, and the
25 Final Order and Judgment are no longer subject to further judicial review. The Effective Date is
26 conditioned upon all of the following occurring: (a) this Agreement has been signed by the Parties,
27 PAGA Counsel, and Defendant's counsel, and (b) the Court has entered the Final Order and
28 Judgment.

1 6. **“Final Order and Judgment”** means the proposed order granting approval of the
2 Settlement and entering Judgment, in the form substantially similar to that attached to this
3 Agreement as Exhibit 1.

4 7. **“Gross Settlement Amount”** means a maximum total of \$200,000¹, which
5 includes all payments owing as a result of this Agreement and includes: the PAGA Payment Fund;
6 Representative Plaintiff Enhancement Awards; Settlement Administration Costs; and PAGA
7 Counsel Attorneys’ Fees and Costs as awarded by the Court.

8 8. **“LWDA Payment”** means a payment to the California Labor Workforce and
9 Development Agency in an amount equal to 75% of the PAGA Payment Fund.

10 9. **“PAGA Payment Fund”** is the Gross Settlement Amount less all of the following:
11 PAGA Counsel’s Attorneys’ Fees and Costs, Representative Plaintiffs’ Enhancement Awards, and
12 Settlement Administration Costs. The PAGA Payment Fund is paid from the Gross Settlement
13 Amount and is comprised of the LWDA Payment and PAGA Aggrieved Employee Payment.

14 10. **“PAGA Aggrieved Employee Payment”** means a payment of 25% of the PAGA
15 Payment Fund, which the Parties have agreed to pay the Aggrieved Employees in connection with
16 the settlement of the PAGA Claim.

17 11. **“PAGA Claim”** means the claim for civil penalties under the California Labor
18 Code Private Attorneys General Act of 2004 (Cal. Lab. Code sections 2698 *et seq.*, “PAGA”)
19 alleged in the Vieyra Action and the Ramirez Action.

20 12. **“PAGA Counsel”** means Gaines & Gaines, APLC and The Law Offices of Farrah
21 Mirabel.

22 13. **“PAGA Period”** means March 23, 2019 through the earlier of the date the Court
23 grants approval of the Settlement or July 12, 2021.

24
25 ¹ Should the PAGA Period include more than 2,500 pay periods, Vieyra and Ramirez may
26 terminate this Settlement Agreement unless Defendant agrees to increase the Gross Settlement
27 Amount proportionately to the pay period increase. For every pay period in excess of 2,500,
28 Defendant must increase the Gross Settlement Amount by 0.04% (1/2,500) of the PAGA Payment
Fund (based on a \$200,000.00 Gross Settlement Amount). For example, if the total number of pay
periods is 2,750, and assuming the PAGA Payment Fund is \$106,500, Vieyra and Ramirez can
terminate this Agreement unless Defendant increases the Gross Settlement Fund by \$10,650.00
([0.04% x \$106,500.00] x 250 pay periods).

1 14. “**Ramirez**” means plaintiff Rafael Ramirez.

2 15. “**Ramirez Action**” means and refers to *Rafael Ramirez v. Spearman Clubs, Inc.*
3 *DBA Laguna Niguel Racquet Club*, Case No. 30-2020-01141764-CU-WT-CJC, which is currently
4 pending in Orange County Superior Court.

5 16. “**Released Claims**” means all claims, demands, rights, liabilities, and causes of
6 action that were, or could have been, asserted against the Released Parties in the Vieyra Action
7 and/or Ramirez Action on behalf of the Aggrieved Employees during the PAGA Period, pursuant
8 to the California Labor Code Private Attorneys General Act of 2004, Labor Code §§ 2698, *et seq.*,
9 based on or arising from the facts or claims alleged in the Vieyra Action and the Ramirez Action.
10 Without limiting the foregoing, and in addition to the foregoing, the Released Claims include all
11 civil penalties under California Labor Code Section 2699 *et seq.* for alleged: failure to pay all
12 minimum and overtime wages earned; failure to provide meal periods or one hour of additional
13 pay for missed meal periods; failure to provide rest breaks or one hour of additional pay for
14 missed rest breaks; failure to provide complete and accurate itemized wage statements; failure to
15 pay for all hours worked; failure to pay sick time; and failure to timely pay wages owed during
16 employment and upon termination of employment, pursuant to the corresponding alleged
17 violations of the California Labor Code, including but not limited to, sections 201-204, 226, 226.3,
18 226.7, 246, 510, 512, 558, 1174, 1194, 1197, 1197.1, 1198, 1198.5, 2698, 2699, 2699.3, the
19 California Business and Professions Code section 17200, and the applicable IWC Wage Order.
20 The Released Claims only include claims for civil penalties under the PAGA. The Settlement
21 does not release any individual claims belonging to the Aggrieved Employees, such as claims for
22 unpaid wages or statutory penalties. The Settlement does not release any of individual claims in
23 causes of action numbers 7-11 in the Ramirez Action.

24 17. “**Released Parties**” means Defendant and each of its officers, directors, agents,
25 insurers, employees, members, board members, partners, owners, shareholders, attorneys or
26 representatives, parent entities, affiliated entities, and all of their predecessors, successors, assigns,
27 and any individual or entity which could be jointly liable with Defendant.

28

1 18. "Settlement Administrator" means ILYM Group, Inc., or any other neutral third-
2 party administrator chosen by the Parties, subject to approval by the Court.

3 19. "Vieyra" means plaintiff Hector Vieyra.

4 20. "Vieyra Action" means and refers to *Hector Vieyra v. Spearman Clubs, Inc.*, Case
5 No. 30-2020-01156371-CU-OE-CXC, which is currently pending in Orange County Superior
6 Court.

7 RECITALS

8 21. On March 30, 2020, Ramirez sent a PAGA Notice to the Labor and Workforce
9 Development Agency ("LWDA"), with a copy to Defendant. On July 7, 2020, Ramirez filed a
10 First Amended Complaint in the Ramirez Action (*Rafael Ramirez v. Spearman Clubs, Inc. DBA*
11 *Laguna Niguel Racquet Club*, Case No. 30-2020-01141764-CU-WT-CJCz), which added a PAGA
12 Claim to Ramirez's previously-alleged individual claims. The Ramirez Action includes, among
13 other things, a PAGA Claim for civil penalties, and an award of reasonable attorneys' fees and
14 costs.

