

09/22/2022

Sherri R. Carter, Executive Officer / Clerk of Court

By: T. Le Deputy

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Attorneys for Defendant SUNVAIR, INC.

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES**

MARIO ALBERT HIDALGO, individually,  
and on behalf of all others similarly situated,

Plaintiff,

vs.

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

Defendants.

Case No.: 21STCV41120

PAGA REPRESENTATIVE ACTION

**STIPULATION OF SETTLEMENT AND  
~~PROPOSED~~ ORDER APPROVING  
SETTLEMENT OF PLAINTIFF'S  
CLAIMS FOR CIVIL PENALTIES  
UNDER PAGA**

Action Filed: November 9, 2021  
Trial Date: Not Set

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1 and this matter was re-assigned to this department shortly thereafter. On March 11, 2022,  
2 Defendant filed its answer to the complaint and disputed all the Plaintiff's allegations.  
3 Defendant disputes that it has engaged in the labor code violations as alleged and denies that it  
4 has engaged in any unlawful conduct.

5 4. The First Amended Complaint alleges civil penalties under PAGA for alleged  
6 violations of California Labor Code sections 201, 202, 203, 204, 218, 226, 226.7, 510, 512,  
7 1174, 1194, 1198, and 2802. Defendant denied, and continue to deny, all of the allegations  
8 made by Plaintiff or that they are liable for any of the damages and/or civil penalties as alleged  
9 in the Action and/or LWDA Notice.

10 5. The Parties recognize that the issues presented in the Action are likely only to be  
11 resolved with extensive and costly pretrial and trial proceedings, and that further litigation will  
12 cause inconvenience, distraction, disruption, delay, and expense disproportionate to the  
13 maximum potential benefits to the PAGA Settlement Members and Plaintiff from continued  
14 litigation.

15 6. On June 14, 2022, the Parties participated in a full-day mediation with neutral  
16 mediator Lynn Frank, Esq., an experienced wage and hour mediator. Prior to participating in  
17 mediation, the Parties engaged in extensive informal discovery, including production of  
18 documents and information. Prior to mediation, Defendant also provided data to Plaintiff's  
19 counsel to evaluate the potential value of Plaintiff's civil penalty claims. Thereafter, the Parties  
20 engaged in extensive, arms-length negotiations and reached a settlement of the Action that are  
21 memorialized in the Agreement. During the mediation, the Parties agreed to a settlement, which  
22 was negotiated in light of all known facts and circumstances, including the difficulty of proving  
23 some of Plaintiff's claims, potential defenses asserted by Defendant, the uncertainty associated  
24 with litigation, the risks of significant delay, and numerous potential appellate issues. It was not  
25 easy for the Parties to reach this settlement, which was possible with the skilled guidance and input  
26 of mediator, Lynn Frank, Esq. Attached hereto as **Exhibit B** is the fully executed Settlement  
27 Agreement of Private Attorney General Act Claims ("Settlement," "Settlement Agreement," or  
28 "Agreement") setting forth the terms of the settlement.

1           7. The Parties conducted investigation of the facts and law. Counsel for the Parties  
2 have further investigated the applicable law as applied to the facts discovered regarding  
3 Plaintiff's claims, the defenses thereto, and the Labor Code violations claimed by the Plaintiff.  
4 Based on their own independent investigations and evaluations, Plaintiff and her counsel are of  
5 the opinion that the settlement for the consideration and on the terms set forth in the Settlement  
6 Agreement and Release of PAGA Claims is fair, reasonable, and adequate and is in the best  
7 interests of the Plaintiff and the PAGA Settlement Members in light of all known facts and  
8 circumstances and the risks inherent in litigation, including the potential appellate issues.  
9 Further, Plaintiff's counsel believes that the settlement amount entered into is in the best  
10 interests of the PAGA Settlement Members and that the settlement for each PAGA Settlement  
11 Member is fair, reasonable, and adequate, given the inherent risk of litigation.

12           8. The settlement in this action provides \$201,088.80 to the alleged aggrieved employees  
13 and the LWDA in exchange for a release of claims under PAGA only.<sup>1</sup> The Settlement Agreement  
14 and Release of PAGA Claims provides, in pertinent part:

15           Upon the date of entry of an order by the Court in this Action approving this  
16 Settlement, and payment of all funds due under this Settlement, the LWDA and  
17 PAGA Settlement Members, including Plaintiff, fully release and forever  
18 discharge the Released Parties from any and all Released Claims as defined  
19 above. As a result of this release, the PAGA Settlement Members will be unable  
20 to bring a claim under, or recover in any other claim brought under, the California  
21 Private Attorneys General Act, California Labor Code § 2698 et seq., for any  
22 violations of the Released Claims that took place during the PAGA Period.

23           "Released Claims" shall mean any and all claims, whether known or unknown, to  
24 recover civil penalties pursuant to PAGA for any alleged violations by Defendant  
25 of California Labor Code §§ 201-204, 210, 218.5, 218.6, 226, 226.3, 226.7, 510,  
26 512, 558, 1174, 1174.5, 1194, 1194.2, 1198, and any category of violations  
27 identified in Labor Code § 2699.5, and the related applicable IWC Wage Order  
28 provision for the PAGA Period.

          "PAGA Period" shall mean November 9, 2020 through the date the Court grants  
approval of this settlement.

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<sup>1</sup> \$201,088.80 is the net amount available to the aggrieved employees and the LWDA from the \$370,148 gross settlement amount following deduction for Plaintiff's attorney's fees of \$148,059.2 (40% of the gross settlement amount), Plaintiff's counsel's actual litigation costs not to exceed (\$15,000.00), and third-party administration costs (not to exceed \$6,000.00).

1 “Released Parties” shall mean Defendant, and all of their subsidiary companies,  
2 affiliates, holding companies, successors, partners, shareholders, insurers, legal  
3 representatives, assigns, employees, officers, directors, attorneys, and agents.

4 “PAGA Settlement Members”: The PAGA Settlement Members (also referred to  
5 herein as the “aggrieved employees”) included in the Settlement shall mean all  
6 individuals that Defendant issued wage statements to in California at any time  
7 during the PAGA Period.

8 The Parties estimate that there are approximately 9,000 pay periods during the PAGA  
9 Period.

10 9. The Parties request that the Court approve the arm’s length settlement reached between  
11 the Parties pertaining to penalties under PAGA, and the release of PAGA claims.

12 **NOW THEREFORE**, in return for the mutual commitments and consideration detailed in  
13 the Settlement Agreement and Release of PAGA Claims attached hereto as Exhibit “B,” the Parties  
14 stipulate as follows:

15 1. The Parties stipulate and jointly propose that the Court review and approve the terms  
16 contained in the Parties’ Settlement Agreement, attached as Exhibit B, in full.

17 2. The Settlement is fair, adequate, and reasonable, as it represents a reasoned  
18 compromise reached through arm’s-length negotiations and considers the risks, complexity, and  
19 expense of further litigation.

20 3. The settlement terms reached through mediation provide for a gross payment by  
21 Defendant of Three Hundred Seventy Thousand One Hundred Forty-Eight Dollars and Zero Cents  
22 (\$370,148; “Total Settlement Payment). The Total Settlement Payment, which shall cover  
23 distribution to the LWDA and the alleged aggrieved employees, Plaintiff’s counsel’s costs and  
24 fees, and costs of administration of the settlement, as follows:

| Description                               | Amount      |
|-------------------------------------------|-------------|
| Attorneys’ Fees (40% of gross settlement) | \$148,059.2 |

|                                                     |                       |
|-----------------------------------------------------|-----------------------|
| Costs (not to exceed amount)                        | \$15,000 <sup>2</sup> |
| Costs of Third-Party Administration (not to exceed) | \$6,000 <sup>3</sup>  |

4. Should the Court approve a lesser amount for attorneys' fees, costs, or costs of third-party administration, the difference shall be allocated as follows: 25% to the alleged aggrieved employees and 75% to the LWDA.

5. The Settlement Administrator shall establish a Qualified Settlement Fund pursuant to Section 468B(g) of the Internal Revenue Code for purposes of administering the Settlement. The Settlement Administrator shall furnish the Qualified Settlement Fund with its own Employer ID Number and calculate all settlement checks and withholdings required under law based on information that will be confidentially furnished by Defendant. There are no payroll deductions to be calculated under this Settlement, since no part of the Settlement will be classified as wages.

6. "PAGA Members": The PAGA Members (also referred to herein as the "aggrieved employees") included in the Settlement shall be all individuals who are or were employed as hourly and/or non-exempt employees by Defendant in California for one or more pay periods from November 9, 2020 through the Effective Date ("Covered Period").

7. Upon the Court's approval of the Settlement Agreement and funding of the Settlement amount, it is agreed that the entire Action will be dismissed, with prejudice.

8. Upon the date of entry of an order by the Court in this Action approving this Settlement, and payment of all funds due under this Settlement, the LWDA and PAGA Settlement Members, including Plaintiff, fully release and forever discharge the Released Parties from any and all Released Claims as defined in Exhibit B. As a result of this release, the PAGA Settlement Members will be unable to bring a claim under, or recover in any other claim

<sup>2</sup> The Settlement authorizes reimbursement of actual costs not to exceed \$15,000, at this time, actual out of pocket costs, including the cost of submitting this stipulation total \$12,917.48. A true and correct copy of a ledger of counsel's costs are attached hereto as Exhibit "C."

<sup>3</sup> A true and correct copy of the third-party administrator's quote is attached hereto as Exhibit "D."

