

FIRST AMENDED SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement (“Agreement”) is entered into as of March 10, 2023, (the “Effective Date”) by and among Plaintiff Simonette Villena (“Plaintiff”), on the one hand, and Defendants Midway Venture LLC (“Midway”) and Peter Balov (“Balov”) (jointly “Defendants”), on the other hand. Plaintiff and Defendants are sometimes collectively referred to herein as the “Parties,” or individually as the “Party.”

RECITALS

WHEREAS, on or around February 9, 2021, Plaintiff filed lawsuit against Defendants entitled Simonette Villena, which is pending in the San Diego Superior Court as Case No. 37-2021-00005970 (the “Action”) asserting a single cause of action for the alleged violation of the California Private Attorneys General Act of 2004, Labor Code § 2698 et seq. (“PAGA”);

WHEREAS, on or around May 6, 2021, Defendants filed an Answer denying all allegations in the Action;

WHEREAS, on May 22, 2022, Plaintiff participated in mediation with Defendants before mediator Mr. Michael Young Esq. regarding claims made in the Action.

WHEREAS, [t]he Parties reached the following PAGA representative action settlement (“Settlement”), subject to Court approval, which is intended to be a full and final resolution of all Released Claims:

AGREEMENT

NOW, THEREFORE, in consideration for the mutual promises and covenants contained herein, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties hereby agree as follows:

1. **No Admission.** The Parties agree the Settlement is not an admission of any liability or wrongdoing. Defendants deny any liability or wrongdoing of any kind and further denies that, for any purpose other than settling the Action, this action is or would be appropriate for representative treatment. Defendants maintain, among other things, that they have complied with California law in all aspects, and continue to do so. Nothing in this Agreement or Settlement negotiations, approval of Settlement, orders related to Settlement or any other aspect of the Settlement will be construed or deemed as an admission of liability, culpability, negligence, or wrongdoing on the part of Defendants.
2. **Settlement Period.** The PAGA Settlement Members will include all current and former Adult Entertainers allegedly misclassified as independent contractors and who performed at Defendant’s venue in California (the “PAGA Settlement Members”) from December 3, 2019 through Court approval of Settlement (the “PAGA Settlement Period”).

3. Removal for Court Settlement Approval. This will be without prejudice to Defendants to remove this matter to the United States District Court if the Settlement does not receive approval by the San Diego County Superior Court for whatever reason.
4. Gross Settlement Amount. Defendants agree to pay, on an all-in and non-reversionary basis, a total of \$74,000.00 inclusive of all amounts to be paid to PAGA Settlement Members, attorney fees, costs, PAGA penalties to both the California Labor and Workforce Development Agency (“LWDA”), and Settlement Administration expenses. With the exception of the operation of the Escalator Clause below, under no circumstances will Defendants’ settlement payment exceed the Gross Settlement Amount.
5. Escalator Clause. Defendants estimated for purposes of mediation that there are 50 periods of business relationship with Defendants for 50 PAGA Settlement Members for the period of December 3, 2019 through May 20, 2022. Before the Parties seek or a Party seeks court approval of the Settlement, Defendant will report to Plaintiff’s counsel concerning the total number of PAGA Settlement Members. If the PAGA Settlement Members as of the date the Court approves the settlement exceeds the referenced 50 PAGA Settlement Members by more than 10.00% (56 or more), the Gross Settlement Amount will increase by \$1,980 per additional PAGA Settlement Member.
6. Released Claims. The claims to be released by the PAGA Settlement Members and the LWDA are limited to any and all claims under PAGA arising out of the allegations expressly pleaded the Action or that could have been pleaded based on the facts pleaded in the Action. The Parties agree and acknowledge all civil penalties for any and all alleged Labor Code violations during the PAGA Settlement Period shall be conclusively deemed adjudicated and extinguished and subject to res judicata by virtue of this Agreement and the entry of a court order approving it.
7. Released Parties. Released Parties as referenced herein and as released in this Settlement are Defendants, Defendant Releasees, and any of their present and former parent companies, subsidiaries, divisions, concepts, related or affiliated companies and its shareholders, officers, directors, employees, agents, attorneys, insurers, successors and assigns, and any individual or entity that could be liable for any of the Released Claims, and Defendants’ counsel of record in the Action.
8. Denial of other pending claims. Defendants are unaware of any pending claims or notices to the LWDA that will be affected by the “Released Claims” provision above.
9. Net Settlement Amount. The Net Settlement Amount will be calculated by deducting all attorneys’ fees, costs, and Settlement Administration expenses from the Gross Settlement Amount.