15 22. On June 11, 2020, Vieyra sent a PAGA Notice to the LWDA, with a copy to
16 Defendant. On October 21, 2020, Vieyra filed a Complaint for PAGA Penalties in the Vieyra
17 Action (*Hector Vieyra v. Spearman Clubs, Inc.*, Case No. 30-2020-01156371-CU-OE-CXC). The
18 Vieyra Action includes a PAGA Claim for civil penalties, and an award of reasonable attorneys'
19 fees and costs.

20 23. On March 12, 2021, the Court in the Ramirez Action issued a Minute Order finding
21 that the Ramirez Action and the Vieyra Action are related matters, and reassigning the Ramirez
22 Action to Judge William Claster (the judge in the Vieyra Action) for all purposes.

23 24. The Parties have conducted a thorough investigation into the facts of the Vieyra
24 Action and the Ramirez Action. This included exchanging data and information, as well as
25 documents relating to the underlying alleged violations and documents relating to Defendant's
26 financial condition. After attending a full day mediation before Lisa Klerman, Esq. of the
27 Mediation Office of Lisa Klerman, the Settlement was reached. The Parties believe the Settlement
28 is fair, reasonable, and adequate. The Parties understand, acknowledge, and agree that this

1 Settlement Agreement constitutes a compromise of the Aggrieved Employees' PAGA Claim, and
2 that it is the desire and intention of the Parties to effect a final and complete resolution of the
3 PAGA Claim that the Representative Plaintiffs and the Aggrieved Employees have against
4 Defendant or any persons or companies affiliated with Defendant.

5 25. The Parties enter into this Settlement Agreement on a conditional basis. In the
6 event the Court does not enter a Final Order and Judgment, substantially in the form attached as
7 Exhibit 1 to this Settlement Agreement, this Settlement Agreement will be deemed null and void
8 *ab initio* and will be of no force or effect whatsoever, and will not be referred to or utilized for any
9 purpose whatsoever.

10 26. Defendant denies all of the claims in the Vieyra Action and the Ramirez Action,
11 and does not waive, but rather expressly reserves, all rights to challenge all such claims and
12 allegations upon all legal, procedural, and factual grounds should this Settlement Agreement not
13 become final. This Settlement Agreement reflects a compromise reached to end litigation except
14 for Ramirez's individual causes of action numbers 7-11 in the Ramirez Action, for wrongful
15 termination, discrimination and retaliation.

16 27. The Parties stipulate and agree to the following terms of this Settlement Agreement
17 with the intent that this Agreement finally disposes of the Vieyra Action, and the PAGA claim in
18 the Ramirez Action, with prejudice.

19 **TERMS AND CONDITIONS**

20 28. **Settlement Payments and Calculation of Claims.** The following table
21 summarizes the allocation of the Gross Settlement Amount:

<u>Gross Settlement Amount of \$200,000.00 Is Broken Down As Follows:</u>	
•	PAGA Counsel Attorneys' Fees not to exceed \$66,000.00
•	PAGA Counsel Costs not to exceed \$15,000.00
•	Up to \$5,000.00 for Enhancement Award and General Release Payment to Named Plaintiff Hector Vieyra.
•	Up to \$2,500.00 for Enhancement Award to Named Plaintiff Rafael Ramirez.
•	Settlement Administration Costs, not to exceed \$5,000.00
•	\$106,500.00 for the PAGA Payment Fund
○	\$79,875.00 for the LWDA Payment
○	\$26,625.00 for the PAGA Aggrieved Employee Payment

1 29. Subject to final Court approval and the conditions specified in this Agreement, and
2 in consideration of the mutual covenants and promises set forth in this Agreement, Defendant
3 agrees to pay the Gross Settlement Amount of \$200,000.00, subject to increase based on the terms
4 of footnote 1 above. The Gross Settlement Amount includes, but is not limited to, payments to be
5 made for PAGA Counsel's attorneys' fees and costs, any enhancement payments to Vieyra and
6 Ramirez, the PAGA Payment Fund, and Settlement Administration Costs. The Parties agree,
7 subject to Court approval, that the Gross Settlement Amount shall be apportioned as follows:

8 a. Settlement Administration Fees And Costs: The fees and costs associated
9 with settlement administration (*e.g.*, preparing and mailing payments to the Aggrieved Employees,
10 tax documentation, etc.) (the "Settlement Administration Costs") will be paid from the Gross
11 Settlement Amount and will not exceed \$5,000.00. The Parties agree to use ILYM Group, Inc. as
12 the Settlement Administrator.

13 b. PAGA Counsel's Attorneys' Fees and Costs: The Parties agree that, subject
14 to the Court's review and approval, PAGA Counsel will be paid from the Gross Settlement
15 Amount an amount that is up to 33.33% of the Gross Settlement Amount for attorneys' fees
16 (estimated to be \$66,000.00), plus actual litigation costs, not to exceed \$15,000.00.

17 c. Vieyra's Enhancement Award and General Release Payment: The Parties
18 agree that, subject to the Court's review and approval, Vieyra will receive a payment of \$5,000.00
19 for his services in bringing the Vieyra Action on behalf of the Aggrieved Employees and his
20 general release of Defendant, which will be paid from the Gross Settlement Amount. In exchange
21 for his \$5,000 payment, Vieyra forever and completely releases all claims he had, or may have
22 had, against Defendant including those under Section 1542 of the California Civil Code which
23 states that:

24 "A general release does not extend to claims that the creditor or
25 releasing party does not know or suspect to exist in his or her favor
26 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."

27 d. Ramirez's Enhancement Award: The Parties agree that, subject to the
28 Court's review and approval, Ramirez will receive a payment of \$2,500.00 for his services in

1 bringing the Ramirez Action on behalf of the Aggrieved Employees and his dismissal of his
2 PAGA claim in the Ramirez Action, which will be paid from the Gross Settlement Amount.

