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SPEARMAN CLUBS, INC.

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

**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(l)(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(l)(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.

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

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

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

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

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

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

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

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

¹ Should the PAGA Period include more than 2,500 pay periods, Vieyra and Ramirez may terminate this Settlement Agreement unless Defendant agrees to increase the Gross Settlement Amount proportionately to the pay period increase. For every pay period in excess of 2,500, 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

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

19. “**Vieyra**” means plaintiff Hector Vieyra.

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

RECITALS

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

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

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

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

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

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

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

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

TERMS AND CONDITIONS

28. **Settlement Payments and Calculation of Claims.** The following table 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

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

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

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

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

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

d. Ramirez's Enhancement Award: The Parties agree that, subject to the 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**”).

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

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

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

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

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

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

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

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

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

46. **Authorization To Act.** PAGA Counsel warrants and represents that they are authorized by Vieyra and Ramirez, respectively, and counsel of record for Defendant warrants that 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.** Vieyra 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.

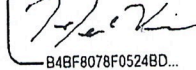
26 **[SIGNATURES ON FOLLOWING PAGE]**
27
28

1 IT IS SO AGREED.

2 April 13, 2021

3 Dated: _____, 2021

DocuSigned by:


B4BF8078F0524BD...

Hector Vieyra

4
5 Dated: 4-14, 2021


Rafael Ramirez

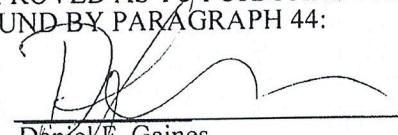
6
7 Dated: _____, 2021

Spearman Clubs, Inc.

8
9 By: Cecil Spearman
Its: CEO

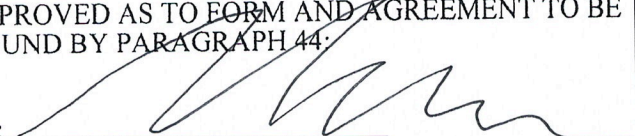
10
11 Dated: April 13,, 2021

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

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

17 Dated: 4/14, 2021

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

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

23 Dated: _____, 2021

APPROVED AS TO FORM:

24
25 By: _____
26 Maria Z. Stearns, Esq.
27 RUTAN & TUCKER, LLP
28 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:

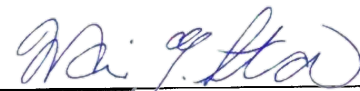
By:  _____
Maria Z. Stearns, Esq.
RUTAN & TUCKER, LLP
Attorneys for Defendant Spearman Clubs Inc.

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.

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

RAFAEL RAMIREZ,

Plaintiffs,

vs.

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

Defendants.

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.

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 _____
28 Honorable William Claster_
Judge of the Superior Court

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 [redacted], 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.