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on behalf of himself and all others similarly situated and aggrieved

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,

Plaintiff,

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]

**[PROPOSED] ORDER GRANTING
FINAL APPROVAL OF CLASS ACTION
AND REPRESENTATIVE ACTION
SETTLEMENT, APPLICATION FOR
ATTORNEYS' FEES AND COSTS, AND
SERVICE AWARD**

FILED
Superior Court of California
County of Los Angeles

03/23/2023

David W. Slayton, Executive Officer / Clerk of Court

By: L. McGreené Deputy

1 This matter having come before the Court on March 23, 2023 for a final fairness hearing
2 pursuant to the Order of this Court dated October 12, 2022, granting preliminary approval
3 (“Preliminary Approval Order”) of the class and representative action settlement upon the terms set
4 forth in the Joint Stipulation re: Class Action and Representative Action Settlement (“Settlement,”
5 “Agreement” or “Settlement Agreement”) submitted in support of Motion for Preliminary Approval
6 of Class and Representative Action Settlement and Provisional Class Certification for Settlement
7 Purposes Only; and due and adequate notice having been given to the Class Members as required in
8 the Preliminary Approval Order; and the Court having considered all papers filed and proceedings
9 had herein and otherwise being fully informed and good cause appearing therefore, it is hereby

10 **ORDERED, ADJUDGED AND DECREED THAT:**

11 1. The Motion for Final Approval of Class Action and Representative Action Settlement;
12 Enhancement Award; and Reasonable Attorneys’ Fees and Costs is hereby granted in its entirety.

13 2. All terms used herein shall have the same meaning as defined in the Settlement
14 Agreement.

15 3. This Court has jurisdiction over the subject matter of this litigation and over all Parties
16 to this litigation, including all Class Members.

17 4. The Court certifies the following two settlement classes for the purpose of settlement
18 only:

19 a. All current and former non-exempt, hourly-paid employees who worked in for
20 defendant Amusement Industry, Inc. doing business as Westland Real Estate Group
21 (“Defendant”) at any time during the period between March 12, 2017 through
22 February 10, 2022 (“Class Period”) in California (“Class Members”).

23 b. All Participating Class Members who performed technician duties including, but
24 not limited to performing maintenance and repair, plumbing, electrical, carpentry,
25 painting, cleaning, and responding to emergency maintenance requests, and worked
26 for Defendant in California at any time during the Class Period (“Technician Class
27 Members”).

28 5. “Plaintiffs” refers to, collectively, plaintiff Mario Angel Mendoza and Edin Marroquin.

1 6. The parties released shall include Defendant and each of its past, present, and future
2 respective subsidiaries, dba's, affiliates, parents, insurers and reinsurers, and company-sponsored
3 employee benefit plans of any nature and their successors and predecessors in interest, including all
4 of their officers, directors, shareholders, employees, agents, principals, heir, representatives,
5 accountants, auditors, consultants, attorneys, administrators, fiduciaries, trustees and agents.

6 7. Upon the entry of this Order granting Final Approval of the Settlement and entry of
7 Judgment, and payment by Defendant to the Settlement Administrator of the Gross Settlement
8 Amount and Employers' Taxes imposed on the wage portions of the Individual Settlement
9 Payments, Plaintiffs, and all Participating Class Members release all claims against the Released
10 Parties asserted in the Operative Complaint filed in the Mendoza Action, or any and claims that may
11 be asserted against the Released Parties based on the factual allegations in the Operative Complaint
12 filed in the Mendoza Action, or any and all claims that may be asserted against the Released Parties
13 based on the factual allegations in the Mendoza Action, as follows: For the duration of the Class
14 Period, the release includes, for Participating Class Members: (a) all claims for failure to pay
15 overtime wages; (b) all claims for failure to pay minimum wages; (c) all claims for failure to provide
16 compliant meal periods, or associated premium pay; (d) all claims for failure to provide compliant
17 rest periods, or associated premium pay; (e) all claims for the failure to timely pay wages upon
18 termination or resignation; (f) all claims for non-compliant wage statements; (g) all claims for failure
19 to reimburse employees for business expenses; (h) all claims for violation of Labor Code section
20 227.3; and (i) all claims asserted through California Business & Professions Code section 17200, *et*
21 *seq.* arising out of the Labor Code violations referenced in the Complaint (the "Class Released
22 Claims").