3 e. PAGA Payment Fund: After deducting PAGA Counsel's Attorneys' Fees
4 and Costs, Settlement Administration Costs, and Representative Plaintiffs' Enhancement Awards
5 from the Gross Settlement Amount, the remaining amount will comprise the PAGA Payment
6 Fund. The PAGA Payment Fund is comprised of the LWDA Payment and the PAGA Aggrieved
7 Employee Payment. The PAGA Payment Fund of approximately \$106,500.00 shall be allocated
8 75% to the LWDA Payment, which is estimated to total \$79,875.00 (\$106,500.00 x 75%). The
9 remaining 25% of the PAGA Payment Fund, estimated to total \$26,625.00 (\$106,500.00 x 25%),
10 shall be allocated to the PAGA Aggrieved Employee Payment to be paid to the Aggrieved
11 Employees on a *pro rata* basis based on pay periods worked during the PAGA Period, as set forth
12 below, which shall be referred to as the Aggrieved Employee's "**Individual PAGA Payment.**"

13 Example:

14 Aggrieved Employee A was actively employed during the PAGA Period for 25 pay
15 periods. All Aggrieved Employees were actively employed a combined total of 2,000 pay periods
16 during the PAGA Period. Aggrieved Employee A's Individual PAGA Payment would be
17 calculated as follows:

- 18 ➤ 25 pay periods for Aggrieved Employee A ÷ 2,000 total pay periods for all
19 Aggrieved Employees = 1.25%.
20 ➤ Aggrieved Employee A is entitled to an Individual PAGA Payment in an amount
21 that is 1.25% of the PAGA Aggrieved Employee Payment.²

22 f. Taxes and Reporting: The Individual PAGA Payments will be treated as
23 non-wage income to the Aggrieved Employees and reported by the Settlement Administrator on
24 IRS Form 1099.

25
26
27
28 ² The Individual PAGA Payment will be rounded to the nearest penny with .5 rounded down.

1 30. **Release by Aggrieved Employees and State of California.**

2 a. Terms of Release. In exchange for the consideration recited in this
3 Settlement Agreement, Vieyra and Ramirez, as representatives for the State of California and all
4 Aggrieved Employees, and on behalf of their current, former, and future heirs, executors,
5 administrators, attorneys, agents, and assigns, will forever completely release and discharge the
6 Released Parties of any and all Released Claims. The Aggrieved Employees and the State of
7 California are deemed by operation of the Final Order and Judgment to have agreed not to sue or
8 otherwise make a claim against any of the Released Parties for any Released Claims.
9 Additionally, Vieyra forever and completely releases all claims he had, or may have had, against
10 Defendant.

11 b. No Claims Based On Stipulation and Agreement. No Aggrieved Employee
12 will have any claim against any of the Released Parties, Defendant's counsel, the Representative
13 Plaintiffs, or PAGA Counsel, based on errors in administering claims or performing the mailing
14 and skip-tracing requirements of the Settlement Administrator under this Agreement.

15 31. **Request For Final Order and Judgment.** Upon execution of this Agreement,
16 PAGA Counsel shall promptly file an unopposed motion with the Court requesting approval of
17 this Settlement by submitting a proposed Final Order and Judgment, in a form substantially similar
18 to Exhibit 1. Ramirez and Vieyra shall not file the motion or application requesting approval or
19 final judgment with the Court until Defendant has been given the opportunity to review and
20 approve it, which approval will not be unreasonably withheld. Vieyra and Ramirez agree to
21 comply with all requirements to give notice of the Settlement to the LWDA, as set forth in
22 California Labor Code §2699(l).

23 32. **Settlement Funding.**

24 a. Upon the Court entering the Final Order and Judgment, and within 7 days
25 after the Effective Date, the Settlement Administrator shall send Defendant's counsel electronic
26 wiring instructions to fund the Gross Settlement Amount.

27 b. Within 21 days after the Effective Date, Defendant shall wire to the
28 Settlement Administrator the Gross Settlement Amount (the "**Funding Date**").

1 c. Within 45 days after the Effective Date, the Settlement Administrator shall
2 issue all payments required by this Agreement (the “**Payment Date**”).

3 33. **PAGA List.** Within 15 days after the Effective Date, Defendant will provide a
4 PAGA List to the Settlement Administrator which will identify all Aggrieved Employees by
5 name, social security number, and last known home address (“**PAGA List**”). The PAGA List will
6 also contain the number of pay periods credited to each Aggrieved Employee during the PAGA
7 Period.

8 34. **List Of Individual Settlement Amounts.** Within 15 days after the Settlement
9 Administrator receives the PAGA List, the Settlement Administrator will provide to PAGA
10 Counsel and Defendant’s counsel a Proceeds List reflecting the Individual PAGA Payment for
11 each Aggrieved Employee (“**Proceeds List**”). The Proceeds List provided to PAGA Counsel will
12 not include the Aggrieved Employees’ names, social security numbers or contact information but
13 will include pay period information.

14 35. **PAGA Payments to Aggrieved Employees.**

15 a. On the Payment Date, the Settlement Administrator will mail to each
16 Aggrieved Employee, via first-class United States Mail, the following: (a) the PAGA Settlement
17 Notice in English, attached as Exhibit 2 to this Agreement and (b) their Individual PAGA Payment
18 (collectively, the “**PAGA Packet**”).

19 b. Prior to mailing the PAGA Packet, the Settlement Administrator will update
20 all addresses using the National Change of Address System (NCOA). In the event that a PAGA
21 Packet is returned to the Settlement Administrator with a forwarding address, the Settlement
22 Administrator will re-send the PAGA Packet to the forwarding address identified. If no
23 forwarding address is provided, then the Settlement Administrator will promptly conduct a
24 “standard search,” sometimes called, “Skip Trace” or “Credit Header” searches, to locate a better
25 address. If a better address is found, the Settlement Administrator will promptly re-send the
26 PAGA Packet. If a better address is not found or the PAGA Packet is ultimately returned without
27 a forwarding address, neither the Settlement Administrator, Defendant, or PAGA Counsel shall be
28 required to take further action.

