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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 PRELIMINARY APPROVAL OF CLASS ACTION AND REPRESENTATIVE ACTION SETTLEMENT

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on behalf of himself and all others similarly situated and aggrieved

DECLARATION OF VEDANG J. PATEL

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 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. 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").

3. On or around April 9, 2021, Plaintiff Edin Marroquin ("Plaintiff Marroquin" and with Plaintiff Mendoza, "Plaintiffs") 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").

4. 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"). A true and correct copy of the PAGA Notice is attached to the Declaration of Justin F. Marquez as Exhibit "1".

5. 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, 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.

6. Thereafter, Plaintiffs and Defendant (collectively, the "Parties") agreed to exchange informal discovery and attend an early mediation. Prior to mediation, Class Counsel was provided with what Class Counsel understand from Defendant to constitute, 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.

7. 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 First 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 First Amended Complaint and First Amended Complaint are filed concurrently with this motion..

8. I believe Class Counsel had strong positions at mediation and understand from the mediator and the mediation process that Defendant did as well, regarding the certifiability of Plaintiffs' claims, the merits thereof, the manageability of a trial, and the likelihood of recovering civil penalties for aggrieved employees. Nevertheless, Class Counsel 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.

/ / /

The Proposed Settlement

9. Approval pursuant to Code of Civil Procedure section 382 and California Rules of Court, rule 3.679, *et seq.*, the Parties have agreed to settle the Action by agreement upon the terms and conditions and for the consideration set forth in the Settlement Agreement, a copy of which is attached as Exhibit "1" hereto. A summary of the terms of the settlement are as follows:

Defendant will stipulate, for purpose of this settlement only, 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 (*i.e.*, the "Gross Settlement Amount" or "GSA") to resolve the matter.
- The Settlement is based on Defendant's that there are no more than 37,296 Workweeks worked during the Class Period. In the event the number of Workweeks worked by Class Members during the Class Period increases by more than 10%, or 3,729 Workweeks, then the Gross Settlement Amount shall be increased proportionally by the Workweeks in excess of 37,296 Workweeks multiplied by the Workweek Value. The Workweek Value shall be calculated by dividing the originally agreed-upon Gross Settlement Amount ($1,118,580.00) by 37,296, which amounts to a Workweek Value of $30.00 per Workweek. Thus, for example, should there be 42,000.00 Workweeks in

the Class Period, then the Gross Settlement Amount shall be increased by $141,12.00. ((42,000 Workweeks – 37,296 Workweeks) x $30.00 per Workweek.).

- $100,000 of the Gross Settlement Amount shall be allocated towards payment to Technician Class Members.
- Defendant will pay the employer's share of taxes separate and apart from the Gross Settlement Amount.
- This is a non-reversionary settlement.
- "Workweek" means the number of workweeks that a Settlement Class Member was employed by and worked for the Defendant in a non-exempt, hourly position in California during the Class Period, based on hire dates, re-hire dates, and termination dates, and worked at least one shift during each such workweek.
- Class Members and Technician Class Members will be paid their *pro rata* share of the class action settlement based on the total number of Workweeks worked during the Class Period.
- The Settlement Administration costs, estimated not to exceed $11,275.00, will be paid out of the Gross Settlement Amount.
- 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, will apply for, and Defendant will not oppose, attorneys' fees of up to thirty-five percent (35%) of the Gross Settlement Amount, which, unless escalated pursuant to the Settlement Agreement, amounts to $391,503.00, and actual costs, not to exceed $30,000.00, all of which will be paid out of the Gross Settlement Amount.
- Class Counsel will apply for, and Defendant will not oppose, an enhancement award of $7,500.00 each for the Class Representatives, for a total of $15,000.00, which will be paid out of the Gross Settlement Amount.
- The "PAGA Period" means the period from April 12, 2020 through February 10, 2022.
- "Aggrieved Employees" means Class Members working for Defendant during the PAGA Period as non-exempt, hourly-paid employees.

- Defendant has agreed to pay $50,000.00 as PAGA penalties, seventy-five percent (75%) or $37,500.00 of which will be paid to the LWDA out of the Gross Settlement Amount, and twenty-five percent (25%) or $12,500.00 of which will be distributed to Aggrieved Employees.
- Any checks from this distribution that are not cashed by Participating Class Members within one-hundred-eighty (180) calendar days from the date of their issuance 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.

<u>The Presumption of Fairness</u>

10. In this Litigation, the Settlement was reached after discussions between Class Counsel, extensive factual and legal research, informal discovery, an exchange of data points, time and payroll records, a review and analysis of time and payroll records with Plaintiffs and expert consultants, preparation of damages analyses with the aid of expert consultants, and a full-day mediation session with a mediator experienced in mediating complex labor and employment matters. The Settlement that has been reached, subject to this Court's approval, is the product of substantial effort and expense by Class Counsel.

11. The settlement amount is, of course, a compromise figure. However, I believe Class Counsel are satisfied that this figure is reasonable in light of the risks and expense of continued litigation.

<u>Settlement Agreement and Accompanying Documents</u>

12. Attached hereto as Exhibit "1" is a true and correct copy of the Settlement Agreement fully executed by the Parties.

13. Attached to the Settlement Agreement as Exhibit "A" thereto is the proposed Notice Class Action Settlement ("Class Notice") to be distributed to Class Members in English

and Spanish.

14. The Parties have agreed to use ILYM Group, Inc. ("ILYM"), an experienced Settlement Administrator, to administer the settlement.

15. The Parties have agreed that the administration costs will be paid out of the Gross Settlement Amount.

The Settlement Was Negotiated at Arms-Length and Not Collusive

16. The Settlement that has been reached, subject to this Court's approval, is the product of substantial effort by Class Counsel. The Settlement was reached after extensive factual and legal investigation and research; substantial negotiation regarding the scope of informal discovery; an exchange of documents and information that included review of time and pay records and analysis thereof with the aid of Plaintiffs and expert consultants; an analysis of shifts and Workweeks worked by Class Members in the Class Period, analysis of the number of pay periods and number of Aggrieved Employees in the PAGA Period for calculating PAGA penalties, number of Class Members eligible for wage statement penalties and waiting time penalties; analysis of Plaintiff's employment records; extensive correspondence and communication between counsel; a review of pleadings, evidence and rulings in similar actions litigated elsewhere in the state; a review of similar cases in the same industry elsewhere in the country; and preparation for and attendance at a full-day session of mediation, followed by months of further negotiations to finalize the terms and conditions of the general settlement parameters agreed to by the Parties.

17. The settlement amount is a compromise figure. It considered the risks related to certifiability, liability, and manageability.

