

BIBIYAN LAW GROUP, P.C.

David D. Bibiyan (SBN 287811)

david@tomorrowlaw.com

Diego Aviles (SBN 315533)

diego@tomorrowlaw.com

Vedang J. Patel (SBN 328647)

vedang@tomorrowlaw.com

Iona Levin (SBN 294657)

iona@tomorrowlaw.com

8484 Wilshire Boulevard, Suite 500

Beverly Hills, California 90211

Tel: (310) 438-5555; Fax: (310) 300-1705

Attorneys for Plaintiff MARIO ANGEL MENDOZA, on behalf of himself
and all others similarly situated and aggrieved

Additional Counsel Listed on Next Page

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES- SPRING STREET COURTHOUSE

MARIO ANGEL MENDOZA, an individual
and on behalf of himself and all others similarly
situated; EDIN MARROQUIN, an individual,
on behalf of himself and all others similarly
situated, and on behalf of the State of California
and other aggrieved persons,

Plaintiffs,

v.

AMUSEMENT INDUSTRY, INC., a California
corporation; and DOES 1 through 100,
inclusive,

Defendants.

CASE NO.: 21STCV09790

[Assigned to the Hon. Carolyn B. Kuhl, in
Dept. 12]

**DECLARATION OF VEDANG J.
PATEL IN SUPPORT OF
PLAINTIFFS' MOTION FOR FINAL
APPROVAL OF CLASS ACTION AND
REPRESENTATIVE ACTION
SETTLEMENT**

1 Justin F. Marquez, Esq. (SBN 262417)
justin@wilshirelawfirm.com
2 Benjamin H. Haber, Esq. (SBN 315664)
benjamin@wilshirelawfirm.com
3 Arrash T. Fattahi, Esq. (SBN 333676)
afattahi@wilshirelawfirm.com
4 **WILSHIRE LAW FIRM**
3055 Wilshire Blvd., 12th Floor
5 Los Angeles, California 90010
Tel: (213) 381-9988; Fax: (213) 381-9989
6
7 Attorneys for Plaintiff, EDIN MARROQUIN,
on behalf of himself and all others similarly situated and aggrieved
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DECLARATION OF VEDANG J. PATEL

I, Vedang J. Patel, state and declare, as follows:

1. I am an attorney at law, duly licensed to practice before all the Courts of the State of California and I am an attorney at Bibiyan Law Group, P.C, counsel for plaintiffs Mario Angel Mendoza (“Plaintiff Mendoza”) and Edin Marroquin (“Plaintiff Marroquin” and with Plaintiff Mendoza, “Plaintiffs”) and all others similarly situated and aggrieved. As such, I am familiar with the file in this matter and, if called as a witness, I could and would competently testify to the following facts of my own personal knowledge.

2. Plaintiffs and defendant Amusement Industry, Inc. doing business as Westland Real Estate Group (“Defendant”), reached a settlement, subject to Court approval, by agreement upon the terms and conditions, and for the consideration set forth in the Joint Stipulation re: Class Action and Representative Action Settlement (“Settlement,” “Agreement” or “Settlement Agreement”), a true and correct copy of which is attached hereto as Exhibit “1” without its internal exhibits.

3. Class Counsel, comprised of David D. Bibiyan and Diego Aviles of Bibiyan Law Group, P.C., as well as Justin F. Marquez of Wilshire Law Firm, believe the Settlement Agreement provides a substantial benefit to the Settlement Class in the form of monetary compensation, particularly in light of the obstacles to certification had the case proceeded on a class basis, the risks in succeeding on the merits even if the matter had been certified on any theory, potential issues of manageability of the Action on a class and PAGA basis, and the discretionary nature of the award of civil penalties under PAGA.

4. I understand from the Settlement Administrator that the deadline for Class Members – defined as: (a) All current and former non-exempt, hourly-paid employees who worked in for defendant Amusement Industry, Inc. doing business as Westland Real Estate Group (“Defendant”) at any time during the period between March 12, 2017 through February 10, 2022 (“Class Period”) in California (“Class Members”); (b) All Participating Class Members who performed technician duties including, but not limited to performing maintenance and repair, plumbing, electrical, carpentry, painting, cleaning, and responding to emergency maintenance

1 requests, and worked for Defendant in California at any time during the Class Period (“Technician
2 Class Members”) – to opt out or object to the settlement was February 6, 2023.

3 5. “Participating Class Members” means all Class Members and Technician Class
4 Members who do not submit a timely and valid Request for Exclusion.

5 6. Pursuant to the declaration of Nicole Bench of ILYM Group, Inc. (“ILYM” or
6 “Settlement Administrator”), of 366 Class Members on the class list provided by Defendant to the
7 Settlement Administrator, zero (0) Class Members have opted out of the Settlement and zero (0)
8 have objected to the Settlement.

9 7. Class Counsel believe that the Settlement is fair, reasonable, and adequate in light
10 of the probable outcome of further litigation relating to liability and damages issues.

11 8. The Parties were able to reach a settlement, subject to Court approval, resolving the
12 dispute in this matter after extensive exchange of documents and information, discussions between
13 counsel about the strengths and weaknesses of the claims and defenses, a full-day mediation before
14 Lynn Frank, Esquire, and months of subsequent negotiations between the Parties to agree upon a
15 long form settlement agreement.

16 9. Class Counsel concluded, after considering the sharply disputed factual and legal
17 issues involved in the Action, including, without limitation, the obstacles to certification should
18 the case have proceeded on a class basis; the risks in succeeding on the merits even if the matter
19 had been certified on any theory; potential hurdles to manageability of the Action on a class or
20 representative basis; and the discretionary nature of civil penalties under PAGA, on one hand; and
21 the substantial benefits to be received pursuant to the compromise and settlement of the Action as
22 set forth in the Settlement Agreement, on the other hand; and that settlement on the terms set forth
23 herein is in the best interest of the Settlement Class, and is fair, reasonable and adequate.

24 10. Class Counsel have achieved a great result in this litigation under the
25 circumstances, embodied in the Settlement Agreement, achieving, according to the Settlement
26 Administrator, an average net payment to Class Members (including the Technician Class) of
27 approximately \$1,702.06 with the highest estimated payment to be \$4,691.58.

28 11. Class Counsel believe the proposed class settlement provides substantial monetary

benefit to Class Members and is a product of diligent, aggressive, and expeditious efforts of Class Counsel to obtain the best possible result for the Settlement Class. Class Counsel believe this is evidenced by the fact that, according to the Settlement Administrator's declaration, zero (0) of 366 Class Members opted out and zero (0) of 366 Class Members submitted objection.

12. Class Counsel believe the Settlement Agreement, already approved by this Court at the preliminary approval proceedings, meets the applicable criteria for this Court's final approval, and that it is fair, adequate, reasonable and in the best interest of the Settlement Class.

Procedural History

13. On or around March 12, 2021, Plaintiff Mendoza filed this putative wage-and-hour class action in the alleging that defendant Amusement Industry, Inc. doing business as Westland Real Estate Group ("Defendant"): (1) failed to pay overtime wages; (2) failed to pay minimum wages; (3) failed to provide meal periods or compensation in lieu thereof; (4) failed to provide rest periods, or compensation in lieu thereof; (5) failed to timely pay all wages due upon separation from employment; (6) failed to provide accurate wage statements; (7) failed to reimburse employees for business expenses; (8) engaged in unfair competition; and (9) violated Labor Code Section 227.3 (the "Mendoza Action").

14. Also, on or around April 9, 2021, Plaintiff Marroquin filed a separate putative wage-and-hour class action against Defendant, bringing substantially similar allegations as Plaintiff Mendoza in his class action (the "Marroquin Class Action").

15. On or around April 12, 2021, Plaintiff Marroquin filed with the Labor and Workforce Development Agency ("LWDA") and served on Defendant, a notice under Labor Code section 2699.3 stating he intended to serve as a proxy of the LWDA to recover civil penalties on behalf of himself and other non-exempt, hourly-paid employees of Defendant under the Labor Code Private Attorneys' General Act of 2004, codified at Labor Code section 2698, et seq. ("PAGA"), for various Labor Code violations ("Marroquin PAGA Notice").

16. After sixty-five (65) days had passed without any action by the LWDA with respect to the Labor Code violations alleged in the Marroquin PAGA Notice, on or around September 22,

2022, Plaintiff Marroquin amended his complaint in the Marroquin Action to seek civil penalties against Defendant under PAGA for the Labor Code violations in the Marroquin PAGA Notice.

17. Thereafter, Plaintiffs and Defendant (collectively, the “Parties”) agreed to exchange informal discovery and attend an early mediation. Prior to mediation, Plaintiffs were provided with, among other things: (1) a 20% sampling of time and payroll records for the estimated 459 putative class members; (2) data points for the putative class which included hire dates, termination dates, and average rates of pay; (3) all employment policies and procedures in Defendant’s possession, custody, or control; and (4) all documents pertaining to Plaintiffs in Defendant’s possession, custody, or control.

18. On or around February 10, 2022, the Parties participated in a full-day mediation before Mark S. Rudy Esquire, a well-regarded mediator experienced in mediating complex labor and employment matters. With the aid of the mediator’s evaluation, the Parties reached the Settlement to resolve the Action and the claims asserted in the Marroquin PAGA Notice. As part and parcel to the Settlement, the Parties agreed to file a Second Amended Complaint in the Mendoza Action (hereinafter, the “Action” or “Litigation” or “Lawsuit”) in order to effectively consolidate the Mendoza Action and Marroquin Action, including Plaintiff Marroquin’s PAGA cause of action. The Stipulation to file the Second Amended Complaint and First Amended Complaint are filed concurrently with this motion.

19. Class Counsel had strong positions at mediation regarding the certifiability of Plaintiffs’ claims, the merits thereof, the manageability of a trial, and the likelihood of recovering civil penalties for aggrieved employees. Class Counsel understands from the mediator and the mediation process that Defendants did as well. Class Counsel understands from the mediator and the mediation process that the Parties concluded, after considering the sharply disputed factual and legal issues involved in this Litigation, the risks associated with further prosecution, and the substantial benefits to be received pursuant to the compromise and settlement of the Lawsuit as set forth in the Settlement Agreement, that settlement on the terms set forth herein is in the best interest of Plaintiffs, putative class members, aggrieved employees, and Defendant, and is fair, reasonable, and adequate.

20. On or about October 12, 2022, this Court preliminarily approved the Settlement and ordered administration of the Class Notice for feedback from Class Members. From the declaration of the Settlement Administrator Class Counsel understands that the Settlement Administrator, on December 23, 2022, administered the Class Notice in English and Spanish, providing Class Members until February 6, 2023 (*i.e.*, 45 days) to opt-out or submit a written objection. In response, zero (0) of 366 Class Members opted-out of the Settlement and zero (0) of 366 Class Members objected to the Settlement.

The Proposed Settlement

21. The terms of the Settlement are as follows:

- Certification of two (2) classes defined as:
 - All current and former non-exempt, hourly-paid employees who worked in for defendant Amusement Industry, Inc. doing business as Westland Real Estate Group (“Defendant”) at any time during the period between March 12, 2017 through February 10, 2022 (“Class Period”) in California (“Class Members”).
 - All Participating Class Members who performed technician duties including, but not limited to performing maintenance and repair, plumbing, electrical, carpentry, painting, cleaning, and responding to emergency maintenance requests, and worked for Defendant in California at any time during the Class Period (“Technician Class Members”).
 - “Participating Class Members” means all Class Members and Technician Class Members who do not submit a timely and valid Request for Exclusion
- Defendant will pay \$1,118,580.00 (the “Gross Settlement Amount” or “GSA”) to resolve the matter.
- The Settlement was based on Defendant’s representation that there were no more than 37,296 Workweeks worked during the Class Period. In the event

1 the number of Workweeks worked by Class Members during the Class Period
2 increased by more than 10%, or 3,729 Workweeks, then the Gross Settlement
3 Amount would have been increased proportionally by the Workweeks in excess
4 of 37,296 Workweeks multiplied by the Workweek Value. The Workweek
5 Value shall be calculated by dividing the originally agreed-upon Gross
6 Settlement Amount (\$1,118,580.00) by 37,296, which amounts to a Workweek
7 Value of \$30.00 per Workweek. However, pursuant to the Declaration of
8 Nicole Bench, the total number of Workweeks did not exceed 37,296
9 Workweeks and thus the Gross Settlement Amount was not increased.

- 10 • This is a non-reversionary settlement.
- 11 • “Workweeks” means the number of workweeks that a Settlement Class Member
12 was employed by and worked for the Defendant in a non-exempt, hourly position
13 in California during the Class Period, based on hire dates, re-hire dates, and
14 termination dates, and worked at least one shift during each such workweek
- 15 • Class Members and Technician Class Members will be paid their *pro rata* share
16 of the class action settlement based on the total number of Workweeks worked
17 during the Class Period.
- 18 • “Workweeks” means the number of workweeks that a Settlement Class Member
19 was employed by and worked for the Defendant in a non-exempt, hourly position
20 in California during the Class Period, based on hire dates, re-hire dates, and
21 termination dates, and worked at least one shift during each such workweek.
- 22 • \$100,000 of the Gross Settlement Amount shall be allocated towards payment
23 to Technician Class Members.
- 24 • The Settlement Administration costs of \$11,275.00 will be paid out of the Gross
25 Settlement Amount.
- 26 • Class Counsel, comprised of David D. Bibiyan and Diego Aviles of Bibiyan
27 Law Group, P.C., as well as Justin F. Marquez of Wilshire Law Firm, hereby
28 apply for, and Defendant will not oppose, attorneys’ fees of up to thirty-five

1 percent (35%) of the Gross Settlement Amount, which, unless escalated
2 pursuant to the Settlement Agreement, amounts to \$391,503.00, and actual
3 costs incurred of \$27,847.31, all of which will be paid out of the Gross
4 Settlement Amount.

- 5 • Class Counsel hereby apply for, and Defendant will not oppose, an
6 enhancement award of \$7,500.00 each for the Class Representatives, which
7 will be paid out of the Gross Settlement Amount.
- 8 • Defendant has agreed to pay \$50,000.00 as PAGA penalties, seventy-five
9 percent (75%) or \$37,500.00 of which will be paid to the LWDA out of the Gross
10 Settlement Amount, and twenty-five percent (25%) or \$12,500.00 of which will
11 be distributed to Aggrieved Employees, defined as Class Members working for
12 Defendant during the period from July 2, 2020 through the end of the Class
13 Period (“PAGA Period”) as non-exempt, hourly-paid employees in California;
14 and
- 15 • Any checks from this distribution that are not cashed by Participating Class
16 Members within one-hundred-eighty (180) calendar days from the date of their
17 issuance shall be canceled and funds associated with such checks shall be
18 considered unpaid, unclaimed or abandoned cash residue pursuant to Code of
19 Civil Procedure section 384 (“Unpaid Residue”). The Unpaid Residue plus
20 accrued interest, if any, as provided in Code of Civil Procedure section 384, shall
21 be transmitted to Legal Aid at Work, 180 Montgomery Street, Suite 600, San
22 Francisco, California 94104, the *cypres recipient*, for use in Los Angeles County.