1 brought under, the California Private Attorneys General Act, California Labor Code § 2698 et  
2 seq., for any violations of the Released Claims that took place during the PAGA Period.

3 9. Under California law, no notice to the alleged aggrieved employees is required for the  
4 resolution of an action under PAGA. *See Arias v. Superior Court*, (2009) 46 Cal.4th 969, 977.  
5 The Parties have nevertheless agreed to provide an explanatory letter to the alleged aggrieved  
6 employees to accompany the PAGA penalty checks. Attached to the Settlement Agreement and  
7 Release of PAGA Claims as Exhibit A is the proposed letter to the alleged aggrieved employees  
8 that would accompany the checks.

9 10. If there is a conflict between the language of this Stipulation and the language of the  
10 Settlement Agreement and Release of PAGA Claims attached as Exhibit B, with the exception of  
11 the timing of the settlement payment, the language of the Settlement Agreement and Release of  
12 PAGA Claims shall control.

13 11. The Parties further expressly agree that the Court will retain jurisdiction under Code of  
14 Civil Procedure section 664.6 to resolve any disputes arising from the settlement of the above-  
15 described action.

16 **IT IS SO STIPULATED.**

17 Dated: 9/20/2022

Respectfully submitted,  
MOON & YANG, APC

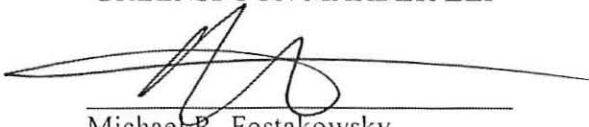
18 By:   
19 Kane Moon

Lilit Ter-Astvatsatryan

20 Attorneys for Plaintiff

21 Dated: 9/19/2022

22 GREENSPOON MARDER LLP

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24 Michael R. Fostakowsky  
25 Attorneys for Defendant  
26  
27  
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1 **[PROPOSED] ORDER AND JUDGMENT**

2 Having considered the foregoing Stipulation, and good cause appearing therefor,

3 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that:

4 1. The Court, for purposes of this Final Order and Judgment, refers to all defined terms as  
5 set forth in the Settlement Agreement and Release of PAGA Claims attached as Exhibit "B" to the  
6 foregoing Stipulation.

7 2. The Settlement is hereby accepted and approved;

8 3. Plaintiff and all PAGA Settlement Members shall have, by operation of this Final Order  
9 and Judgment, fully, finally, and forever released, relinquished, and discharged the Released  
10 Parties from all Released Claims as follows:

11 Upon the date of entry of an order by the Court in this Action approving this  
12 Settlement, and payment of all funds due under this Settlement, the LWDA and  
13 PAGA Settlement Members, including Plaintiff, fully release and forever  
14 discharge the Released Parties from any and all Released Claims as defined  
15 above. As a result of this release, the PAGA Settlement Members will be unable  
16 to bring a claim under, or recover in any other claim brought under, the California  
17 Private Attorneys General Act, California Labor Code § 2698 et seq., for any  
18 violations of the Released Claims that took place during the PAGA Period.

19 "Released Claims" shall mean any and all claims, whether known or unknown, to  
20 recover civil penalties pursuant to PAGA for any alleged violations by Defendant  
21 of California Labor Code §§ 201-204, 210, 218.5, 218.6, 226, 226.3, 226.7, 510,  
22 512, 558, 1174, 1174.5, 1194, 1194.2, 1198, and any category of violations  
23 identified in Labor Code § 2699.5, and the related applicable IWC Wage Order  
24 provision for the PAGA Period.

25 "PAGA Period" shall mean November 9, 2020 through the date the Court grants  
26 approval.

27 "Released Parties" shall mean Defendant, and all of their subsidiary companies,  
28 affiliates, holding companies, successors, partners, shareholders, insurers, legal  
representatives, assigns, employees, officers, directors, attorneys, and agents.

"PAGA Settlement Members": The PAGA Settlement Members (also referred to  
herein as the "aggrieved employees") included in the Settlement shall mean all  
individuals that Defendant issued wage statements to in California at any time  
during the PAGA Period.

1           4. The Parties shall bear their own respective attorneys' fees and costs, except as otherwise  
2 provided for in the Settlement and approved by the Court.

3           5. The Settlement is not an admission by Defendant, nor is this Order a finding of the  
4 validity of any allegations or of any wrongdoing by Defendant. Neither this Order, the Settlement,  
5 nor any document referred to herein, nor any action taken to carry out the Settlement, may be used  
6 as an admission of any fault, wrongdoing, omission, concession, or liability whatsoever by or  
7 against Defendant.

8           6. Defendant shall pay the PAGA Settlement Members, Plaintiff's Counsel, the Labor and  
9 Workforce Development Agency ("LWDA"), and the Settlement Administrator pursuant to the  
10 terms of the Settlement:

- 11           a. Actual administration costs of up to \$6,000, payable to the Settlement  
12           Administrator for administration of the Settlement;
- 13           b. Attorneys' fees to Plaintiff's Counsel in the amount of \$148,059.2 (40%).
- 14           c. Reimbursement for actual costs incurred by Plaintiff's Counsel, not to exceed  
15           \$12,917.48, which does not exceed \$15,000;
- 16           d. The remaining amount to the PAGA Fund, which shall be allocated as set forth in  
17           Labor Code § 2699(d), with 75% allocated to the LWDA, and the remaining 25%  
18           to the PAGA Settlement Members on a pro-rata basis. The Administrator will  
19           cancel all checks that remain uncashed 180 days from the mailing date and  
20           forward such amounts to the California State Controller's Office in the names of  
21           the PAGA Settlement Members who did not cash their check.

22           7. Defendant payment shall be made to the administrator within seven (7) days of this  
23 Order.

24           8. The Court finds that the fees requested by Plaintiff's Counsel of forty (40%) of the total  
25 settlement amount are reasonable, and the costs requested of up to \$15,000.00 are reasonable and  
26 necessary for the prosecution of this action. The Court hereby awards attorney's fees in the amount  
27 of \$148,059.2 and costs in the amount of \$12,917.48 to Plaintiff's Counsel for their attorney's fees  
28 and costs. The payment of fees and costs to Plaintiff's Counsel shall be made in accordance with

1 the terms of the Settlement.

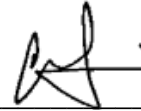
2 9. The Court approves of the proposed letter attached to the Settlement Agreement and  
3 Release of PAGA Claims as Exhibit 1 to Exhibit B to be sent to PAGA Settlement Members along  
4 with their respective settlement check.

5 10. This action is dismissed with prejudice.

6 11. Plaintiff shall submit a copy of this Order and Judgment to the LWDA within ten  
7 calendar days after entry of the Order and Judgment.

8 12. This Court shall retain jurisdiction, pursuant to C.C.P. section 664.6, over this action,  
9 the Parties, and the PAGA Settlement Members to the fullest extent necessary to interpret, enforce,  
10 and effectuate the terms and intent of the Settlement and this Order and Judgment.

11 DATED: 09/22/2022



12 HON. CHRISTOPHER K. LUI

13 JUDGE OF THE LOS ANGELES  
14 COUNTY SUPERIOR COURT

# **Exhibit A**

# **MOON & YANG, APC**

ATTORNEYS AT LAW  
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Kane Moon, Esq.  
*Kane.Moon@moonyanglaw.com*

November 7, 2021

## **VIA ONLINE SUBMISSION**

Labor & Workforce Development Agency  
Attn. PAGA Administrator  
1515 Clay Street, Ste. 801  
Oakland, CA 94612

## **VIA CERTIFIED MAIL**

Sunvair, Inc.  
29145 The Old Road  
Valencia, CA 91355

### **Notice of Labor Code Violations and PAGA Penalties**

Re: *Mario Albert Hidalgo v. Sunvair, Inc.*

To Whom It May Concern:

Please be advised that my office has been retained by Mario Albert Hidalgo ("Plaintiff") to pursue a Labor Code Private Attorney General Act (PAGA) representative action (Cal. Lab. Code §§ 2699, *et seq.*) against his former employer, Sunvair, Inc. ("Defendant"). The purpose of this letter is to comply with PAGA and set forth the facts and theories of California Labor Code violations which we allege Defendant engaged in with respect to Plaintiff and all of Defendant's aggrieved employees.

Plaintiff wishes to pursue a PAGA representative action on behalf of Plaintiff individually as an aggrieved employee, on behalf of the State of California, and on behalf of all other current and former aggrieved employees who worked for Defendant in California as an hourly paid, non-exempt employee at any time within the applicable statutory period (hereafter, the "Aggrieved Employees").

Plaintiff and the Aggrieved Employees of Defendant suffered the Labor Code violations described below.

### **Factual Background Regarding Plaintiff's Employment with Defendant**

Defendant owns and operates an industry, business, and establishment within the State of California, including Los Angeles County. As such, Defendant is subject to the California Labor Code and the Wage Orders issued by the Industrial Welfare Commission ("IWC").

Plaintiff worked for Defendant from approximately 2000 to August 2021, primarily in Los Angeles County. Defendant classified Plaintiff as non-exempt from overtime. During the time period that Plaintiff was employed by Defendant, Plaintiff typically worked 5 days per week, and in excess of 8 hours each workday.

Throughout Plaintiff's employment, Defendant committed numerous labor code violations under state law. As discussed below, Plaintiff's experience working for Defendant was typical and illustrative.

### **Failure to Pay for All Hours Worked, Including Overtime**

Under California law, an employer must pay for all hours worked by an employee. "Hours worked" is the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In addition, Labor Code § 510 provides that employees in California shall not be employed more than eight (8) hours in any workday or forty (40) hours in a workweek unless they receive additional compensation beyond their regular wages in amounts specified by law.