18. I believe Class Counsel assert that the wage and hour claims and the claims for resulting penalties would be certified. On the other hand, Class Counsel understand from the mediator and the mediation process that Defendant argued that Plaintiffs cannot meet the requirements of class certification because any wage discrepancies are not the product of an overarching policy that was uniformly applied; that Class Members were paid for all hours under Defendant's control, or otherwise suffered or permitted to work by Defendant; that it properly calculated the regular rate of pay for the purpose of calculating overtime wages; that meal periods

were provided and rest periods were authorized and/or permitted; that Defendant's meal and rest period policies were compliant; that Defendant did not deter Class Members from taking meal and rest periods and any untimely or missed meal periods were elections by Class Members and not caused by Defendant or Class Members were paid the required premiums; that Defendant reimbursed Class members for all expenses incurred in furtherance of work; and that Defendant thus provided all pay owed to Class Members by separation of employment and issued accurate wage statements to Class Members. Defendant further contends that class certification would not be warranted because individual liability issues predominate over any class-wide allegations.

19. While Class Counsel believe in the chance of success of certifying the claims, Class Counsel recognized the potential risk, expense, and complexity posed by further litigation. Moreover, litigating Plaintiffs' claims in this Litigation—claims that involve approximately 459 Class Members during the Class Period—would require substantial preparation and discovery and ultimately would involve the deposition and presentation of numerous more witnesses (including Class Members and expert witnesses), as well as the consideration, preparation, and analysis of expert reports. Therefore, should litigation have progressed any further, there would have been significant expense incurred by each side (above and beyond the expense already incurred).

20. In light of the sharply contested legal and factual issues, the risks of continued litigation, and the substantial benefits to Class Members under the Settlement, Class Counsel believe the terms and conditions of this class settlement are fair and reasonable to all sides.

The Settlement Amount is Well Within the Range of Reasonableness

21. Class Counsel believe the settlement amount reached in this case provides significant recovery to Class Members and Aggrieved Employees, and easily falls within the range of reasonableness.

Unpaid Wages for Failure to Pay for All Time Worked

22. Class Counsel advanced theories at mediation that Defendant failed to pay all wages owed to Class Members because: (1) Class Members were required to perform pre-shift and post-shift duties; (2) Class Members were expected to remain on-call every other week and respond immediately to work requests; and (3) Defendant detrimentally rounded Class Members'

time entries. Based on Plaintiffs' narrative evidence, Class Counsel theorized Class Members were expected to perform tasks off-the-clock such as creating reports for the next shift, attending to customer complaints, performing tasks related to plumbing or other property issues, and attending to emergency requests. Furthermore, based on Plaintiffs' narrative evidence, Class Counsel theorized Class Members were under Defendant's control during weeks in which they were on-call for which their time went uncompensated. Finally, Class Counsel understand from the mediation process that Defendant rounded time entries to the nearest quarter hour, and thus Class Counsel theorized at mediation Class Members were detrimentally harmed by Defendant's rounding practices.

23. Class Counsel advanced several theories at mediation, one of which was that Class Members worked approximately fifteen (15) minutes off the clock without pay based on the foregoing theories. Furthermore, Class Counsel understand from expert consultants retained to analyzed Defendants' records that approximately 47.9% of all shifts were greater than eight (8) hours in length. Thus, one calculation performed at mediation by Class Counsel resulted in Defendant's exposure in unpaid wages for off-the-clock work to be $1,521,251. ((182,782 x .479 shifts x $18.91/hour x .25 hours/shift x 1.5 overtime rate) + (182,782 shifts x .521 shifts x $18.91 x .25 hours/shift x 2 in liquidated damages)).

24. Additionally, Class Counsel understand rom expert consultants retained to analyze Defendant's records that Defendant rounded 70.4% of all Class Members time entries during the shift, for an average of one minute every single shift, or 2,075.7 hours. Thus, one calculation performed at mediation by Class Counsel resulted in Defendant's exposure in unpaid wages for detrimental rounding to be $67,531. (2,075.7 hours x .479 shifts x 1.5 overtime rate) + (2,075.7 hours x .521 shifts x 2 in liquidated damages).

25. Thus, one calculation performed at mediation by Class Counsel resulted in Defendant's exposure for failure to pay for all time worked for the foregoing theories to be $1,588,782.

26. Class Counsel understand from the mediator and the mediation process that Defendant makes the following defenses in connection with this claim: Defendant argued that

they did not require Class Members to work off-the-clock and, rather, they were paid for all time suffered or permitted to work. Defendant contends that its policies prohibit off-the-clock work. Defendant argued that rounded time entries benefitted Class Members. Defendant also contends that any theory that off-the-clock work was performed is purely speculative, such off-the-clock work was voluntary if it occurred, and certainly not indicative of a pattern or practice. For the same reason, Defendant contends this claim not subject to class treatment and would make a trial in this Litigation unmanageable. Defendant further states that an estimate of 15 minutes of time worked off-the-clock for every single shift during the Class Period is an exaggeration of time spent working off-the-clock, even if any was spent.

27. Class Counsel had to, and did, factor in the defenses attributed to Defendant's defenses, when considering whether the settlement reached was fair, reasonable and adequate.

Failure to Include Incentive Pay in the Regular Rate of Pay for Calculating Overtime Wages

28. Class Counsel theorized at mediation that Defendant failure to properly include incentive bonuses to Class Members in the regular rate of pay for purposes of calculating overtime wages. Class Counsel understand from Defendant's policies that some Class Members would qualify for incentive bonuses for high productivity and completing large projects. Based on expert analysis, Class Counsel understand 6.8% of pay periods included incentive bonuses, which when factoring in resulted in average underpayment of $18.48 per pay period. Based on expert analysis, Class Counsel understand this resulted in $4,011 in unpaid overtime wages.

29. Class Counsel understand from the mediator and the mediation process that Defendants make the following defenses in connection with this claim: Defendant contends that any bonuses paid were discretionary and thus are not to be included in the regular rate of pay for the purposes of calculating overtime wages under the applicable Wage Order. Defendant further defends that it did properly include all bonuses under the applicable Wage Order in Class members' regular rate of pay for calculating overtime wages and thus no monies are owed in connection with this theory.

30. Once again, Class Counsel had to, and did, factor in Defendant's defenses, when considering whether the settlement reached was fair, reasonable and adequate.

Recovery of Damages for Non-Compliant Meal Periods

31. Class Counsel theorized that Defendant's meal period policies and practices throughout the Class Period did not comply with the Labor Code. Class Counsel, based on Defendant's records, theorized that Defendant's meal period policy was non-compliant in that it require supervisors authority over when Class Members could take meal periods and did not inform Class Members when meal period premiums are to be paid. Furthermore, expert analysis of Defendants' records showed that meal periods were rounded to the nearest half hour.