23 **The Settlement is the Product of Arm’s Length and Informed Negotiations**

24 22. Class Counsel believe that the Settlement that has been reached, subject to this
25 Court’s approval, is the product of substantial effort by the Parties and their counsel. The Settlement
26 was reached after extensive factual and legal investigation and research; substantial negotiation
27 regarding the scope of informal discovery; an exchange of documents and information that included
28 review of time and pay records and analysis thereof with the aid of Plaintiffs and expert consultants;

1 an analysis of shifts and Workweeks worked by Class Members in the Class Period, analysis of the
2 number of pay periods and number of Aggrieved Employees in the PAGA Period for calculating
3 PAGA penalties, number of Class Members eligible for wage statement penalties and waiting time
4 penalties; analysis of Plaintiffs' employment records; extensive correspondence and communication
5 between counsel; a review of pleadings, evidence and rulings in similar actions litigated elsewhere
6 in the state; a review of similar cases in the same industry elsewhere in the country; and preparation
7 for and attendance at a full-day session of mediation, followed by months of further negotiations to
8 finalize the terms and conditions of the general settlement parameters agreed to by Class Counsel.

9 23. Class Counsel believe that the settlement amount is a compromise figure. It
10 considered the risks related to certifiability, liability, and manageability.

11 24. Class Counsel believe that the wage and hour claims and the claims for resulting
12 penalties would be certified. On the other hand, Class Counsel understand from the mediator and
13 the mediation process that Defendant argued that Plaintiffs cannot meet the requirements of class
14 certification because Plaintiffs have not identified any evidence to support any of the claims she
15 asserted on behalf of herself or the other alleged class members and aggrieved employees; that the
16 vast majority of alleged class members were part-time employees who did not work overtime, who
17 were paid at or above the minimum wage for all hours worked, whose expenses were reimbursed,
18 and whose uncontrolled, offsite work schedules allowed them to take uninterrupted rest breaks and
19 meal periods whenever they wanted and for however long they wanted; that any wage discrepancies
20 are not the product of an overarching policy that was uniformly applied; that Class Members were
21 paid for all hours under Defendant's control, or otherwise suffered or permitted to work by
22 Defendant; that meal periods were provided and rest periods were authorized and/or permitted; that
23 Defendant's meal and rest period policies were compliant; that Defendant did not deter Class
24 Members from taking meal and rest periods and any untimely or missed meal periods were elections
25 by Class Members and not caused by Defendant or Class Members were paid the required
26 premiums; and that Defendant thus provided all pay owed to Class Members by separation of
27 employment and issued accurate wage statements to Class Members. Defendant further contends
28 that class certification would not be warranted because individual liability issues predominate over

1 any class-wide allegations.

2 25. Class Counsel aggressively advanced Plaintiffs' position through the litigation and
3 settlement negotiations. The negotiations were conducted, as discussed herein, after considerable
4 investigation and analysis by capable and experienced Class Counsel. Class Counsel have concluded
5 that it is in the best interest of the Class Members to settle this class action for the substantial benefit
6 obtained for the Class Members under the Settlement Agreement and the costs inherent in extensive
7 additional discovery. As such, Class Counsel ultimately recognized that the inherent expense, delay
8 and uncertainty of trial present a real danger that an ultimate victory by either side may be of
9 substantially less value than the Settlement.

10 **The Settlement was Reached After Extensive Litigation, Factual Investigation**
11 **and Legal Analysis of the Class Claims**

12 26. Class Counsel engaged in extensive informal discovery, investigation, and
13 discussions about the strengths and weaknesses of the claims and defenses, including a full-day
14 mediation session. This yielded information and documentation concerning the claims set forth in
15 the Action. Class Counsel believe that Defendant provided sufficient information to determine the
16 number of Class Members in the Class Period, the number of Class Members in the Class Period
17 who would be eligible for PAGA penalties, the number of pay periods in the Class Period, Class
18 Members' average rates of pay, penalties for wage statement violations, waiting time penalties and
19 unpaid wages. Class Counsel was also provided with and painstakingly reviewed and analyzed
20 voluminous corresponding time and payroll records, as well as policies and procedures in effect
21 during the Class Period. The foregoing analysis permitted Class Counsel to analyze, among others,
22 the number of late, or unprovided meal periods and rest periods and the sufficiency of Defendant's
23 meal and rest period policies. In addition, counsel for the Parties have investigated the law as applied
24 to the facts discovered regarding the alleged claims of Plaintiffs and potential defenses thereto, and
25 the potential damages claimed by Plaintiffs.

26 27. Based on this thorough investigation of the facts, Class Counsel believe that the Gross
27 Settlement Amount of \$1,118,580.00 is not only within the reasonable standard but constitutes an
28 excellent result as it has been shown by the fact that 100% of the Class Members are participating

1 in the settlement and zero (0) are objecting to it.

2 28. Given the nature of any litigation, especially class action litigation, further litigation
3 would involve extensive written discovery, numerous depositions, expert discovery, discovery
4 disputes, class certification and summary judgment and/or summary adjudication motions. Class
5 Counsel believe that this case would be particularly time-consuming and expensive given Plaintiffs'
6 claims that Class Members were not given regular thirty-minute meal periods, meal periods were
7 often interrupted and not duty-free, as well as failure to provide regular, uninterrupted rest periods.

8 29. Class Counsel believe that further litigation of these claims would likely have seen
9 the deposition of tens of Class Members to achieve certification or defend against attempts of
10 decertification. Moreover, proving any individual damages would be a lengthy and burdensome
11 process. Thus, after carefully analyzing Plaintiffs' claims, Class Counsel concluded that this
12 Settlement is in the best interest of the Settlement Class.

13 **Plaintiffs' Cases Contain Significant Risks**

14 30. Class Counsel believe, in contrast to certain financial benefits that the proposed
15 Settlement provides to the Settlement Class, continued litigation of this Action would involve
16 substantial risks for the Settlement Class. Class Counsel understand from the mediator and the
17 mediation process that Defendant asserted a number of potentially dispositive defenses and could
18 potentially pursue summary judgment with regard to one or more of these defenses should the
19 litigation continue, including, without limitation, the contentions that Plaintiffs' unpaid wages
20 claims are purely speculative.

21 31. While Class Counsel believe that there is a strong possibility that they would
22 ultimately have prevailed in a motion for class certification and trial in this case, the result is, by
23 nature, highly uncertain. Class Counsel therefore recognized that the prospects of certification and
24 liability are far from certain, and the risks of litigation are substantial. If Defendant successfully
25 opposed certification, prevailed on the merits, proved that the Action was not manageable, and/or
26 avoided imposition of discretionary penalties under PAGA, a judgment would be entered for
27 Defendant, and the Settlement Class would receive nothing. The proposed Settlement, in contrast,
28 offers significant value to the Settlement Class that fairly and reasonably accounts for the very real

1 risks of continued litigation.

2 **The Settlement Provides Substantial Benefits to the Settlement Class**

3 32. Class Counsel believe the relief provided to the Settlement Class by this Settlement
4 is significant and substantial. As noted above, 100% of the Class Members have agreed to participate
5 in the Settlement and none have objected. Moreover, based on the Settlement Administrator's
6 analysis, the average net payment to each Participating Class Member is estimated at \$1,702.06 and
7 the highest net payment to a Participating Class Member is estimated at \$4,691.58. Accordingly, the
8 Settlement Agreement provides a significant benefit to the Settlement Class.

9 **There are Zero (0) Objections and Zero (0) Opt-Outs**

10 33. According to the Settlement Administrator, there are zero (0) opt-outs out of 366
11 Class Members. In addition, there are zero (0) objections submitted out of 366 Class Members.
12 This reception by Class Members, Class Counsel believe, weighs strongly in favor of final
13 approval.

14 **The Payment to the Settlement Administrator is Reasonable**

15 34. I am informed and believe the Settlement Administrator fulfilled its duty to prepare
16 and send the Notice to all Settlement Class Members in English and Spanish. The Settlement
17 Administrator has also prepared a report which details the efforts taken to reach Class Members, the
18 number of opt-outs (or lack thereof) and objections received (or lack thereof), the total number of
19 Class Members and number of shifts worked by Class Members, as well as the highest estimated
20 payment, average estimated payment and lowest estimated payment to be made to Class Members.

21 35. According to the Settlement Agreement, the Settlement Administrator will also, as
22 part of its duties upon final approval, have to: (1) set up a bank account in which funds will be
23 deposited; (2) calculate the employer's share of taxes owed by Defendant; (3) work with
24 Defendant's Counsel to fund the settlement and employer's share of taxes; (4) send out checks to
25 all recipients, including the LWDA, Plaintiffs, and Class Counsel; (5) cancel uncashed checks and
26 transmit the funds to the Court Appointed Special Advocates for Children of San Bernardino
27 County; and (6) work with Class Counsel, Defendant's Counsel and Class Members to answer
28 questions, and re-mail checks, as necessary.

1 36. The Settlement Administrator states that a fee of \$11,275.00 is the total cost of
2 administration of the Settlement, which Class Counsel believe is fair and reasonable.

3 **The Named Plaintiffs Should be Awarded the Requested Enhancement Award**

4 37. Class Counsel request that the Court finally approve an enhancement award of
5 \$7,500.00 each to Plaintiff Mendoza and Plaintiff Marroquin, for a total of \$15,000.00 to
6 Plaintiffs, from the Gross Settlement Amount for the time and effort they undertook in
7 participating in the Action.

8 38. A named plaintiff is an essential ingredient of any class action, an enhancement
9 award is appropriate to induce individuals to step forward and assume the burdens and obligations
10 of representing the class.

11 39. Class Counsel believe, in employment class actions, such as discrimination or wage
12 claims, the named plaintiff should be entitled to an enhancement award as an incentive to take the
13 risks associated with pursuing employment claims on behalf of other employees.

14 40. Class Counsel believe the named Plaintiffs sacrificed greatly on behalf of the
15 Settlement Class. Not only did they risk retaliation but decided to forego what may have been a
16 larger recovery and surely would have been more expedient to benefit fellow Class Members.
17 They provided first-hand knowledge and documentation as to Defendant's timekeeping practices;
18 provided wage statements; and filled in key details regarding the entries thereon and answered
19 key questions at pivotal moments throughout the litigation, including at a full-day mediation
20 session. Moreover, this Settlement would not have been possible without contribution from the
21 Plaintiff.

22 41. In addition, above and beyond the release being provided by other Class Members,
23 Plaintiff provided a general release and a Civil Code section 1542 release of unknown claims in
24 consideration for their enhancement payments.

25 42. Class Counsel believe the enhancement award requested for Plaintiffs is in line
26 with, and, in fact, modest, in comparison with the enhancement awards in similar wage-and hour-
27 class actions considering the burden this Action has caused Plaintiff, the risk of retaliation they
28 faced, the broader release they had to provide, the intrusive questioning to which they were

1 subjected, the tens of hours contributed, and the constant attention to this matter to remain abreast
2 of current events as class representative.

3 43. Class Counsel believe that Plaintiffs likely could have received a greater amount in
4 a much faster fashion had they pursued their claims individually, and because the request is
5 expected to be unopposed by Defendant, Class Counsel hereby request that this Court finally
6 approve an enhancement of \$7,500.00 each to Plaintiff Mendoza and Plaintiff Marroquin, for a
7 total of \$15,000.00 to Plaintiffs.

8 **The Requested Attorneys' Fees and Costs are Fair, Reasonable and Appropriate**

9 44. Class Counsel believe that Class Counsel's application for an award of attorneys'
10 fees in an amount of thirty-five (35%) of the Gross Settlement Amount is fair and reasonable.
11 Class Counsel are informed and believe the requested fee falls on the lower end of the Ninth
12 Circuit's historical benchmark for attorneys' fees of 20% to 50% of a common fund and is fair
13 compensation for undertaking complex, risky, expensive, and time-consuming litigation on a
14 contingent basis.

15 45. Further, Class Counsel are informed and believe, through the notice sent to the
16 Settlement Class, all members of the Settlement Class were advised of the amount of attorneys'
17 fees requested and zero (0) member of the Settlement Class objected to the Settlement and request
18 for attorneys' fees. Class Counsel believe this is evidence of the Settlement Class's belief that the
19 requested attorneys' fee percentage is reasonable.

20 46. Class Counsel believe the requested fees are very reasonable and the results
21 achieved for the Settlement Class are excellent.

22 47. Class Counsel seek a fee award calculated as a percentage of the total value of the
23 Settlement Amount for the successful prosecution and resolution of this Action.

24 48. For Class Counsel, the fees here were wholly contingent in nature. There was the
25 prospect of the enormous costs inherent in class action and representative litigation, as well as a
26 long battle with Defendant. That prospect had become reality as hundreds of hours have been
27 spent in connection with this Action, including in:

- 28 • The investigation of the matter, including meeting with Plaintiffs, reviewing

1 policies, Plaintiffs' time and pay records, Plaintiffs' personnel file, and exploring
2 Defendant's corporate structure;

- 3 • Filing and serving pleadings in the Action, including the initial Complaint and
4 the First Amended Complaint;
- 5 • Compliance with prerequisites in connection with Plaintiffs' cause of action
6 under PAGA;
- 7 • Discussing the potential merits of mediation, as well as negotiating the
8 parameters thereof and the informal discovery to be exchanged beforehand,
9 which involved various iterations of written correspondence back and forth, and
10 several telephone discussions between counsel regarding the potential scope of
11 discovery, as well as the scope of the pleadings;
- 12 • Obtaining and reviewing informal discovery;
- 13 • Selecting a mediator and mediation date;
- 14 • Working with opposing counsel and consultants for the receipt of a
15 representative sampling and analyzing the same with the aid of expert
16 consultants and Plaintiffs to perform analyses of liability and exposure prior to
17 attendance of the mediation in this matter;
- 18 • attendance at a full-day mediation;
- 19 • months of subsequent negotiations after mediation;
- 20 • communicating with Plaintiffs and providing regular updates regarding the
21 events and happenings occurring in the Action;
- 22 • negotiating, finalizing and fully executing the Settlement Agreement, in
23 which multiple drafts were distributed;
- 24 • preparing a draft class notice and obtaining bids for administration;
- 25 • preparation of the Motion for Preliminary Approval;
- 26 • Reviewing and analyzing the Settlement Administrator's final report to provide
27 the information necessary for the Court's review of the Motion for Final
28 Approval; and

- Preparing the instant Motion for Final Approval.

49. Moreover, Class Counsel believe that over \$27,000 of costs have been expended in connection with said investigations, analyses, and mediation. Indeed, Class Counsel risked and incurred not only a great deal of time, but also a great deal of expense to ensure the successful litigation of this Action on behalf of all Class Members. Based on the foregoing, Class Counsel respectfully request that the Court award attorneys' fees in the amount of \$391,503.00, and costs of \$16,613.30 as further detailed in the Declarations of David D. Bibiyan filed concurrently.

Class Counsel's Hourly Rate

50. Class Counsel's hourly rates for attorneys are \$850, \$825, \$700, \$650, \$600, \$550, \$450, \$400, \$350, and \$300. Their paralegal and legal assistant's hourly rates are \$150 and \$75, respectively.

51. Class Counsel believe that one difficulty in determining the hourly rate of attorneys of similar skill and experience in the relevant community is the scarcity of hourly fee-paying clients in class action litigation. Class Counsel believe that, as a practical matter, few if any consumers pay attorneys' fees on an hourly basis for such extensive litigation, and thus retainer agreements in such cases are based on a contingency fee relationship.

52. Class Counsel believe, although there is no customary billing rate, the nature of class action work should be strongly considered by the court.