1 c. Aggrieved Employees shall have 180 calendar days after the date the PAGA
2 Packet is mailed to them to cash their settlement payment checks. If any Aggrieved Employee's
3 check is not cashed within that period, the settlement payment check will be voided and a stop-
4 payment will be issued. Neither Defendant, Defendant's counsel, Vieyra, Ramirez, nor PAGA
5 Counsel will have any liability for lost or stolen settlement payment checks, forged signatures on
6 settlement payment checks, unauthorized negotiation of settlement payment checks or failure to
7 timely cash a settlement payment check within the 180 day period.

8 d. Any unpaid cash residue or unclaimed Aggrieved Employee funds, plus any
9 accrued interest that has not otherwise been distributed pursuant to order of the Court, shall be
10 distributed to the State Controller's Unclaimed Property Fund in the name(s) of the employee(s)
11 who did not claim the funds.

12 36. **Payments Of Enhancement Awards, Attorneys' Fees And Costs, and the**
13 **LWDA Settlement Payment.**

14 a. No later than the Payment Date, the Settlement Administrator will pay from
15 the Gross Settlement Amount the Vieyra Enhancement Award and Ramirez Enhancement Award
16 as awarded by the Court. The payment will be made by sending (i) Vieyra's counsel (Gaines &
17 Gaines, APLC) a check or wire payable to "Hector Vieyra" in the amount of the Court-approved
18 Vieyra Enhancement Award, and (ii) to Ramirez's counsel (The Law Offices of Farrah Mirabel) a
19 check or wire payable to "Rafael Ramirez" in the amount of the Court-approved Ramirez
20 Enhancement Award. These payments are conditioned upon PAGA Counsel providing
21 Defendant's counsel with completed Form W-9s for Vieyra and Ramirez.

22 b. No later than the Payment Date, the Settlement Administrator will pay from
23 the Gross Settlement Amount to PAGA Counsel their Court-approved Attorneys' Fees and Costs.
24 Such payment is conditional upon PAGA Counsel providing the Settlement Administrator with
25 completed Form W-9s.

26 c. No later than the Payment Date, the Settlement Administrator will pay the
27 LWDA Payment from the PAGA Payment Fund by issuing a check in the approximate amount of
28 \$79,875.00 (75% of the PAGA Payment Fund) payable to "California Labor Workforce and

1 Development Agency.”

2 37. **Deadlines.** If any deadline specified in this Agreement falls on a Saturday,
3 Sunday, or Court holiday, the deadline will be automatically extended to the next regular business
4 day. Unless specified otherwise, all references to “days” shall mean calendar days.

5 38. **Enforcement and Continuing Jurisdiction of the Court.** Pursuant to the Parties’
6 agreement, this Settlement Agreement will be approved by the Court and will be enforceable by
7 the Court pursuant to California Code of Civil Procedure section 664.6. Even after the entry of the
8 Final Order and Judgment, this Court will have and retain continuing jurisdiction over the Vieyra
9 Action and the Ramirez Action and over all Parties and the Aggrieved Employees, to the fullest
10 extent necessary or convenient to enforce and effectuate the terms and intent of this Settlement
11 Agreement and all matters provided for in it, and to interpret it.

12 39. **Mutual Full Cooperation.** The Parties will fully cooperate with each other to
13 accomplish the terms of this Settlement Agreement, including, but not limited to, execution of
14 such documents and taking such other action as may be reasonably necessary or convenient to
15 implement it.

16 40. **Non-Admission Of Liability.** The Parties enter into this Agreement to resolve the
17 dispute that has arisen between them and to avoid the burden, expense and risk of continued
18 litigation. In entering into this Agreement, Defendant does not admit, and specifically denies, that
19 it has violated any federal, state, or local law; violated any regulations or guidelines promulgated
20 pursuant to any statute or any other applicable laws, regulations or legal requirements; violated or
21 breached any duty; engaged in any misrepresentation or deception; or engaged in any other
22 unlawful conduct with respect to the Vieyra Action and/or the Ramirez Action. Neither this
23 Agreement, nor any of its terms or provisions, nor any of the negotiations connected with it, shall
24 be construed as an admission or concession by Defendant of any such violations or failures to
25 comply with any applicable law. Except as necessary in a proceeding to enforce the terms of this
26 Agreement, this Agreement and its terms and provisions shall not be offered or received as
27 evidence in any action or proceeding to establish any liability or admission on the part of
28 Defendant or to establish the existence of any condition constituting a violation of, or a non-

1 compliance with, federal, state, local or other applicable law. Similarly, in entering into this
2 Agreement, Vieyra and Ramirez do not admit, and specifically deny, the merits of Defendant's
3 defenses. Neither this Agreement, nor any of its terms or provisions, or documents submitted in
4 support of the Settlement, nor any of the negotiations connected with it, shall be construed as an
5 admission or concession by Vieyra or Ramirez of the validity of any of Defendant's claimed
6 defenses to the Vieyra Action and/or the Ramirez Action. Except as necessary in a proceeding to
7 enforce the terms of this Agreement, this Agreement and its terms and provisions, as well as all
8 documents, pleadings, or declarations filed in support of the Agreement shall not be offered or
9 received as evidence in any action or proceeding to establish any defense in the Vieyra Action
10 and/or the Ramirez Action.

11 41. **Effective Date Of Defendant's Obligations Under This Agreement.**

12 Defendant's obligations under this Settlement Agreement will become final and effective only
13 upon the occurrence of the Effective Date. In the event that any of the conditions specified in this
14 Settlement Agreement are not satisfied, or in the event that this Settlement does not obtain
15 approval of the Court for any reason, all matters covered by this Agreement will be null and void.
16 In such event, neither this Agreement nor any negotiations leading to this Settlement will be used
17 or construed by or against any Party as a determination, admission, or concession of any issue of
18 law or fact in the litigation; and the Parties do not waive, and instead expressly reserve, their
19 respective rights regarding the prosecution and defense of the Vieyra Action and the Ramirez
20 Action, including all available defenses and affirmative defenses, and to challenge any claim, as if
21 this Settlement Agreement never existed.

