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on behalf of himself and all others similarly situated and aggrieved

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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,

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]

**[PROPOSED] ORDER GRANTING
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT AND
CERTIFYING CLASS FOR
SETTLEMENT PURPOSES ONLY**

1 This Court, having considered the Motion of plaintiffs Mario Angel Mendoza (“Plaintiff
2 Mendoza”) and Edin Marroquin (“Plaintiff Marroquin” and with Plaintiff Mendoza, “Plaintiffs”) for Preliminary Approval of the Class Action Settlement and Provisional Class Certification for
3 Settlement Purposes Only (“Motion for Preliminary Approval”), the Declarations of David D.
4 Bibiyan, Vedang J. Patel, Justin F. Marquez, Plaintiffs, and Sean Hartranft, the Joint Stipulation re:
5 Class Action and Representative Action Settlement (the “Settlement Agreement”), the Notice of
6 Proposed Class Action Settlement (“Class Notice”), and the other documents submitted in support
7 of the Motion for Preliminary Approval, hereby **ORDERS, ADJUDGES AND DECREES THAT:**

8
9 1. The definitions set out in the settlement Agreement are incorporated by reference
10 into this Order; all terms defined therein shall have the same meaning in this Order.

11 2. The Court certifies the following two settlement classes for the purpose of settlement
12 only:

- 13 a. All current and former non-exempt, hourly-paid employees who worked for
14 defendant Amusement Industry, Inc. doing business as Westland Real Estate Group
15 (“Defendant”) at any time during the period between March 12, 2017 through
16 February 10, 2022 (“Class Period”) in California (“Class Members”).
- 17 b. All Participating Class Members who performed technician duties including, but
18 not limited to performing maintenance and repair, plumbing, electrical, carpentry,
19 painting, cleaning, and responding to emergency maintenance requests, and worked
20 for Defendant in California at any time during the Class Period (“Technician Class
21 Members”).

22 3. The Court preliminarily appoints named plaintiffs Mario Angel Mendoza and Edin
23 Marroquin as Class Representative and David D. Bibiyan and Diego Aviles of Bibiyan Law Group,
24 P.C., as well as Justin F. Marquez of Wilshire Law Firm as Class Counsel.

25 4. The Court preliminarily approves the proposed class settlement upon the terms and
26 conditions set forth in the Settlement Agreement. The Court finds, on a preliminary basis, that the
27 settlement appears to be within the range of reasonableness of settlement that could ultimately be
28 given final approval by the Court. It appears to the Court on a preliminary basis that the settlement

1 amount is fair, adequate and reasonable as to all potential settlement class members when balanced
2 against the probable outcome of further litigation relating to liability and damages issues. It further
3 appears that extensive and costly investigation and research has been conducted such that counsel
4 for the parties at this time are reasonably able to evaluate their respective positions. It further
5 appears to the Court that the settlement at this time will avoid substantial additional costs by all
6 parties, as well as the delay and risks that would be presented by the further prosecution of the
7 Action. It further appears that the settlement has been reached as the result of intensive, non-
8 collusive, arms-length negotiations utilizing an experienced third-party neutral.

9 5. The Court, approves, as to form and content, the Class Notice that has been submitted
10 herewith.

11 6. The Court directs the mailing of the Class Notice by first-class mail to the Class
12 Members in accordance with the procedures set forth in the Settlement Agreement. The Court finds
13 that dissemination of the Class Notice set forth in the Settlement Agreement complies with the
14 requirements of law and appears to be the best notice practicable under the circumstances.

15 7. The Court hereby preliminarily approves the definition and disposition of the Gross
16 Settlement Amount of \$1,118,580.00, which is inclusive of: attorneys' fees not to exceed thirty-five
17 percent (35%) of the Gross Settlement Amount, which, if not escalated pursuant to the Settlement
18 Agreement, amounts to \$391,503.00, in addition to actual costs incurred not to exceed \$30,000.00;
19 an incentive award of \$7,500.00 each to Plaintiff Medoza and Plaintiff Marroquin, for a total of
20 \$15,000.00 to Plaintiffs; costs of settlement administration of no more than \$11,275.00; the
21 Technician Settlement Amount of \$100,000.00 to be distributed to Technician Class Members; and
22 Private Attorneys' General Act of 2004 ("PAGA") penalties in the amount of \$50,000.00, of which
23 \$37,500.00 (75%) will be paid to the Labor and Workforce Development Agency ("LWDA") and
24 \$12,500.00 (25%) to "Aggrieved Employees", defined Class Members working for Defendant
25 during the period between April 12, 2020 through February 10, 2022 ("PAGA Period") as non-
26 exempt, hourly-paid employees in California.

27 8. The Gross Settlement Amount expressly excludes Employer Taxes, which will be
28 paid separately and apart by Defendant on the wages portion of the Gross Settlement Amount.