53. Class Counsel are informed and believe that a survey conducted by the National Law Journal for the year 2002 provides a sample of a billing rate for California Lawyers. In that survey, six California firms provided their hourly billing rates. Of those six firms, five regularly charge in excess of \$500 per hour for their partners. In fact, four of the firms charge as high as \$600.00, \$620.00, \$650.00, and up to \$850.00 per hour. These firms are located in Orange County, Los Angeles County, San Francisco County and San Diego County and are the types of firms that Plaintiffs' counsel regularly opposes in these class action cases. Class Counsel are informed and believe that the only difference is that these defense attorneys are paid on a monthly basis and do not have to advance any costs on a case. A true and correct copy of the 2002 National Law Survey is attached hereto as Exhibit "2."

1 54. Finally, I am attaching the Declaration of Richard Pearl in support of the Motion
2 for Final Approval in the case of *Rosa Cantu, et al v. Pacific Bell Telephone Company*, Los
3 Angeles Superior Court Case No. BC441237, dated January 4, 2011. A true and correct copy of
4 Richard Pearl's Declaration is attached hereto as Exhibit "3".

5 55. Class Counsel are informed and believe that Mr. Pearl specializes in issues related
6 to cost-award attorneys' fees, including the representation of parties in fee litigation and appeals,
7 serving as an expert witness, mediator and arbitrator in disputes concerning attorney's fees and
8 related issues.

9 56. Class Counsel are informed and believe that Mr. Pearl confirms that courts have
10 approved hourly rates of attorneys as follows:

- 11 (1) Rates of up to \$875.00 in *Savaglio, et al. v. Wal-Mart*, Alameda County Superior
12 Court, Case No. C-835687-7 (before applying a 2.36 multiplier);
- 13 (2) Rates of up to \$750.00 in *Kasmiri et al. v. Regents of UC*, San Francisco County
14 Superior Court (before applying a 3.7 multiplier); and
- 15 (3) Rates of up to \$750.00 in *Environmental Law Foundation v. Laidlaw Transit, Inc.*,
16 San Francisco Superior Court, Case No. CGC-06-451832 (before applying a 1.25
17 multiplier). *Id.* at pages 4 and 5.

18 57. Class Counsel are informed and believe that Mr. Pearl has reviewed numerous
19 declarations, depositions, and surveys of legal rates on a non-contingent basis for the year 2009
20 and found hourly rates of up to \$795.00, \$800.00, \$855.00, \$950.00, etc. Class Counsel are
21 informed and believe that these are non-contingent rates where payment in full is expected
22 promptly upon billing.

23 58. Class Counsel believe Class Counsel's hourly rates are in line with and, in fact,
24 modest, compared with the hourly rates of other counsel in similar actions.

25 **An Attorney's Fees Based on a Percentage of the Fund is Justified**

26 **Based on Zero (0) Objections and Zero (0) Opt-Outs from Class Members**

27 59. According to the Settlement Administrator, members of the Settlement Class were
28 notified of the Settlement and attorneys' fees, which resulted in zero (0) Class Members opting

1 out and zero (0) members of the Settlement Class objecting to the Settlement and specifically the
2 requested attorneys' fees and costs requested.

3 **The Quality of Representation, the Novelty and Complexity of the Issues,**
4 **and the Results Obtained**

5 60. Class Counsel used a high level of skill in addressing the difficult questions
6 presented in this case, which involved the contested issues regarding: the compliance of various
7 Defendant's policies with the Labor Code, including whether all time worked was paid for;
8 whether meal and/or rest breaks were given in compliance with the Labor Code; issues regarding
9 the timeliness of pay, including whether all pay was received by termination or resignation; the
10 sufficiency and accuracy of wage statements (including whether issues therewith, if any, were
11 intentional or injurious); and various other issues.

12 61. Class Counsel's skill in this area of law lies in the size of this Settlement and the
13 recoveries of individual members of the Settlement Class; Plaintiffs' unpaid wages claims are
14 speculative; Defendants contention that its meal and rest period policies were compliant; and other
15 hurdles encountered by Class Counsel that were traversed in reaching this Settlement.

16 **This Litigation Precluded Other Employment by Class Counsel**

17 62. Class Counsel believe a practitioner can only properly litigate so many cases at
18 one time. The requirements of this case were significant, requiring over 680 hours to be
19 expended to date by Class Counsel, and another twenty-five (25) to fifty (50) hours
20 conservatively expected to be expended in the future in connection with final approval, settlement
21 administration, and updates to this Court regarding uncashed checks. Class Counsel were also
22 most definitely precluded from other employment. This factor should be considered since a
23 multiplier is sought. Here, Class Counsel is requesting a modest multiplier of 1.09 (391,503 /
24 361,350).

25
26 I declare under penalty of perjury under the laws of the state of California that the foregoing is
27 true and correct this 2nd day of March 2023, at Beverly Hills, California.

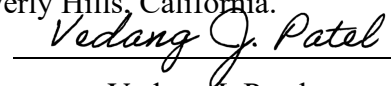
28 
Vedang J. Patel

EXHIBIT 1

BIBIYAN LAW GROUP, P.C.

David D. Bibiyan (SBN 287811)

david@tomorrowlaw.com

Diego Aviles (SBN 315533)

diego@tomorrowlaw.com

8484 Wilshire Boulevard, Suite 500

Beverly Hills, California 90211

Tel: (310) 438-5555; Fax: (310) 300-1705

Attorneys for Plaintiff, MARIO ANGEL MENDOZA

on behalf of himself and all others similarly situated and aggrieved

Justin F. Marquez, Esq. (SBN 262417)

justin@wilshirelawfirm.com

Benjamin H. Haber, Esq. (SBN 315664)

benjamin@wilshirelawfirm.com

Arrash T. Fattahi, Esq. (SBN 333676)

afattahi@wilshirelawfirm.com

WILSHIRE LAW FIRM

3055 Wilshire Blvd., 12th Floor

Los Angeles, California 90010

Tel: (213) 381-9988; Fax: (213) 381-9989

Attorneys for Plaintiff, EDIN MARROQUIN,

on behalf of himself and all others similarly situated and aggrieved

Bashir E. Eustache (Bar No. 241759)

Westland Real Estate Group

520 W. Willow Street

Long Beach, CA 90808

Tel: (310) 438-5149; Fax: (562) 332-6090

E-mail: *bashir.e@westlandreg.com*

Attorney for Defendant AMUSEMENT INDUSTRY, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES - SPRING STREET COURTHOUSE

MARIO ANGEL MENDOZA, on behalf of
himself and all others similarly situated and
aggrieved,

Plaintiffs,

v.

AMUSEMENT INDUSTRY, INC., a
California corporation; and DOES 1 through
100, inclusive,

Defendants.

CASE NO.: 21STCV09790

[Assigned to the Hon. Carolyn B. Kuhl, in
Dept. 12]

CLASS ACTION

**JOINT STIPULATION RE: CLASS
ACTION AND REPRESENTATIVE
ACTION SETTLEMENT**

Action Filed: March 12, 2021

Trial Date: None Set

1 This Joint Stipulation re: Class Action and Representative Action Settlement
2 (“Settlement” or “Agreement” or “Settlement Agreement”) is made by and between plaintiffs
3 Mario Angel Mendoza (“Plaintiff Mendoza”) and Edin Marroquin (“Plaintiff Marroquin”, and
4 with Plaintiff Mendoza, “Plaintiffs”) individually and on behalf of the Settlement Class, on the
5 one hand; and defendant Amusement Industry, Inc. d.b.a. Westland Real Estate Group
6 (“Amusement” or “Defendant”), on the other hand, in the lawsuit entitled *Mendoza. v.*
7 *Amusement Industry, Inc.*, filed in Los Angeles County Superior Court, Case No. 21STCV09790
8 and the lawsuit entitled *Marroquin v. Amusement Industry, Inc. dba Westland Real Estate Group*,
9 filed in Los Angeles County Superior Court, Case No. 21STCV13690. Plaintiffs and Defendant
10 shall be, at times, collectively referred to as the “Parties”. This Agreement is intended by the
11 Parties to fully, finally, and forever resolve the claims as set forth herein, based upon and subject
12 to the terms and conditions of this Agreement.

13 **1. DEFINITIONS**

14 **A. “Actions”** means, collectively, *Mendoza. v. Amusement Industry, Inc.*, filed in
15 Los Angeles County Superior Court, Case No. 21STCV09790 and *Marroquin v. Amusement*
16 *Industry, Inc. dba Westland Real Estate Group*, filed in Los Angeles County Superior Court,
17 Case No. 21STCV13690.

18 **B. “Aggrieved Employees”** means Class Members working for Defendant during
19 the PAGA Period as non-exempt, hourly-paid employees in California.

20 **C. “Class Counsel”** means: David D. Bibiyan and Diego Aviles of Bibiyan Law
21 Group, P.C, as well as Justin F. Marquez of Wilshire Law Firm. The term “Class Counsel” shall
22 be used synonymously with the term “Plaintiffs’ Counsel.”

23 **D. “Class Period” or “Settlement Period”** means the period from March 12, 2017
24 through February 10, 2022.

25 **E. “Court”** means the Superior Court of the State of California for the County of
26 Los Angeles.

27 **F. “Final Approval Date”** means the later of: (1) the date the Court signs an Order
28 granting final approval of this Settlement (“Final Approval”) and Judgment; (2) if there is an

1 objector, 60 days from the date of Final Approval and Judgment if no appeal has been filed by
2 that date; or (3) to the extent any appeals have been filed, the date on which they have been
3 resolved or exhausted.

4 **G. “Defendant”** means Amusement Industry, Inc., doing business as Westland Real
5 Estate Group.

6 **H. “Employer Taxes”** means employer-funded taxes and contributions imposed on
7 the wage portions of the Individual Settlement Payments under the Federal Insurance
8 Contributions Act, the Federal Unemployment Tax Act, and any similar state and federal taxes
9 and contributions required of employers, such as for unemployment insurance.

10 **I. “General Release”** means the broader release of claims by Named Plaintiffs,
11 which is in addition to their limited release of claims as a Participating Class Member.

12 **J. “Gross Settlement Amount”** means a non-reversionary fund in the sum of One
13 Million, One Hundred Eighteen Thousand, Five Hundred Eighty Dollars and Zero Cents
14 (\$1,118,580.00),¹ which shall be paid by Defendant, from which all payments for the Individual
15 Settlement Payments and **Individual** Technician Payments to Participating Class Members, the
16 Court-approved amounts for attorneys’ fees and reimbursement of litigation costs and expenses
17 to Class Counsel, Settlement Administration Costs, the Service Awards, the PAGA Payment, and
18 the LWDA Payment shall be made. It expressly excludes Employer Taxes, which shall be paid
19 by Defendant separate, apart, and in addition to the Gross Settlement Amount.

20 **K. “Individual PAGA Payment”** means a payment made to an Aggrieved
21 Employee for his or her share of the PAGA Payment, which may be in addition to his or her
22 Individual Settlement Share and his or her Individual Technician Payment if he or she is also a
23 Participating Member.

24 **L. “Individual Settlement Payment”** means a payment to a Participating Class
25 Member of his or her net share of the Net Settlement Amount, excluding any amounts that he or
26 she may be owed as an Aggrieved Employee and/or Technician Settlement Class Member.

27
28

¹ As the same may be increased in accordance with Paragraph 17, below.

1 **M. “Individual Settlement Share”** means the gross amount of the Net Settlement
2 Amount that a Settlement Class Member is eligible to receive from the Net Settlement Amount
3 based on the number of Workweeks that he or she worked as a Settlement Class Member during
4 the Class Period if he or she does not submit a timely and valid Request for Exclusion.

5 **N. “Individual Technician Payments”** means the gross amount of the Technician
6 Payment that a Technician Settlement Class Member is eligible to receive based on the number
7 of Workweeks that he or she worked during the Class Period once all opt-outs have been factored
8 in, excluding any Individual PAGA Payment to which he or she may be entitled if he or she is
9 also an Aggrieved Employee.

10 **O. “LWDA Payment”** means the payment to the State of California Labor and
11 Workforce Development Agency (“LWDA”) for its seventy-five percent (75%) share of the total
12 amount allocated toward penalties under the PAGA all of which is to be paid from the Gross
13 Settlement Amount. The Parties have agreed that Fifty Thousand Dollars and Zero Cents
14 (\$50,000.00) shall be allocated toward PAGA penalties, of which Thirty Seven Thousand, Five
15 Hundred Dollars and Zero Cents (\$37,500.00) will be paid to the LWDA (*i.e.*, the LWDA
16 Payment) and Twelve Thousand, Five Hundred Dollars and Zero Cents (\$12,500.00) will be paid
17 to Aggrieved Employees on a *pro rata* basis based on the Workweeks worked for Defendant as
18 a non-exempt, hourly-paid employee in California during the PAGA Period (*i.e.* the PAGA
19 Payment).

20 **P. “Net Settlement Amount”** means the portion of the Gross Settlement Amount
21 that is available for distribution to the Participating Class Members after deductions for the Court-
22 approved allocations for Settlement Administration Costs, Service Awards to Plaintiffs, an award
23 of attorneys’ fees, reimbursement of litigation costs and expenses to Class Counsel, the LWDA
24 Payment, the PAGA Payment and the Technician Settlement Amount.

25 **Q. “Operative Complaint” or “Complaint”** means the First Amended Complaint
26 to be filed in the case of *Mendoza. v. Amusement Industry, Inc.*, filed in Los Angeles County
27 Superior Court, Case No. 21STCV09790, that effectively consolidates the Actions for purposes
28 of settlement approval.

1 **R. “PAGA Payment”** is the 25% portion of the Fifty Thousand Dollars and Zero
2 Cents (\$50,000.00) that is allocated toward PAGA penalties (Twelve Thousand, Five Hundred
3 Dollars and Zero Cents (\$12,500.00)) that will be paid to Aggrieved Employees on a *pro rata*
4 basis based on the Workweeks worked as non-exempt, hourly-paid employees in California
5 during the PAGA Period, which would be in addition to their Individual Settlement Share if they
6 are Participating Class Members, as well.

7 **S. “PAGA Period”** means the period from April 12, 2020 through February 10,
8 2022.

9 **T. “Participating Class Members”** means all Settlement Class Members and
10 Technician Settlement Class Members who do not submit a timely and valid Request for
11 Exclusion.

12 **U. “Participating Individual Settlement Share”** means the gross amount of the Net
13 Settlement Amount that a Participating Class Member is eligible to receive based on the number
14 of Workweeks that he or she worked as a Settlement Class Member during the Class Period once
15 all opt-outs have been factored in, excluding any Individual PAGA Payment to which he or she
16 may be entitled if he or she is also an Aggrieved Employee and any amounts he or she may be
17 eligible to receive as a Technician Settlement Class Member.

18 **V. “Plaintiffs”, “Named Plaintiffs” or “Class Representatives”** shall refer to
19 plaintiffs Mario Angel Mendoza (“Plaintiff Mendoza”) and Edin Marroquin (“Plaintiff
20 Marroquin”).

21 **W. “Preliminary Approval Date”** means the date on which the Court enters an
22 Order granting preliminary approval of the Settlement.

