

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement ("Agreement") is entered into as of June 28, 2022 (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 Plaintiff's individual claims as well as 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.** Plaintiff's non-individual claims will include all current and former Adult Entertainers 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") and who Plaintiff is entitled to pursue on a representative basis under existing law at the time of this Agreement.

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 \$99,000.00 inclusive of all amounts to be paid to PAGA Settlement Members, attorney fees, costs, individual payment to the named Plaintiff, 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. 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 \$1980 per additional PAGA Settlement Member.
6. Released Claims. The claims to be released by Plaintiff, acting individually and in a representative capacity on behalf of the LWDA and the PAGA Settlement Members 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.

Plaintiff, individually, on behalf of her respective successors and assigns, representatives, heirs, and attorneys, releases Defendants and each of their predecessors, successors, and assigns, and each of its respective present or former officers, owners, representatives, joint venturers, members, shareholders, executives, directors, employees, partners, agents, insurers, claims administrators, representatives, attorneys, parents, subsidiaries, divisions, related entities, and affiliated entities (collectively, the "Defendant Releasees") from all claims, demands, actions or other legal responsibilities of any kind, known or unknown, which Plaintiff has or may have prior to the Effective Date of this Agreement, including but not limited to those which are in any way based on, or pertaining to Plaintiff's legal, contractual, or common law relationship with Defendant or the termination of that relationship. In the broadest possible manner and construction, this release also includes, but is not limited to, any claims Plaintiff may have arising under any foreign, federal, state or local constitution, statute, ordinance, regulation, or common law, including, but not limited to, misrepresentation, fraud, deceit, concealment, invasion of privacy, breach of contract, breach of quasi-contract, breach of implied contract, breach of the covenant of good

faith and fair dealing, libel, slander, negligent or intentional infliction of emotional distress, violation of public policy, negligence, bad faith, unfair business practices, fraud, concealment or interference with business opportunity or with contracts, contractual indemnity, or equitable or implied indemnity. For the sake of clarity, this release expressly includes, but is not limited to, any and all claims for costs, attorney's fees, sanctions or any other relief sought under Cal. Code of Civ. Proc., Section 128.7 or the like

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. Unknown Claims: As part of the foregoing general release of claims, and not by way of limitation, Plaintiff expressly waives all of her rights under Section 1542 of the California Civil Code, which states:

"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."

The provisions of all comparable, equivalent, or similar statutes and principles of common law of California, of the other states of the United States, and of the United States are also hereby expressly waived by Plaintiff.
9. 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.
10. Net Settlement Amount. The Net Settlement Amount will be calculated by deducting all attorneys' fees, costs, the individual payment to the named Plaintiff, and Settlement Administration expenses from the Gross Settlement Amount.
11. PAGA Allocation. From the Gross Settlement Amount a total payment amount of \$33,000.00 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").
12. Employer-Side Payroll Taxes. The Parties do not expect Defendants to have employer-side payroll taxes.

13. Notice of Settlement To LWDA. Plaintiff shall timely file a notice of claim and notice of settlement with the LWDA.
14. 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.
15. 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.
16. 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 confidentiality agreement 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.
17. 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.

18. 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.
19. 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.
20. 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.
21. 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.
22. 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 all representative claims that are being resolved by this Agreement and for purposes of entering into and administering this Agreement.
23. 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 \$33,000.00, subject to approval by the Court. Defendants shall not oppose reasonable attorney costs, not to exceed \$12,000.00, 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.

24. PAGA Settlement Members Representative Individual payment. Plaintiff shall receive an individual payment at no additional cost to Defendants, subject to approval by the Court, for her role as a PAGA plaintiff in the Action and in connection with her pursuit of non-individual claims being resolved. Plaintiff agrees that she will sign a general release that includes a release of all claims arising out of and relating to her employment or other business relationship with Defendants, as well as all known and unknown claims pursuant to California Civil Code section 1542. Defendants shall not oppose an individual payment to the PAGA Settlement Members Representative in an amount not to exceed \$25,000.00, from the the Gross Settlement Amount, subject to approval by the Court. The individual payment is to be part of, and to be deducted from, the Gross Settlement Amount. An IRS Form 1099 shall issue for this individual payment. Any portion of the payment not awarded to the PAGA Settlement Members Representative shall be added to the Net Settlement Amount.
25. 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.
26. Mutual Cooperation. The Parties agree to cooperate fully with each other to accomplish the terms of this Agreement, to use their best effortsto 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.
27. 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.
28. Enforceability. The Parties intend this Agreement enforceable and enforceable, subject to Court approval under CA Code Civ. Proc. § 664.6.