32. Moreover, the documents provided to Class Counsel showed that 68,052 eligible shifts had unique meal period violations *(i.e.*, meal periods that were late, short, or not taken). Furthermore, documents and information reflected that no meal period premiums provided. Thus, one measure of exposure Class Counsel advanced at mediation for non-compliant meal periods came to $1,286,863. (68,052 eligible shifts x $18.91/hour.).

33. Class Counsel understand from the mediator and the mediation process that Defendant makes the following defenses in connection with this claim: Defendant argued that it had compliant meal period policies and practices. Defendant argued that Class Members took timely and full meal-periods and any rounded entries were coincidental and do not in any fashion dictate a Labor Code violation or indicate harm to Class Members. Defendant contends that its policy requires their employees to take timely and full meal periods. Defendant further contends that any instance of a Class Member failing to take a compliant meal period was voluntary, in violation of its meal period policy, would necessitate an individualized inquiry, and would not lend itself to a manageable trial. Thus, Defendant contends that *no* monies are owed for this account but, even if any amounts were due, the amount calculated by Class Counsel is excessive.

34. Once again, Class Counsel had to, and did, factor in Defendant's defenses, when considering whether the settlement reached was fair, reasonable and adequate.

Recovery of Damages for Non-Compliant Rest Periods

35. Class Counsel theorized that Defendant's rest period policies and practices were non-compliant in that Class Members were not informed they are entitled rest period premiums or when they may be entitled to them, and did not consistently receive timely, uninterrupted rest

periods evidenced by Plaintiff's narrative evidence. Notably, Class Counsel understand from expert consultants retained that a review of payroll records provided by Defendant reflects that no rest period premiums were ever issued during the Class Period.

36. An analysis, performed by expert consultants retained by Class Counsel, of the time records, payroll records, and data provided by Defendant reflects approximately 170,925 shifts worked above 3.5 hours for Class Members. Thus, one calculation performed at the mediation was a 40% violation rate of rest-eligible shifts, resulting in an exposure of $1,292,878 for failure to pay rest period premiums. (170,925 shifts x $18.91/hr x .4 shifts).

37. Class Counsel understand from the mediator and the mediation process that Defendant make the following defenses in connection with this claim: Defendant argued that it maintained a compliant rest period policy and practice and that, in fact, all Class Members were authorized and permitted to take rest periods and did. Defendant further contends that if Class Members did not take the rest periods they were authorized and permitted to take, they did so voluntarily and thus the same would raise an individualized inquiry that would neither be suited for certification nor manageable at trial. Lastly, Defendant contends that a 40% violation rate for rest period violations is excessive, speculative, and unwarranted and that, instead, there are no monies owed for unpaid rest periods.

38. While Class Counsel believe that rest periods were often not taken or interrupted by Defendant, Class Counsel had to, and did, factor in Defendant's defenses, when considering whether the settlement reached was fair, reasonable and adequate.

<u>Failure to Indemnify for Business Expenses</u>

39. Class Counsel theorized that Class Members are owed money for Defendant's failure to reimburse for: (1) purchase and maintenance of their own tools and equipment; (2) separate laundering of work uniforms; (3) use of a personal cell phone for work purposes; and (4) unpaid mileage reimbursements.

40. A. Purchase and Maintenance of Tools and Equipment

41. Class Counsel theorized, based on Plaintiffs' narrative evidence, that Technician Class Members were required to personally purchase tools for work purposes and maintain them.

Furthermore, Defendant's own policy indicated that technicians must have their own tools for work. One theory advanced at mediation by Class Counsel was a conservative $1,000 in purchase of tools and equipment for Technician Class Members. Class Counsel understand from the documents provided that there are approximately 201 Technician Class Members during the Class Period. Thus, one calculation performed by Class Counsel at mediation resulted in Defendant's exposure for this claim to be $201,000 (201 Technician Class Members x $1,000).

42. B. Separate Laundering of Work Uniforms

43. Class Counsel also theorized that Technician Class Members mandatory work uniforms would become soiled, requiring separate laundering, due to the nature of their work. Class Counsel theorized their uniforms would become soiled due to working with hazardous chemicals as well as exposure to fecal bacteria from duties that included picking up after dog remains, repairing toilets, and repairing sewer lines. Class Counsel understand from expert analysis that there are approximately 23,225 Workweeks worked by Technician Class Members. Thus one calculation performed at mediation by class counsel resulted in Defendant's exposure for this claim to be $232,250 ($10 per laundry wash x 22,225 Workweeks).

44. C. Use of a Personal Cell Phone for Work Purposes

45. Class Counsel theorized that Class Members are owed reimbursement for personal cell phone usage because Defendant's policy required some employees to maintain a smart phone with a working camera and have sufficient internet and wireless cellular data plans. Class Counsel understand from Defendant's policies that it reimbursed Class Members at a rate of $5.00 per month for such usage. However, Class Counsel theorized that cell phones cost more than $5.00 per month. One theory advanced at mediation was a cost of $60 per month for each phone, which after subtracting the $5.00, results in $55.00 per month, or $650 per employee per year. Thus, one calculation performed at mediation by Class Counsel resulted in Defendant's exposure for this claim to be $596,700 (459 Class members x $1,300 (average of 2 years of work per employee)).

46. D. Unpaid Mileage Reimbursement

47. Class Counsel theorized, based on Plaintiffs' narrative evidence, that Technician Class Members were required to use their own vehicles to drive to and from various properties after

they reported for work. Class Counsel theorized at mediation that Technician Class Members would be required to drive up to five (5) miles of unpaid mileage per shift, or 125 miles per week. Thus, one calculation performed at mediation by Class Counsel resulted in Defendant's exposure for this claim to be $235,240 (80,424 shifts worked by Technician Class Members (80,424 shifts worked by Technician Class Members x 5 miles x $0.585/mile).

48. Thus, one calculation performed by Class Counsel at mediation resulted in Defendant's exposure for failure to reimburse for business expenses to be $1,265,190.

49. Class Counsel understand from the mediator and the mediation process that Defendant makes the following defenses in connection with this claim: Defendant argued that it reimbursed Class Members for all expenses incurred and pointed to its own policies which expressly reimburse employees for certain expenses. Defendant argued that Technician Class Members already owned the tools necessary to perform their work and no additional monies are owed for that claim. Defendant contends that Technician Class Members did not separately launder their uniform in practice. Defendant also contends that it expressly reimbursed Class Members for cell phone usage for work purposes and that Class Members used their cell phones for other purposes than work, and as such is not liable for the entirety of their cell phone bills. Furthermore, Defendant contends that Class Members were reimbursed for their mileage. Finally, Defendant contends that any instance of a Class Member claiming to be owed reimbursement would require an individualized inquiry into when and why, and therefore not make this claim subject to class treatment. Thus, Defendant contends that no monies are owed for these claims, either.