23 **X. “Released Parties”** shall mean Defendant and each of its past, present, and future
24 respective subsidiaries, dba’s, affiliates, parents, insurers and reinsurers, and company-sponsored
25 employee benefit plans of any nature and their successors and predecessors in interest, including
26 all of their officers, directors, shareholders, employees, agents, principals, heirs, representatives,
27 accountants, auditors, consultants, attorneys, administrators, fiduciaries, trustees, and agents.
28

1 **Y. “Response Deadline”** means the deadline for Settlement Class Members and
2 Technician Settlement Class Members to mail any Requests for Exclusion, Objections, or
3 Administrator Disputes to the Settlement Administrator, which is forty-five (45) calendar days
4 from the date that the Class Notice is first mailed in English and Spanish by the
5 Settlement Administrator, unless a Class Member’s notice is re-mailed. In such an instance, the
6 Response Deadline shall be fifteen (15) calendar days from the re-mailing, or forty-five (45)
7 calendar days from the date of the initial mailing, whichever is later, in which to mail a Request
8 for Exclusion, Administrator Dispute or Objection. The date of the postmark of any mailing shall
9 be the exclusive means for determining whether a Request for Exclusion, Objection, or
10 Administrator Dispute was submitted by the Response Deadline.

11 **Z. “Request for Exclusion”** means a written request to be excluded from the
12 Settlement Class pursuant to Paragraph 9© below.

13 **AA. “Service Awards”** means monetary amounts to be paid to Plaintiffs of up to
14 Seven Thousand, Five Hundred Dollars and Zero Cents (\$7,500.00) each, for a total of Fifteen
15 Thousand Dollars and Zero Cents (\$15,000.00), which subject to Court approval, will be paid
16 out of the Gross Settlement Amount.

17 **BB. “Settlement Administration Costs”** means all costs incurred by the Settlement
18 Administrator in administration of the Settlement, including, but not limited to, translating the
19 Class Notice to Spanish, the distribution of the Class Notice to the Settlement Class in English
20 and Spanish, calculating Individual Settlement Shares, Individual Settlement Payments,
21 Technician Settlement Payments, Individual PAGA Payments, and Participating Individual
22 Settlement Shares, as well as associated taxes and withholdings, providing declarations,
23 generating Individual Settlement Payment checks and Individual Technician Payment checks and
24 related tax reporting forms, doing administrative work related to unclaimed checks, transmitting
25 payment to Class Counsel for the Court-approved amounts for attorneys’ fees and reimbursement
26 of litigation costs and expenses, to Plaintiffs for their Service Awards, and to the LWDA for the
27 LWDA Payment, providing weekly reports of opt-outs, objections and related information, and
28 any other actions of the Settlement Administrator as set forth in this Agreement, all pursuant to

1 the terms of this Agreement. The Settlement Administration Costs are estimated not to exceed
2 \$11,275.00. If the actual amount of the Settlement Administration Costs is less than \$11,275.00,
3 the difference between \$11,275.00 and the actual Settlement Administration Costs shall be a part
4 of the Net Settlement Amount. If the Settlement Administration Costs exceed \$11,275.00, then
5 such excess will be paid solely from the Gross Settlement Amount and Defendant will not be
6 responsible for paying any additional funds in order to pay these additional costs.

7 **CC. “Settlement Administrator”** means the Third-Party Administrator mutually
8 agreed upon by the Parties that will be responsible for the administration of the Settlement
9 including, without limitation, translating the Class Notice in Spanish, the distribution of the
10 Individual Settlement Payments and Technician Settlement Payments to be made by Defendant
11 from the Gross Settlement Amount and related matters under this Agreement including as set
12 forth in Section 1. BB above.

13 **DD. “Settlement Class” or “Settlement Class Members” or “Class Members”**
14 means all current and former non-exempt, hourly-paid employees who worked in California for
15 Defendant at any time during the Class Period.

16 **EE. “Technician Settlement Class” or “Technician Settlement Class Members” or**
17 **“Technician Class Members”** means all Participating Class Members who performed
18 technician duties including, but not limited to, performing maintenance and repair, plumbing,
19 electrical, carpentry, painting, cleaning, and responding to emergency maintenance requests, and
20 worked for Defendant in California at any time during the Class Period.

21 **FF. “Technician Settlement Amount”** means the non-revisionary allocation of One
22 Hundred Thousand Dollars and Zero Cents (\$100,000.00) from the Gross Settlement Amount
23 allocated to Technician Settlement Payments.

24 **GG. “Workweeks”** means the number of workweeks that a Settlement Class Member
25 was employed by and worked for the Defendant in a non-exempt, hourly position in California
26 during the Class Period, based on hire dates, re-hire dates, and termination dates, and worked at
27 least one shift during each such workweek.

28 **2. BACKGROUND**

1 **A.** On March 12, 2021, Plaintiff Mendoza filed a putative wage-and-hour class action
2 alleging that, during the Class Period, Defendant, with respect to Class Members: (1) failed to
3 pay overtime wages; (2) failed to pay minimum wages; (3) failed to provide meal periods or
4 associated premium pay; (4) failed to provide rest periods or associated premium pay; (5) failed
5 to pay all wages due upon separation from employment; (6) failed to provide accurate wage
6 statements; (7) failed to reimburse for expenses incurred in furtherance of work; (8) engaged in
7 unfair competition; and (9) violated Labor Code section 227.3 (“Mendoza Action”).

8 **B.** On April 9, 2021, Plaintiff Marroquin filed a separate putative wage-and-hour
9 class action against Defendant, bringing substantially similar allegations as Plaintiff Mendoza in
10 his class action (“Marroquin Action”).

11 **C.** On April 12, 2021, Plaintiff Marroquin filed a notice with the LWDA and served
12 on Defendant a notice under Labor Code section 2699.3, stating he intended to serve as a proxy
13 of the LWDA to recover civil penalties for Aggrieved Employees (“Marroquin PAGA Notice”).
14 After sixty-five (65) days had passed without any communication from the LWDA with respect
15 to Labor Code violations alleged in the Marroquin PAGA Notice, Plaintiff Marroquin amended
16 his complaint in the Marroquin Action to seek civil penalties against Defendant under PAGA.

17 **D.** Shortly thereafter, the Parties agreed to exchange informal discovery and attend
18 an early mediation, in which Plaintiffs were provided with, among other things: (1) a sampling
19 of time and payroll records for the estimated 432 putative class members; (2) data points which
20 included hire dates, termination dates, and average rates of pay; (3) all employment policies and
21 procedures in Defendant’s possession, custody, or control; and (4) all documents pertaining to
22 Plaintiffs in Defendant’s possession, custody, or control.

23 **E.** On February 10, 2022, the Parties participated in a full-day mediation before Mark
24 S. Rudy Esquire, a well-regarded mediator experienced in mediating complex labor and
25 employment matters. With the aid of the mediator’s evaluation, the Parties reached the
26 Settlement to resolve the Actions.

27 **F.** Class Counsel has conducted significant investigation of the law and facts relating
28 to the claims asserted in the Actions and Marroquin PAGA Notice and have concluded that the

1 Settlement set forth herein is fair, reasonable, adequate, and in the best interests of the Settlement
2 Class, taking into account the sharply contested issues involved, the expense and time necessary
3 to litigate the Actions through trial and any appeals, the risks and costs of further litigation of the
4 Actions, the risk of an adverse outcome, the uncertainties of complex litigation, the information
5 learned through informal discovery regarding Plaintiffs' allegations, and the substantial benefits
6 to be received by Settlement Class Members and Technician Settlement Class Members in
7 connection with the Settlement.

8 **G.** Defendant has concluded that, because of the substantial expense of defending
9 against the Actions, the length of time necessary to resolve the issues presented herein, the
10 inconvenience involved, and the concomitant disruption to its business operations, it is in its best
11 interest to accept the terms of this Agreement. Defendant denies each of the allegations and
12 claims asserted against it in the Actions and Marroquin PAGA Notice. However, Defendant
13 nevertheless desires to settle the Actions for the purpose of avoiding the burden, expense and
14 uncertainty of continuing litigation and for the purpose of putting to rest the controversies
15 engendered by the Actions.

16 **H.** This Agreement is intended to and does effectuate the full, final, and complete
17 resolution of all Class Released Claims of Plaintiffs and Participating Class Members, and all
18 PAGA Released Claims of Plaintiffs and, to the extent permitted by law, of the State of California
19 and Aggrieved Employees.

20 **3. JURISDICTION**

21 The Court has jurisdiction over the Parties and the subject matter of the Actions. The
22 Actions include claims that, if proven, would authorize the Court to grant relief pursuant to the
23 applicable statutes. After the Court has granted Final Approval of the Settlement and entered
24 judgment, the Court shall retain jurisdiction over the Parties to enforce the terms of the judgment
25 pursuant to California Rule of Court, Rule 3.769 (h).

26 **4. STIPULATION OF CLASS CERTIFICATION**

27 The Parties stipulate to the certification of the Settlement Class under this Agreement for
28 purposes of settlement only.

1 **5. CONSOLIDATION OF ACTIONS AND MOTIONS FOR APPROVAL**
2 **OF SETTLEMENT**

3 The Parties have stipulated to the filing of a First Amended Complaint (“FAC”) in the
4 Mendoza Action that: (1) effectively consolidates the Mendoza and Marroquin Actions; and (2)
5 includes all of the allegations in the Marroquin Action, including all allegations under PAGA in
6 the Marroquin Action, and identifies Plaintiff Marroquin as a named plaintiff and class
7 representative. The allegations of the FAC to be filed in the Mendoza Action shall hereinafter
8 be referred to as the “Lawsuit” or “Litigation.” As part of the Agreement to effectively
9 consolidate the Actions, Plaintiff Marroquin will dismiss the Marroquin Action, for the purpose
10 of consolidating the Marroquin Action into the Mendoza Action.

11 After full execution of this Agreement, Plaintiffs will move for an order granting
12 preliminary approval of the Settlement, approving and directing the mailing of the proposed
13 Notice of Class Action Settlement (“Class Notice”) attached hereto as **Exhibit “A”**, conditionally
14 certifying the Settlement Class and Technician Settlement Class for settlement purposes only,
15 and approving the deadlines proposed by the Parties for the submission of Requests for
16 Exclusion, Administrator Disputes, and Objections. If and when the Court preliminarily
17 approves the Settlement, and after administration of the Class Notice in a manner consistent with
18 the Court’s Preliminary Approval Order, Plaintiffs will move for an order finally approving the
19 Settlement and seek entry of a Judgment in line with this Settlement. The Parties may both
20 respond to any Objections lodged to final approval of the Settlement up to five (5) court days
21 before the Final Approval Hearing.

22 The Parties hereby agree that whether or not the Court finally approves the Settlement,
23 Plaintiff Marroquin’s allegations in the Marroquin Action will relate back to the date on which
24 Plaintiff Marroquin filed the Marroquin Action, and Defendant will be estopped from making
25 any argument that there is any adverse effect on the statute of limitations caused by Plaintiff
26 Marroquin’s dismissal of the Marroquin Action without prejudice to effectuate the consolidation
27 that took place in order to effectuate this Settlement.
28

1 **6. STATEMENT OF NO ADMISSION OF WRONGDOING OR**
2 **LIABILITY**

3 Defendant denies any wrongdoing of any sort and further DENIES any liability to
4 Plaintiffs, the Settlement Class, and the Technician Settlement Class with respect to any claims
5 or allegations asserted in the Actions and Marroquin PAGA Notice. This Agreement shall not
6 be deemed an admission by Defendant of any claims or allegations asserted in the Actions or
7 Marroquin PAGA Notice. Except as set forth elsewhere herein, in the event that this Agreement
8 is not approved by the Court, or any appellate court, is terminated, or otherwise fails to be
9 enforceable, Plaintiffs will not be deemed to have waived, limited or affected in any way any
10 claims, rights or remedies in the Actions and Marroquin PAGA Notice, and Defendant will not
11 be deemed to have waived, limited, or affected in any way any of its objections or defenses in
12 the Actions and Marroquin PAGA Notice. If this Settlement is not effectuated for any reason,
13 the Parties shall be restored to their respective positions in the Actions prior to the entry of this
14 Settlement.

15 **7. RELEASE OF CLAIMS**

16 **A. Release by All Participating Class Members.**

17 Effective only upon the Court's entry of an Order granting Final Approval of the
18 Settlement and entry of Judgment, and payment by Defendant to the Settlement Administrator of
19 the Gross Settlement Amount and Employers' Taxes imposed on the wage portions of the
20 Individual Settlement Payments, Plaintiffs and all Participating Class Members release all claims
21 against the Released Parties asserted in the Operative Complaint filed in the Mendoza Action, or
22 any and all claims that may be asserted against the Released Parties based on the factual
23 allegations in the Operative Complaint filed in the Mendoza Action, or any and all claims that
24 may be asserted against the Released Parties based on the factual allegations in the Mendoza
25 Action, as follows: For the duration of the Class Period, the release includes, for Participating
26 Class Members: (a) all claims for failure to pay overtime wages; (b) all claims for failure to pay
27 minimum wages; (c) all claims for failure to provide compliant meal periods, or associated
28 premium pay; (d) all claims for failure to provide compliant rest periods, or associated premium

1 pay; (e) all claims for the failure to timely pay wages upon termination or resignation; (f) all
2 claims for non-compliant wage statements; (g) all claims for failure to reimburse employees for
3 business expenses; (h) all claims for violation of Labor Code section 227.3; and (i) all claims
4 asserted through California Business & Professions Code section 17200, *et seq.* arising out of the
5 Labor Code violations referenced in the Operative Complaint (the “Class Released Claims”).

6 **B. Release by Aggrieved Employees**

7 For Aggrieved Employees, and, to the extent permitted by law, the State of California,
8 the release includes for the duration of the PAGA Period, all claims asserted in the Marroquin
9 PAGA Notice, and alleged in the Operative Complaint, for PAGA civil penalties pursuant to
10 Labor Code sections 210, 226.3, 558, 1197.1, and 2698 *et. seq.* in connection with alleged
11 violations of Labor Code sections 96, 98.6, 200, 201, 202, 203, 204, 226, 226.7, 227.3, 246 *et*
12 *seq.*, 432, 510, 512, 1174, 1194, 1197, 1198.5, 2802, and 2810.5 (the “PAGA Released Claims”).

13 **C. Exclusions of Class and PAGA Release**

14 These releases expressly exclude all other claims, including claims for vested benefits,
15 wrongful termination, unemployment insurance, disability, social security, workers’
16 compensation, and any other claims outside of the Class Released Claims of Participating Class
17 Members arising during the Class Period and the PAGA Released Claims of Aggrieved
18 Employees (and, to the extent permitted by law, the State of California) arising outside of the
19 PAGA Period. The Class Released Claims and PAGA Released Claims shall be referred to
20 herein as the “Released Claims”.