29. 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.
30. 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.
31. 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.
32. 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: 07 / 07 / 2022, 2022



Simonette Villena

Dated: _____, 2022

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

AGREED AS TO FORM

Dated: _____, 2022

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

Dated: _____, 2022

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

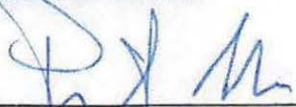
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IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this Memorandum of Understanding as of the dates set forth below:

Dated: 07 / 07 / 2022, 2022


Simonette Villena

Dated: 7/12/2022, 2022


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

AGREED AS TO FORM

Dated: _____, 2022

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

Dated: _____, 2022

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

29. 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.
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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: _____, 2022

Simonette Villena

Dated: _____, 2022

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

AGREED AS TO FORM

Dated: _____, 2022

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

07 / 06 / 2022

Dated: _____, 2022

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

29. 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.
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31. 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.
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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: _____, 2022

Simonette Villena

Dated: _____, 2022

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

AGREED AS TO FORM

Dated: July 7, 2022



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

Dated: _____, 2022

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

Dated: July 12, 2022



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

EXHIBIT "A"

Confidentiality Agreement

This Confidentiality Agreement (the "Agreement"), dated as of _____, 2022, ("Effective Date"), is between Midway Venture LLC dba Pacers, a California limited liability company located at 3334 Midway Dr, San Diego, CA 92110 ("Disclosing Party" or "Midway"), and ILYM Group, Inc., a California Corporation located at 14751 Plaza Drive, Unit J, Tustin, CA 92780-0000 ("Recipient").

1. In connection with Recipient's role as the Settlement Administrator concerning the confidential Settlement and Release Agreement dated June 28, 2022, (the "Settlement Agreement") between Plaintiff Simonette Villena ("Plaintiff"), on the one hand, and Midway and Peter Balov, on the other hand, Disclosing Party shall provide to Recipient the legal names and last known address of the PAGA Settlement Members as defined by the Settlement Agreement. Recipient shall use the Confidential Information solely for the Purpose and, subject to Section 3, shall not disclose or permit access to Confidential Information other than to its employees, officers, and directors (collectively, "Representatives") who: (a) need to know such Confidential Information for the Purpose; (b) know of the existence and terms of this Agreement; and (c) are bound by written confidentiality agreements/confidentiality obligations no less protective of the Confidential Information than the terms contained herein. Recipient shall safeguard the Confidential Information from unauthorized use, access, or disclosure using at least the degree of care it uses to protect its most sensitive information and no less than a reasonable degree of care. Recipient shall promptly notify Disclosing Party of any unauthorized use or disclosure of Confidential Information and take all reasonable steps/use its best efforts/cooperate with Disclosing Party to prevent further use or disclosure. Recipient will be responsible for any breach of this Agreement caused by its Representatives. The Confidential Information shall not be disclosed to Plaintiff, counsel for Plaintiff, or to any of Plaintiff's counsel's employees or staff members.

2. "Confidential Information" means any and all identifying information of the PAGA Settlement Members, including all non-public, proprietary, or confidential information of Disclosing Party relating to Disclosing Party's business operations, adult entertainer information and lists, and Disclosing Party's trade secrets, in oral, visual, written, electronic, or other tangible or intangible form, whether or not marked or designated as "confidential," and all notes, analyses, summaries, and other materials prepared by Recipient or any of its Representatives that contain, are based on, or otherwise reflect, to any degree, any of the foregoing ("Notes"). Confidential Information also includes: (i) the facts that the parties are in discussions regarding the Purpose and that Confidential Information has been disclosed; and (ii) any terms, conditions or arrangements discussed.