50. Once again, Class Counsel had to, and did, factor in Defendant's defenses, when considering whether the settlement reached was fair, reasonable and adequate.

Wage Statement Violations

51. Class Counsel understand from expert analysis that the data provided by Defendant reflects that there were 9,687 pay periods during the relevant statutory period for Class Members. If, in fact, Class Members worked every off-the-clock every shift as set forth above, and no meal period or rest premiums were paid, every wage statement would thus, Class Counsel theorized,

violate Labor Code section 226. Thus, Defendant's maximum exposure for wage statement violations would be $986,700. (9,867 pay periods x $100/pay period.)

52. Class Counsel understand from the mediator and the mediation process that Defendant makes the following defenses in connection with this claim: Defendant contends that the wage statements issued to the employees fully complied with Labor Code section 226. Defendant contends that because it believes no wages are unpaid that, thus, there can be no derivative penalties.

53. Defendant further defends that even if there were, *arguendo*, derivative penalties, that Plaintiff suffered no injury, citing *Maldonado v. Epsilon Plastics, Inc.* (2018) 22 Cal.App.5th 1308 [*Maldonado*]. In that case, the Court noted that "inaccurate wage statements alone do not justify penalties; the plaintiffs must establish injury flowing from the inaccuracy." The Court therein rejected the position of plaintiffs in that matter that "*any* failure to pay overtime at the appropriate rate *also* generates a wage statement injury justifying the imposition of wage statements…" At the time of mediation, Defendant further cited *Naranjo v. Spectrum Security Services, Inc.* (2019) 40 Cal.App.5th 444 [*Naranjo*] for the proposition that no derivative wage statement violation exists for failure to pay for meal and rest period premiums.

54. Class Counsel note that California Supreme Court recently overruled the California Court of Appeal's decision in *Naranjo* and ruled that employer can be liable for derivative wage statement violations for failure to pay meal and rest period premiums. (*See Naranjo v. Spectrum Security Services, Inc.* (2022) 13 Cal. 5th 93, [509, P.3d 956, 969].) Class Counsel further notes that, to the extent *Maldonado* is still good law after the Court's ruling in *Naranjo*, the Court in *Maldonado* suggests that failure to account for all time worked may, in fact, constitute an injury, and thus does not find the defense meritorious as to Class Counsel's argument.

55. However, Class Counsel also understands the risks inherent in this claim should Plaintiff's failure to pay wages claims not be certified. Class Counsel also had to factor in, and did factor in, the risk that a Court would find there was no injury to Class Members even if the wage statements were inaccurate or that Defendant's conduct was not intentional, both of which are requirements of Labor Code section 226 before penalties can issue. Class Counsel also notes

that the calculation used does not take into account the first pay period violation only being $50 and the fact that all Class Members did not work all pay periods and therefore do not qualify for the maximum penalty of $4,000 as calculated in Plaintiff's exposure model used at mediation.

Waiting Time Penalties

56. Class Counsel theorized that the full 30-day penalty is owed under Labor Code section 203 due to Defendant's failure to pay wages for all hours worked and failure to pay premium wages. The documents and information provided by Defendant reflects that there were approximately 217 terminated Class Members employed by Defendant during the relevant time period. Thus, Class Counsel calculated Defendant's maximum exposure for waiting time penalties to be $739,015. (217 terminated Class Members x $14.19/hour x 8 hours/day x 30 days.)

57. Class Counsel understand from the mediator and the mediation process that Defendant contends that there is no credence to Plaintiffs' off-the-clock theory and that, thus, no waiting time penalties are owed based on that theory. Defendant further defends that failure to pay premium pay is not a basis for waiting time penalties to issue, citing *Naranjo* again. Finally, Defendant contends that its actions were not "willful" and that, thus, waiting time penalties cannot be awarded. Thus, Defendant argues that no waiting time penalties are owed.

PAGA Penalties

58. Class Counsel understand from expert analysis that the time and payroll data provided by Defendant reflect that there were approximately 9,228 pay periods in the PAGA Period through mediation. Plaintiffs' claims in the Action under PAGA are substantially similar to those described herein, except Plaintiffs also advanced a theory at mediation that Defendant failed to provide notices as required under Labor Code section 2810.5.

59. PAGA penalties include penalties for initial violations and subsequent violations. Defendant contends that only initial violation rates may be used instead of the subsequent violation rates initially used by Class Counsel. Specifically, Defendant contends that until "notified that it is violating a Labor Code provision … the employer cannot be presumed to be aware that its continuing underpayment of employees is a "violation" subject to penalties." (*Amaral v. Cintas Corp. No. 2* [*Amaral*] (2008) 163 Cal. App. 4th 1157, 1209.) Thus, Defendant contends that

subsequent violations in the PAGA context means not just later in time but following notice to the employer that it is in violation of the Labor Code. With this in mind, and because Class Counsel through investigation and discovery did not come to the conclusion that Defendant at any time was notified by any governmental entity that they violated any Labor Code sections presented in the PAGA Notice and PAGA claims, Class Counsel adjusted the exposure model for Defendant to include only initial violation rates.

60. While Class Counsel are informed and believe that reasonable minds differ with regard to calculation of PAGA penalties, Class Counsel believe it is reasonable to calculate Defendant's maximum exposure in PAGA penalties as follows:

61. a. Overtime Violations: Labor Code section 558 prescribes penalties of $50 for an initial violation and $100 for each subsequent violation. Using the initial pay period rate for all violations, and a violation every single pay period for every single non-exempt employee in the Settlement Period, this amounts to a maximum exposure of $461,400. (9,228 pay periods x $50.)

62. b. Minimum Wage Violations: Labor Code section 1197.1 prescribes penalties of $100 for an initial violation and $250 for each subsequent violation. Using the initial pay period rate for all violations, and a violation every single pay period for every single Aggrieved Employee in the PAGA Period, this amounts to a maximum exposure of $922,800. (9,228 pay periods x $100.)

63. c. Meal Period Violations: Labor Code section 558 prescribes penalties of $50 for an initial violation and $100 for each subsequent violation. Using the initial pay period rate for all violations, and a violation every single pay period for every single non-exempt employee in the Settlement Period, this amounts to a maximum exposure of $461,400. (9,228 pay periods x $50.)

64. d. Rest Period Violations: Labor Code section 558 prescribes penalties of $50 for an initial violation and $100 for each subsequent violation. Using the initial pay period rate for all violations, and a violation every single pay period for every single non-exempt employee

in the Settlement Period, this amounts to a maximum exposure of $461,400. (9,228 pay periods x $50.)