21 **D. General Release by Plaintiff Mendoza.**

22 Effective only upon the Court’s entry of an Order granting Final Approval of the
23 Settlement and entry of Judgment, and payment by Defendant to the Settlement Administrator
24 selected of the full Gross Settlement Amount and Employers’ Taxes imposed on the wage
25 portions of the Individual Settlement Payments, in addition to the Released Claims, Plaintiff
26 Mendoza makes the additional following General Release: Plaintiff Mendoza releases the
27 Released Parties from all claims, demands, rights, liabilities and causes of action of every nature
28 and description whatsoever, known or unknown, asserted or that might have been asserted,

1 whether in tort, contract, or for violation of any state or federal statute, rule, law or regulation
2 arising out of, relating to, or in connection with any act or omission of the Released Parties
3 through the date of full execution of this Agreement in connection with Plaintiff Mendoza's
4 employment with Defendant or the termination thereof, except for any and all other claims that
5 may not be released as a matter of law through this Agreement. To the extent of the General
6 Release provided herein, Plaintiff Mendoza stipulates and agrees that, upon the Court's entry of
7 an Order granting Final Approval of the Settlement and entry of Judgment, and payment by
8 Defendant to the Settlement Administrator selected of the full Gross Settlement Amount and
9 Employers' Taxes imposed on the wage portions of the Individual Settlement Payments, he shall
10 have expressly waived and relinquished, to the fullest extent permitted by law, the provisions,
11 rights and benefits of Section 1542 of the California Civil Code, or any other similar provision
12 under federal or state law, which provides:

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

16 This General Release does not apply to, and expressly excludes any claims by Plaintiff
17 Marroquin against the Released Parties under the Fair Employment and Housing Act ("FEHA"),
18 the California Family Rights Act ("CFRA"), wrongful termination in violation of public policy,
19 intentional infliction of emotional distress, and negligent infliction of emotional distress, and
20 such limited claims by Plaintiff Marroquin shall not be affected by this Agreement. Namely, this
21 Agreement and provision have no bearing on any of the claims asserted by Plaintiff Marroquin
22 in his individual wrongful termination action, filed in Los Angeles County Superior Court, Case
23 No. 21STCV27714.

24 **8. SETTLEMENT ADMINISTRATOR**

25 A. Plaintiffs and Defendant, through their respective counsel, have selected ILYM
26 Group, Inc. to administer the Settlement, which includes but is not limited to translating the Class
27 Notice to Spanish, distributing and responding to inquiries about the Class Notice, calculating all
28 amounts to be paid from the Gross Settlement Amount and calculating the Employers' Taxes

imposed on the wage portions of the Individual Settlement Payments. Charges and expenses of the Settlement Administrator, currently estimated to be \$11,275.00 will be paid from the Gross Settlement Amount. If the actual amount of the Settlement Administration Costs is less than \$11,275.00, the difference between \$11,275.00 and the actual Settlement Administration Costs shall be a part of the Net Settlement Amount. If the Settlement Administration Costs exceed \$11,275.00, then such excess will be paid solely from the Gross Settlement Amount and Defendant will not be responsible for paying any additional funds in order to pay these additional costs.

**9. NOTICE, ADMINISTRATOR DISPUTE, OBJECTION, AND
EXCLUSION PROCESS**

A. Notice to the Settlement Class Members

(1) Within seven (7) calendar days after the Preliminary Approval Date, Defendant's Counsel shall provide the Settlement Administrator with information with respect to each Settlement Class Member and Technician Class Member, including his or her: (1) name; (2) last known address(es) currently in Defendant's possession, custody, or control; (3) last known telephone number(s) currently in Defendant's possession, custody, or control; (4) last known Social Security Number(s) in Defendant's possession, custody, or control; (5) the dates of employment (*i.e.*, hire dates, and, if applicable, re-hire date(s) and/or separation date(s)) for each Settlement Class Member and Technician Settlement Class Member; and (6) an indication of whether or not the Settlement Class Member would qualify as a Technician Settlement Class Member if he or she does not opt out of the Settlement. This information shall be referred to as the "Class List" and shall be made available to Class Counsel upon request. The Settlement Administrator shall perform an address search using the United States Postal Service National Change of Address ("NCOA") database and update the addresses contained on the Class List with the newly-found addresses, if any. Within seven (7) calendar days of receiving the Class List from Defendant, the Settlement Administrator shall mail the Class Notice in English and Spanish to the Settlement Class Members and Technician Settlement Class Members via first-class regular U.S. Mail using the most current mailing address information available. The

1 Settlement Administrator shall maintain the Class List and digital copies of all the Settlement
2 Administrator's records evidencing the giving of notice to any Settlement Class Member, for at
3 least four (4) years from the Final Approval Date.

4 (2) The Class Notice will set forth:

- 5 (a) the Settlement Class Member's and/or Technician
6 Settlement Class Member's estimated Individual
7 Settlement Payment, estimated Individual Technician
8 Payment (if applicable), and Individual PAGA
9 Payment (if applicable), and the basis for each;
- 10 (b) the information required by California Rule of Court,
11 Rule 3.766 (d);
- 12 (c) the material terms of the Settlement;
- 13 (d) the proposed Settlement Administration Costs;
- 14 (e) the definition of the Settlement Class and Technician
15 Settlement Class;
- 16 (f) a statement that the Court has preliminarily approved
17 the Settlement;
- 18 (g) how the Settlement Class Member and/or Technician
19 Class Member can obtain additional information,
20 including contact information for Class Counsel;
- 21 (h) information regarding opt-out and objection
22 procedures;
- 23 (i) the date and location of the Final Approval Hearing;
24 and
- 25 (j) that the Settlement Class Member and/or Aggrieved
26 Employee must notify the Settlement Administrator no
27 later than the Response Deadline if the Settlement
28 Class Member and/or Technician Settlement Class

Member disputes the accuracy of the number of Workweeks as set forth on his or her Class Notice (“Administrator Dispute”) and/or whether he or she should qualify as a Technician Settlement Class Member. If a Settlement Class Member and/or Technician Settlement Class Member fails to timely dispute the number of Workweeks attributed to him or her in conformity with the instructions in the Class Notice, then he or she shall be deemed to have waived any objection to its accuracy and any claim to any additional settlement payment based on different data.

(3) If a Class Notice from the initial notice mailing is returned as undeliverable, the Settlement Administrator will attempt to obtain a current address for the Settlement Class Member to whom the returned Class Notice had been mailed, within five (5) calendar days of receipt of the returned Class Notice, by: (1) contacting the Settlement Class Member and/or Technician Settlement Class Member by phone, if possible, and (2) undertaking skip tracing. If the Settlement Administrator is successful in obtaining a new address, it will promptly re-mail the Class Notice to the Settlement Class Member and/or Technician Settlement Class Member. Further, any Class Notices that are returned to the Settlement Administrator with a forwarding address before the Response Deadline shall be promptly re-mailed to the forwarding address affixed thereto.

(4) No later than seven (7) calendar days from the Response Deadline, the Settlement Administrator shall provide counsel for the Parties with a declaration attesting to the completion of the notice process, including the number of attempts to obtain valid mailing addresses for and re-sending of any returned Class Notices, as well as the identities, number of, and copies of all Requests for Exclusion and Objections received by the Settlement Administrator.

B. Objections.

1 Only Participating Class Members may object to the Settlement. In order for any
2 Settlement Class Member to object to this Settlement in writing, or any term of it, he or she must
3 do so by mailing a written objection to the Settlement Administrator at the address or phone
4 number provided on the Class Notice no later than the Response Deadline. The Settlement
5 Administrator shall email a copy of the Objection forthwith to Class Counsel and Defendant's
6 counsel and attach copies of all Objections to the Declaration it provides Class Counsel, which
7 Class Counsel shall file in support of Plaintiffs' Motion for Final Approval. The Objection
8 should set forth in writing: (1) the Objector's name; (2) the Objector's address; (3) the last four
9 digits of the Objector's Social Security Number; (4) the Objector's signature; (5) a statement of
10 whether the Objector plans to appear at the Final Approval Hearing; and (6) the reason(s) for the
11 Objection, along with whatever legal authority, if any, the Objector asserts in support of the
12 Objection. If a Participating Class Member objects to the Settlement, the Participating Class
13 Member will remain a member of the Settlement Class and/or Technician Settlement Class and
14 if the Court approves this Agreement, the Participating Class Member will be bound by the terms
15 of the Settlement in the same way and to the same extent as a Participating Class Member who
16 does not object. The date of mailing of the Class Notice to the objecting Participating Class
17 Member shall be conclusively determined according to the records of the Settlement
18 Administrator. Participating Class Members must object in writing to be heard at the Final
19 Approval Hearing and may appear at the hearing at their own expense. Class Counsel and
20 Defendant's Counsel may respond to any objection lodged with the Court up to five (5) court
21 days before the Final Approval Hearing.

22 **C. Requesting Exclusion.**

23 Any Settlement Class Member or Technician Class Member may request exclusion from
24 (*i.e.*, "opt out" of) the Settlement by mailing a written request to be excluded from the Settlement
25 ("Request for Exclusion") to the Settlement Administrator, postmarked on or before the
26 Response Deadline. To be valid, a Request for Exclusion must include: (1) the Class Member
27 and/or Technician Class Member's name; (2) the last 4 digits of the Class Member and/or
28 Technician Class Member's Social Security Number; (3) the Class Member and/or Technician

1 Class Member's signature; and (4) the following statement: "Please exclude me from the
2 Settlement Class in the *Mendoza. v. Amusement Industry, Inc.* matter" or any statement of similar
3 meaning standing for the proposition that the Class member does not wish to participate in the
4 Settlement. The Settlement Administrator shall immediately provide copies of all Requests for
5 Exclusion to Class Counsel and Defendant's Counsel and shall report the Requests for Exclusions
6 that it receives, to the Court, in its declaration to be provided in advance of the Final Approval
7 Hearing. Any Settlement Class Member who requests exclusion using this procedure will not be
8 entitled to receive any payment from the Settlement and will not be bound by the Settlement
9 Agreement or have any right to object to, appeal, or comment on the Settlement. Any Settlement
10 Class Member and/or Technician Settlement Class Member who does not opt out of the
11 Settlement by submitting a timely and valid Request for Exclusion will be bound by all terms of
12 the Settlement, including those pertaining to the Released Claims, as well as any Judgment that
13 may be entered by the Court if Final Approval of the Settlement is granted. A Settlement Class
14 Member and/or Technician Settlement Class Member cannot submit both a Request for
15 Exclusion and an Objection. If a Settlement Class Member and/or Technician Settlement Class
16 Member submits an Objection and a Request for Exclusion, the Request for Exclusion will
17 control and the Objection will be overruled. Settlement Class Members and/or Technician
18 Settlement Class Members who worked during the PAGA Period as Aggrieved Employees that
19 submit a valid Request for Exclusion will still be deemed Aggrieved Employees and thus will
20 still receive their Individual PAGA Payments and be bound by the release of the PAGA Released
21 Claims.

22 **D. Disputes Regarding Settlement Class Members' Workweek Data.**

23 Each Settlement Class Member and Technician Settlement Class Member may dispute
24 the number of Workweeks attributed to him or her on his or her Class Notice as worked during
25 the Class Period and/or PAGA Period, as well as whether he or she should qualify as a Technician
26 Settlement Class Member ("Administrator Dispute"). Any such disputes must be mailed to the
27 Settlement Administrator by the Settlement Class Member and Technician Settlement Class
28 Member, postmarked on or before the Response Deadline. The Settlement Administrator shall

1 immediately provide copies of all disputes to Class Counsel and counsel for Defendant and shall
2 immediately attempt to resolve all such disputes directly with relevant Settlement Class
3 Member(s) and the Technician Settlement Class Member(s) with the assistance of Defendant and
4 Class Counsel. If the dispute cannot be resolved in this manner, the Court shall adjudicate the
5 dispute.

6 **10. INDIVIDUAL SETTLEMENT PAYMENTS, INDIVIDUAL**
7 **TECHNICIAN PAYMENTS AND INDIVIDUAL PAGA PAYMENTS**

8 **A. Technician Settlement Payments to Participating Class Members.**

9 The Parties agreed to allocate One Hundred Thousand Dollars and Zero Cents
10 (\$100,000.00) of the Gross Settlement Amount toward the Technician Settlement Payment
11 which will be divided equally among the Technician Settlement Class Members who do not
12 submit a valid and timely Request for Exclusion.

13 **B. Individual Settlement Payments for Non-Technician Class Members**

14 Individual Settlement Payments will be calculated and distributed to Participating Class
15 Members from the Net Settlement Amount on a *pro rata* basis, based on the Participating Class
16 Members' respective number of Workweeks during the Class Period.

17 **C. Individual PAGA Payments**

18 Individual PAGA Payments to Aggrieved Employees will be calculated and distributed
19 to Aggrieved Employees from the PAGA Payment on a *pro rata* basis, based on Aggrieved
20 Employees' respective number of Workweeks worked during the PAGA Period.

21 **D. Formula for Payment**

22 Specific calculations of the Individual Settlement Shares, Individual PAGA Payments
23 to Aggrieved Employees, and Individual Technician Payments will be made as follows:

24 a. The Settlement Administrator will determine the total number of Workweeks
25 worked by each Settlement Class Member during the Class Period ("Class Member's
26 Workweeks"), as well as the aggregate number of Workweeks worked by all Settlement Class
27 Members during the Class Period ("Class Workweeks"). Additionally, the Settlement
28 Administrator will determine the total number of Workweeks worked by each Aggrieved

Employee during the PAGA Period (“Aggrieved Employee’s Workweeks”), as well as the aggregate number of Workweeks worked by all Aggrieved Employees during the PAGA Period (“PAGA Workweeks”). Finally, the Settlement Administrator will have a list of all Class Members who worked as Technicians during the Class Period.

b. To determine each Settlement Class Member’s Individual Settlement Share, the Settlement Administrator will use the following formula: Individual Settlement Share = (Settlement Class Member’s Workweeks ÷ Class Workweeks) × Net Settlement Amount.

c. To determine each Participating Class Member’s Participating Individual Settlement Share, the Settlement Administrator will determine the aggregate number of Workweeks worked by all Participating Class Members during the Class Period (“Participating Class Workweeks”) and use the following formula: Individual Settlement Share = (Participating Class Member’s Workweeks ÷ Participating Class Workweeks) × Net Settlement Amount.

d. The net amount of the Participating Individual Settlement Share is to be paid out to Participating Class Members by way of check and is referred to as “Individual Settlement Payment(s)”.

e. To determine each Aggrieved Employee’s Individual PAGA Payment, the Settlement Administrator will use the following formula: Aggrieved Employee’s Individual PAGA Payment = (Aggrieved Employee’s Workweeks ÷ PAGA Workweeks) x PAGA Payment.

f. To determine each Technician Settlement Class Member’s Individual Technician Payment, the Settlement Administrator will use the following formula: Individual Technician Payment = (Technician Settlement Amount ÷ Technician Settlement Class Members.)

E. Manner of Payment

Participating Individual Settlement Payments, Technician Settlement Payments, and Individual PAGA Payments shall be paid to Participating Class Members and/or Aggrieved Employees by way of check. When a Participating Class Member is also an Aggrieved

Employee, one check may be issued that aggregates both the Individual Settlement Payment and the Individual PAGA Payment.

11. DISTRIBUTION OF PAYMENTS

A. Distribution of Individual Settlement Payments.

Participating Class Members will receive an Individual Settlement Payment. If the Participating Class Members are Technician Settlement Class Members, they will also receive Individual Technician Payments and, whether or not the Settlement Class Member is a Participating Class Member, if he or she is an Aggrieved Employee, he or she will receive an Individual PAGA Payment. Individual Settlement Payment, Technician Settlement Payments, Individual PAGA Payment checks shall remain valid and negotiable for one hundred and eighty (180) calendar days after the date of their issuance. Within seven (7) calendar days after expiration of the 180-day period, checks for such payments shall be canceled and funds associated with such checks shall be considered unpaid, unclaimed or abandoned cash residue pursuant to Code of Civil Procedure Section 384 (“Unpaid Residue”). The Unpaid Residue plus accrued interest, if any, as provided in Code of Civil Procedure Section 384, shall be transmitted to Legal Aid at Work, 180 Montgomery Street, Suite 600, San Francisco, California 94104, the *cy pres* recipient, for use in Los Angeles County. The Parties and their counsel, by signing this Agreement, agree that they have no interest in the governance of the *cy pres* recipient, nor do they have a conflict of interest with the *cy pres* recipient designated herein. The Settlement Administrator shall prepare a report regarding the distribution plan pursuant to Code of Civil Procedure Section 384 and the report shall be presented to the Court by Class Counsel along with a proposed amended judgment that is consistent with the provisions of Code of Civil Procedure Section 384.