3. If Recipient or any of its Representatives is required by applicable law or a valid legal order to disclose any Confidential Information, Recipient shall, before such disclosure, notify Disclosing Party of such requirements so that Disclosing Party may seek a protective order or other remedy, and Recipient shall reasonably assist Disclosing Party therewith. If Recipient remains legally compelled to make such disclosure, it shall: (a) only disclose that portion of the Confidential Information that, in the written opinion of its legal counsel, Recipient is required to disclose; and (b) use reasonable efforts to ensure that such Confidential Information is afforded confidential treatment.

4. On the expiration of this Agreement, completion of Recipient's assignment, or otherwise at Disclosing Party's request, Recipient shall within three (3) days, at Disclosing Party's option, either return to Disclosing Party or destroy all Confidential Information in its and its Representatives' possession other than Notes, and destroy all Notes, and certify in writing to Disclosing Party the destruction of such Confidential Information.

5. Disclosing Party has no obligation under this Agreement to (a) disclose any Confidential Information or (b) negotiate for, enter into, or otherwise pursue the Purpose. Disclosing Party provides all Confidential Information without any representation or warranty, expressed or implied, as to the accuracy or completeness thereof, and Disclosing Party will have no liability to Recipient or any other person relating to Recipient's use of any of the Confidential Information or any errors therein or omissions therefrom.

6. Disclosing Party retains its entire right, title, and interest in and to all Confidential Information, and no disclosure of Confidential Information hereunder will be construed as a license, assignment, or other transfer of any such right, title, and interest to Recipient or any other person.

7. Recipient acknowledges and agrees that any breach of this Agreement will cause injury to Disclosing Party for which money damages would be an inadequate remedy and that, in addition to remedies at law, Disclosing Party is entitled to equitable relief as a remedy for any such breach.

8. This Agreement has been negotiated, executed, and delivered and shall be performed in the State of California and shall be governed by, construed and enforced in accordance with the laws of the State of California, without regard for its conflict of laws rules. The Parties hereby irrevocably submit to the exclusive jurisdiction of the courts of the State of California, County of California, for the purpose of enforcing this Agreement.

9. In the event any Party prevails in an action, motion, application, and/or petition to enforce or challenge any of the terms of this Agreement, to

preserve its, his or her rights under this Agreement, or in the event of breach by any Party of obligations under this Agreement, the prevailing Party shall be entitled to all costs and expenses incurred in enforcing the terms of this Agreement, including, without limitation, reasonable attorneys' fees, expert fees, and other expenses.

10. All notices must be in writing and addressed to the relevant party at its address set out in the preamble (or to such other address such party specifies in accordance with this Section 10). All notices must be personally delivered or sent prepaid by nationally recognized courier or certified or registered mail, return receipt requested, and are effective on actual receipt.

11. This Agreement is the entire agreement of the parties regarding its subject matter, and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, whether written or oral, regarding such subject matter. This Agreement may only be amended, modified, waived, or supplemented by an agreement in writing signed by both parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

Recipient:

Disclosing Party:

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

EXHIBIT "B"

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO – CENTRAL

SIMONETTE VILLENA, on behalf of herself,) CASE NO: 37-2021-00005970-CU-OE-CTL
and as an "aggrieved employee" on behalf of)
other "aggrieved employees" under the Labor) [Case Assigned for All Purposes To: Hon.
Code Private Attorneys General Act of 2004) Timothy B. Taylor, Dept. C-72]
Plaintiffs,) [PROPOSED] ORDER APPROVING
vs.) PAGA SETTLEMENT
MIDWAY VENTURE, LLC, a California) Action Filed: February 9, 2021
limited liability company dba PACERS) Trial Date: October 14, 2022
SHOWGIRLS WORLDWIDE and PACERS)
SHOWGIRLS INTERNATIONAL, PETER)
BALOV, an individual; and DOES 1-50,)
inclusive,)
Defendants.)