22 42. **Nullification.** If: (1) the Court should for any reason fail to enter the Final Order
23 and Judgment without material modification; or (2) the Court's Final Order and Judgment is
24 reversed or modified as to any material term as defined above, or declared or rendered void as to
25 any material term as defined above, then (a) the Settlement Agreement shall become null and void;
26 and (b) the Parties will revert to their respective positions immediately prior to reaching the
27 settlement.
28

1 43. **Invalidation.** Invalidation of any material term of this Settlement Agreement will
2 invalidate this Agreement in its entirety unless the Parties subsequently agree in writing that the
3 remaining provisions will remain in full force and effect.

4 44. **No Publicity.** Vieyra, Ramirez, and their counsel agree that the terms of this
5 Settlement Agreement (including, but not limited to, the Gross Settlement Amount), the
6 negotiations leading to the execution of this Settlement Agreement, and the Settlement Agreement
7 itself, shall not be discussed with or publicized or promoted to the media (including, without
8 limitation, legal periodicals and publications such as "Jury Verdicts," or disclosure of the
9 Settlement Agreement on any website of Plaintiffs' counsel), or the public at large, without the
10 advance written consent of Defendant. The Parties intend that this Paragraph shall prohibit
11 Vieyra, Ramirez, and/or their counsel from discussing, answering questions about, promoting or
12 publicizing the Settlement Agreement, its terms, or the negotiations leading to the Settlement
13 Agreement with anyone other than the Court or those individuals necessary to effectuate the terms
14 of the Agreement (which include Aggrieved Employees [other than Vieyra and Ramirez], the
15 Court, and the LWDA, on which no publicity or communication restrictions will be placed).
16 Notwithstanding the foregoing, Vieyra, Ramirez, and their counsel: (1) may tell the public in
17 general only that certain claims "have been resolved by the Parties," and (2) may disclose the
18 terms of the Settlement Agreement (a) in appropriate filings with the Court in this case; (b) where
19 required by law (e.g., income tax returns); and (c) to accountants or other tax professionals for the
20 purpose of preparing tax returns.

21 45. **Entire Agreement.** This Settlement Agreement constitutes the entire integrated
22 agreement between the Parties relating to the Vieyra Action and Ramirez Action, and no oral
23 representations, warranties, or inducements have been made to any party concerning this
24 Settlement Agreement other than the representations, warranties, and covenants contained and
25 memorialized in this Settlement Agreement.

26 46. **Authorization To Act.** PAGA Counsel warrants and represents that they are
27 authorized by Vieyra and Ramirez, respectively, and counsel of record for Defendant warrants that
28 they are authorized by Defendant, to take all appropriate action required or permitted to be taken

1 by such Parties pursuant to this Settlement Agreement to effectuate its terms, and to execute any
2 other documents required to effectuate the terms of this Settlement Agreement, except for any
3 documents, including but not limited to this Settlement Agreement, that are required to be
4 executed by the Parties.

5 47. **Modification Only In Writing.** This Settlement Agreement may be amended or
6 modified only by a written instrument signed by all Parties or their successors in interest.

7 48. **Binding On Successors.** This Settlement Agreement is binding upon and will
8 inure to the benefit of the Parties to this Agreement, as well as their respective attorneys, past,
9 present, and future predecessors, successors, shareholders, officers, directors, employees, agents,
10 trustees, representatives, administrators, fiduciaries, assigns, insurers, executors, partners, parent
11 corporations, subsidiaries, and related or affiliated entities.

12 49. **No Prior Assignments.** Veyra and Ramirez are deemed by operation of the Final
13 Order and Judgment to represent, covenant, and warrant that they have not directly or indirectly
14 assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or
15 entity any portion of any liability, claim, demand, cause of action, or rights released and
16 discharged by this Agreement.

17 50. **Governing Law.** All terms of this Settlement Agreement will be governed by and
18 interpreted according to the laws of the State of California, without giving effect to conflicts of
19 laws principles.

20 51. **Counterparts.** This Settlement Agreement may be executed in one or more
21 counterparts. All executed counterparts and each of them will be deemed to be one and the same
22 instrument. Counsel for the Parties will exchange among themselves signed counterparts.

23 52. **Headings For Convenience Only.** The descriptive headings of any paragraphs or
24 sections of this Settlement Agreement are inserted for convenience of reference only and do not
25 constitute a part of this Settlement Agreement.

26 53. **Construction Of This Agreement.** The Parties agree that the terms and conditions
27 of this Settlement Agreement are the result of arms-length negotiations between the Parties and
28 that this Settlement Agreement will not be construed in favor of or against any Party by reason of

1 the extent to which any Party, or his or its counsel participated in the drafting of this Agreement.
2 This Settlement Agreement constitutes the entire agreement between the Parties. Except as
3 expressly provided in this Agreement, this Settlement Agreement has not been executed in
4 reliance upon any other oral or written representations or terms and no such extrinsic oral or
5 written representations or terms will modify, vary or contradict the terms of this Settlement
6 Agreement. In entering this Settlement Agreement, the Parties explicitly recognize California
7 Civil Code section 1625 and California Code of Civil Procedure section 1856(a), which provide
8 that a written agreement is to be construed according to its terms and may not be varied or
9 contradicted by extrinsic evidence. Vieyra, Ramirez, and Defendant had available to them the
10 advice and assistance of independent counsel. As such, neither Vieyra, Ramirez, nor Defendant
11 may claim that any ambiguity in this Settlement Agreement should be construed against the other.

12 54. **Corporate Signatories.** Any person executing this Settlement Agreement or any
13 related document on behalf of a corporate signatory warrants and promises for the benefit of all
14 Parties that such person has been duly authorized by such corporation to execute this Settlement
15 Agreement or any related document.

16 55. **Representation By Counsel.** All of the Parties to this Settlement Agreement
17 acknowledge that they have been represented by counsel throughout all negotiations which
18 preceded the execution of this Settlement Agreement and that this Agreement has been executed
19 with the consent and advice of counsel.