B. Funding of Settlement.

Defendant shall, within fourteen (14) calendar days of Final Approval Date, make payment of the Gross Settlement Amount (as the same may be escalated pursuant to Paragraph 17 of this Agreement) and Employer Taxes to the Settlement Administrator for deposit in an interest-bearing qualified settlement account (“QSA”) with an FDIC insured banking institution,

1 for distribution in accordance with this Agreement and the Court's Orders and subject to the
2 conditions described herein.

3 **C. Time for Distribution.**

4 Within seven (7) calendar days after payment of the full Gross Settlement Amount and
5 Employer Taxes by Defendant, or as soon thereafter as practicable, the Settlement Administrator
6 shall distribute Payments from the QSA for: (1) the Service Awards to Plaintiffs as specified in
7 this Agreement and approved by the Court; (2) the Attorneys' Fees and Cost Award to be paid
8 to Class Counsel, as specified in this Agreement and approved by the Court; (3) the Settlement
9 Administrator Costs, as specified in this Agreement and approved the Court; (4) the LWDA
10 Payment, as specified in this Agreement and approved by the Court; (5) Individual PAGA
11 Payments as specified in this Agreement and approved by the Court; and (6) Individual
12 Technician Payments, as specified in this Agreement and approved by the Court. The balance
13 remaining shall constitute the Net Settlement Amount from which Individual Settlement
14 Payments shall be made to Participating Class Members, less applicable taxes and withholdings.
15 All interest accrued shall be for the benefit of the Class Members and distributed on a *pro rata*
16 basis to Participating Class Members based on the number of Workweeks worked by them in the
17 Class Period.

18 **12. ATTORNEYS' FEES AND LITIGATION COSTS**

19 Class Counsel shall apply for, and Defendant shall not oppose, an award of attorneys'
20 fees of up to 35% of the Gross Settlement Amount, which, unless escalated pursuant to Paragraph
21 17 of this Agreement, amounts to Three Hundred Ninety-One Thousand, Five Hundred Three
22 Dollars and Zero Cents (\$391,503.00). Class Counsel shall further apply for, and Defendant shall
23 not oppose, an application or motion by Class Counsel for reimbursement of actual costs
24 associated with Class Counsel's prosecution of this matter as set forth by declaration testimony
25 in an amount up to Thirty Thousand Dollars and Zero Cents (\$30,000.00). Awards of attorneys'
26 fees and costs shall be paid out of the Gross Settlement Amount, and encompass all past and
27 future attorneys' fees and costs necessary to prosecute, settle, and obtain Final Approval of the
28 settlement in Actions. The "future" aspect of the amounts stated herein includes, without

1 limitation, all time and expenses expended by Class Counsel (including any appeals therein).
2 There will be no additional charge of any kind to either the Settlement Class Members or request
3 for additional consideration from Defendant for such work unless, Defendant materially breaches
4 this Agreement, including any term regarding funding, and further efforts are necessary from
5 Class Counsel to remedy said breach, including, without limitation, moving the Court to enforce
6 the Agreement. Should the Court approve attorneys' fees and/or litigation costs and expenses in
7 amounts that are less than the amounts provided for herein, then the unapproved portion(s) shall
8 be a part of the Net Settlement Amount.

9 **13. SERVICE AWARDS TO PLAINTIFFS**

10 Named Plaintiffs shall seek, and Defendant shall not oppose, Service Awards in an
11 amount not to exceed Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00) for
12 Plaintiff Mendoza and Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00) for
13 Plaintiff Marroquin, amounting to a total of Fifteen Thousand Dollars and Zero Cents
14 (\$15,000.00) for participation in and assistance with the Class Actions. Any Service Awards
15 awarded to Plaintiffs shall be paid from the Gross Settlement Amount and shall be reported on
16 an IRS Form 1099. If the Court approves the Service Awards to Plaintiffs in less than the
17 amounts sought herein, then the unapproved portion(s) shall be a part of the Net Settlement
18 Amount.

19 **14. TAXATION AND ALLOCATION**

20 a. Each Individual Settlement Payment and/or Individual Technician Payment shall
21 be allocated as follows: 50% as wages (to be reported on an IRS Form W2); and 50% as interest
22 and penalties (to be reported on an IRS Form 1099). Each Individual PAGA Payment shall be
23 allocated entirely as penalties and reported on an IRS Form 1099. The Parties agree that the
24 employees' share of taxes and withholdings with respect to the wage-portion of the Individual
25 Settlement Share will be withheld from the Individual Settlement Share in order to yield the
26 Individual Settlement Payment. The amount of federal income tax withholding will be based
27 upon a flat withholding rate for supplemental wage payments in accordance with Treasury
28

1 Regulation § 31.3402(g)-1(a)(2) as amended or supplemented. Income tax withholding will also
2 be made pursuant to applicable state and/or local withholding codes or regulations.

3 b. Forms W-2 and/or Forms 1099 will be distributed by the Settlement
4 Administrator at times and in the manner required by the Internal Revenue Code of 1986 (the
5 “Code”) and consistent with this Agreement. If the Code, the regulations promulgated
6 thereunder, or other applicable tax law, is changed after the date of this Agreement, the processes
7 set forth in this Section may be modified in a manner to bring settlement administration into
8 compliance with any such changes.

9 c. All Employer Taxes shall be paid by Defendant separate, apart, and in addition to
10 the Gross Settlement Amount. Defendant shall remain liable to pay the employer’s share of
11 payroll taxes as described above.

12 d. Neither Counsel for Plaintiffs nor Defendant intend anything contained in this
13 Agreement to constitute advice regarding taxes or taxability, nor shall anything in this Agreement
14 be relied upon as such within the meaning of United States Treasury Department Circular 230
15 (31 C.F.R. Part 10, as amended) or otherwise.

16 **15. PRIVATE ATTORNEYS’ GENERAL ACT ALLOCATION**

17 The Parties agree to allocate Fifty Thousand Dollars and Zero Cents (\$50,000.00) of the
18 Gross Settlement Amount toward PAGA penalties. Pursuant to the PAGA, seventy-five percent
19 (75%) of the amount allocated toward PAGA (\$37,500.00) will be paid to the LWDA and twenty-
20 five percent (25%) (\$12,500.00) will be distributed to Aggrieved Employees on a *pro rata* basis
21 based upon their respective Workweeks worked as Aggrieved Employees during the PAGA
22 Period.

23 **16. COURT APPROVAL**

24 This Agreement is contingent upon an order by the Court granting Final Approval of the
25 Settlement, and that the LWDA does not intervene and object to the Settlement. In the event it
26 becomes impossible to secure approval of the Settlement by the Court and the LWDA, the Parties
27 shall be restored to their respective positions in the Actions prior to entry of this Settlement. If
28 this Settlement Agreement is voided, not approved by the Court or approval is reversed on appeal,

1 it shall have no force or effect and no Party shall be bound by its terms except to the extent: (a)
2 the Court reserves any authority to issue any appropriate orders when denying approval; and/or
3 (b) there are any terms and conditions in this Settlement Agreement specifically stated to survive
4 the Settlement Agreement being voided or not approved, and which control in such an event.

5 **17. INCREASE IN WORKWEEKS**

6 Defendant represents that there are no more than 37,296 Workweeks worked during the
7 Class Period. In the event the number of Workweeks worked by Class Members during the
8 Class Period increases by more than 10%, or 3,729 Workweeks, then the Gross Settlement
9 Amount shall be increased proportionally by the Workweeks in excess of 37,296 Workweeks
10 multiplied by the Workweek Value. The Workweek Value shall be calculated by dividing the
11 originally agreed-upon Gross Settlement Amount (\$1,118,580.00) by 37,296, which amounts
12 to a Workweek Value of \$30.00 per Workweek. Thus, for example, should there be 42,000.00
13 Workweeks in the Class Period, then the Gross Settlement Amount shall be increased by
14 \$141,12.00. ((42,000 Workweeks – 37,296 Workweeks) x \$30.00 per Workweek.)

15 **18. NOTICE OF JUDGMENT**

16 In addition to any duties set out herein, the Settlement Administrator shall provide
17 notice of the Final Judgment entered in the Mendoza Action by posting the same on its website
18 for a period of no less than four (4) years.

19 **19. MISCELLANEOUS PROVISIONS**

20 **A. Interpretation of the Agreement.**

21 This Agreement constitutes the entire agreement between the Parties with respect to its
22 subject matter. Except as expressly provided herein, this Agreement has not been executed in
23 reliance upon any other written or oral representations or terms, and no such extrinsic oral or
24 written representations or terms shall modify, vary or contradict its terms. In entering into this
25 Agreement, the Parties agree that this Agreement is to be construed according to its terms and
26 may not be varied or contradicted by extrinsic evidence. The Agreement will be interpreted and
27 enforced under the laws of the State of California, both in its procedural and substantive aspects,
28 without regard to its conflict of law provisions. Any claim arising out of or relating to the

1 Agreement, or the subject matter hereof, will be resolved solely and exclusively in the Superior
2 Court of the State of California for the County of Los Angeles, and Plaintiffs and Defendant
3 hereby consent to the personal jurisdiction of the Court in the Actions over it solely in connection
4 therewith. The foregoing is only limited to disputes concerning this Agreement. The Parties,
5 and each of them, participated in the negotiation and drafting of this Agreement and had available
6 to them the advice and assistance of independent counsel. As such, neither Plaintiffs nor
7 Defendant may claim that any ambiguity in this Agreement should be construed against the other.
8 The Agreement may be modified only by a writing signed by counsel for the Parties and approved
9 by the Court.

10 **B. Further Cooperation.**

11 The Parties and their respective attorneys shall proceed diligently to prepare and execute
12 all documents, to seek the necessary approvals from the Court, and to do all things reasonably
13 necessary to consummate the Settlement as expeditiously as possible. The Parties agree that they
14 will not take any action inconsistent with this Agreement, including, without limitation,
15 encouraging Settlement Class Members and/or Technician Class Members to opt out of the
16 Settlement. In the event the Court finds that any Party has taken actions inconsistent with the
17 Settlement, including, without limitation, encouraging Settlement Class Members and/or
18 Technician Class Members to opt out of the Settlement, the Court may take any corrective
19 actions, including enjoining any Party from communicating regarding the Settlement on an *ex*
20 *parte* basis, issuing (a) corrective notice(s), awarding monetary, issue, evidentiary and/or
21 terminating sanctions against that Party, and/or enforcing this Agreement despite the presence of
22 opt-outs and/or objections.

23 **C. Counterparts.**

24 The Agreement may be executed in one or more actual or non-original counterparts, all
25 of which will be considered one and the same instrument and all of which will be considered
26 duplicate originals.

27 **D. Authority.**

Each individual signing below warrants that he or she has the authority to execute this Agreement on behalf of the Party for whom or which that individual has signed this Agreement.

E. No Third-Party Beneficiaries.

Plaintiffs, Participating Class Members, Aggrieved Employees, the State of California, Class Counsel, and Defendant are direct beneficiaries of this Agreement, but there are no third-party beneficiaries.

F. Deadlines Falling on Weekends or Holidays.

To the extent that any deadline set forth in this Agreement falls on a Saturday, Sunday, or legal holiday, that deadline shall be continued until the following business day.

G. Severability.

In the event that one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall in no way effect any other provision if Defendant's Counsel and Class Counsel, on behalf of the Parties and the Settlement Class, mutually elect in writing to proceed as if such invalid, illegal, or unenforceable provision had never been included in this Agreement.

IT IS SO AGREED:

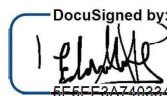
Dated: Jul 29, 2022, 2022



Mario a. Mendoza (Jul 29, 2022 13:11 PDT)

MARIO ANGEL MENDOZA
Plaintiff and Class Representative

Dated: 8/25/2022, 2022

DocuSigned by:

6E6EE2A7403845F...

EDIN MARROQUIN
Plaintiff

Dated: _____, 2022

AMUSEMENT INDUSTRY, INC.

Defendant

By:

Its:

Each individual signing below warrants that he or she has the authority to execute this Agreement on behalf of the Party for whom or which that individual has signed this Agreement.

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Plaintiffs, Participating Class Members, Aggrieved Employees, the State of California, Class Counsel, and Defendant are direct beneficiaries of this Agreement, but there are no third-party beneficiaries.

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IT IS SO AGREED:

Dated: _____, 2022

MARIO ANGEL MENDOZA
Plaintiff and Class Representative

Dated: _____, 2022

EDIN MARROQUIN
Plaintiff

Dated: 8/31, 2022

AMUSEMENT INDUSTRY, INC.
Defendant
By: Yaakov Greenspan
Its: President

AGREED AS TO FORM:

Dated: September 1, 2022

Vedang J. Patel

DAVID D. BIBIYAN
VEDANG J. PATEL
**Counsel for Plaintiff MARIO ANGEL
MENDOZA**

Dated: _____, 2022

JUSTIN F. MARQUEZ
Counsel for Plaintiff EDIN MARROQUIN

Dated: _____, 2022

BASHIR E. EUSTACHE
**Counsel for Defendant AMUSEMENT
INDUSTRY, INC.**

AGREED AS TO FORM:

Dated: _____, 2022

DAVID D. BIBIYAN
VEDANG J. PATEL
**Counsel for Plaintiff MARIO ANGEL
MENDOZA**

Dated: _____ August 25, 2022

JUSTIN F. MARQUEZ
Counsel for Plaintiff EDIN MARROQUIN

Dated: _____, 2022

BASHIR E. EUSTACHE
**Counsel for Defendant AMUSEMENT
INDUSTRY, INC.**

1
2 **AGREED AS TO FORM:**

3
4 Dated: _____, 2022

5 _____
6 DAVID D. BIBIYAN
7 VEDANG J. PATEL
8 **Counsel for Plaintiff MARIO ANGEL**
9 **MENDOZA**

10
11 Dated: _____, 2022

12 _____
13 JUSTIN F. MARQUEZ
14 **Counsel for Plaintiff EDIN MARROQUIN**

15
16 Dated: 8/30 _____, 2022

17 _____
18 
19 BASHIR E. EUSTACHE
20 **Counsel for Defendant AMUSEMENT**
21 **INDUSTRY, INC.**

EXHIBIT 2



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A Firm-by-Firm Sampling of Billing Rates Nationwide

The *National Law Journal* asked the respondents to its 2002 survey of the nation's 250 largest law provide hourly billing rate information for partners and associates firmwide. The firms that supplied information -- including some firms that are not in the NLJ 250 -- are listed below in alphabetical order. The number after a firm's name indicates the total number of attorneys at that firm. The city listed below the name of a firm is the location of the firm's principal office or largest office.