Labor Code §§ 1194 and 1198 also provide that employees in California shall not be employed more than eight hours in any workday unless they receive additional compensation beyond their regular wages in amounts specified by law. Additionally, Labor Code § 1198 states that the employment of an employee for longer hours than those fixed by the Industrial Welfare Commission is unlawful.

Throughout the statutory period, Defendants maintained a policy and practice of not paying Plaintiff and the Aggrieved Employees for all hours worked, including all overtime wages. Plaintiff and the Aggrieved Employees were required to work "off the clock", and uncompensated. For example, Plaintiff and the Aggrieved Employees were required to use his cellular telephones while off the clock, such as receiving calls from Defendants regarding shifts and work schedule. Further, Plaintiff and the Aggrieved Employees were required to expend time to purchase items, such as tools, while off the clock and uncompensated. Further, Plaintiff and the Aggrieved Employees received non-discretionary bonuses. However, Defendants failed to incorporate all remuneration when calculating the correct overtime rate of pay, leading to underpayment of wages. In maintaining a practice of not paying all wages owed, Defendants failed to maintain accurate records of the hours Plaintiff and the Aggrieved Employees worked.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, 1197.1, and 2699(f)(2) for failing to pay for all hours worked, including overtime.

### **Failure to Provide Meal Periods**

Under California law, employers have an affirmative obligation to relieve employees of all duty in order to take their first 30-minute, duty-free meal periods no later than the start of sixth hour of work in a workday, and to allow employees to take their second 30-minute, duty-free meal period no later than the start of the eleventh hour of work in the workday. Further, employees are entitled to be paid one hour of additional wages for each workday they were not provided with all required meal period(s).

Despite these legal requirements, Defendant wrongfully failed to provide Plaintiff and the Aggrieved Employees with legally compliant meal periods. Defendant regularly required Plaintiff and the Aggrieved Employees to work in excess of five consecutive hours a day without providing a 30-minute, continuous and uninterrupted, duty-free meal period for every five hours of work, or without compensating Plaintiff and the Aggrieved Employees for meal periods that were not provided by the end of the fifth hour of work or tenth hour of work. Defendant did not adequately inform Plaintiff and the Aggrieved Employees of their right to take a meal period by the end of the fifth hour of work, or, for shifts greater than 10 hours, by the end of the tenth hour of work. Moreover, Defendant did not have adequate written policies or practices providing meal periods for Plaintiff and the Aggrieved Employees, nor did Defendant have adequate policies or practices regarding the timing of meal periods. Defendant also did not have adequate policies or practices to verify whether Plaintiff and the Aggrieved Employees were taking their required meal periods. Accordingly, Defendant's policy and practice was to not provide meal periods to Plaintiff and the Aggrieved Employees in compliance with California law.

Plaintiff and the Aggrieved Employees are thus entitled to be paid one hour of additional wages for each workday he or she was not provided with all required meal period(s). Defendant, however, regularly failed to pay Plaintiff and the Aggrieved Employees the additional wages to which they were entitled for meal periods and that were not provided.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, and 2699(f)(2) for failing to provide meal periods and pay meal period premium wages.

### **Failure to Authorize and Permit Rest Periods**

Employers are required by California law to authorize and permit breaks of 10 uninterrupted minutes for each four hours of work or major fraction of four hours (i.e. more than two hours). Thus, for example, if an employee's work time is 6 hours and ten minutes, the employee is entitled to two rest breaks. Each failure to authorize rest breaks as so required is itself a violation of California's rest break laws.

Defendant, however, wrongfully failed to authorize and permit Plaintiff and the Aggrieved Employees to take timely and duty-free rest periods. Defendant regularly required Plaintiff and the Aggrieved Employees to work in excess of four consecutive hours a day without Defendant authorizing and permitting them to take a 10 minute, continuous and uninterrupted, rest period for every four hours of work (or major fraction of four hours), or without compensating Plaintiff and the Aggrieved Employees for rest periods that were not authorized or permitted. Defendant did not adequately inform Plaintiff and the Aggrieved Employees of their right to take a rest period. Moreover, Defendant did not have adequate policies or practices permitting or authorizing rest periods for Plaintiff and the Aggrieved Employees, nor did Defendant have adequate policies or practices regarding the timing of rest periods. Defendant also did not have adequate policies or practices to verify whether Plaintiff and the Aggrieved Employees were taking their required rest periods. Further, Defendant did not maintain accurate records of employee work periods, and therefore Defendant cannot demonstrate that Plaintiff and the Aggrieved Employees took rest periods during the middle of each work period. Accordingly, Defendant's policy and practice was for Plaintiff and the Aggrieved Employees to work through rest periods and to not authorize or permit them to take any rest periods.

Plaintiff and the Aggrieved Employees are thus entitled to be paid one hour of additional wages for each workday he or she was not authorized and permitted to take all required rest period(s). Defendant, however, regularly failed to pay Plaintiff and the Aggrieved Employees the additional wages to which they were entitled for rest periods and that they were not authorized and permitted to take.

As a result, Defendant are liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, and 2699(f)(2) for failing to authorize and permit rest periods and pay rest period premium wages.

**Failure to Maintain Accurate Records of Hours Worked and Meal Periods**

Plaintiff seeks penalties under Labor Code § 1174(d). Pursuant to Labor Code § 1174.5, any person, including any entity, employing labor who willfully fails to maintain accurate and complete records required by Labor Code § 1174 is subject to a penalty under § 1174.5. Pursuant to the applicable IWC Order § 7(A)(3), every employer shall keep time records showing when the employee begins and ends each work period. Meal periods and total hours worked daily shall also be recorded.

Defendant, however, failed to maintain accurate records of hours worked and all meal periods taken or missed by Plaintiff and the Aggrieved Employees.

Defendant's failure to provide and maintain records required by the Labor Code IWC Wage Orders deprived Plaintiff and the Aggrieved Employees the ability to know, understand and

question the accuracy and frequency of meal periods, and the accuracy of their hours worked stated in Defendant's records. Therefore, Plaintiff and the Aggrieved Employees had no way to dispute the resulting failure to pay wages, all of which resulted in an unjustified economic enrichment to Defendant. As a direct result, Plaintiff and the Aggrieved Employees have suffered and continue to suffer, substantial losses related to the use and enjoyment of such wages, lost interest on such wages and expenses and attorney's fees in seeking to compel Defendant to fully perform its obligation under state law, all to their respective damage in amounts according to proof at trial. As a result of Defendant's knowing failure to comply with the Labor Code and applicable IWC Wage Orders, Plaintiff and the Aggrieved Employees have also suffered an injury in that they were prevented from knowing, understanding, and disputing the wage payments paid to them.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 1174.5 for failing to maintain accurate records of hours worked and meal periods.

#### **Failure to Reimburse and Indemnify Expenses**

California Labor Code § 2802 requires employers to reimburse employees for their necessary expenditures and losses incurred in direct consequence of the discharge of their duties or of their obedience to directions of the employer.

Throughout the statutory period, Defendant wrongfully required Plaintiff and the Aggrieved Employees to pay expenses that they incurred in direct discharge of their duties for Defendant without reimbursement, which included the purchase of tools and masks. Further, Plaintiff and the Aggrieved Employees were required to use their personal cellular telephones for work. Plaintiff and the Aggrieved Employees incurred these substantial expenses as a direct result of performing their job duties for Defendant, and Defendant has failed to indemnify Plaintiff and the Aggrieved Employees for these employment-related expenses.

#### **Failure to Timely Pay All Wages at Termination**

Labor Code §§ 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

Within the applicable statute of limitations, the employment of Plaintiff and many other Aggrieved Employees ended, i.e. was terminated by quitting or discharge, and the employment

of others will be. However, during the relevant time period, Defendant failed, and continues to fail to pay Plaintiff and terminated Aggrieved Employees, without abatement, all wages required to be paid by Labor Code sections 201 and 202 either at the time of discharge, or within seventy-two (72) hours of their leaving Defendant's employ. These unpaid wages include wages for unpaid work time (including minimum and straight time wages), missed meal periods, and missed rest periods.

Defendant's conduct violates Labor Code §§ 201 and 202. Labor Code § 203 provides that if an employer willfully fails to pay wages owed, in accordance with sections 201 and 202, then the wages of the employee shall continue as a penalty wage from the due date, and at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

Accordingly, Plaintiff and the Aggrieved Employees are entitled to recover from Defendant their additionally accruing wages for each day they were not paid, at their regular hourly rate of pay, up to 30 days maximum pursuant to Labor Code § 203.

Moreover, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 2699(f)(2) for failing to timely pay all wages at termination.

#### **Failure to Furnish Accurate Itemized Wage Statements**

Labor Code § 226(a) provides that every employer shall furnish each of his or her employees an accurate itemized wage statement in writing showing nine pieces of information, including: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. An employee is presumed to suffer an injury if this information is missing. (Lab. Code § 226(e)(2)(B)(iii).)

The statute further provides: "An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees." (Lab. Code § 226(e)(1).)

Defendant intentionally and willfully failed to provide employees with complete and accurate wage statements. The deficiencies include, among other things, the failure to correctly identify hourly rates, the failure to correctly list gross wages earned, and the failure to list the true net wages earned, including wages for meal periods that were not provided in accordance with California law, wages for rest periods that were not authorized and permitted to take in accordance with California law, and correct wages earned for all hours worked.