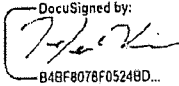
20 56. **Attorneys' Fees And Costs.** Except as otherwise provided in this Agreement, the
21 Parties will bear responsibility for their own attorneys' fees and costs, taxable or otherwise,
22 incurred by them or arising out of the Vieyra Action and/or the Ramirez Action and will not seek
23 reimbursement thereof from any Party to this Settlement Agreement. In the event of a proven
24 breach of this Agreement, the breaching party will be required to pay the prevailing Party's
25 reasonable attorneys' fees and costs incurred in enforcing this Agreement.

26 [SIGNATURES ON FOLLOWING PAGE]
27
28

1 IT IS SO AGREED.

2 April 13, 2021

3 Dated: _____, 2021

DocuSigned by:

B4BF8078F05248D...

Hector Vieyra

4
5 Dated: 4-14, 2021


Rafael Ramirez

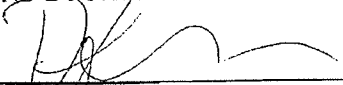
6
7 Dated: _____, 2021

Spearman Clubs, Inc.

8
9 By: Cecil Spearman
Its: CEO

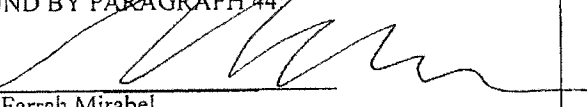
10
11 Dated: April 13,, 2021

APPROVED AS TO FORM AND AGREEMENT TO BE
BOUND BY PARAGRAPH 44:

12
13 By: 
Daniel F. Gaines
GAINES & GAINES, APLC
Attorneys for Plaintiff Hector Vieyra, as an
individual, on behalf of himself and all aggrieved
employees

14
15
16
17 Dated: 4/14, 2021

APPROVED AS TO FORM AND AGREEMENT TO BE
BOUND BY PARAGRAPH 44:

18
19 By: 
Farrah Mirabel
THE LAW OFFICES OF FARRAH MIRABEL
Attorneys for Plaintiff Rafael Ramirez, as an
individual, on behalf of himself and all aggrieved
employees

20
21
22
23 Dated: _____, 2021

APPROVED AS TO FORM:

24
25 By: _____
Maria Z. Stearns, Esq.
RUTAN & TUCKER, LLP
Attorneys for Defendant Spearman Clubs Inc.

1 IT IS SO AGREED.

2 Dated: _____, 2021

Hector Vieyra

5 Dated: _____, 2021

Rafael Ramirez

7 Dated: 4-14, 2021

Spearman Clubs, Inc.



By: Cecil Spearman
Its: CEO

11 Dated: _____, 2021

APPROVED AS TO FORM AND AGREEMENT TO BE
BOUND BY PARAGRAPH 44:

By: _____

Daniel F. Gaines
GAINES & GAINES, APLC
Attorneys for Plaintiff Hector Vieyra, as an
individual, on behalf of himself and all aggrieved
employees

17 Dated: _____, 2021

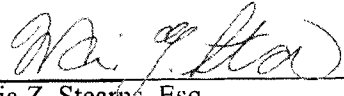
APPROVED AS TO FORM AND AGREEMENT TO BE
BOUND BY PARAGRAPH 44:

By: _____

Farrah Mirabel
THE LAW OFFICES OF FARRAH MIRABEL
Attorneys for Plaintiff Rafael Ramirez, as an
individual, on behalf of himself and all aggrieved
employees

23 Dated: April 14, 2021

APPROVED AS TO FORM:

By: 

Maria Z. Stearns, Esq.
RUTAN & TUCKER, LLP
Attorneys for Defendant Spearman Clubs Inc.

EXHIBIT 1

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE, CIVIL COMPLEX CENTER

HECTOR VIEYRA, on behalf of himself and
all "aggrieved employees" pursuant to Labor
Code §2698 *et seq.*,

Plaintiffs,

vs.

SPEARMAN CLUBS, INC., a Delaware
corporation; and DOES 1 through 10, inclusive,

Defendants.

RAFAEL RAMIREZ,

Plaintiffs,

vs.

SPEARMAN CLUBS, INC. DBA LAGUNA
NIGUEL RACQUET CLUB, a California
Corporation; and DOES 1-50 ALL
INCLUSIVE,

Defendants.

Case No. 30-2020-01156371-CU-OE-CXC
and Case No. 30-2020-01141764-CU-WT-CJC

ASSIGNED FOR ALL PURPOSES TO:
HON. WILLIAM CLASTER, DEPT. CX104

**[PROPOSED] ORDER GRANTING
APPROVAL OF PAGA SETTLEMENT
AND ENTERING JUDGMENT**

Dates Action Filed: May 28, 2020 (Ramirez);
August 21, 2020 (Vieyra)
Trial Date: Not Yet Scheduled

1 **[PROPOSED] ORDER AND JUDGMENT**

2 This matter came on for hearing on _____, 2021 at _____ in Dept.
3 CX104 of the above-captioned Court on plaintiff Hector Vieyra's ("Vieyra") and plaintiff Rafael
4 Ramirez's ("Ramirez") (collectively, "Plaintiffs") unopposed motion for approval of a settlement
5 agreement pursuant to the California Labor Code Private Attorneys General Act ("PAGA") (the
6 "Settlement").

7 Having received and considered the Settlement Agreement, the supporting papers filed by
8 Plaintiffs, and the evidence and argument received by the Court, the Court grants approval of the
9 Settlement and **HEREBY ORDERS AND MAKES THE FOLLOWING**

10 **DETERMINATIONS:**

11 1. Except as otherwise defined in this Order and Judgment ("Order"), all capitalized
12 terms have the same meaning as defined in the Settlement Agreement that is attached as **Exhibit 1**
13 to this Order.