23 8. For Aggrieved Employees, and, to the extent permitted by law, the State of California,
24 the release includes for the duration of the PAGA Period, all claims asserted in the Marroquin PAGA
25 Notice, and alleged in the Operative Complaint, for PAGA civil penalties pursuant to Labor Code
26 sections 210, 226.3, 558, 1197.1, and 2698 *et. seq.* in connection with alleged violations of Labor
27 Code sections 96, 98.6, 200, 201, 202, 203, 204, 226, 226.7, 227.3, 246 *et seq.* 432, 510, 512, 1174,
28 1194, 1197, 1998.5, 2802 and 2810.5 (the "PAGA Released Claims").

1 9. Distribution of the Notice of Class Action Settlement (“Class Notice”) directed to the
2 Class Members as set forth in the Settlement Agreement and the other matters set forth herein have
3 been completed in conformity with the Preliminary Approval Order, including individual notice to
4 all Class Members who could be identified through reasonable effort, and was the best notice
5 practicable under the circumstances. This Class Notice provided due and adequate notice of the
6 proceedings and of the matters set forth therein, including the proposed class settlement set forth in
7 the Settlement Agreement, to all persons entitled to such Class Notice, and the Class Notice fully
8 satisfied the requirement of due process.

9 10. Zero (0) Settlement Class Members opted out of the Settlement and zero (0) Settlement
10 Class Members objected to the Settlement.

11 11. The Court further finds that the Settlement is fair, reasonable and adequate, and that
12 Plaintiff has satisfied the standards and applicable requirements for final approval of class action
13 settlement under California law, including the provisions of Code of Civil Procedure section 382
14 and Federal Rules of Civil Procedure, rule 23, approved for use by the California state courts in
15 *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 821.

16 12. This Court hereby approves the settlement set forth in the Settlement Agreement and
17 finds that the settlement is, in all respects, fair, adequate and reasonable, and directs the parties to
18 effectuate the settlement according to its terms. The Court finds that the settlement has been reached
19 as a result of intensive, serious and non-collusive arm’s-length negotiations. The Court further finds
20 that the Parties have conducted extensive and costly investigation and research, and counsel for the
21 parties are able to reasonably evaluate their respective positions. The Court also finds that settlement
22 at this time will avoid additional substantial costs, as well as avoid the delay and risks that would
23 be presented by the further prosecution of this Action. The Court has noted the significant benefits
24 to the Class Members under the Settlement. The Court also finds that the class is properly certified
25 as a class for settlement purposes only.

26 13. Nothing contained in the Settlement Agreement shall be construed or deemed in
27 admission of liability, culpability, negligence, or wrongdoing on the part of Defendant. Each of the
28 Parties has entered into this Settlement Agreement with the intention to avoid further disputes and

1 litigation, and the attendant inconvenience and expense. This Settlement Agreement shall be
2 inadmissible in evidence in any action or proceeding, except an action or proceeding to approve,
3 interpret or enforce its terms.

4 14. The Court approves Plaintiffs as class representatives.

5 15. The Court approves David D. Bibiyan and Diego Aviles of Bibiyan Law Group, P.C.,
6 as well as Justin F. Marquez of Wilshire Law Firm, as Class Counsel.

7 16. The Court approves ILYM Group, Inc. (“ILYM”, or “Settlement Administrator”) as the
8 Settlement Administrator.

9 17. The Court hereby awards Class Counsel attorneys' fees in the total amount of
10 ~~\$391,503.00~~ ^{\$372,860.00}, which is thirty-five percent (35%) of the Gross Settlement Amount and to be deducted
11 therefrom. In addition, the Court awards Class Counsel reimbursement of their costs of \$27,847.31
12 to be deducted from the Gross Settlement Amount. Attorneys' fees and costs will be paid by the
13 Settlement Administrator from the Gross Settlement Amount as set forth in the Settlement
14 Agreement. In approving the payment of Attorneys' Fees, the Court finds that the Settlement
15 conferred a significant benefit on the Class and the necessity and financial burden of private
16 enforcement of California labor laws makes an attorneys' fee award to Class Counsel appropriate.