1 9. Defendant shall pay the Gross Settlement Amount and Employer Taxes within
2 fourteen (14) calendar days of the Court's final approval of this Settlement.

3 10. Class Member's "Workweeks" shall mean the number of workweeks that a
4 Settlement Class Member was employed by and worked for the Defendant in a non-exempt, hourly
5 position in California during the Class Period, based on hire dates, re-hire dates, and termination
6 dates, and worked at least one shift during each such workweek.

7 11. The Settlement is based on Defendant's representation that there are no more than
8 37,296 Workweeks worked during the Class Period. In the event the number of Workweeks worked
9 by Class Members during the Class Period increases by more than 10%, or 3,729 Workweeks, then
10 the Gross Settlement Amount shall be increased proportionally by the Workweeks in excess of
11 37,296 Workweeks multiplied by the Workweek Value. The Workweek Value shall be calculated
12 by dividing the originally agreed-upon Gross Settlement Amount (\$1,118,580.00) by 37,296, which
13 amounts to a Workweek Value of \$30.00 per Workweek. Thus, for example, should there be
14 42,000.00 Workweeks in the Class Period, then the Gross Settlement Amount shall be increased by
15 \$141,12.00. ((42,000 Workweeks – 37,296 Workweeks) x \$30.00 per Workweek.).

16 12. The Court deems ILYM Group, Inc. ("ILYM") the Settlement Administrator, and
17 payment of administrative costs, not to exceed \$11,275.00, out of the Gross Settlement Amount for
18 services to be rendered by ILYM on behalf of the class.

19 13. The Settlement Administrator shall prepare and submit to Class Counsel and
20 Defendant's Counsel a declaration attesting to the completion of the notice process as set forth in
21 the Settlement Agreement, including the number of attempts to obtain valid mailing addresses for
22 and re-sending of any returned Class Notices, as well as the identities, number of, and copies of all
23 opt-outs and objections received.

24 14. The Court directs Defendant to, within seven (7) calendar days of this Order, provide
25 the Settlement Administrator with the "Class List" for Class Members and Technician Class
26 members. The Class List will include for each Settlement Class Member and Technician Class
27 Member, his or her: (1) name; (2) last known address(es) currently in Defendant's possession,
28 custody, or control; (3) last known telephone number(s) currently in Defendant's possession,

1 custody, or control; (4) last known Social Security Number(s) in Defendant's possession, custody,
2 or control; (5) the dates of employment (i.e., hire dates, and, if applicable, re-hire date(s) and/or
3 separation date(s)) for each Settlement Class Member and Technician Settlement Class Member;
4 and (6) an indication of whether or not the Settlement Class Member would qualify as a Technician
5 Settlement Class Member if he or she does not opt out of the Settlement. ("Class List").

6 15. Because Social Security Numbers are included in the Class List, the Settlement
7 Administrator shall maintain the Class List in confidence and shall only access and use the list to
8 administer the settlement in conformity with the Court's orders.

9 16. Upon receipt of the Class List, the Settlement Administrator shall perform an address
10 search using the United States Postal Service National Change of Address (the "NCOA") database
11 and update the addresses contained on the Class List with the newly found addresses, if any. To the
12 extent that this process yields an updated address, that updated address shall replace the last known
13 address and be treated as the new last known address for purposes of this Settlement, and for
14 subsequent mailings.

15 17. Within seven (7) calendar days of receiving the Class List from Defendant, the
16 Settlement Administrator shall mail the Class Notice, in English and Spanish, to the Settlement
17 Class Members, via first-class regular U.S. Mail, using the most current mailing address information
18 available.

19 18. The deadline by which Class Members may dispute the number of Workweeks
20 worked, and the deadline by which Class Members may opt out or object, shall be forty-five (45)
21 days from the date of the mailing of the Class Notice, unless the Class Member had their Class
22 Notice re-mailed. Class Members who are re-mailed a Class Notice shall have fifteen (15) calendar
23 days from the re-mailing, or forty-five (45) days from the date of the initial mailing, whichever is
24 later, in which to postmark a Request for Exclusion, objection, or to dispute the information
25 provided in the Class Notice. This shall be known as the "Response Deadline."