65. e. Waiting Time Penalties: Labor Code section 2699 prescribes penalties of $100 for an initial violation and $200 for each subsequent violation. Because this violation is merited only at separation of employment, a 100% violation rate would likely include just one violation per employee. The data produced by Defendant indicates that there are 217 Aggrieved Employees whose employment was separated during the PAGA Period. This amounts to a maximum exposure of $21,700. (217 Aggrieved Employees x $100.)

66. f. Wage Statement Violations: According to *Gunther v. Alaska Airlines, Inc.* (2021) 287 Cal.Rptr.3d 229, in this instance, Labor Code section 2699 would be the appropriate penalty for wage statement violations that are inaccurate, which prescribes penalties of $100 for an initial violation and $200 for each subsequent violation. (*Id.* at 247-248.) Using the initial pay period rate for all violations, and a violation every single pay period for every single Aggrieved Employee in the PAGA Period, this amounts to a maximum exposure of $922,800. (9,228 pay periods x $100.)

67. g. Failure to Indemnify for Business Expenses: Labor Code section 558 prescribes penalties of $50 for an initial violation and $100 for each subsequent violation. Using the initial pay period rate for all violations, and a violation every single pay period for every single non-exempt employee in the PAGA Period, this amounts to a maximum exposure of $461,400. (9,228 pay periods x $50.)

68. h. Violation of Labor Code § 2810.5: Upon hire, Defendant must provide each Aggrieved Employee a notice under Labor Code section 2810.5 with the information set out under that Labor Code section. Labor Code section 2699 prescribes penalties of $100 for an initial violation and $200 for each subsequent violation. Plaintiff understands Defendant to concede that no such notices were provided. There were, according to the data provided by Defendant, approximately 217 Aggrieved Employees hired during the PAGA Period. This amounts to a maximum exposure, using the initial violation rate, of $21,700. (217 Aggrieved Employees x $100.).

69. i. <u>Conclusion</u>: In sum, Class Counsel calculated Defendant's total maximum exposure for PAGA violations if the Court were to find a 100% violation rate for every Aggrieved Employee every pay period and not exercise its discretion to reduce any of those penalties to be $3,734,600.

70. Class Counsel understand from the mediator and the mediation process that Defendant argued the following in connection with this claim: Defendant contends that no PAGA penalties are likely to be awarded and, even if they were, the maximum exposure calculated by Class Counsel is vastly overstated. First, Defendant defends that PAGA penalties cannot and should not be stacked and that, even if they could, very few Courts have ever exercised discretion to stack them. Second, Defendant asserts that individualized issues predominate the PAGA claims, making the claims unmanageable for trial pursuant to *Wesson v. Staples the Office Superstore, LLC* (2021) 68 Cal.App.5th 746. Third, Defendant denies that a violation for each pay period can be established. Defendant states that because the PAGA penalties rely upon substantially similar allegations made in the Action, they are subject to the same defenses, and, thus, for the same reason Defendant believes there will be no damages collectible in the class action and no PAGA penalties would be awarded. Fourth, Defendant contends that a Court is unlikely to exercise its discretion to award civil penalties under PAGA where, as here, there is no conduct shown by Plaintiff that would show any Labor Code violation by Defendant is knowing and intentional that would justify PAGA penalties. Defendant insists that this is especially true in this Action where class action damages are available to Class Members, rendering an award of PAGA penalties in addition to class action damages an unjust, arbitrary, oppressive, or confiscatory double recovery. Thus, Defendant contends that the Court cannot, should not, and will not exercise its discretion to award any penalties under PAGA.

71. Class Counsel maintains that it is possible to recover the subsequent violation rate for penalties, that stacking is permissible, and that there is no manageability requirement under PAGA (citing *Estrada v. Royalty Carpet Mills, Inc.*). Class Counsel also understand the risks inherent should the Court not exercise its discretion to grant any PAGA penalties, in addition to potential issues on the merits, trial manageability, and issues the possibility that the Court does not

use permit stacking of penalties or permit the use of the subsequent violation rate when providing penalties. As such, Class Counsel believes a 75% discount of this claim to be reasonable, resulting in a valuation of $933,650 as a reasonable estimate of the likelihood of what Plaintiff may recover at trial for PAGA penalties. ($3,734,600 x .25.)

Conclusion

72. When including derivative penalties, such as waiting time penalties, wage statement violations, and discretionary PAGA penalties, Class Counsel theorized Defendant's maximum exposure to be approximately $8,097,089. However, this maximum exposure did not take into account all of Defendant's defenses, including, without limitation, that: (1) Defendant's policies regarding tasks performed off-the-clock, the claim is not certifiable and does not lend itself to a manageable trial; (2) not all Class Members performed tasks off-the-clock every shift and thus the damages attributed to this line item are excessive; (3) in light of Defendant's policies regarding meal period policies, the claim is not certifiable and does not lend itself to a manageable trial; (4) in light of Defendant's policies regarding rest period policies, the claim is not certifiable and does not lend itself to a manageable trial; (5) Plaintiff's claims for wage statement and waiting time penalties are derivative of the above-referenced claims and if those fail, these would fail too; (6) if *Naranjo* is upheld, there would be no derivative wage statement and waiting time penalties for the failure to provide premium pay, thus creating an even greater risk that the derivative penalties never issue; (7) Defendant's failure to pay wages was not willful and that thus no waiting time penalties or wage statement violations are owed; (8) no injury was suffered by Class Members and thus no wage statement violations are owed; (9) Plaintiff's calculation of its exposure for PAGA penalties is excessive and unrealistic as it assumes that the Court will permit the stacking of eight penalties and find that there was a violation every pay period by ever Aggrieved Employee in connection with every theory without any reduction whatsoever of the maximum penalties sought; and (10) the Court will exercise its discretion to grant PAGA penalties at all in light of the fact that damages are available in connection with Plaintiff's class claims, thus creating double the liability for the same violations for Defendant.

73. In all, Class Counsel obtained a Gross Settlement Amount of $1,118,580.00. Particularly in light of the risks involving obstacles to class certification, all issues and risks related to liability, the issues with manageability at trial, the manner in which the discretionary nature of PAGA penalties, and considering the case law regarding fair, reasonable, and adequate settlements, Class Counsel strongly believes that the settlement reached is fair, reasonable, and adequate and in the best interest of Class Members.

74. Moreover, $50,000 of the Gross Settlement Amount was attributed to PAGA penalties. This allocation was decided mutually by the Parties and the mutual decision was based on: (1) the fact that damages are available for the failure to pay wage claims while only penalties are available for the PAGA claims; (2) the risk that the Court may exercise its discretion to decline to stack PAGA penalties; (3) the risk that the Court may exercise its discretion to not award the full amount of PAGA penalties available; and (4) the risk that the Court may decline to award any PAGA penalties at all in light of the fact that damages are available for Class Members and it may find any further liability against Defendant may be unnecessarily punitive.