As a result of Defendant violating Labor Code § 226, Plaintiff and similarly Aggrieved Employees suffered injury and damage to their statutorily protected rights.

Accordingly, Plaintiff and similarly Aggrieved Employees are entitled to recover from Defendant the greater of their actual damages caused by Defendant's failure to comply with Labor Code § 226(a), or an aggregate penalty not exceeding \$4,000 dollars per employee.

Moreover, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 226.3 for failing to furnish accurate itemized wage statements.

**Failure to Pay All Earned Wages Twice Per Month**

Based on its failure to pay Plaintiff and the Aggrieved Employees for all wages as discussed above, Defendant also violated Labor Code § 204.

Labor Code § 204 requires employers to pay employees all earned wages two times per month. Throughout the statute of limitations period applicable to this cause of action, employees were entitled to be paid twice a month at their regular rates, including all meal period premium wages owed, rest period premium wages owed, and wages owed for hours worked. However, during all such times, Defendant systematically failed and refused to pay the employees all wages due, and failed to pay those wages twice a month, in that employees were not paid all wages for all meal periods not provided by Defendant, all wages for all rest periods not authorized and permitted by Defendant, and all wages for all hours worked. As a result, Defendant owes employees the legally required wages for unpaid wages, and Plaintiff and the Aggrieved Employees suffered damages in those amounts.

Moreover, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 210 for failing to pay all earned wages twice per month.

**Action for Civil Penalties Under PAGA**

In light of the above, Plaintiff alleges that Defendant violated the following provisions of the Labor Code with respect to the Aggrieved Employees:

1. Labor Code § 204, 510, 1194, 1197, and 1198 by failing to pay for all hours worked, including minimum wages, straight time wages and overtime wages;

2. Labor Code § 226.7, 512 and applicable Wage Orders by failing to provide meal periods;
3. Labor Code § 226.7 and applicable Wage Orders by failing to authorize and permit rest periods;
4. Labor Code § 1174.5 and applicable Wage Orders by failing to maintain accurate records of hours worked and meal periods taken or missed;
5. Labor Code § 2802 by failing to reimburse and indemnify employees for expenses and losses in the direct consequence and discharge of their duties;
6. Labor Code §§ 201 to 203 by willfully failing to pay all wages owed at termination;
7. Labor Code § 226 by failing to provide accurate itemized wage statements; and
8. Labor Code § 204 by failing to pay all earned wages two times per month.

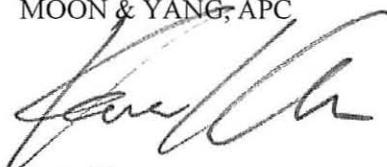
Therefore, on behalf of all Aggrieved Employees, Plaintiff seeks applicable penalties related to the violations alleged above pursuant to the PAGA. These include, but are not limited to, penalties under Labor Code §§ 210, 226.3, 558, 1174.5, 1197.1, 2802, and 2699(f)(2).

Plaintiff has placed Defendant on notice by mailing a certified copy of this correspondence to its corporate address, as indicated on the first page.

Thank you for your attention to this matter. If you have any questions, please do not hesitate to contact me.

Sincerely,

MOON & YANG, APC

A handwritten signature in black ink, appearing to read 'Kane Moon', written over a horizontal line.

Kane Moon  
*Attorney at Law*

# **Exhibit B**

1 Kane Moon (SBN 249834)  
kane.moon@moonyanglaw.com  
2 Lilit Ter-Astvatsatryan (SBN 320389)  
lilit@moonyanglaw.com  
3 **MOON & YANG, APC**  
4 1055 W. Seventh St., Suite 1880  
Los Angeles, California 90017  
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7 Attorneys for Plaintiff Mario Albert Hidalgo

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **FOR THE COUNTY OF LOS ANGELES**

11 MARIO ALBERT HIDALGO, individually,  
and on behalf of all others similarly situated,

12 Plaintiff,

13 vs.

14 SUNVAIR, INC., a Delaware corporation;  
15 and DOES 1 through 10, inclusive,

16 Defendants.

Case No.: 21STCV41120

PAGA REPRESENTATIVE ACTION

**SETTLEMENT AGREEMENT AND  
RELEASE OF PAGA CLAIMS**

Action Filed: November 9, 2021

Trial Date: Not Set

## SETTLEMENT AGREEMENT AND RELEASE OF PAGA CLAIMS

Plaintiff Mario Albert Hidalgo ("Plaintiff"), individually and in his capacity as a representative of the State of California on behalf of other allegedly aggrieved employees (as defined in paragraph 2, below), and Defendant Sunvair, Inc. ("Defendant"), hereby enter into this Settlement Agreement and Release of Private Attorneys General Act of 2004 Claims ("Settlement") as follows:

### DEFINITIONS

As used in this Settlement, the following terms shall have the following meanings:

1. **"Action"** shall mean the civil action entitled *Mario Albert Hidalgo v. Sunvair, Inc.*, Case No. 21STCV41120, which is currently pending in the Los Angeles County Superior Court of the State of California.

2. **"PAGA Settlement Members"** The PAGA Settlement Members (also referred to herein as the "aggrieved employees") included in the Settlement shall mean all individuals that Defendant issued wage statements to in California at any time during the PAGA Period.

3. **"Settled Claims"** This Settlement is a settlement of all PAGA claims identified in Plaintiff's PAGA notice letter, dated November 7, 2021 ("Settled Claims").

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

5. **"Court"** means the California Superior Court, County of Los Angeles.

6. **"Defendant"** means Sunvair, Inc.

7. **"Effective Date"** refers to the date upon which the following have occurred: (i) approval of the Settlement is granted by the Superior Court of California for the County of Los Angeles, or other court assuming jurisdiction of this matter, and (ii) the Court's Judgment approving the Settlement becomes Final.

8. **"PAGA Period"** shall mean November 9, 2020 through the date the Court grants approval of this settlement.

1           9.     **“Gross Settlement Amount”** means a maximum total of \$370,148.00, which  
2 includes all payments owing as a result of this Agreement and includes: the Net Settlement Amount;  
3 Settlement Administration Costs; Plaintiff’s service award; and PAGA Counsel Attorneys’ Fees and  
4 Costs as awarded by the Court.

5           10.    **“LWDA Payment”** means a payment to the California Labor Workforce and  
6 Development Agency in an amount equal to 75% of the Net Settlement Amount.

7           11.    **“Net Settlement Amount”** is the Gross Settlement Amount less (1) PAGA  
8 Counsel’s Attorneys’ Fees and Costs, and (2) Settlement Administration Costs.

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

12           13.    **“PAGA Claim”** means the claim for civil penalties under the California Labor Code  
13 Private Attorneys General Act of 2004 (Cal. Lab. Code sections 2698 *et seq.*, “PAGA”) alleged in  
14 the Action and stated in Plaintiff’s August 14, 2020 notice letter to the LWDA.

15           14.    **“PAGA Counsel”** means Moon & Yang, APC.

16           15.    **“Released Claims”** shall mean any and all claims, whether known or unknown, to  
17 recover civil penalties pursuant to PAGA for any alleged violations by Defendants that were  
18 included in Plaintiff’s letter to the LWDA and/or Plaintiff’s operative complaint including, but not  
19 limited to, California Labor Code Private Attorneys General Act of 2004, Labor Code §§ 2698, *et*  
20 *seq.*, based on alleged violations of Labor Code §§ 201-204, 210, 218.5, 218.6, 226, 226.3, 226.7,  
21 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1198, and the related applicable IWC Wage Order  
22 provision for the PAGA Period whether for civil penalties or attorneys’ fees and costs arising out of  
23 the PAGA claims at issue, including but not limited to: failure to pay minimum and regular rate  
24 wages, failure to pay overtime compensation, failure to provide meal periods, failure to authorize  
25 and permit rest breaks, failure to indemnify necessary business expenses, failure to timely pay final  
26 wages at termination, and failure to provide accurate itemized wage statements, and any other  
27 violations that were alleged or could have been alleged in Plaintiff’s letter to the LWDA or any  
28 complaint filed in this action.

1           16.     **“Released Parties”** shall mean Defendant, and all of their subsidiary companies,  
2 affiliates, holding companies, successors, partners, shareholders, insurers, legal representatives,  
3 assigns, employees, officers, directors, attorneys, and agents.

4 17. **“Representative Plaintiff”** means Plaintiff Mario Albert Hidalgo.

18. **“Settlement Administrator”** refers to a qualified, third-party settlement administrator agreed to by the Parties to administer the terms of the Settlement. The Parties agree to utilize ILYM Group, Inc. to administer the Settlement, at an estimated cost not to exceed \$6,000.00.

## RECITALS

19. On November 7, 2021, Plaintiff sent a PAGA Notice to the Labor Workforce and Development Agency (“LWDA”), with a copy to Defendant. On November 9, 2021, Plaintiff filed a class action complaint in the Superior Court of the State of California, County of Los Angeles in a case styled *Mario Albert Hidalgo v. Sunvair, Inc.*, Case No. 21STCV41120.

14           20.     On February 7, 2022, Plaintiff filed a first amended complaint in the Action as a  
15 PAGA stand alone action. On February 7, 2021, Plaintiff dismissed his individual and class  
16 allegations.

17           21.     The PAGA Claims seeks civil penalties and an award of reasonable attorneys' fees  
18 and costs.

22. The Parties have conducted a thorough investigation into the facts of the Action. This included exchanging data and information as well as documents relating to the underlying alleged violations. After attending a mediation with Lynn Frank, Esq. on June 14, 2022, the Parties believe that the Settlement is fair, reasonable, and adequate. The Parties understand, acknowledge, and agree that this Settlement Agreement constitutes a compromise of Representative Plaintiff's and 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 Plaintiff and the Aggrieved Employees have against Defendant or any persons or companies affiliated with Defendant.