The Court has considered Plaintiff's Motion for Approval of Settlement and Entry of
Order thereon. The matter having ben submitted and good cause appearing,

IT IS HEREBY ORDERED AND ADJUDGED AS FOLLOWS:

1. The litigation in this action consists of a representative action by Plaintiff
Simonette Villena ("Plaintiff" or "PAGA Representative") against Defendants Midway Venture
LLC ("Midway") and Peter Balov ("Balov") (jointly "Defendants") under the California Private
Attorneys General Act of 2004, Labor Code § 2698 et seq. ("PAGA") for penalties on behalf of
the State of California and all current and former aggrieved Adult Entertainers who suffered one

1 or more Labor Code violations at Defendant's venue located at 3334 Midway Dr, San Diego, CA
2 92110 from December 1, 2020, through approval of the settlement and entry of this order thereon
3 (the "PAGA Settlement Members").

4 2. The Court has jurisdiction over the subject matter of this litigation, the PAGA
5 Representative, the PAGA Settlement Members, and Defendants. This order shall be binding not
6 only on the named parties to this action but also on the PAGA Settlement Members and the State
7 of California, who are hereby barred by the doctrine of res judicata from re-litigating the claims
8 in this action. See *Arias v. Super. Ct.* (2009) 46 Cal.4th 969, 986 [holding that a judgment in a
9 representative action brought by an aggrieved employee under PAGA is binding not only on the
10 named employee but also on state labor law enforcement agencies and any aggrieved employee
11 not a party to the proceeding].

12 3. The Court hereby approves the terms of the settlement and finds that the
13 settlement is, in all respects, fair, adequate, reasonable, and just and is not arbitrary, oppressive
14 or confiscatory and directs the parties to effectuate the settlement according to its terms. The
15 Court finds that the settlement has been reached as a result of informed and non-collusive arm's-
16 length negotiations. The Court further finds that the settlement will avoid additional and
17 potentially substantial litigation costs, as well as delay and risk if the parties were to continue to
18 litigate the case. The Court has reviewed the monetary recovery being provided as part of the
19 Settlement and recognizes the significant value afforded to California Labor and Workforce
20 Development Agency ("LWDA"), Plaintiff, and the PAGA Settlement Members.

21 4. The Settlement is not an admission by Defendants, nor is this order a finding of
22 the validity of any allegations or of any wrongdoing by Defendants. Neither this Order, the
23 settlement, nor any document referred to herein, nor any action taken to carry out the Settlement,
24 may be used as an admission of any fault, wrongdoing, omission, concession, or liability
25 whatsoever by or against Defendants.

26 5. In accordance with the settlement, which the Court hereby approves based on
27 good cause showing for the reasons set forth in Plaintiff's motion, and with no objection received
28 from the LWDA: (a) The total payment under this Settlement Agreement is Ninety Nine

1 Thousand Dollars (\$99,000.00) (the "Gross Settlement Amount"), which includes any and all
2 payments to the PAGA Settlement Members, payment to the LWDA pursuant to PAGA,
3 Plaintiff's Counsel's fees and costs, any service and general release payment to the PAGA
4 Representative, and all third-party costs of settlement administration; (b) ILYM Group, Inc. is
5 hereby approved to administer this Settlement; and (c) the LWDA and all Aggrieved Employees
6 are hereby permanently enjoined from pursuing, or seeking to reopen, any Released Claims
7 against any Released Parties.

8 6. The Gross Settlement amount will be used to pay attorney fees and litigation costs
9 in the amount of [\$_____], Plaintiff's incentive award in the amount of \$25,000, and settlement
10 administration costs in the amount of [\$_____]. The Net Settlement Fund is \$33,000.00.
11 Seventy-five percent (75%) of the remaining Net Settlement Fund (*i.e.* \$24,750) will be
12 distributed to the LWDA as required by the PAGA and the remaining (25%) (\$8,250) will be
13 distributed in equal shares to the PAGA Settlement Members.

14 7. Plaintiff will be issued an IRS Form 1099 and its state and local equivalents for
15 any incentive payment amount received under the Settlement. The payments to PAGA
16 Settlement Members will not be reduced by payroll tax withholding and deductions; instead, the
17 Settlement Administrator will issue to the PAGA Settlement Members an IRS Form 1099 and its
18 state and local equivalents with respect to the payment.