A | B | C | D | E | F | G | H | I | J | K | L | M | N | O | P | Q | R | S | T | U | V | W | X | Y | Z

A B C D

Akin, Gump, Strauss, Hauer & Feld (1,017)
(Washington, D.C.)
Partners \$350-\$600
Associates \$170-\$330

Alston & Bird (674)
(Atlanta)
Partners \$330-\$575
Associates \$170-\$500

Altheimer & Gray (361)
(Chicago)
Partners \$220-\$525
Associates \$115-\$360

Andrews & Kurth (375)
(Houston)
Partners \$210-\$535
Associates \$170-\$400

Arent Fox Kintner Plotkin & Kahn (249)
(Washington, D.C.)
Partners \$115-\$560
Associates \$165-\$360

Armstrong Tebbate (250)
(St. Louis)
Partners \$210-\$310
Associates \$105-\$240

Artor & Hadden (273)
(Cleveland)
Partners \$215-\$450
Associates \$150-\$285

Baker, Donelson, Bearman & Caldwell (240)
(Memphis, Tenn.)
Partners \$175-\$480
Associates \$110-\$275

Ballard Spahr Andrews & Ingersoll (441)
(Philadelphia)

Kelley Drye & Warren (358)
(New York)
Partners \$300-\$590
Associates \$180-\$375

Kramer Levin Natallie & Frankel (285)
(New York)
Partners \$440-\$625
Associates \$210-\$440

L M N

Lang Powell Spears Lubertsky (175)
(Seattle)
Partners \$225-\$380
Associates \$175-\$260

Lewis, Rice & Fingersh (170)
(St. Louis)
Partners \$360-\$355
Associates \$110-\$270

Littler Mendelson (395)
(San Francisco)
Partners \$220-\$440
Associates \$135-\$350

Locke Liddell & Sapp (408)
(Houston)
Partners \$300-\$595
Associates \$150-\$340

Loeb & Loeb (175)
(Los Angeles)
Partners \$350-\$650
Associates \$185-\$325

Lora, Blazoff & Brook (325)
(Chicago)
Partners \$255-\$510
Associates \$140-\$285

Lowenstein Sandler (193)
(Roseland, N.J.)

04/15/11

Partners \$240-\$525
Associates \$145-\$300

Bell, Boyd & Lloyd (226)
(Chicago)
Partners \$250-\$550
Associates \$200-\$275

Blackwell Sanders Peper Martin (301)
(Kansas City, Mo.)
Partners \$165-\$410
Associates \$110-\$210

Blank Rome Comisky & McCauley (398)
(Philadelphia)
Partners \$285-\$565
Associates \$175-\$360

Boutt, Cummings, Connors & Barry (89)
(Nashville, Tenn.)
Partners \$185-\$375
Associates \$135-\$235

Bracewell & Patterson (362)
(Houston)
Partners \$210-\$600
Associates \$125-\$325

Bradley, Arant, Rose & White (181)
(Birmingham, Ala.)
Partners \$205-\$365
Associates \$150-\$275

Brinks Hofer Gilson & Liang (138)
(Chicago)
Partners \$295-\$500
Associates \$165-\$290

Bryan Cave (841)
(St. Louis)
Partners \$225-\$710
Associates \$135-\$410

Buchalter, Nemer, Fields & Younger (137)
(Los Angeles)
Partners \$310-\$450
Associates \$160-\$350

Bushman Shattuck (282)
(Pittsburgh)
Partners \$225-\$720
Associates \$135-\$300

Buckingham Doolittle & Burroughs (135)
(Albany, Ohio)
Partners \$205-\$360
Associates \$135-\$260

Burns, Peano, Swicker & Mathis (37)
(Alexandria, Va.)
Partners \$300-\$550
Associates \$175-\$300

Burr & Forman (169)
(Birmingham, Ala.)
Partners \$205-\$365
Associates \$140-\$225

Butter Long (204)
(Detroit)
Partners \$205-\$380
Associates \$135-\$215

Partners \$285-\$525
Associates \$140-\$295

Lyco, Forward, Hamilton & Scripps (202)
(San Diego)
Partners \$310-\$500
Associates \$150-\$300

Manatt, Phelps & Phillips (244)
(Los Angeles)
Partners \$375-\$600
Associates \$200-\$355

Marshall, Dennehey, Warner, Coleman & Goggin (288)
(Philadelphia)
Partners \$130-\$255
Associates \$115-\$180

Mathews and Branscomb (51)
(San Antonio)
Partners \$175-\$325
Associates \$125-\$195

McCarter & English (270)
(Newark, N.J.)
Partners \$250-\$495
Associates \$140-\$285

McGuireWoods (558)
(Richmond, Va.)
Partners \$210-\$575
Associates \$85-\$325

Michael Best & Friedrich (349)
(Milwaukee)
Partners \$180-\$425
Associates \$120-\$240

Miller, Canfield, Paddock and Stone (301)
(Detroit)
Partners \$210-\$475
Associates \$125-\$230

Miller & Chevalier (123)
(Washington, D.C.)
Partners \$320-\$650
Associates \$175-\$340

Miller Nash (149)
(Portland, Ore.)
Partners \$210-\$350
Associates \$125-\$225

Moffett Mullins Rife & Scarborough (262)
(Columbia, S.C.)
Partners \$200-\$390
Associates \$145-\$270

Mutter, McLennen & Fish (170)
(Boston)
Partners \$330-\$480
Associates \$175-\$300

O - R

Obermayer Rebmann Maxwell & Hippel (110)
(Philadelphia)
Partners \$300-\$475
Associates \$145-\$325

Ogletree, Deakins, Nash, Smoak & Stewart (162)

Jenkins & Gilchrist (573)
(Dallas)
Partners \$275-\$525
Associates \$165-\$280

Jenner & Block (390)
(Chicago)
Partners \$350-\$625
Associates \$185-\$350

Jones, Walker, Waechter, Poltavant, Carrère &
Denègre (217)
(New Orleans)
Partners \$170-\$335
Associates \$110-\$185

Womble Carlyle Sandridge & Rice (437)
(Winston-Salem, N.C.)
Partners \$190-\$500
Associates \$125-\$265

Wyatt, Tarrant & Combs (201)
(Louisville, Ky.)
Partners \$150-\$310
Associates \$100-\$190

(The National Law Journal, December 2002)

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11/19/03

EXHIBIT 3

1 JOSEPH E. JARAMILLO, CA Bar No. 178566
jjaramillo@gdblegal.com
2 ROBERTA L. STEELE, CA Bar No. 188198
rsteele@gdblegal.com
3 GOLDSTEIN, DEMCHAK, BALLER,
BORGEN & DARDARIAN
4 300 Lakeside Drive, Suite 1000
Oakland, CA 94612
5 (510) 763-9800
(510) 835-1417 (fax)

6 GRAHAM S.P. HOLLIS, CA Bar No. 120577
ghollis@gracehollis.com
7 MARTA MANUS CA Bar No. 260132
mmanus@gracehollis.com
8 GRACEHOLLIS LLP
9 3555 Fifth Avenue
San Diego, CA 92103
10 (619) 692-0800
(619) 692-0822 (fax)

11 Attorneys for Plaintiffs ROSA CANTU and
12 SANDRA CHU

13 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 COUNTY OF LOS ANGELES
15

16 ROSA CANTU AND SANDRA CHU,
17 individually and on behalf of others similarly
situated,

18 Plaintiffs,

19 vs.

20 PACIFIC BELL TELEPHONE COMPANY
d/b/a AT&T CALIFORNIA, and Does 1 through
21 100, inclusive,

22 Defendants.

Case No.: BC441237

CLASS ACTION [Code Civ. Proc. § 382]

REPRESENTATIVE ACTION
[Labor Code § 2698, et seq.]

DECLARATION OF RICHARD M. PEARL
IN SUPPORT OF PLAINTIFFS' MOTION
FOR FINAL APPROVAL OF CLASS
ACTION SETTLEMENT AND AN AWARD
OF REASONABLE ATTORNEYS' FEES
AND COSTS

Date: February 4, 2011
Time: 9:00 a.m.
Dept: 324
Judge: Emilie H. Elias

DECLARATION OF RICHARD M. PEARL IN SUPPORT OF PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS
ACTION SETTLEMENT AND AN AWARD OF REASONABLE ATTORNEYS' FEES AND COSTS - CASE NO.: BC441237

234747-2

1 I, Richard M. Pearl, declare:

2 1. I make this Declaration of my own personal knowledge, and if called to testify, I could
3 and would testify competently to the matters stated herein.

4 A. Background

5 2. I am a member in good standing of the California State Bar. I am in private practice as
6 the principal of my own law firm, the Law Offices of Richard M. Pearl. I specialize in issues related to
7 court-awarded attorneys' fees, including the representation of parties in fee litigation and appeals,
8 serving as an expert witness, and serving as a mediator and arbitrator in disputes concerning attorneys'
9 fees and related issues. In this case, I have been asked by Plaintiffs' counsel to express my expert
10 opinion regarding their claim for reasonable attorneys' fees.

11 3. Briefly summarized, my background is as follows: I am a 1969 graduate of Boalt Hall
12 School of Law, University of California, Berkeley, California. After graduation, I spent fourteen years
13 in federally-funded legal services programs before going into private practice in 1982. From 1977 to
14 1982, I was Director of Litigation for California Rural Legal Assistance, Inc., a statewide legal services
15 program with more than fifty attorneys. Since April 1987, I have been a sole practitioner in the San
16 Francisco Bay Area. Martindale Hubbell rates my law firm "AV." I also have been selected as a
17 Northern California "Super Lawyer" in Appellate Law for 2005, 2006, 2007, 2008, and 2010. A copy
18 of my Resume is attached hereto as Exhibit A.

19 4. Since 1982, my practice has been a general civil litigation and appellate practice, with an
20 emphasis on cases and appeals involving court-awarded attorneys' fees. I have lectured and written
21 extensively on court-awarded attorneys' fees. I have been a member of the California State Bar's
22 Attorneys Fees Task Force and have testified before the State Bar Board of Governors and the
23 California Legislature on attorneys' fee issues. I am the author of California Attorney Fee Awards, (3d
24 ed Cal. CEB 2010). I also was the author of California Attorney Fee Awards, 2d Ed. (Calif. Cont. Ed.
25 of Bar 1994), and its 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007,
26 and 2008 Supplements. This treatise has been cited by the California appellate courts on more than 35
27 occasions. I also authored the 1984, 1985, 1987, 1988, 1990, 1991, 1992, and 1993 Supplements to its
28 predecessor, CEB's California Attorney's Fees Award Practice. In addition, I authored a federal

1 manual on attorneys' fees entitled *Attorneys' Fees: A Legal Services Practice Manual*, published by the
2 Legal Services Corporation. I also co-authored the chapter on "Attorney Fees" in Volume 2 of CEB's
3 *Wrongful Employment Termination Practice*, 2d Ed. (1997).

4 5. More than 90% of my practice is devoted to issues involving court-awarded attorney's
5 fees. I have been counsel in over 140 attorneys' fee applications in state and federal courts, primarily
6 representing other attorneys. I also have briefed and argued more than 40 appeals, at least 25 of which
7 have involved attorneys' fees issues. In the past ten or so years, I have successfully handled four cases
8 in the California Supreme Court involving court-awarded attorneys' fees: (1) *Delaney v. Baker* (1999)
9 20 Cal. 4th 23, which held that heightened remedies, including attorneys' fees, are available in suits
10 against nursing homes under California's Elder Abuse Act; (2) *Ketchum v. Moses* (2001) 24 Cal. 4th
11 1122, which held, inter alia, that contingent risk multipliers remain available under California attorney
12 fee law, despite the United States Supreme Court's contrary ruling on federal law (note that in
13 *Ketchum*, I was primary appellate counsel in the Court of Appeal and "second chair" in the Supreme
14 Court); (3) *Flannery v. Prentice* (2001) 26 Cal. 4th 572, which held that in the absence of an agreement
15 to the contrary, statutory attorneys' fees belong to the attorney whose services they are based upon; and
16 (4) *Graham v. DaimlerChrysler Corp.* (2004) 34 Cal. 4th 553, which I handled, along with trial counsel,
17 in both the Court of Appeal and Supreme Court. I also successfully represented the plaintiffs in a
18 previous attorneys' fee decision in the Supreme Court, *Maria P. v. Riler* (1987) 43 Cal. 3d 1281, and
19 represented amicus curiae, along with Richard Rothschild, in the Supreme Court's most recent fee
20 decision, *Yasquez v. State of California* (2009) 45 Cal. 4th 243. I also have handled several Ninth
21 Circuit attorneys' fees matters, including *Davis v. City & County of San Francisco* (9th Cir. 1992) 976
22 F.2d 1536, *Mangold v. CPUC* (9th Cir. 1995) 67 F.3d 1470, *Velez v. Wynne* (9th Cir. 2007) 2007 U.S.
23 App. LEXIS 2194, and *Camacho v. Bridgeport Financial, Inc.* (9th Cir. 2008) 523 F.3d 973. See
24 Exhibit A.

25 B. Plaintiffs' Counsel's Rates

26 6. I have been asked by Plaintiffs' counsel to submit this declaration in support of
27 Plaintiffs' Motion for Final Approval of Class Action Settlement and an Award of Reasonable
28 Attorneys' Fees and Costs. I submit this declaration to provide the Court information concerning

2
DECLARATION OF RICHARD M. PEARL IN SUPPORT OF PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS
ACTION SETTLEMENT AND AN AWARD OF REASONABLE ATTORNEYS' FEES AND COSTS - CASE NO.: BCM1237

234747-2

1 hourly rates for attorneys in the San Francisco Bay Area, and in particular to provide information
2 demonstrating that the hourly rates requested by Plaintiffs' counsel in this matter are within the range of
3 market rates being charged in the San Francisco Bay Area and the San Diego market for similar
4 services, i.e. handling and trying complex class actions on behalf of employees against large employers
5 like Pacific Bell Telephone Company in this case.

6 7. I understand that Plaintiffs' counsel are requesting an award of attorneys' fees at the
7 following rates:

8 a. Goldstein Demchak Baller Borgen & Dardarian, Oakland, CA

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Name	Grad Year	Billing Rate
Roberta L. Steele	1993	\$600
Laura L. Ho	1994	\$600
Joseph E. Jaramillo	1995	\$550
Senior Paralegal		\$195
Paralegal		\$150

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13 b. Grace Hollis LLP, San Diego, CA

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Name	Grad Year	Billing Rate
Graham S.P. Hollis	1985	\$600
Marta Mannus	2008	\$375
Senior Paralegal		\$170

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17 8. Through my writing and practice, I have become familiar with the non-contingent
18 market rates charged by attorneys in California and elsewhere. This familiarity has been obtained in
19 several ways: (1) by handling attorneys' fee litigation; (2) by discussing fees with other attorneys;
20 (3) by obtaining declarations regarding prevailing market rates in cases in which I represent attorneys
21 seeking fees; and (4) by reviewing attorneys' fee applications and awards in other cases, as well as
22 surveys and articles on attorney's fees in the legal newspapers and treatises.

23 9. The information I have gathered, some of which is summarized below, shows that the
24 rates requested by Plaintiffs' counsel in this case are well in line with the non-contingent market rates
25 charged by litigation attorneys of similar qualifications and experience in San Francisco, San Diego,
26 and similar markets.

27 ///

28 ///

c. Rates found reasonable in other cases.