26 19. The Class Notice shall instruct Settlement Class Members on how to exclude
27 themselves from the Settlement Class. Any Settlement Class Member may request exclusion from
28 (i.e., "opt out" of) the Settlement by mailing a written request to be excluded from the Settlement

(the “Request for Exclusion”) to the Settlement Administrator, postmarked on or before the Response Deadline. To be valid, a Request for Exclusion must include: (1) the Class Member and/or Technician Class Member’s name; (2) the last 4 digits of the Class Member and/or Technician Class Member’s Social Security Number; (3) the Class Member and/or Technician Class Member’s signature; and (4) the following statement: “Please exclude me from the Settlement Class in the *Mendoza. v. Amusement Industry, Inc.* matter” or any statement of similar meaning standing for the proposition that the Class member does not wish to participate in the Settlement. The Settlement Administrator shall immediately provide copies of all Requests for Exclusion to Class Counsel and Defendant’s Counsel and shall report the Requests for Exclusions that it receives, to the Court, in its declaration to be provided in advance of the Final Approval Hearing. Any Settlement Class Member who requests exclusion using this procedure will not be entitled to receive any payment from the Settlement and will not be bound by the Settlement Agreement or have any right to object to, appeal, or comment on the Settlement. Any Settlement Class Member and/or Technician Settlement Class Member who does not opt out of the Settlement by submitting a timely and valid Request for Exclusion will be bound by all terms of the Settlement, including those pertaining to the Released Claims, as well as any Judgment that may be entered by the Court if Final Approval of the Settlement is granted.

20. Any Class Member who does not submit a timely and valid Request for Exclusion shall be deemed a “Participating Class Member” and be bound by the terms of the Settlement, including the releases provide therein.

21. Settlement Class Members and Technician Class members will have an opportunity to dispute the information provided in their Class Notice (the “Workweek Dispute”). Any such disputes must be mailed to the Settlement Administrator by the Settlement Class Member and Technician Settlement Class Member, postmarked on or before the Response Deadline. The Settlement Administrator shall immediately provide copies of all disputes to Class Counsel and counsel for Defendant and shall immediately attempt to resolve all such disputes directly with relevant Settlement Class Member(s) and the Technician Settlement Class Member(s) with the assistance of Defendant and Class Counsel. If the dispute cannot be resolved in this manner, the

1 Court shall adjudicate the dispute.

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

22 23. Participating Class Members may (though are not required to) appear at the Final
23 Approval hearing, either in person or through the objector's own counsel. The failure to file and
24 serve a written objection does not waive a Participating Class Member's right to appear at and make
25 an oral objection at the Final Approval hearing.

26 24. If a Settlement Class Member submits both an Objection and a Request for
27 Exclusion, the Request for Exclusion will control and the Objection will be void.

28 25. All papers filed in support of final approval, including supporting documents for

1 attorneys' fees and costs, shall be filed by _____, 2022.

2 26. A Final Approval Hearing shall be held with the Court on _____, 2022 at
3 _____ : ____m. in Department "12" of the above-entitled Court to determine: (1) whether the
4 proposed settlement is fair, reasonable, and adequate and should be finally approved by the Court;
5 (2) the amount of attorneys' fees and costs to award Class Counsel; (3) the amount of incentive
6 award to the Class Representatives; (4) the amount to be paid to the Settlement Administrator; and
7 (5) the amount to be apportioned to PAGA and/or paid to the LWDA and Aggrieved Employees.

8 27. No more than seven (7) calendar days after payment by Defendant of the Gross
9 Settlement Amount, as well as payment by Defendant of the Employer Taxes, the Settlement
10 Administrator shall distribute all payments due under the Settlement, including Individual
11 Settlement Payments to Participating Class Members, Individual Technician Payments to
12 Technician Class Members, Individual PAGA Payments to Aggrieved Employees, Court-approved
13 payments for the Service Award to Plaintiffs, attorneys' fees and litigation costs and expenses to
14 Class Counsel, approved settlement administration costs to the Settlement Administrator, and the
15 LWDA Payment to the LWDA.

16 28. Individual Settlement Payment and Individual PAGA Payment checks shall remain
17 valid and negotiable for one hundred and eighty (180) calendar days after the date of their
18 issuance. Within seven (7) calendar days after expiration of the 180-day period, checks for such
19 payments shall be canceled and funds associated with such checks shall be considered unpaid,
20 unclaimed or abandoned cash residue pursuant to Code of Civil Procedure section 384 ("Unpaid
21 Residue"). The Unpaid Residue plus accrued interest, if any, as provided in Code of Civil
22 Procedure section 384, shall be transmitted to Legal Aid at Work, 180 Montgomery Street, Suite
23 600, San Francisco, California 94104, the *cy pres* recipient, for use in Los Angeles County. The
24 Settlement Administrator shall prepare a report regarding the distribution plan pursuant to Code
25 of Civil Procedure section 384 and the report shall be presented to the Court by Class Counsel
26 along with a proposed amended judgment that is consistent with the provisions of Code of Civil
27 Procedure section 384.

28 29. In the event the settlement does not become effective in accordance with the terms

1 of the Settlement, or the settlement is not finally approved, or is terminated, cancelled or fails to
2 become effective for any reason, this Order shall be rendered null and void and shall be vacated,
3 and the parties shall revert to their respective positions as of the entry of the Settlement Agreement.
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5 **IT IS SO ORDERED.**

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7 Dated: _____, 2022

Judge of the Superior Court

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