14 2. The California Labor Workforce and Development Agency ("LWDA") has been
15 provided notice of the Settlement in accordance with PAGA, California Labor Code
16 § 2699(l)(2), (l)(4). In particular, on the date Plaintiffs filed their motion seeking approval of the
17 Settlement with the Court, they submitted to the LWDA a notice of the Settlement enclosing a
18 copy of the Settlement Agreement. Plaintiffs' notice of the Settlement to the LWDA complied
19 with the notice requirements of PAGA.

20 3. The Court has jurisdiction over the subject matter of this litigation, over all
21 Aggrieved Employees, and over those persons undertaking affirmative obligations under the
22 Settlement.

23 4. The Settlement is approved under Labor Code § 2699(l)(2).

24 5. The PAGA Settlement Notice to Aggrieved Employees, attached as **Exhibit 2** to
25 this Order, fairly and adequately describes the Vieyra Action and the Ramirez Action, the
26 approved Settlement, and is the best notice practicable under the circumstances.

27
28

1 6. The Court finds that each Aggrieved Employee, in accordance with the Settlement,
2 releases all Released Claims against the Released Parties.

3 7. The Gross Settlement Amount, PAGA Payment Fund and the methodology used to
4 calculate the LWDA Payment and PAGA Aggrieved Employee Payment (which is comprised of
5 the Individual PAGA Payments), in accordance with the Settlement is approved.

6 8. The Court approves ILYM Group, Inc. to act as the Settlement Administrator. The
7 Court awards the Settlement Administrator in this Action its actual fees and costs in accordance
8 with the terms of the Settlement Agreement, not to exceed \$5,000.00.

9 9. The Court approves Gaines & Gaines, APLC and The Law Offices of Farrah
10 Mirabelle as PAGA Counsel.

11 10. The Court awards PAGA Counsel attorneys' fees in the amount of \$66,000.00 and
12 actual litigation costs not to exceed \$15,000.00, both of which the Court finds to be fair and
13 reasonable. The Court authorizes the Settlement Administrator to make these payments, in
14 accordance with the terms of the Settlement Agreement.

15 11. The Court authorizes the Settlement Administrator to calculate the PAGA Payment
16 Fund, inclusive of the LWDA Payment and PAGA Aggrieved Employee Payment (which is
17 comprised of the Individual PAGA Payments), in accordance with the terms of the Settlement
18 Agreement.

19 12. The Court finds that the LWDA Payment of \$79,875.00 as its share of the
20 settlement of civil penalties is fair and reasonable. The Court authorizes the Settlement
21 Administrator to pay the LWDA Payment, in accordance with the terms of the Settlement
22 Agreement.

23 13. The Court finds that the PAGA Aggrieved Employee Payment of \$26,625.00 as the
24 Aggrieved Employees' share of the settlement of civil penalties is fair and reasonable. The Court
25 authorizes the Settlement Administrator to pay the PAGA Aggrieved Employee Payment, in
26 accordance with the terms of the Settlement Agreement.

27 14. The Court approves payment of \$5,000.00 to Vieyra for his services in bringing a
28 PAGA action on behalf of the Aggrieved Employees and his general release of claims against

1 Defendant. The Court authorizes the Settlement Administrator to pay Vieyra's Enhancement
2 Award and General Release payment, in accordance with the terms of the Settlement Agreement.

3 15. The Court approves payment of \$2,500 to Ramirez for his services in bringing a
4 PAGA action on behalf of the Aggrieved Employees. The Court authorizes the Settlement
5 Administrator to pay Ramirez's Enhancement Award, in accordance with the terms of the
6 Settlement Agreement.

7 16. Checks for Individual PAGA Payments sent to Aggrieved Employees shall be valid
8 for 180 days after issuance. Funds remaining from any checks for Individual PAGA Payments
9 uncashed after 180 days will be dispersed to the State Controller's Unclaimed Property fund in the
10 name(s) of the employee(s) who did not cash their checks, in accordance with the terms of the
11 Settlement Agreement.

12 17. Upon completion of the Settlement, the Settlement Administrator will provide
13 written certification of the completion to the Court and counsel for the Parties, which shall be filed
14 with the Court on or before _____.

15 18. Without affecting the finality of this order and entry of judgment, the Court retains
16 exclusive and continuing jurisdiction over the Vieyra Action and the Ramirez Action for purposes
17 of supervising, administering, implementing, and enforcing this Order and the Settlement.

18 19. Nothing in this Order or the Settlement shall be construed as an admission or
19 concession by any party. The Settlement and this resulting Order and entry of judgment simply
20 represent a compromise of disputed allegations.

21 20. The Court enters final judgment in accordance with the terms of the Settlement
22 Agreement and this Order.

23 21. Plaintiff is directed to submit a copy of this Order and entry of judgment to the
24 LWDA within 10 days of the date of this Order and entry of judgment.

25 **IT IS SO ORDERED:**

26 DATED: _____, 2021

27 _____
Honorable William Claster_
Judge of the Superior Court

28

EXHIBIT 2

Exhibit 2

[Date], 2021

ILYM Group, Inc.
14771 Plaza Dr., Suite I
Tustin, CA 92780

[Employee Name]
[Employee Street Address],
[City, State Zip]

Re: PAGA Settlement Payment

Dear Current or Former Spearman Clubs, Inc. Employee:

You have received this notice because Spearman Clubs, Inc.'s ("SCI") records indicate that you have worked for SCI as an hourly, non-exempt employee at some time between March 23, 2019 through _____, 2021. This notice relates to the settlement of the lawsuits styled *Hector Vieyra v. Spearman Clubs, Inc.*, Orange County Superior Court Case No. 30-2020-01156371-CU-OE-CXC, and *Rafael Ramirez v. Spearman Clubs, Inc. DBA Laguna Niguel Racquet Club*, Orange County Superior Court Case No. 30-2020-01141764-CU-WT-CJC (the "Lawsuits").