The Proposed Attorneys' Fees and Costs are Reasonable

75. Class Counsel seeks an attorneys' fees award of thirty-five percent (35%) of the Gross Settlement Amount, which, unless escalated pursuant to this Agreement, would amount to $391,503.00. Class Counsel also seeks reimbursement of costs not to exceed $30,000.00. .

76. Class Counsel believe the requested fee falls well within the historical range of attorneys' fee awards under the common fund theory, which is generally from 25% to 50%.

77. Class Counsel believe the requested fee is fair compensation for undertaking complex, risky, expensive, and time-consuming litigation on a contingent fee basis.

78. I understand from Class Counsel that extensive investigation was done before and after litigation began with the help of Plaintiffs and consultants that included detailed review of time and payroll records; months of negotiations between opposing counsel, as well as discussion of diametrically opposed viewpoints regarding the certifiability of Plaintiffs' claims, the merits of Plaintiffs' claims, the manageability of those claims at a class action or representative action trial, including what settlement terms would be just and proper. Moreover, significant expense was

expended, including filing fees, the utilization of forensic consultants to help analyze time and payroll records, time spent with Plaintiffs by telephone, as well as attending a full-day mediation session to try to resolve the Litigation, among other things.

79. Class Counsel have borne, and continue to bear, the entire risk and cost of litigation associated with the Actions on a purely contingent basis.

80. Class Counsel believe it is fair to characterize the factual and legal issues posed in this case were evolving and difficult. Indeed, Class Counsel has easily already expended hundreds of hours on this matter, including:

- The investigation of the matter, including meeting with Plaintiffs, reviewing policies, Plaintiff's time and pay records, Plaintiffs' personnel file, and exploring Defendant's corporate structure;
- Filing and serving pleadings in the two (2) actions;
- Compliance with prerequisites in connection with Plaintiff Marroquin's cause of action under PAGA;
- Preparing notices, meeting and conferring with counsel for Defendant to prepare joint reports, and discussing the matter in big picture early on in the Litigation;
- Discussing the potential merits of mediation, as well as negotiating the parameters thereof and the informal discovery to be exchanged beforehand, which involved various iterations of written correspondence back and forth and several telephone discussions between counsel regarding the potential scope of discovery, as well as the scope of the pleadings;
- Obtaining and reviewing informal discovery;
- Working with opposing counsel and consultants for the receipt of a representative sampling and analyzing the same with the aid of expert consultants and Plaintiffs to perform analyses of liability and exposure;
- Selecting a mediator and mediation date;
- Preparation of a mediation brief and damages model for use at the mediation session;

- Attendance at the mediation session;
- Negotiating, finalizing, and fully executing the Settlement Agreement;
- Communicating with Plaintiffs who requested updates or other information regarding this matter; and
- Preparing the instant motion for preliminary approval.

81. Based on Class Counsel's past experience in wage and hour class action litigation, Class Counsel believe that our offices are very likely to be called upon, after the Class Notice has been sent, to expend substantial amounts of additional time to help Class Members understand the terms of the proposed settlement, and to assist Class Members in the preparation and documentation of their claims.

82. Class Counsel believe it is also likely that, even after final approval of the settlement has been granted, Class Counsel will be called upon to expend additional amounts of time in the presentation and resolution of contests and disputes relating to Class Members' claims under the terms of the proposed settlement, as to the amounts of individual claims and perhaps other individual issues

83. Finally, if the Settlement is approved, Class Counsel will have to work with the Settlement Administrator to submit a report to this Court regarding the distribution plan pursuant to Code of Civil Procedure section 384 along with a proposed amended judgment, which will require further time and cost to be expended.

84. I am informed and believe the requested attorneys' fees are not expected to be opposed by Defendant and are well within established guidelines.

<u>The Request Enhancement Awards to the Named Plaintiffs and Class Representatives are Reasonable</u>

85. Class Counsel believe Plaintiffs are entitled to an enhanced award for their service as class representative, for answering extensive questions by Class Counsel, for being available and answering questions during mediation, for the risk in being the named plaintiffs, and for providing Defendant with a more expansive release of claims, including a waiver based upon California Civil Code section 1542 (for Plaintiff Mendoza only), in exchange for the enhancement award.

86. I am informed and believe Defendant does not oppose the requested enhancements to Plaintiffs.

87. Class Counsel can attest that Plaintiffs devoted a great deal of time assisting Class Counsel in this case, communicated with counsel very frequently, and were very valuable participants in the strategy for and success of the mediation. Plaintiffs risked intrusive discovery and the payment of employer costs.

88. In the experience of Class Counsel, the typical enhancement award in wage and hour class actions ranges from approximately $10,000.00 to $25,000.00, although some awards are higher. In contrast, Class Counsel seeks an extremely limited enhancement of $7,500.00 each to Plaintiff Mendoza and Plaintiff Marroquin, for a total of $15,000.00 to Plaintiffs, for their service, which is commensurate to the time and effort they have put forth in the prosecution of this matter.

<u>Conditional Certification for Settlement Purposes</u>

Ascertainability

89. Here, the Class Member definition (*i.e.*, all current and former non-exempt, hourly-paid employees who worked in California for Defendant at any time during the Class Period) is derived from the operative complaint, which complains of alleged violations of Labor Code sections that are chiefly, and in some instances, solely applicable to non-exempt, hourly-paid employees. There is no difficulty ascertaining who is a Class Member based on the above-described definition as it is readily apparent to all involved who is a non-exempt, hourly-paid employee of Defendant who worked in California during the Class Period based solely from Defendant's payroll records, which amounts to approximately 459 persons per Defendant's records. Furthermore, the Technician Class Member definition (*i.e.* 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) is derived from the operative complaint, which complains of alleged violations of Labor Code sections that are in some instances solely applicable to non-exempt, hourly-paid employees who performed technician duties such as Plaintiffs. It is apparent who is a

Technician Class Member solely from Defendant's payroll records, which amounts to approximately 201 persons.

Numerosity

Class Counsel understand from the documents and information provided, Defendant identified at least 459 Class Members and 201 Technician Class Members. That is sufficiently numerous to establish the numerosity requirement.

Commonality

90. This Litigation is brought to resolve common issues that include, without limitation: (1) whether Class Members are entitled to pay for tasks performed off-the-clock; (2) whether Defendant's failed to include incentive bonuses in the regular rate of pay for the purposes of calculating overtime wages; (3) whether Defendant provided full, un-interrupted meal periods; (4) whether Class Members are entitled to premium pay interrupted meal periods; (5) whether Defendant provided full, un-interrupted meal periods; (6) whether Class Members are entitled to premium pay for interrupted rest periods; (7) whether Class Members are owed money for Defendant's alleged failure to reimburse expenses incurred in furtherance of work; (8) whether the failure to pay for time worked off-the-clock entitles Class Members to waiting time penalties or wage statement violations; (9) whether the failure to pay due premium wages entitles Class Members to waiting time penalties or wage statement violations; (10) whether the failure to pay for all time worked was willful to justify waiting time penalties or wage statement violations; and (11) whether the failure to pay for all time worked constitutes an injury sufficient to justify wage statement violations.