Set forth below are rates that were awarded by the courts in the following cases:

2010 Rates

(1) *Savaglio, et al. v. WalMart*, Alameda County Superior Court No. C-835687-7, Order Granting Class Counsel's Motion for Attorneys' Fees, filed September 10, 2010, a wage and hour class action, in which the court found the following hourly rates reasonable (before applying a 2.36 multiplier):

Years of Experience	Rate
51	\$875
39	\$750
38	\$600
33	\$775
25	\$550
23	\$650
21	\$625
19	\$610
18	\$600
17	\$585
16	\$570
15	\$560
14	\$550
13	\$525
12	\$515
11	\$510
10	\$505
9	\$500
7	\$460
4	\$435
Law Clerks	\$125-\$260

2009 Rates

(1) *Center for Biological Diversity v. California Fish & Game Commission*, San Francisco Superior Court No. CPF-08-508759, Order Granting Petitioners' Motion for Attorneys' Fees, filed December 1, 2009, in which the court found reasonable the following hourly rates:

Years of Experience	Rate
25	\$650
8	\$375
4	\$250
Law Clerks	\$150

1 (2) *Kashmiri et al v. Regents of U.C.*, San Francisco Superior Court, Order Granting
2 Plaintiffs' Motion for Common Fund Attorneys' Fees and Expenses, filed September 30, 2008, in
3 which the court found the following rates reasonable, plus a 3.7 lodestar multiplier:

Years of Experience	Rate
40	\$750
22	\$690
14	\$590
7	\$420
4	\$345
2	\$295
Law Clerks	\$200
Paralegals	\$195

10 (4) *Environmental Law Foundation v. Laidlaw Transit, Inc.*, San Francisco Superior
11 Court No. CGC-06-451832, Order Granting Motion for Court Approval of Parties Joint Stipulated
12 Judgment, filed September 22, 2008, in which the court found the following hourly rates reasonable in a
13 Proposition 65 action, plus a 1.25 multiplier:

Years of Experience	Rate
29	\$750
26	\$700
24	\$700
23	\$650
18	\$650
16	\$625
14	\$600
10	\$560
9	\$495-\$575
8	\$475
7	\$450
6	\$395
4	\$325
2	\$300
1	\$250
Paralegals	\$145-\$175
Interns	\$125

25 (5) *Gardner v. Schwarzenegger*, Alameda County Superior Court No. RG06-278911,
26 Order After Hearing filed April 20, 2009, aff'd by unpublished opinion, 2010 Cal. App. Unpub. LEXIS
27 1240, in which the court found the following 2008 rates reasonable, plus a 1.75 multiplier:

Years of Experience	Rate
17	\$640
14	\$590
8	\$445
Paralegal	\$170

a. Rate Information from Surveys and Other Cases:

I have reviewed numerous declarations and depositions filed in other cases, as well as various surveys of legal rates. These include the Westlaw CourtExpress Legal Billing Reports for May, August, and December 2009 (attached hereto as Exhibit B). These sources show the hourly rates for litigation undertaken on a non-contingent basis by the following California law firms, listed in alphabetical order:

Altshuler Berzon LLP

2009 Rates:

Years Experience	Rate
32	\$775
15	\$625
8	\$475
Law Clerks	\$200
Paralegals	\$195

2007 Rates:

Years Experience	Rate
23	\$700
15	\$550
5	\$325
Paralegals	\$155-\$190

Cooley Godward Kronish LLP

2008 Rates:

Years Experience	Rate
Partners	\$525-\$980
Associates	\$285-\$570

2007 Rates:

Years Experience	Rate
Partners	\$470-\$875 (average \$673)
Associates	\$250-\$555 (average \$403)

Conghlin Stoia Geller Rudman & Robbins, LLP

2007 Rates:

Years Experience	Rate
42	\$700
19	\$650
14	\$650
14	\$600
13	\$585
11	\$510
6	\$460
5	\$285

Duane Morris LLP

2009 Rates:

Years Experience	Rate
Partners	\$325-\$795
Associates	\$225-\$450

Epstein Becker & Green LLP

2009 Rates:

Years Experience	Rate
Partners	\$350-\$855
Associates	\$180-\$475

Fenwick & West

2007 Rates:

Years Experience	Rate
Partners	\$500-\$775 (average \$590)
Associates	\$245-\$500 (average \$370)

Hadsell Stormer

2009 Rates:

Years Experience	Rate
35	\$775
20	\$575

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RA/RS/TT

Howard, Rice, Nemerovski, Canady, Falk & Rabkin

2008 Rates:

Years Experience	Rate
Partners	\$515-\$795
Associates	\$275-\$510

2007 Rates:

Years Experience	Rate
Partners	\$495-\$775
Associates	\$275-\$485

Litt, Estuar, Harrison & Kitson, LLP

2009 Rates:

Years Experience	Rate
39	\$800
16	\$550
3	\$320
2	\$285
Paralegals	\$125-\$235
Law Clerks	\$225

Loeb & Loeb

2009 Rates:

Years Experience	Rate
Partners	\$475-\$950
Associates	\$285-\$450

2008 Rates:

Years Experience	Rate
Partners	\$450-\$925
Associates	\$260-\$500

2007 Rates:

Years Experience	Rate
Partners	\$475-\$875 (average \$605)
Associates	\$240-\$500 (average \$400)

Manatt, Phelps & Phillips

2009 Rates:

Years Experience	Rate
Partners	\$495-\$850
Associates	\$250-\$505

2008 Rates:

Years Experience	Rate
Partners	\$495-\$850
Associates	\$290-\$505

2007 Rates:

Years Experience	Rate
Partners	\$520-\$785 (average \$600)
Associates	\$265-\$480 (average \$395)

Morrison Foerster

2009 Rates:

Years Experience	Rate
24	\$750

2008 Rates:

Years Experience	Rate
45	\$675
36	\$725
33	\$785
14	\$650
12	\$600
9	\$560
7	\$535
5	\$485
1	\$520
Paralegals	\$185- \$230

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2007 Rates:

Years Experience	Rate
44	\$675
11	\$550
8	\$520
6	\$475
3	\$250

O'Melveny & Myers

2009 Rates:

Years Experience	Rate
36-37	\$860-\$950
21	\$820
16-18	\$700-\$710
14	\$595-\$675
10	\$590
8	\$565
7	\$540-\$565
5-6	\$480-\$520
2-4	\$395-450
Paralegals	\$225-310

Reed Smith

2008 Rates:

Years Experience	Rate
Partners	\$375-\$900 (average \$626)
Associates	\$235-\$580 (average \$423)

2007 Rates:

Years Experience	Rate
Partners	\$350-\$825 (average \$558)
Associates	\$200-\$510 (average \$374)

Rudy, Exelrod & Zieff

2009 Rates:

Years Experience	Rate
Partners	
31	\$700
Associates	
3	\$305

2007 Rates:

Years Experience	Rate
Partners	
29	\$700
12	\$500
Associates	
10	\$400
8	\$330
Law Clerk	\$200
Paralegal	\$150

Schoubrun, DeSimone, Seplow, Harris & Hoffman

2009 Rates:

Years Experience	Rate
33	\$750
25	\$625
24	\$625
8	\$375
6	\$370
Paralegals	\$125

Sheppard, Mullin, Richter & Hampton

2008 Rates:

Years Experience	Rate
Partners	\$475-\$795
Associates	\$275-\$455

2007 Rates:

Years Experience	Rate
Partners	\$425-\$795
Associates	\$260-\$550

Townsend and Townsend and Crew

2009 Rates:

Years Experience	Rate
Partners	\$480-\$750
Associates	\$260-\$460

Winston & Strawn

2009 Rates:

Years Experience	Rate
Partners	\$400-\$995
Associates	\$210-\$670

10. The hourly rates set forth above pertain largely to law firms headquartered in the San Francisco Bay Area and Los Angeles. To the extent those law firms handle cases in other jurisdictions, like San Diego, they almost always charge the same rates that they do for litigation in the Bay Area. To the extent Plaintiffs' claim is based upon San Diego rates, however, I also am of the opinion that they are in line with the rates charged by lawyers of comparable skill, experience, and reputation for comparable work, i.e., complex representative litigation in San Diego. I base that opinion on the following facts:

a. In a report filed with the California Public Utilities Commission (attached as Exhibit C), the San Diego Gas & Electric Co. reported that in 2003, it hired outside counsel at rates of from \$477-625 per hour for partners with 13 or more years experience, \$435 per hour for partners with 8-12 years of practice, and \$239-425 per hour for associate attorneys with up to 7 years of practice. Hourly rates have increased significantly since then.

b. San Diego law firm Luce, Forward, Hamilton & Scripps reports that in 2010, its partner rates ranged from \$350 to \$670 per hour, and its associate rates ranged from \$245 to \$445 per hour. In 2009, its partner rates ranged from \$360 to \$650 per hour, and its associate rates ranged from \$240 to \$540 per hour.

11. My research regarding attorneys' fees in California has indicated a consistent increase in fees over the last several years. Most firms increased their rates over these periods. Consistent with this market, I raised my rates in 2009 and 2010, and will raise it again in 2011, to reflect both the

1 demand for my services and inflation in costs and legal rates; my rate is still significantly less than
2 many attorneys with comparable experience, expertise, and skills at other firms.

3 12. The hourly rates set forth above are those charged where full payment is expected
4 promptly upon the rendition of the billing and without consideration of factors other than hours and
5 rates. If any substantial part of the payment were to be deferred for any substantial period of time, for
6 example, or if payment were to be contingent upon outcome or any other factor, the fee arrangement
7 would be adjusted accordingly to compensate the attorneys for those factors.

8 13. In my experience, fee awards are almost always determined based on current rates, i.e.,
9 the attorney's rate at the time a motion for fees is made, rather than the historical rate at the time the
10 work was performed. This is a common and accepted practice to compensate attorneys for the delay in
11 being paid.

12 C. Plaintiffs' Counsel's Requested Percentage Fee

13 14. I understand that Plaintiffs request an award of fees under the common fund doctrine as a
14 percentage of the fund recovered in this litigation sufficient to provide them with a reasonable fee. This
15 is an appropriate request because this is a fully-paid, non-reversionary settlement in which the value of
16 the class recovery is fully monetized at \$2,000,000, inclusive of fees, expenses, and settlement
17 administration costs. Under these circumstances, courts award fees as percentages of the common fund
18 where they are in line with the range of fees freely negotiated in the legal marketplace in comparable
19 litigation.

20 15. Based on the information I have gathered and my own experience and expertise, it is my
21 opinion that the 33 1/3% common fund fee recovery requested by Class Counsel is, in the
22 circumstances of this case, reasonable and consistent with awards approved by other California state
23 courts reviewing class action settlements, based on the factors discussed below.

24 16. My opinion is based in part on the fact that, as a common fund case with the fund
25 consisting of \$2 million, Plaintiffs' claimed fee of 33 1/3% is entirely consistent with the legal
26 marketplace for attorneys' services in contingency fee cases involving similar financial recoveries. In
27 the course of my practice, I have become familiar with the contingency fee percentages charged by law
28 firms to sophisticated institutional clients in large damage cases. Based on that knowledge and my

1 experience in the attorneys' fees field generally, it is my opinion that if competent and experienced
2 attorneys and a sophisticated client were to negotiate a contingency fee agreement under the
3 circumstances where (a) a high risk, complex case was being contemplated, (b) it is anticipated that the
4 opposition would be vigorous, and (c) the attorneys would not be paid unless and until they were able to
5 obtain significant relief for the client, the sophisticated client would be more than willing to enter into a
6 retainer agreement under which the client would pay only the litigation out-of-pocket costs, and the
7 attorneys could reasonably expect to recover 5% to 35% of the total value of any recovery as fees.

8 17. An award of 33 1/3% of the common fund requested by Class Counsel here is consistent
9 with legal marketplace for attorneys' services in contingency fee cases because of (a) the high risk
10 involved in litigating an incentive compensation plan case on behalf of nearly 100 California
11 employees; (b) the vigorous defense presented by the large defense firm that represents Defendant here;
12 (c) the relatively small size of the common fund, which weighs toward a higher percentage; and (d) the
13 fact that here, unlike in the paradigm market practices situation described in the previous paragraph,
14 Class Counsel were obligated to advance the substantial litigation costs on a contingent basis with risk
15 of delay in repayment as well as possible non-repayment, and to represent Plaintiffs through appeal of
16 any judgment in this case. This award would also be appropriate to encourage settlement, reward
17 counsel for maximizing their clients' recoveries, and promote the private enforcement of the wage and
18 hour laws Plaintiffs allege were violated.

19 **D. Plaintiffs' Counsel's Lodestar Multiplier**

20 18. Courts often cross-check a percentage-based fee against a lodestar based fee to determine
21 if it is reasonable. I understand that Plaintiffs' lodestar here is \$332,383.88 on non-fees work. The
22 \$666,667 fee award requested represents a 2 multiplier on the non-fees lodestar.

23 19. The expense and risk of public interest litigation has not diminished over the years; to
24 the contrary, these cases are in many ways more difficult than ever. As a result, fewer and fewer
25 attorneys and firms are willing to take on such litigation, and the few who are willing to do so can only
26 continue if their fee awards reflect true market value. Attorneys who litigate on a wholly or partially
27 contingent basis expect to receive significantly higher effective hourly rates in cases where
28 compensation is contingent on success. As the case law recognizes, this does not result in any

1 "windfall" or undue "bonus." In the legal marketplace, a lawyer who assumes a significant financial
2 risk on behalf of a client rightfully expects that his or her compensation will be significantly greater
3 than if no risk was involved (i.e., if the client paid the bill on a monthly basis), and that the greater the
4 risk, the greater the "enhancement." Adjusting court-awarded fees upward in contingent fee cases to
5 reflect the risk of recovering no compensation whatsoever for hundreds of hours of labor simply makes
6 them competitive in the legal marketplace, helping to ensure that meritorious cases will be brought to
7 enforce important public interest policies and that clients who have meritorious claims will be more
8 likely to obtain qualified counsel.

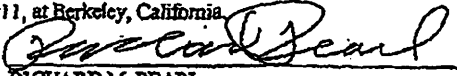
9 20. In my experience, lodestar multipliers of 2 to 4 are typical for class actions such as this
10 case. Plaintiffs' requested fee falls well within this range.

11 E. Plaintiffs' Counsel's Out-of-Pocket Expenses.

12 21. I have reviewed the billing practices of hundreds of attorneys in California. Based on
13 my experience and knowledge of these billing practices, I am aware that it is a common practice for
14 firms to bill their clients for out-of-pocket expenses incurred in litigation on a monthly basis as they are
15 incurred. Such expenses include, but are not limited to, charges incurred for copying, long-distance
16 telephone calls, postage, messengers, travel, deposition and hearing transcripts, legal and non-legal
17 computer research services, mediation services, and expert witnesses. I am informed that Plaintiffs
18 expended \$16,258.08 in out-of-pocket litigation expenses in this case, including \$8,000 for the services
19 of an experienced and skilled mediator, David Rotman, who brokered the settlement in this case. Based
20 on my knowledge and experience of such costs and billing practices, it is my opinion that these
21 expenses are reasonable given the complex nature of this case.

22 If called as a witness, I could and would competently testify from my personal knowledge to the
23 facts stated herein. I declare under penalty of perjury under the laws of the state of California the
24 foregoing is true and correct.

25 Executed this 4th day of January, 2011, at Berkeley, California.

26 
27 RICHARD M. PEARL
28