10. PAGA Allocation. From the Gross Settlement Amount a total payment amount of \$34,633.33 shall be allocated for penalties under PAGA (Labor Code § 2698, *et seq.*), seventy-five percent (75%) of which is to be paid to the LWDA (“LWDA Payment”).
11. Employer-Side Payroll Taxes. The Parties do not expect Defendants to have employer-side payroll taxes.
12. Notice of Settlement To LWDA. Plaintiff shall timely file a notice of claim and notice of settlement with the LWDA.
13. Tax Allocation. One hundred percent (100%) of the individual settlement awards from the Net Settlement Amount payable to eligible PAGA Settlement Members will be allocated to civil penalties. IRS Forms 1099 will be issued for individual settlement awards.
14. Settlement Administration. The Settlement Administrator shall be ILYM Group, Inc., or any other alternative as agreed by the Parties in writing and approved by the Court. The expense of the Settlement Administrator shall not increase the Gross Settlement Amount. The identities of the PAGA Settlement Members shall be held strictly confidential as between the Settlement Administrator and Defendants though they shall be made available to the Court if the Court requires.
15. Appointment of Settlement Administrator. The Settlement Administrator, as a condition of appointment, will agree to be bound by this Agreement with respect to the performance of its duties and compensation. The Settlement Administrator’s duties will include issuing checks to PAGA Settlement Members to effectuate the payments due under this Agreement. The Settlement Administrator’s reasonable fees and expenses, including issuing and mailing checks, will be paid out of the Gross Settlement Amount. Midway shall provide the Settlement Administrator the legal names of the PAGA Settlement Member, social security numbers, and their last known addresses. The Settlement Administrator shall not disclose to Plaintiff, Plaintiff’s counsel, or any third party the legal names or any information concerning identities of the PAGA Settlement Member. Any and all information provided by Defendants to the Settlement Administrator concerning the identity of the PAGA Settlement Members for purposes of effectuating this Agreement shall be kept in the highest confidence by the Settlement Administrator, and the Settlement Administrator shall be subject to a stipulated court order in the form attached hereto as **Exhibit “A”** to keep this information confidential. It is recognized and agreed among the parties that adult entertainers use “stage names” to protect their privacy, and the disclosure of the identity of any of the adult entertainers that are among the PAGA Settlement Members would subject the PAGA Settlement Members to a breach of their privacy, embarrassment, harassment, and potential physical harm. Entertainers regularly ask or require Pacers to protect their privacy before they make use of the Venue.

16. Calculation of Individual Settlement Payments. The Settlement Administrator will calculate the business relationships of the PAGA Settlement Members with the Defendants during the PAGA Settlement Period, the amount to paid *pro rata*, and the individual settlement payments to eligible PAGA Settlement Members. Defendants' data will be presumed to be correct.
17. No Claim Form. There will not be a claims process requirement, and as such, PAGA Settlement Members will not be required to submit a claim form to receive their individual settlements.
18. No Right to Opt Out. The Parties agree the PAGA Settlement Members do not have any right, statutory or otherwise, to opt out of the PAGA Settlement Members group.
19. Uncashed Checks. The expiration date on the settlement checks will be one hundred and eighty (180) days from the date the settlement checks are issued. Defendant will pay those funds represented by uncashed checks to the California Unclaimed Property Fund in the name of the PAGA Settlement Members concerned.
20. Approval of Settlement Documents. This Agreement is contingent upon Court approval. The parties further agree that the negotiations of this Agreement are subject to the mediation privilege set forth in Evidence Code section 1119, and this Agreement was negotiated and drafted pursuant to the continued mediation before Mr. Michael Young Esq. The Parties will cooperate in seeking approval of this settlement contemplated by this Agreement. The Parties further agree to fully cooperate in the drafting and/or filing of any further documents reasonably necessary to be prepared or filed and shall take all steps that may be requested by the Court relating to the approval and implementation of the Agreement, which are not inconsistent with the terms of this Agreement. Plaintiff's counsel shall draft the Plaintiff's Motion for Approval of Settlement and provide the draft to Defendants' counsel for review at least three (3) court days prior to the filing date for Plaintiff's Motion for Approval of Settlement. The Parties will jointly appear at the hearing on Plaintiff's Motion for Approval of Settlement, and the parties shall submit a proposed order granting the motion in the form evidenced by **Exhibit "B"** to this Agreement. If the Court does not grant approval of the settlement contemplated by this Agreement, then the Agreement will become null and void. This Agreement and all negotiations concerning this Agreement shall be deemed privileged under Evidence Code section 1119 and 1152.
21. PAGA Settlement Members Counsel. The Parties agree to the designation of David Spivak of The Spivak Law Firm and Walter Haines of United Employees Law Group as counsel for the PAGA Settlement Members for purposes of entering into and administering this Agreement.
22. PAGA Settlement Members Counsel Fees and Costs. Defendants shall not oppose PAGA Settlement Members Counsel's request for fees of up to thirty-three and one third percent (33 and 1/3%) of the Gross Settlement Amount, or \$24,666.67, subject to

approval by the Court. Defendants shall not oppose reasonable attorney costs, not to exceed \$10,000.00, subject to approval by the Court. The Court-approved attorney fees and costs are part of, and to be deducted from, the Gross Settlement Amount. Any portion of the PAGA Settlement Members Counsel fees and costs not awarded by the Court shall be added to the Net Settlement Amount.