Typicality

91. Plaintiffs: (1) are non-exempt, hourly-paid employees like other Class Members; (2) complain of not being paid for all time under Defendant's control or suffered and/or permitted to work for Defendant; (3) did not receive full premium pay for meal periods that were not compliant with the Labor Code; and (4) never received premium pay for rest periods that were not provided to Class Members.

/ / /

Adequacy of Plaintiff

92. Class Counsel believe no conflicts, disabling or otherwise, exists between Plaintiffs and Class Members because Plaintiffs allege to have been damaged by the same alleged conduct of Defendant (*i.e.*, Plaintiff classified as a non-exempt employee, not paid premium pay, etc.) and thus have the incentive to fairly represent all Class Members' claims to achieve the maximum possible recovery. Moreover, Plaintiffs' goals have been realized via redress for employees whose wage and hour rights were violated.

Superiority of Class Action

93. Class Counsel believe this wage and hour class action is a superior vehicle for resolution of the issues it seeks to resolve.

94. It deals with apparently common issues that lend themselves to efficient adjudication if adjudicated together, including: (1) whether Class Members are entitled to pay for tasks performed off-the-clock; (2) whether Defendant's failed to include incentive bonuses in the regular rate of pay for the purposes of calculating overtime wages; (3) whether Defendant provided full, un-interrupted meal periods; (4) whether Class Members are entitled to premium pay interrupted meal periods; (5) whether Defendant provided full, un-interrupted meal periods; (6) whether Class Members are entitled to premium pay for interrupted rest periods; (7) whether Class Members are owed money for Defendant's alleged failure to reimburse expenses incurred in furtherance of work; (8) whether the failure to pay for time worked off-the-clock entitles Class Members to waiting time penalties or wage statement violations; (9) whether the failure to pay due premium wages entitles Class Members to waiting time penalties or wage statement violations; (10) whether the failure to pay for all time worked was willful to justify waiting time penalties or wage statement violations; and (11) whether the failure to pay for all time worked constitutes an injury sufficient to justify wage statement violations.

95. Moreover, with approximately 459 Class Members, presentation of all of them before this Court may be problematic, impractical, and burdensome on the Court. On the contrary, a class action allows claims of many individuals to be resolved at the same time, eliminates the possibility of repetitious litigation and affords small claimants with a method of obtaining redress

for claims which otherwise would be too insufficient to warrant individual litigation. It is also brought by a former employee who is not at the greater risk of retaliation than current employees who are less likely to seek such redress for themselves. In addition, Class Counsel is not aware of any other action against Defendant brought on an individual basis, which signals that Class Members have little interest in personally controlling their claims. Moreover, a class action would eradicate the concern of inconsistent rulings regarding the wage and hour issues brought as part of this class action.

Fee Splitting Arrangement

96. I believe that my law firm, Bibiyan Law Group, P.C. and Wilshire Law Firm have entered into a fee sharing agreement in this matter. I believe that Plaintiff Mendoza was informed of this fee sharing agreement and executed said agreement. Pursuant to the agreement, 65% of attorneys' fees will be allocated to Bibiyan Law Group, P.C. and 35% will be allocated to Wilshire Law Firm.

I declare under penalty of perjury under the laws of the state of California that the foregoing is true and correct this 1st of September 2022, at Beverly Hills, California.

Vedang J. Patel

Vedang J. Patel

EXHIBIT 1

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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

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

1. <u>DEFINITIONS</u>

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

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

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

D. "**Class Period" or "Settlement Period**" means the period from March 12, 2017 through February 10, 2022.

E. "**Court**" means the Superior Court of the State of California for the County of Los Angeles.

F. "**Final Approval Date**" means the later of: (1) the date the Court signs an Order granting final approval of this Settlement ("Final Approval") and Judgment; (2) if there is an objector, 60 days from the date of Final Approval and Judgment if no appeal has been filed by that date; or (3) to the extent any appeals have been filed, the date on which they have been resolved or exhausted.

G. "**Defendant**" means Amusement Industry, Inc., doing business as Westland Real Estate Group.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

BB. **"Settlement Administration Costs"** means all costs incurred by the Settlement Administrator in administration of the Settlement, including, but not limited to, translating the Class Notice to Spanish, the distribution of the Class Notice to the Settlement Class in English and Spanish, calculating Individual Settlement Shares, Individual Settlement Payments, Technician Settlement Payments, Individual PAGA Payments, and Participating Individual Settlement Shares, as well as associated taxes and withholdings, providing declarations, generating Individual Settlement Payment checks and Individual Technician Payment checks and related tax reporting forms, doing administrative work related to unclaimed checks, transmitting payment to Class Counsel for the Court-approved amounts for attorneys' fees and reimbursement of litigation costs and expenses, to Plaintiffs for their Service Awards, and to the LWDA for the LWDA Payment, providing weekly reports of opt-outs, objections and related information, and any other actions of the Settlement Administrator as set forth in this Agreement, all pursuant to the terms of this Agreement. The Settlement Administration Costs are estimated not to exceed $11,275.00.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.

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

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

EE. "**Technician Settlement Class**" or "**Technician Settlement Class Members**" or "**Technician Class Members**" means 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.

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

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

2. BACKGROUND

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

B. On 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 ("Marroquin Action").

C. On April 12, 2021, Plaintiff Marroquin filed a notice with the 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 for Aggrieved Employees ("Marroquin PAGA Notice"). After sixty-five (65) days had passed without any communication from the LWDA with respect to Labor Code violations alleged in the Marroquin PAGA Notice, Plaintiff Marroquin amended his complaint in the Marroquin Action to seek civil penalties against Defendant under PAGA.

D. Shortly thereafter, the Parties agreed to exchange informal discovery and attend an early mediation, in which Plaintiffs were provided with, among other things: (1) a sampling of time and payroll records for the estimated 432 putative class members; (2) data points 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.