19 8. The PAGA Settlement Members must receive or cash his or her settlement
20 payment within 180 calendar days after it is mailed to him or her. If a check is returned to the
21 Settlement Administrator, the Settlement Administrator will make all reasonable efforts to re-
22 mail it to the PAGA Settlement Member at his or her correct address. If a PAGA Settlement
23 Member cannot be located or if a PAGA Settlement Member fails to cash the check for his or her
24 Settlement Share within 180 days after it is mailed to him or her, the Settlement Administrator
25 will distribute the funds represented by the uncashed check to the California State Controllers'
26 Office Unclaimed Property Fund.

27 9. The Court hereby confirms David Spivak of The Spivak Law Firm as PAGA
28 counsel, Simonette Villena as the PAGA Representative, and ILYM Group, Inc. as the

1 Settlement Administrator.

2 10. The Court further orders, adjudge and decrees that upon the Court's signing of an
3 order approving the settlement, the LWDA and PAGA Settlement Members fully release and
4 forever discharge the Defendants from any and all known and unknown claims under PAGA
5 against the Defendants that were alleged in the operative complaint filed in this action, including
6 but not limited to alleged violations of California Labor Code Sections 201, 202, 203, 204, 210,
7 218.5, 221, 222, 223, 224, 226, 226(a), 226(e), 226.2, 226.3, 226.7, 233, 510, 512, 551, 552, 558,
8 1174, 1194, 1194.2, 1197, 1197.1, 1198, 2698, 2699, 2800, and 2802; and Wage Order 4.

9 11. All of the Released Claims are deemed adjudicated and extinguished with
10 prejudice as to the PAGA Representative, PAGA Settlement Members, all of the other aggrieved
11 employees, and the State of California.

12 12. The Settlement Administrator shall make the payments to the LWDA, the PAGA
13 Settlement Members, the Plaintiff, Plaintiffs' counsel and to the Settlement Administrator as
14 provided for in the settlement agreement.

15 13. The Court finds that, under California law (which is applicable here), class action
16 procedural rules do not apply to representative PAGA actions that do not involve putative class
17 claims, such as the Representative PAGA Action. (See *Arias v. Super. Ct.* (2009) 46 Cal.4th
18 969.) Therefore, the Court finds that the notice requirements and other procedures applicable to
19 class action settlements do not apply to the settlement approval process for the representative
20 PAGA action.

21 14. The Court further finds that notice of the Settlement has been provided to the
22 LWDA as required by PAGA and Labor Code section 2699, subdivision (l)(2), in particular.

23 15. Any request to intervene in the Litigation and/or Settlement that is filed after the
24 date this Judgment is entered shall be and hereby is deemed untimely.

25 16. Neither the settlement nor any act performed or document executed pursuant to or
26 in furtherance of the settlement (a) is or may be deemed to be or may be used as an admission of,
27 or evidence of, the validity of any released claims, or of any wrongdoing or liability of the
28 Defendants; or (b) is or may be deemed to be or may be used as an admission of, or evidence of,

1 any fault or omission of the Defendants, or any of them, in any civil, criminal or administrative
2 proceeding in any court, administrative agency or other tribunal. Defendants or any of the
3 releasees may file the settlement and/or the order from this action in any other action that may be
4 brought against it or them in order to support a defense or counterclaim based on principles of
5 res judicata, collateral estoppel, release, good faith settlement, judgment bar or reduction or any
6 theory of claim preclusion or issue preclusion or similar defense or counterclaim.

7 17. This action is dismissed with prejudice. This Court shall retain jurisdiction,
8 pursuant to Code of Civil Procedure section 664.6, over this action and the parties and the PAGA
9 Settlement Members, to the fullest extent necessary to interpret, enforce and effectuate the terms
10 and intent of the settlement agreement and this order.

11 **IT IS HEREBY ORDERED:**

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13 Dated: _____

HON. TIMOTHY B. TAYLOR
JUDGE OF THE SUPERIOR COURT

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