28      23.      The Parties enter into this Settlement Agreement on a conditional basis. In the event

the Court does not enter a Final Order and Judgment as defined in 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.

24. Defendant denied, and continues to deny, each and every claim and contention alleged in the Action, and has always maintained that it never engaged in any unlawful acts regarding any of the matters alleged in the Action.

25. Defendant denies all of the claims in the 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.

26. The Parties stipulate and agree to the following terms of this Settlement Agreement with the intent that this Agreement finally disposes of the Action with prejudice.

**NOW, THEREFORE**, in consideration of the mutual covenants, promises, and conditions set forth, the Parties agree as follows:

#### **TERMS AND CONDITIONS**

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

##### **Gross Settlement Amount of \$370,148 Is Broken Down As Follows:**

- PAGA Counsel Attorneys' Fees not to exceed 40% (or \$148,059.2).
- PAGA Counsel Costs not to exceed \$15,000.
- Settlement Administration Costs not to exceed \$6,000.
- Approximately \$201,088.8 for the Net Settlement Amount:
  - 25% of the Net Settlement Amount for the PAGA Aggrieved Employee Payment (approximately \$50,272.2)
  - 75% of the Net Settlement Amount for the LWDA Payment (approximately \$150,816.6)

27. 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 \$370,148.0. The Gross Settlement Amount includes, but is not limited to, payments to be made to PAGA Counsel's attorneys' fees and costs, LWDA Payment, and Settlement Administration Costs.

1           28. Escalator Clause: At mediation Plaintiff calculated based on the information  
2 provided by Defendant through informal discovery that there was approximately 9,000 pay periods  
3 as of June 14, 2022, and Defendant agreed this was roughly in the proximity. If the actual number  
4 of pay periods is more than 20% greater than this number (i.e., if there are more than 10,800 pay  
5 periods in the Covered Period), Defendant shall increase the settlement payment in proportion to  
6 the increase in pay periods.

7           29. The Parties agree, subject to Court approval, that the Gross Settlement Amount shall  
8 be apportioned as follows:

9               a. Settlement Administration Fees And Costs: Settlement administration shall  
10 be done by a qualified, third-party settlement administrator agreed to by the Parties and approved  
11 by the Court ("Settlement Administrator"). The fees and costs associated with settlement  
12 administration (e.g., preparing and mailing payments to the Aggrieved Employees, tax  
13 documentation, etc.) (the "**Settlement Administration Costs**") will be paid from the Gross  
14 Settlement Amount at an estimated cost not to exceed \$6,000.00. The Parties agree to use ILYM  
15 Group, Inc. as the Settlement Administrator. Any unused portion of the settlement administration  
16 fees shall be distributed to the aggrieved employees and LWDA on a pro-rata basis.

17               b. Tax Treatment and Tax Indemnification: PAGA Settlement Members will  
18 assume any tax obligations or consequences which may arise from this Settlement. PAGA  
19 Settlement Members release any and all claims that they have or may have against Defendants for  
20 any claims, demands, deficiencies, levies, assessments, executions, judgments, penalties, taxes,  
21 indemnification, and any other recoveries related to any payments made under this Settlement or  
22 any compensation provided at any time by Defendants or any of the Released Parties. If any state  
23 or federal taxing authority contacts, investigates, or pursues any action against any PAGA  
24 Settlement Members for their individual share of taxes related to any payments made under this  
25 Settlement or any compensation provided at any time by Defendants or any of the Released Parties,  
26 each PAGA Settlement Member shall be responsible for their own defense of and payment for any  
27 claim of unpaid taxes, interest, or penalties brought by any state or federal taxing authority for the  
28 PAGA Settlement Member's share of any state or federal tax obligation. If a PAGA Settlement

1 Member has questions about any liability to any state or federal taxing authority, they shall contact  
 2 the Settlement Administrator. The PAGA Settlement Members shall not contact Defendants, any  
 3 of the Released Parties, or Defense Counsel.

4 c. PAGA Counsel's Attorneys' Fees and Costs: The Parties agree that, subject  
 5 to the Court's review and approval, PAGA Counsel will be paid from the Gross Settlement Amount  
 6 an amount that is up to 40% of the Gross Settlement Amount for attorneys' fees (\$148,059), plus  
 7 actual litigation costs), not to exceed \$15,000.00. Any unused portion of the attorneys' costs shall  
 8 be distributed to the aggrieved employees and LWDA on a pro-rata basis.

9 30. Net Settlement Amount: After deducting PAGA Counsel's Attorneys' Fees and  
 10 Costs, and Settlement Administration Costs from the Gross Settlement Amount, the remaining  
 11 amount will comprise the Net Settlement Amount. The Net Settlement Amount is comprised of the  
 12 LWDA Payment and the PAGA Aggrieved Employee Payment. The Net Settlement Amount of  
 13 approximately \$201,088.80 shall be allocated 75% to the "LWDA Payment", which is estimated to  
 14 total \$150,816.60 (\$201,088.80 x .75). The remaining 25% of the Net Settlement Amount,  
 15 estimated to total \$50,272.20 (\$201,088.80 x .25), shall be allocated to the "PAGA Aggrieved  
 16 Employee Payment" to be paid to the Aggrieved Employees based on his or her proportionate share  
 17 of the weeks worked during the PAGA Period., which shall be referred to as the Aggrieved  
 18 Employee's "**Individual PAGA Payment.**"

19 Example:

20 Aggrieved Employee A was actively employed during the PAGA Period for 25 pay periods.  
 21 All Aggrieved Employees were actively employed a combined total of 9,000 pay periods during the  
 22 PAGA Period. Aggrieved Employee A's Individual PAGA Payment would be calculated as follows:

- 23 ➤ 25 pay periods for Aggrieved Employee A ÷ 9,000 total pay periods for all Aggrieved  
 24 Employees = 0.277%.
- 25 ➤ Aggrieved Employee A is entitled to an Individual PAGA Payment in an amount that is  
 26 0.277%.of the PAGA Aggrieved Employee Payment.

27 a. Taxes and Reporting: The Individual PAGA Payments will be treated as non-  
 28 wage income to the Aggrieved Employees and reported by the Settlement Administrator on IRS

1 Form 1099.

2 31. **Release By PAGA Settlement Members**

3 a. Claims Released by the LWDA and All PAGA Settlement Members. Upon  
4 the date of entry of an order by the Court in this Action approving this Settlement, and payment of  
5 all funds due under this Settlement, the LWDA and PAGA Settlement Members, including Plaintiff,  
6 fully release and forever discharge the Released Parties from any and all Released Claims. As a  
7 result of this release, the PAGA Settlement Members will be unable to bring a claim under, or  
8 recover in any other claim brought under, the California Private Attorneys General Act, California  
9 Labor Code § 2698 *et seq.*, for any violations of the Released Claims that took place during the  
10 PAGA Period.

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

15 32. **Settlement Funding**

16 33. The Settlement Administrator shall establish a Qualified Settlement Fund pursuant  
17 to Section 468B(g) of the Internal Revenue Code for purposes of administering the Settlement. The  
18 Settlement Administrator shall furnish the Qualified Settlement Fund with its own Employer ID  
19 Number and calculate all settlement checks and withholdings required under law based on  
20 information that will be confidentially furnished by Defendants. There are no payroll deductions to  
21 be calculated under this Settlement, since no part of the Settlement will be classified as wages.

22 a. Subject to Court approval of the Settlement, and within seven (7) days of the  
23 Court's approval of the Settlement, payment shall be made in full to the administrator.

24 b. Within seven (7) days after the full funding of the settlement, the Settlement  
25 Administrator shall pay to the LWDA an amount equivalent to seventy-five percent (75%) of the  
26 PAGA Fund, or as otherwise directed by the Court.

27 c. Within seven (7) days after the full funding of the settlement, the Settlement  
28 Administrator shall distribute to the Plaintiff's Counsel their court-approved Plaintiff's Counsel

1 Payment and approved litigation costs.

2 d. Within seven (7) days after the full funding of the settlement, the Settlement  
3 Administrator shall deduct an amount equivalent to the Settlement Administrative Costs.

4 34. **PAGA List**

5 Defendants shall provide the Settlement Administrator with a list of the names and addresses  
6 of the PAGA Settlement Members, to be furnished within fourteen (14) days after the Court issues  
7 an Order approving the Settlement. The contact information is being provided confidentially to the  
8 Settlement Administrator only, and the Settlement Administrator shall treat the information as  
9 private and confidential and take all necessary precautions to maintain the confidentiality of contact  
10 information of the PAGA Settlement Members. This information is to be used only to carry out the  
11 Settlement Administrator's duties as specified in this Settlement.

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

13 a. On the Payment Date, the Settlement Administrator will mail to each  
14 Aggrieved Employee, via first-class United States Mail, the following: (a) the PAGA Settlement  
15 Notice, attached as Exhibit A to this Agreement and (b) their Individual PAGA Payment  
16 (collectively, the "**PAGA Packet**").

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

26 c. Aggrieved Employees shall have 180 calendar days after the date the PAGA  
27 Packet is mailed to them to cash their settlement payment checks. If any Aggrieved Employee's  
28 check is not cashed within that period, the settlement payment check will be voided and a stop-

1 payment will be issued. Neither Defendant, Defendant's counsel, Plaintiff, nor PAGA Counsel will  
2 have any liability for lost or stolen settlement payment checks, forged signatures on settlement  
3 payment checks, unauthorized negotiation of settlement payment checks or failure to timely cash a  
4 settlement payment check within the 180-day period.