In the Lawsuits, Plaintiffs Hector Vieyra ("Vieyra") and Rafael Ramirez ("Ramirez") seek civil penalties pursuant to the California Private Attorneys General Act ("PAGA"), a law which allows Vieyra and Ramirez to attempt to recover penalties on behalf of the State of California and on behalf of employees who Vieyra and Ramirez claim were "aggrieved" by alleged wage and hour violations on the part of SCI, including its alleged: failure to pay all minimum and overtime wages earned; failure to provide meal periods or one hour of additional pay for missed meal periods; failure to provide rest breaks or one hour of additional pay for missed rest breaks; failure to provide complete and accurate itemized wage statements; failure to pay for all hours worked; failure to pay sick time; and failure to timely pay wages owed during employment and upon termination of employment.

SCI strongly disputes Vieyra and Ramirez's allegations and maintains that it has fully complied with all applicable wage and hour laws. The Court has not issued any ruling regarding the merits of the Lawsuits. Nonetheless, to avoid the cost and distraction of litigation, SCI has made a business decision to settle the Lawsuits, which settlement has been approved by the Court.

The enclosed settlement check represents your portion of the Court-approved PAGA settlement. You will not be retaliated against for cashing your check. Checks that are not cashed within 180 days of issuance will be voided and the funds will be distributed to the State Controller's Unclaimed Property Fund in the name of the employee who did not cash the check.

Regardless of what you do with the settlement check, you will have released claims for penalties arising under PAGA as asserted in the Lawsuits.

If you have any questions about this notice, please contact the Settlement Administrator, ILYM Group Inc. at () - .

THIS NOTICE IS NOT AN EXPRESSION OF ANY OPINION BY THE COURT AS TO THE MERITS OF THE CLAIMS OR DEFENSES BY EITHER SIDE IN THE LAWSUITS. PLEASE DO NOT CONTACT THE COURT REGARDING THE CASE.

EXHIBIT D

EXHIBIT E

GAINES & GAINES
A Professional Law Corporation
27200 Agoura Road, Suite 101
Calabasas, CA 91301

Invoice submitted to:
Hector Vierya

May 12, 2021

Invoice #4859

Professional Services

	<u>Hours</u>	<u>Amount</u>
6/8/2020 [Estimated] Pre-timekeeping: litigation research and analysis re Defendant and claims	10.00	7,000.00
6/9/2020 Prepare LWDA letter and upload	1.80	990.00
8/20/2020 Prepare complaint	4.00	2,200.00
8/21/2020 Review and revise complaint	0.40	280.00
9/17/2020 Call with OC; prepare informal discovery letter	2.10	1,155.00
10/12/2020 Email and call with client re status	0.40	220.00
10/15/2020 Emails with opposing counsel	0.30	165.00
10/28/2020 Emails with counsel/mediator re mediation scheduling	0.20	140.00
11/2/2020 Prepare joint Case Management Statement	0.50	350.00
Call with client re mediation	0.40	220.00
11/12/2020 Revise joint statement of the case	0.40	280.00
1/28/2021 Phone call with defense	0.30	210.00
2/1/2021 Prepare joint Case Management Statement	0.40	280.00
2/22/2021 Email with defense re data for mediation	0.30	165.00

	Hours	Amount
2/24/2021 Call with defense counsel re mediation	0.40	220.00
3/2/2021 Conflict check with expert	0.40	220.00
3/5/2021 Emails with B. Berger re data analysis; send data to same	0.60	450.00
3/8/2021 Draft mediation brief & Review docs/data	1.30	715.00
3/9/2021 Mediation call re expectations, etc	0.40	220.00
3/10/2021 Revise and send brief	2.20	1,210.00
3/12/2021 Attend Mediation via zoom	8.50	5,950.00
Draft JPA	0.60	330.00
Call with client re mediation and acceptance	0.30	165.00
Attend Mediation via Zoom	8.50	5,525.00
3/16/2021 Prepared, filed and served Notice of Settlement	0.80	560.00
4/8/2021 Review and revise settlement docs; Research; email to defense counsel	2.00	1,300.00
4/23/2021 Review settlement agreement	0.80	440.00
Draft motion for PAGA approval	3.50	1,925.00
4/26/2021 Revise Mtn for PAGA approval	1.50	825.00
4/27/2021 Review settlement agreement and commence review/revision of motion for approval	1.20	900.00
4/28/2021 Further revise motion for approval with attention to details for maximum value of each claim	1.70	1,275.00
4/29/2021 Start declaration of DFG and declaration of client ISO paga motion for settlement	3.50	1,925.00
Email draft approval motion to co-counsel	0.20	150.00
5/12/2021 [ESTIMATED] Time required to finalize approval paperwork, attend approval hearing, communicate with employees, administrator and counsel for Defendant, and close file	7.50	5,250.00
[ESTIMATED] Time required to finalize approval paperwork, attend approval hearing, communicate with employees, administrator and counsel for Defendant, and close file	7.50	4,875.00
For professional services rendered	74.90	\$48,085.00

	<u>Amount</u>
Balance due	<u><u>\$48,085.00</u></u>

User Summary			
Name	Hours	Rate	Amount
Alex Katofsky	29.00	700.00	\$20,300.00
Daniel Gaines	18.00	650.00	\$11,700.00
Evan Gaines	6.30	550.00	\$3,465.00
Miriam Schimmel	3.70	750.00	\$2,775.00
Sepideh Ardestani	17.90	550.00	\$9,845.00

EXHIBIT F

**Vieyra v. Spearman Clubs
Class Counsel's Costs**

<u>EXPENSE CATEGORY</u>	<u>EXPENSE</u>
Postage charges	\$15.60
Photocopy charges	\$18.43
Filing fees (including related attorney service expenses)	\$1,780.19
Mediation fees	\$7,000.00
Expert review/analysis of Time and Wage Records	\$1,700.00
Future estimated expenses	\$274.00
• Filing fees, service fees, and courtesy copy for Motion (will be filed via OneLegal) - \$150.00 • Postage for mailing Motion for Final Approval - \$10.00 • Court call expenses for Motion Hearing - \$94.00 • Filing fees and service fees for Notice of Entry of Order once Motion Order signed (will be filed via One Legal) - \$15.00 • Postage for mailing Notice of Entry of Order - \$5.00	
TOTAL EXPENSES	\$10,788.22