17 ~~18. The amount of this award is based on a lodestar analysis and is subject to a reasonable~~
18 ~~multiplier for awarding reasonable attorney's fees and costs—it is thus reasonable, fair and~~
19 ~~eminently justified. In setting an award of attorneys' fees, costs and expenses, this Court has~~
20 ~~considered the following factors: (a) the time and labor required; (b) preclusion of other~~
21 ~~employment; (c) the contingent nature of the cases; (d) the experience, reputation and ability of~~
22 ~~Plaintiff's Counsel and the skill they displayed in the litigation; (e) the reasonable hourly rate of~~
23 ~~attorneys' fees assessed by Class Counsel associated with prosecution of this Class Action, to wit:~~
24 ~~David D. Bibiyan, Esq.: \$825; Jeffrey Klein, Esq.: \$700; Diego Aviles, Esq.: \$600; Sara Ehsani-~~
25 ~~Nia, Esq.: \$400; Vedang J. Patel, Esq.: \$450; Joshua Shirian, Esq.: \$400; Anton Swain-Gil, Esq.:~~
26 ~~\$350; Iona Levin, Esq.: \$400; ; Justin F. Marquez, Esq.: \$850; Benjamin H. Haber, Esq.: \$650;~~
27 ~~Arrash T. Fattahi, Esq.: \$450; Paralegals at \$150; and Legal Assistants at \$75; (f) the results~~
28 ~~achieved and benefits conferred on the Settlement Class, and (g) the reaction of Settlement Class~~

1 ~~Members. (See, eg. *Serrano v. Priest* (1977) 20 Cal.3d 25, 49, *Dunk v. Ford Motor Co.* (1996) 48~~
2 ~~Cal.App.4th 1794, 1810 fn. 21.)~~

3 19. The Court hereby approves an incentive award of \$7,500.00 each to Plaintiff Mendoza
4 and Plaintiff Marroquin, for a total of \$15,000.00 to Plaintiffs, in consideration for their time, effort
5 and risk incurred on behalf of the Settlement Class, and for providing a general release and releasing
6 unknown claims pursuant to Civil Code section 1542. The incentive award will be paid to Plaintiffs
7 by the Settlement Administrator from the Gross Settlement Amount as set forth in the Settlement
8 Agreement.

9 20. The Court hereby approves the Technician Settlement Amount of \$100,000 to be
10 distributed to Technician Class Members.

11 21. The Court hereby approves the Settlement Administrator's cost in the amount of
12 \$11,275.00. The Settlement Administrator, Phoenix Settlement Administrators, shall be paid the
13 cost of administration of the settlement from the Gross Settlement Amount.

14 22. The Court hereby approves the PAGA penalties amount of \$50,000.00, of which
15 \$37,500.00 shall be paid to the LWDA and the remaining \$12,500.00 to be distributed to the
16 "Aggrieved Employees", defined as Class Members working for Defendant during the period
17 between April 12, 2020 through February 10, 2022 ("PAGA Period") as non-exempt, hourly-paid
18 employees in California.

19 23. Except as expressly provided herein, the Parties each shall bear all their own fees and
20 costs in connection with this matter.

21 24. Participating Class Members will receive an Individual Settlement Payment and
22 Aggrieved Employees will receive an Individual PAGA Payment. Individual Settlement Payment
23 and Individual PAGA Payment checks shall remain valid and negotiable for one hundred eighty
24 (180) calendar days after the date of their issuance. Within seven (7) calendar days after expiration
25 of the 180-day period, checks for such payments shall be canceled and funds associated with such
26 checks shall be considered unpaid, unclaimed, or abandoned cash residue pursuant to Code of Civil
27 Procedure section 384 ("Unpaid Residue"). The Unpaid Residue plus accrued interest, if any, as
28 provided in Code of Civil Procedure section 384, shall be transmitted to Legal Aid at Work, 180

1 Montgomery Street, Suite 600, San Francisco, California 94104, the *cy pres* recipient, for use in Los
2 Angeles County.

3 25. The Court finds that the class settlement on the terms set forth in the Settlement
4 Agreement was made in good faith, and constitutes a fair, reasonable and adequate compromise of
5 the released claims against Defendant.

Non-appearance case review

6 26. An ~~Order to Show Cause Hearing~~ Re: Final Administration of the Class Action
7 Settlement is hereby scheduled for Dec. 13, 2023, : .m, in Department 12 of the
8 above entitled Court. At least five (5) calendar days prior to said ~~OSC hearing~~ non-appearance date, the Parties shall file
9 a declaration confirming that the claims have been paid and that administration of all of the terms
10 and conditions of the class action settlement have been completed. ~~Should the Court find that said~~
11 ~~declaration has sufficiently evidenced full and complete administration of the class action~~
12 ~~settlement, said OSC hearing will go off-calendar.~~

13 27. Without affecting the finality of the Judgment in any way, this Court hereby retains
14 continuing jurisdiction over the interpretation, implementation and enforcement of the Settlement
15 and all orders and judgments entered in connection therewith.

16
17 **IT IS SO ORDERED.**

18
19 Dated: 03/23/2023, 2023



Carolyn B. Kuhl

Carolyn B. Kuhl / Judge

Judge of the Superior Court

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