5 d. Any unpaid cash residue or unclaimed Aggrieved Employee funds, plus any  
6 accrued interest that has not otherwise been distributed pursuant to order of the Court, shall be  
7 transmitted to California State Controller's Office for Unclaimed Property in the name of each  
8 Aggrieved Employee who failed to cash their Individual PAGA Payment prior to the void date.

9 36. **Enforcement and Continuing Jurisdiction of the Court.**

10 Pursuant to the Parties agreement, this Settlement Agreement will be approved by the Court  
11 and will be enforceable by the Court pursuant to California Code of Civil Procedure section 664.6.  
12 Even after the entry of the Final Order and Judgment, this Court will have and retain continuing  
13 jurisdiction over the Action and over all Parties and the Aggrieved Employees, to the fullest extent  
14 necessary or convenient to enforce and effectuate the terms and intent of this Settlement Agreement  
15 and all matters provided for in it, and to interpret it.

16 37. **Mutual Full Cooperation.**

17 The Parties will fully cooperate with each other to accomplish the terms of this Settlement  
18 Agreement, including, but not limited to, execution of such documents and taking such other action  
19 as may be reasonably necessary or convenient to implement it. The Parties agree to use their best  
20 efforts and any other efforts that may become necessary by Order of the Court, or otherwise, to  
21 effectuate this Settlement.

22 38. **Non-Admission Of Liability.**

23 Based on the factual and legal issues involved, the expense and time necessary to prosecute the  
24 Action through trial, the risks, uncertainty and costs of further prosecution, the difficulty of proof  
25 necessary to establish a class for purposes of liability, and the relative benefits to the PAGA Settlement  
26 Members of an expeditious resolution to the Action, the Parties have concluded that the terms set forth  
27 in this Settlement are fair, reasonable, adequate and in the best interests of the PAGA Settlement  
28 Members.

1 In entering into this Agreement, Defendant does not admit, and specifically denies, that it has  
2 violated any federal, state, or local law; violated any regulations or guidelines promulgated pursuant to  
3 any statute or any other applicable laws, regulations or legal requirements; violated or breached any  
4 duty; engaged in any misrepresentation or deception; or engaged in any other unlawful conduct with  
5 respect to the Action. Neither this Agreement, nor any of its terms or provisions, nor any of the  
6 negotiations connected with it, shall be construed as an admission or concession by Defendant of any  
7 such violations or failures to comply with any applicable law. Defendant specifically denies that it has  
8 engaged in any unlawful or wrongful conduct against Plaintiff or the PAGA Settlement Members.

9 39. **Effective Date of Defendant's Obligations Under This Agreement.**

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

20 40. **Nullification.**

21 If: (1) the Court should for any reason fail to enter the Final Order and Judgment; or (2) the  
22 Court's Final Order and Judgment is reversed or modified as to any material term as defined above,  
23 or declared or rendered void as to any material term as defined above, then (a) the Settlement  
24 Agreement shall become null and void; (b) the Parties will revert to their respective positions  
25 immediately prior to reaching the settlement; and (c) the Parties will split the cost for any Settlement  
26 Administration Costs.

27 41. **Invalidation.**

28 Invalidation of any material term of this Settlement Agreement will invalidate this

1 Agreement in its entirety unless the Parties subsequently agree in writing that the remaining  
2 provisions will remain in full force and effect.

3 42. **Entire Agreement.**

4 This Settlement Agreement constitutes the entire integrated agreement between the Parties  
5 relating to the Action, and no oral representations, warranties, or inducements have been made to  
6 any party concerning this Settlement Agreement other than the representations, warranties, and  
7 covenants contained and memorialized in this Settlement Agreement. Representative Plaintiff and  
8 Defendant have entered into a separate agreement resolving Representative Plaintiff's individual  
9 claims, which he had previously dismissed without prejudice to proceed with the PAGA Claim.

10 43. **Authorization To Act.**

11 PAGA Counsel warrants and represents that they are authorized by the Representative  
12 Plaintiff, and counsel of record for Defendant warrants that they are authorized by Defendant, to  
13 take all appropriate action required or permitted to be taken by such Parties pursuant to this  
14 Settlement Agreement to effectuate its terms, and to execute any other documents required to  
15 effectuate the terms of this Settlement Agreement, except for any documents, including but not  
16 limited to this Settlement Agreement, that are required to be executed by the Parties.

17 44. **Modification Only In Writing.**

18 This Settlement Agreement may be amended or modified only by a written instrument signed  
19 by all Parties or their successors in interest.

20 45. **Binding On Successors.**

21 This Settlement Agreement is binding upon and will inure to the benefit of the Parties to this  
22 Agreement, as well as their respective attorneys, past, present, and future predecessors, successors,  
23 shareholders, officers, directors, employees, agents, trustees, representatives, administrators,  
24 fiduciaries, assigns, insurers, executors, partners, parent corporations, subsidiaries, and related or  
25 affiliated entities.

26 46. **No Prior Assignments.**

27 The Aggrieved Employees are deemed by operation of the Final Order and Judgment to  
28 represent, covenant, and warrant that they have not directly or indirectly assigned, transferred,

1 encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any  
2 liability, claim, demand, cause of action, or rights released and discharged by this Agreement.

3 47. **Governing Law.**

4 All terms of this Settlement Agreement will be governed by and interpreted according to the  
5 laws of the State of California, without giving effect to conflicts of laws principles.

6 48. **Counterparts.**

7 This Settlement Agreement may be executed in one or more counterparts. All executed  
8 counterparts and each of them will be deemed to be one and the same instrument. Counsel for the  
9 Parties will exchange among themselves signed counterparts.

10 49. **Headings For Convenience Only.**

11 The descriptive headings of any paragraphs or sections of this Settlement Agreement are  
12 inserted for convenience of reference only and do not constitute a part of this Settlement Agreement.

13 50. **Construction Of This Agreement.**

14 The Parties agree that the terms and conditions of this Settlement Agreement are the result  
15 of arms-length negotiations between the Parties and that this Settlement Agreement will not be  
16 construed in favor of or against any Party by reason of the extent to which any Party, or his or its  
17 counsel participated in the drafting of this Agreement. This Settlement Agreement constitutes the  
18 entire agreement between the Parties. Except as expressly provided in this Agreement, this  
19 Settlement Agreement has not been executed in reliance upon any other oral or written  
20 representations or terms and no such extrinsic oral or written representations or terms will modify,  
21 vary or contradict the terms of this Settlement Agreement. In entering this Settlement Agreement,  
22 the Parties explicitly recognize California Civil Code section 1625 and California Code of Civil  
23 Procedure section 1856(a), which provide that a written agreement is to be construed according to  
24 its terms and may not be varied or contradicted by extrinsic evidence. The Representative Plaintiff  
25 and Defendant had available to them the advice and assistance of independent counsel. As such,  
26 neither Representative Plaintiff nor Defendant may claim that any ambiguity in this Settlement  
27 Agreement should be construed against the other.

28 ///

## 51. Corporate Signatories.

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

## 52. Representation By Counsel.

All of the Parties hereto acknowledge that they have been represented by counsel throughout all negotiations which preceded the execution of this Settlement Agreement and that this Agreement has been executed with the consent and advice of counsel.

### 53. Attorneys' Fees And Costs.

Except as otherwise provided in this Agreement, the Parties will bear responsibility for their own attorneys' fees and costs, taxable or otherwise, incurred by them or arising out of this Action and will not seek reimbursement thereof from any Party to this Settlement Agreement. In the event of a proven breach of this Agreement, the breaching party will be required to pay the prevailing Party's reasonable attorneys' fees and costs incurred in enforcing this Agreement.

\*\*\*

**IT IS SO AGREED:**

Dated: 9/13/2022

PLAINTIFF MARIO ALBERT HIDALGO

DocuSigned by:

Merio #  
3C935F8CER0E496

Mario Albert Hidalgo

**Plaintiff's Counsel:**

Dated: 9/20/2022

MOON &amp; YANG, APC

By:

Kane Moon  
Lilit Ter-Astvatsatryan

Attorneys for Plaintiff

1 Dated: 13 SEPTEMBER 2022

DEFENDANT SUNVAIR, INC.

2  
3 By:   
4 Name: GLENN MILLER  
5 Title: CHIEF FINANCIAL OFFICER

6 Dated: \_\_\_\_\_

GREENSPOONMARDER LLP

8 \_\_\_\_\_  
9 Michael Fostakowsky

10 Attorneys for Defendant  
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# **Exhibit 1**

[CLAIMS ADMINISTRATOR LETTERHEAD]

Mailing Date

**NOTICE OF SETTLEMENT**

*Re: Mario Albert Hidalgo, on behalf of the State of California, as a private attorney general, Plaintiff v. Sunvair, Inc., Defendant, Los Angeles County Superior Court, Case No. 21STCV41120 filed on November 9, 2021 (the "Lawsuit")*

[claims admin info]

You have received the enclosed check in connection with the Settlement of the above-referenced lawsuit brought by a former employee Mario Albert Hidalgo ("Plaintiff") against Sunvair, Inc. (hereinafter, "Sunvair") for civil penalties pursuant to the Private Attorneys General Act, Labor Code § 2698 et seq. ("PAGA").