23. Confidentiality. The PAGA Settlement Members Representative and PAGA Settlement Members Counsel will keep all terms of this settlement confidential and will not make any public disclosure or social media postings of the Dispute, the Settlement or this Agreement except for what is necessary to obtain approval of this Settlement from the Court. If comment or information is requested by the media, the PAGA Settlement Members Representative and PAGA Settlement Members Counsel will provide no information other than direct the media to the public records of the action on file with the Court. PAGA Settlement Members Counsel will take all steps necessary to ensure Plaintiff is aware of this confidentiality provision, which Plaintiff shall abide by. PAGA Settlement Members Counsel and the PAGA Settlement Members Representative agree that this Confidentiality term is a material term and that breach of this provision shall be deemed a material breach of this Settlement. The Parties agree that breach of this term shall cause irreparable harm to Defendants, and injunctive relief is an appropriate remedy for the breach of this provision.
24. Mutual Cooperation. The Parties agree to cooperate fully with each other to accomplish the terms of this Agreement, to use their best efforts to obtain Court approval of the settlement, and to use any other efforts that may become necessary by order of the Court, or otherwise, to effectuate the Settlement. PAGA Settlement Members Counsel agrees to prepare and circulate the initial draft Stipulation of Settlement and Notice of PAGA Settlement for Defendant's review within 30 days of the execution of this MOU. If there are any outstanding issues will be submitted to the Parties' mediator, Mr. Michael Young Esq., for continued mediation.
25. Authority to Execute. Counsel for the Parties agree they have authority to execute this Confidential Memorandum of Understanding for and on behalf of the Parties.
26. Enforceability. The Parties intend this Agreement enforceable and enforceable, subject to Court approval under CA Code Civ. Proc. § 664.6.
27. Attorney's Fees. Except as set forth herein, each one of the Parties shall bear all of its, his or her own attorneys' fees, costs and expenses including but not limited to those incurred in negotiating and performing this Agreement. No party shall be ever been deemed a "prevailing party" of any kind as a result of entering into this Agreement.
28. Interpretation. This Agreement shall be interpreted simply and fairly and not strictly in favor of or against any Party. To this end, the Parties agree that the terms of this Agreement are the product of an arm's length negotiation.

29. Successors and Assigns. The obligations and duties of this Agreement shall be binding upon the Parties, their successors and permitted assigns, and the rights of this Agreement shall inure to the benefit of successors and permitted assigns.
30. Final Agreement. This Agreement is the complete, final and exclusive statement of the Agreement between the Parties with respect to the subject matter hereof. This Agreement supersedes all prior or contemporaneous agreements, negotiations, representations, understandings, and discussions between the Parties with respect to the subject matter covered hereby. Any modification, alteration or amendment of this Agreement shall be void and have no force or effect unless it is in writing and signed by the Party sought to be bound

IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this Memorandum of Understanding as of the dates set forth below:

Dated: March 11, 2023



Simonette Villena

Dated: March ____, 2023

Peter Balov for himself and as
Owner/President
Midway Venture LLC

AGREED AS TO FORM

Dated: March ____, 2023

Walter L. Haines
The Spivak Law Firm
Attorneys for Plaintiff Simonette Villena

Dated: March ____, 2023

David G. Spivak
The Spivak Law Firm
Attorneys for Plaintiff Simonette Villena

Dated: March ____, 2023

Jason P. Saccuzzo
Vivoli Saccuzzo, LLP
Attorneys for Defendants Midway Venture LLC
and Peter Balov

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Dated: March ¹³ ____, 2023



Walter L. Haines
The Spivak Law Firm
Attorneys for Plaintiff Simonette Villena

Dated: March 20 ____, 2023



David G. Spivak
The Spivak Law Firm
Attorneys for Plaintiff Simonette Villena

Dated: March ____, 2023

Jason P. Saccuzzo
Vivoli Saccuzzo, LLP
Attorneys for Defendants Midway Venture LLC
and Peter Balov

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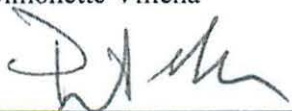
IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this Memorandum of Understanding as of the dates set forth below:

Dated: March 11, 2023



Simonette Villena

Dated: March 21, 2023



Peter Balov for himself and as
Owner/President
Midway Venture LLC

AGREED AS TO FORM

Dated: March ____, 2023

Walter L. Haines
The Spivak Law Firm
Attorneys for Plaintiff Simonette Villena

Dated: March ____, 2023

David G. Spivak
The Spivak Law Firm
Attorneys for Plaintiff Simonette Villena

Dated: March 21, 2023



Jason P. Saccuzzo
Vivoli Saccuzzo, LLP
Attorneys for Defendants Midway Venture LLC
and Peter Balov