Plaintiff claimed he and other non-exempt employees of Sunvair employed anytime from November 9, 2020 through [ DATE ] were subjected to the following claims including, but not limited to: (1) Failure to Pay Minimum Wages; (2) Failure to Pay Overtime Compensation; (3) Failure to Provide Meal Periods; (4) Failure to Authorize and Permit Rest Breaks; (5) Failure to Indemnify Necessary Business Expenses; (6) Failure to Timely Pay Final Wages at Termination; (7) Failure to Provide Accurate Itemized Wage Statements; and (8) Unfair Business Practices.

Sunvair denies, and continues to deny, all allegations and liability, but to avoid further time and expense of protracted and uncertain litigation, Sunvair and Plaintiff have agreed to settle the lawsuit for civil penalties. The settlement, approved by the Court on [ DATE ], resolves the alleged claims brought on behalf of all non-exempt employees of Sunvair that worked in California any time between November 9, 2020 and [ DATE ] ("PAGA Group").

Pursuant to the Court's Order, a payment of \$370,148.00 was approved in settlement of this lawsuit. Upon the date of entry of that Order approving this Settlement, and payment of all funds due under this Settlement, the LWDA and PAGA Settlement Members, including Plaintiff, fully release and forever discharge the Released Parties from any and all Released Claims defined as any and all claims, whether known or unknown, to recover civil penalties pursuant to PAGA for any alleged violations by Defendant of California Labor Code Private Attorneys General Act of 2004, Labor Code §§ 2698, et seq., based on alleged violations of Labor Code §§ 201-204, 210, 218.5, 218.6, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1198, and the related applicable IWC Wage Order provision for the PAGA Period.

After accounting for Plaintiff's Counsel's attorneys' fees of \$\_\_\_\_\_ and reimbursement of litigation costs of \$\_\_\_\_\_, and settlement administration costs not to exceed six thousand dollars (\$6,000), the remaining sum called the "PAGA Payment" will be divided pursuant to California law as follows: \$\_\_\_\_\_ (75%) to the State of California Labor Workforce Development Agency and \$\_\_\_\_\_ (25%) to all PAGA Group employees to be shared on a proportionate basis. The enclosed check represents your share based upon the number of Pay Periods you worked any time during the period from November 9, 2020 and [ DATE ] ("PAGA Period").

Regardless of whether you negotiate the enclosed check, by way of this Settlement and the corresponding Final Order, for the PAGA Period, each PAGA Settlement Employee shall fully release Sunvair for all claims for civil penalties under PAGA as alleged in the LWDA Letter and Plaintiff's Operative Complaint filed in this Action or reasonably could have been asserted under Labor Code § 2698 et seq. based upon the facts alleged in the LWDA Letter and Plaintiff's Complaint filed in this Matter.

Your enclosed check is valid for 180 days from the date of its issuance. **It is strongly recommended that you cash or deposit this check immediately.** After that date, you cannot cash the check and it will be null and void and the amount forwarded to the State of California Controller's Office Unclaimed Property Division in your name for further handling. **Even if you fail to cash the enclosed check, you will still be deemed to have waived all claims arising from the Lawsuit, including all claims set forth in the release of claims described above.**

If the check is lost or misplaced, please contact the Administrator immediately, toll-free (800) \_\_\_\_\_ to have it reissued. If you have any questions about your check, please contact the [insert administrator information].

Very truly yours,

# **Exhibit C**

## Activities Export

09/20/2022  
2:49 PM

| Date       | Type | Description                     | Matter                                           | User       | Qty  | Rate (\$)  | Non-billable (\$)      | Billable (\$)               |
|------------|------|---------------------------------|--------------------------------------------------|------------|------|------------|------------------------|-----------------------------|
| 07/29/2022 | \$   | Case Anywhere<br>● Unbilled     | 01502-Hidalgo<br>Hidalgo v. Sunvair Inc.<br>(ED) | Seung Yang | 1.00 | \$147.00   | -                      | \$147.00                    |
| 07/22/2022 | \$   | Journal<br>● Unbilled           | 01502-Hidalgo<br>Hidalgo v. Sunvair Inc.<br>(ED) | Seung Yang | 1.00 | \$27.81    | -                      | \$27.81                     |
| 06/24/2022 | \$   | Berger Consulting<br>● Unbilled | 01502-Hidalgo<br>Hidalgo v. Sunvair Inc.<br>(ED) | Seung Yang | 1.00 | \$1,100.00 | -                      | \$1,100.00                  |
| 05/09/2022 | \$   | Journal<br>● Unbilled           | 01502-Hidalgo<br>Hidalgo v. Sunvair Inc.<br>(ED) | Seung Yang | 1.00 | \$7.26     | -                      | \$7.26                      |
| 04/28/2022 | \$   | Mediation fee (p)<br>● Unbilled | 01502-Hidalgo<br>Hidalgo v. Sunvair Inc.<br>(ED) | Seung Yang | 1.00 | \$9,000.00 | -                      | \$9,000.00                  |
| 04/26/2022 | \$   | Journal<br>● Unbilled           | 01502-Hidalgo<br>Hidalgo v. Sunvair Inc.<br>(ED) | Seung Yang | 1.00 | \$7.26     | -                      | \$7.26                      |
| 04/07/2022 | \$   | Case Anywhere<br>● Unbilled     | 01502-Hidalgo<br>Hidalgo v. Sunvair Inc.<br>(ED) | Seung Yang | 1.00 | \$117.30   | -                      | \$117.30                    |
| 03/02/2022 | \$   | Ace<br>● Unbilled               | 01502-Hidalgo<br>Hidalgo v. Sunvair Inc.<br>(ED) | Seung Yang | 1.00 | \$41.50    | -                      | \$41.50                     |
| 02/14/2022 | \$   | Journal<br>● Unbilled           | 01502-Hidalgo<br>Hidalgo v. Sunvair Inc.<br>(ED) | Seung Yang | 1.00 | \$7.26     | -                      | \$7.26                      |
|            |      |                                 |                                                  |            |      |            | <b>\$0.00</b><br>0.00h | <b>\$12,945.29</b><br>0.00h |

## Activities Export

09/20/2022  
2:49 PM

| Date       | Type | Description                 | Matter                                           | User       | Qty  | Rate (\$)  | Non-billable (\$)      | Billable (\$)               |
|------------|------|-----------------------------|--------------------------------------------------|------------|------|------------|------------------------|-----------------------------|
| 02/09/2022 | \$   | Journal<br>● Unbilled       | 01502-Hidalgo<br>Hidalgo v. Sunvair Inc.<br>(ED) | Seung Yang | 1.00 | \$7.26     | -                      | \$7.26                      |
| 01/19/2022 | \$   | Journal LA<br>● Unbilled    | 01502-Hidalgo<br>Hidalgo v. Sunvair Inc.<br>(ED) | Seung Yang | 1.00 | \$7.26     | -                      | \$7.26                      |
| 11/22/2021 | \$   | Journal<br>● Unbilled       | 01502-Hidalgo<br>Hidalgo v. Sunvair Inc.<br>(ED) | Seung Yang | 1.00 | \$7.26     | -                      | \$7.26                      |
| 11/15/2021 | \$   | Ace<br>● Unbilled           | 01502-Hidalgo<br>Hidalgo v. Sunvair Inc.<br>(ED) | Seung Yang | 1.00 | \$161.40   | -                      | \$161.40                    |
| 11/08/2021 | \$   | Admin fee<br>● Unbilled     | 01502-Hidalgo<br>Hidalgo v. Sunvair Inc.<br>(ED) | Seung Yang | 1.00 | \$750.00   | -                      | \$750.00                    |
| 11/08/2021 | \$   | Complaint fee<br>● Unbilled | 01502-Hidalgo<br>Hidalgo v. Sunvair Inc.<br>(ED) | Seung Yang | 1.00 | \$1,481.72 | -                      | \$1,481.72                  |
| 11/08/2021 | \$   | LWDA<br>● Unbilled          | 01502-Hidalgo<br>Hidalgo v. Sunvair Inc.<br>(ED) | Seung Yang | 1.00 | \$75.00    | -                      | \$75.00                     |
|            |      |                             |                                                  |            |      |            | <b>\$0.00</b><br>0.00h | <b>\$12,945.29</b><br>0.00h |

# **Exhibit D**

# ILYM | GROUP, Inc.

SETTLEMENT ADMINISTRATION EXPERTS

## Case Name: Hidalgo v. Sunvair, Inc.

Tuesday, July 12, 2022

Requesting Attorneys Name:

Lilit Ter-Astvatsatryan

E-Mail:

[lilit@moonyanglaw.com](mailto:lilit@moonyanglaw.com)

ILYM Contact:

Sean Hartranft

E-Mail:

[Sean@ilymgroup.com](mailto:Sean@ilymgroup.com)

Contact Number:

949.690.2564

### Assumptions: PAGA Settlement

| ASSUMPTIONS                         |     |
|-------------------------------------|-----|
| Total Number of Aggrieved Employees | 160 |
| Toll-Free Telephone Support         | Yes |
| Certified Spanish Translation       | No  |
| Case Duration (Years)               | 1   |

| Activity                                            | Rate Type | Unit Cost | Volume | Amount   |
|-----------------------------------------------------|-----------|-----------|--------|----------|
| CASE STARTUP                                        |           |           |        |          |
| Initial Setup - Import and Formatting of Data*      | Hourly    | \$150.00  | 3      | \$450.00 |
| Project Manager (Case notification and maintenance) | Hourly    | \$120.00  | 4      | \$480.00 |
| Toll Free Phone Support                             | Flat Rate | \$35.00   | 1      | \$35.00  |
| NCOA                                                | Flat Rate | \$45.00   | 1      | \$45.00  |

\*ILYM assumes that data will be in a standard format. Client will be notified immediately if not in standard format to correct data or ILYM can convert to standard format @ \$150.00 per hour.

**Subtotal \$1,010.00**

| DISTRIBUTION (Includes EIN, Bank Acct /QSF Setup)* |           |            |     |            |
|----------------------------------------------------|-----------|------------|-----|------------|
| Distribution Setup & Management                    | Hourly    | \$150.00   | 3   | \$450.00   |
| Account Reconciliation & Distribution Reporting    | Hourly    | \$125.00   | 3   | \$375.00   |
| Fulfillment of Notice & Check - (including 1099)   | Per Check | \$1.50     | 160 | \$240.00   |
| USPS First Class 1oz Postage                       | Per Piece | \$0.55     | 160 | \$88.00    |
| Remails (Forward/Skip Trace Undeliverables)        | Per Piece | \$2.00     | 16  | \$32.00    |
| Preparation of Taxes                               | Hourly    | \$125.00   | 10  | \$1,250.00 |
| Annual Filing of Tax Return                        | Per Year  | \$1,500.00 | 1   | \$1,500.00 |

\*Additional Bank fees may apply

**Subtotal \$3,935.00**

| CASE CONCLUSION              |        |          |   |          |
|------------------------------|--------|----------|---|----------|
| Data Manager Final Reporting | Hourly | \$100.00 | 2 | \$200.00 |
| Declaration                  | Hourly | \$125.00 | 2 | \$250.00 |

**Subtotal \$450.00**

**Will Not Exceed: \$5,395.00**

# Terms and Conditions

All services to be provided by ILYM Group, Inc. (hereinafter, "ILYM") to Client shall be subject to the following terms and conditions:

**Services:** Subject to the terms hereof, ILYM agrees to provide the Client with Administration Services (hereinafter, "services") as specified in the Proposal provided to Client to which these Terms and Conditions are attached. The estimate is in good faith and does not cover any applicable taxes and fees. The estimate does not make provision for any services or class members/size not delineated in the request for proposal or stipulations. Such services do not in any way constitute legal services or advice. ILYM is performing its services as an Independent Contractor and neither it nor its employees shall be deemed to be employees of the Client.

**Mailing and Data Conversion:** ILYM's database administration assumes the Client will provide complete data that includes all information required to send notifications and complete the administration process. Data must be provided in a complete, consistent, standardized electronic format. ILYM's standard format is Microsoft Excel, however, ILYM may accept other formats at its discretion. Further developments or enhancements to non-standardized data will be billed to Client by ILYM on a time and materials basis, according to ILYM's Standard Rates.

**Charges for Services:** Charges to the Client for services shall be on a time and materials basis at our prevailing rates, as the same may change from time to time. Any fee estimates set forth in the proposal are estimates only, based on information provided by Client to ILYM. Actual fees charged by ILYM to Client may be greater or less than such estimate, and Client shall be responsible for the payment of all such charges and expenses in accordance with Section 5 hereof. Charges incurred related to resolving post distribution withholdings and related corrective files due to voids and re-issues of payments and related correspondence with state and federal taxing authorities will not be charged to the Client to the extent that funds are received from the taxing authorities offset these charges. ILYM may derive financial benefits from financial institutions in connection with the deposit and investment of settlement funds with such institutions, including without limitation, discounts on eligible banking services and fees, and loans at favorable rates.

**Indemnification:** Client will indemnify and hold ILYM (and the officers, employees, affiliates and agents harmless against any losses incurred by ILYM, arising out of, in connection with, or related to (i) any breach of the terms by Client; (ii) the processing and handling of any payment by ILYM in accordance with Client's instructions, including without limitation, the imposition of any stop payment or void payment on any check or the wrongful dishonor of a check by ILYM pursuant to Client's instructions.

**Payment of Charges:** ILYM reserves the right to request payment of postage charges and 50% of the final administration charges at the start of the case. ILYM bills are due upon receipt unless otherwise negotiated and agreed to with the Client. In the event settlement terms provide that ILYM is to be paid out of the Settlement Fund, ILYM will request that Counsel endeavor to make alternate payment arrangements for ILYM charges that are due at the onset of the case. The entire remaining balance is due and payable at the time the Settlement Account is funded by, or no later than the time of disbursement. Decisions of the court and actions of the parties, including disapproval or withdrawal of a settlement, do not affect the Client's liability to ILYM for payment of services. Services are not provided on a contingency fee basis.

**Confidentiality:** ILYM maintains reasonable and appropriate security measures and safeguards to protect the security and confidentiality of Client data provided to ILYM by Client in connection herewith. Should ILYM ever be notified of any judicial order or other proceedings in which a third party seeks to obtain access to the confidential data created by or for the Client, ILYM will promptly notify the Client, unless prohibited by applicable law. The Client shall have the option to (1) provide legal representation at the Client's expense to avoid such access or (2) promptly reimburse ILYM for any of its costs, including attorneys' fees, reasonably incurred in avoiding, attempting to avoid or providing such access and not paid by the entity seeking the data. If ILYM is required, pursuant to a court order, to produce documents, disclose data, or otherwise act in contravention of the obligations imposed by this Agreement, or otherwise, with respect to maintaining the confidentiality, proprietary nature and secrecy of the produced documents or disclosed data, ILYM will not be liable for breach of said obligation.

**Data Rights:** ILYM does not convey nor does the Client obtain any right in the programs, system data, or materials utilized or provided by ILYM in the ordinary course of business in the performance of this Agreement.

**Document Retention:** Unless directed otherwise in writing by Client, ILYM will destroy undeliverable mail on the effective date of the settlement or the date that the disposition of the case is no longer subject to appeal or review, whichever is later. ILYM will maintain claim forms and other correspondence for one year after final distribution of funds or benefits, or until the date that the disposition of the case is no longer subject to appeal or review, whichever is later.

**Limitation of damages:** ILYM is not responsible to the Client for any special, consequential or incidental damages incurred by Client. Any liability of ILYM to the Client shall not exceed the total amount billed to the Client for the particular services that give rise to any loss.

**Termination:** The services to be provided under this Agreement may be terminated, at will by the Client upon at least 30 calendar days' prior written notice to ILYM. The Client's obligation to pay for services or projects in progress at the time of notice of withdrawal shall continue throughout that 30 day period. ILYM may terminate this Agreement (i) with 10 calendar days' prior written notice, if the Client is not current in payment of charges or (ii) in any event, upon at least 3 months' prior written notice to the Client.

**Notice:** Any notice required or permitted hereunder shall be in writing and shall be delivered personally, or sent by registered mail, postage prepaid, or overnight courier service to the responsible officer or principal of ILYM or the Client, as applicable, and shall be deemed given when so delivered personally, or, if mailed, five days after the date of deposit in United States mail, or, if sent by courier, one business day after delivery to such courier service.

**Force Majeure:** To the extent performance by ILYM of any of its obligations hereunder is substantially prevented by reason of any act of God or by reason of any other matter beyond ILYM's reasonable control, then such performance shall be excused and this Agreement, at ILYM's option, be deemed suspended during the continuation of such condition and for a reasonable time thereafter.

**Waiver of Rights:** No failure or delay on the part of a party in exercising any right hereunder will operate as a waiver of, or impair, any such right. No single or partial exercise of any such right will preclude any other or further exercise thereof or the exercise of any other right. No waiver of any such right will be effective unless given in a signed writing.

**Jurisdiction:** The parties hereto submit to the jurisdiction of the Court of the applicable case for purposes of any suit, action or proceeding to enforce any provision of, or based on any right arising out of, this Agreement. The parties hereto hereby waive any objection to the laying of venue of any such suit, action or proceeding in the Court.

**Entire Agreement:** These terms and conditions and the proposal embody the entire agreement between the parties with respect to the subject matter hereof, and cancels and supersedes all prior negotiations, representations, and agreements related thereto, either written or oral, except to the extent they are expressly incorporated herein. No changes in, additions to, or waivers of, the terms and conditions set forth herein will be binding upon any party, unless approved in writing by such party's authorized representative.

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**PROOF OF SERVICE**

**STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not a party to the within suit; my business address is 1055 W. 7<sup>th</sup> Street, Suite 1880, Los Angeles, CA 90017.

On the date indicated below, I served the document described as: **STIPULATION OF SETTLEMENT AND [PROPOSED] ORDER APPROVING SETTLEMENT OF PLAINTIFF'S CLAIMS FOR CIVIL PENALTIES UNDER PAGA** on the interested parties in this action by sending [ ] the original [or] [✓] a true copy thereof [✓] to interested parties as follows [or] [ ] as stated on the attached service list:

Ransom Boynton, Esq.  
Michael R. Fostakowsky, Esq.  
Brian Koegle, Esq.  
**Greenspoon Marder Law**  
1875 Century Park East, Suite 1900  
Los Angeles, California 90067  
Direct: 323-776-3130  
Office: 323-880-4520  
ransom.boynton@gmlaw.com  
michael.fostakowsky@gmlaw.com  
brian.koegle@gmlaw.com

*Attorneys for Defendant Sunvair, Inc.,*

[✓] **BY ELECTRONIC SERVICE:** Based on a court order or an agreement of the parties to accept electronic service, I caused the documents to be sent to the persons at the electronic service addresses listed above via third-party cloud service **CASEANYWHERE**.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this **September 20, 2022** at Los Angeles, California.

\_\_\_\_\_  
Ivette Hernandez  
Type or Print Name

\_\_\_\_\_  
  
Signature