E. On 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 Actions.

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

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

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

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

3. <u>JURISDICTION</u>

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

4. <u>STIPULATION OF CLASS CERTIFICATION</u>

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

5. <u>CONSOLIDATION OF ACTIONS AND MOTIONS FOR APPROVAL OF SETTLEMENT</u>

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

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

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

6. STATEMENT OF NO ADMISSION OF WRONGDOING OR LIABILITY

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

7. RELEASE OF CLAIMS

A. Release by All Participating Class Members.

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

B. Release by Aggrieved Employees

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

C. Exclusions of Class and PAGA Release

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

D. General Release by Plaintiff Mendoza.

Effective only upon the Court's entry of an Order granting Final Approval of the Settlement and entry of Judgment, and payment by Defendant to the Settlement Administrator selected of the full Gross Settlement Amount and Employers' Taxes imposed on the wage portions of the Individual Settlement Payments, in addition to the Released Claims, Plaintiff Mendoza makes the additional following General Release: Plaintiff Mendoza releases the Released Parties from all claims, demands, rights, liabilities and causes of action of every nature and description whatsoever, known or unknown, asserted or that might have been asserted, whether in tort, contract, or for violation of any state or federal statute, rule, law or regulation arising out of, relating to, or in connection with any act or omission of the Released Parties through the date of full execution of this Agreement in connection with Plaintiff Mendoza's employment with Defendant or the termination thereof, except for any and all other claims that may not be released as a matter of law through this Agreement. To the extent of the General Release provided herein, Plaintiff Mendoza stipulates and agrees that, upon the Court's entry of an Order granting Final Approval of the Settlement and entry of Judgment, and payment by Defendant to the Settlement Administrator selected of the full Gross Settlement Amount and Employers' Taxes imposed on the wage portions of the Individual Settlement Payments, he shall have expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of Section 1542 of the California Civil Code, or any other similar provision under federal or state law, which provides:

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

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

8. <u>SETTLEMENT ADMINISTRATOR</u>

A. Plaintiffs and Defendant, through their respective counsel, have selected ILYM Group, Inc. to administer the Settlement, which includes but is not limited to translating the Class Notice to Spanish, distributing and responding to inquiries about the Class Notice, calculating all 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 $11,275.00will 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. <u>NOTICE, ADMINISTRATOR DISPUTE, OBJECTION, AND EXCLUSION PROCESS</u>

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

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

(2) The Class Notice will set forth:

(a) the Settlement Class Member's and/or Technician Settlement Class Member's estimated Individual Settlement Payment, estimated Individual Technician Payment (if applicable), and Individual PAGA Payment (if appliable), and the basis for each;

(b) the information required by California Rule of Court, Rule 3.766 (d);

(c) the material terms of the Settlement;

(d) the proposed Settlement Administration Costs;

(e) the definition of the Settlement Class and Technician Settlement Class;

(f) a statement that the Court has preliminarily approved the Settlement;

(g) how the Settlement Class Member and/or Technician Class Member can obtain additional information, including contact information for Class Counsel;

(h) information regarding opt-out and objection procedures;

(i) the date and location of the Final Approval Hearing; and

(j) that the Settlement Class Member and/or Aggrieved Employee must notify the Settlement Administrator no later than the Response Deadline if the Settlement 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.

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

C. **Requesting Exclusion.**

Any Settlement Class Member or Technician Class Member may request exclusion from (*i.e.*, "opt out" of) the Settlement by mailing a written request to be excluded from the Settlement ("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. A Settlement Class Member and/or Technician Settlement Class Member cannot submit both a Request for Exclusion and an Objection. If a Settlement Class Member and/or Technician Settlement Class Member submits an Objection and a Request for Exclusion, the Request for Exclusion will control and the Objection will be overruled. Settlement Class Members and/or Technician Settlement Class Members who worked during the PAGA Period as Aggrieved Employees that submit a valid Request for Exclusion will still be deemed Aggrieved Employees and thus will still receive their Individual PAGA Payments and be bound by the release of the PAGA Released Claims.

D. Disputes Regarding Settlement Class Members' Workweek Data.

Each Settlement Class Member and Technician Settlement Class Member may dispute the number of Workweeks attributed to him or her on his or her Class Notice as worked during the Class Period and/or PAGA Period, as well as whether he or she should qualify as a Technician Settlement Class Member ("Administrator 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 Court shall adjudicate the dispute.

10. INDIVIDUAL SETTLEMENT PAYMENTS, INDIVIDUAL TECHNICIAN PAYMENTS AND INDIVIDUAL PAGA PAYMENTS

A. Technician Settlement Payments to Participating Class Members.

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

B. Individual Settlement Payments for Non-Technician Class Members

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

C. Individual PAGA Payments

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

D. Formula for Payment

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

a. The Settlement Administrator will determine the total number of Workweeks worked by each Settlement Class Member during the Class Period ("Class Member's Workweeks"), as well as the aggregate number of Workweeks worked by all Settlement Class Members during the Class Period ("Class Workweeks"). Additionally, the Settlement 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. <u>DISTRIBUTION OF PAYMENTS</u>

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

C. Time for Distribution.

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

12. <u>ATTORNEYS' FEES AND LITIGATION COSTS</u>

Class Counsel shall apply for, and Defendant shall not oppose, an award of attorneys' fees of up to 35% of the Gross Settlement Amount, which, unless escalated pursuant to Paragraph 17 of this Agreement, amounts to Three Hundred Ninety-One Thousand, Five Hundred Three Dollars and Zero Cents ($391,503.00). Class Counsel shall further apply for, and Defendant shall not oppose, an application or motion by Class Counsel for reimbursement of actual costs associated with Class Counsel's prosecution of this matter as set forth by declaration testimony in an amount up to Thirty Thousand Dollars and Zero Cents ($30,000.00). Awards of attorneys' fees and costs shall be paid out of the Gross Settlement Amount, and encompass all past and future attorneys' fees and costs necessary to prosecute, settle, and obtain Final Approval of the settlement in Actions. The "future" aspect of the amounts stated herein includes, without limitation, all time and expenses expended by Class Counsel (including any appeals therein). There will be no additional charge of any kind to either the Settlement Class Members or request for additional consideration from Defendant for such work unless, Defendant materially breaches this Agreement, including any term regarding funding, and further efforts are necessary from Class Counsel to remedy said breach, including, without limitation, moving the Court to enforce the Agreement. Should the Court approve attorneys' fees and/or litigation costs and expenses in amounts that are less than the amounts provided for herein, then the unapproved portion(s) shall be a part of the Net Settlement Amount.

13. <u>SERVICE AWARDS TO PLAINTIFFS</u>

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

14. <u>TAXATION AND ALLOCATION</u>

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

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

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

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

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

15. <u>PRIVATE ATTORNEYS' GENERAL ACT ALLOCATION</u>

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

16. <u>COURT APPROVAL</u>

This Agreement is contingent upon an order by the Court granting Final Approval of the Settlement, and that the LWDA does not intervene and object to the Settlement. In the event it becomes impossible to secure approval of the Settlement by the Court and the LWDA, the Parties shall be restored to their respective positions in the Actions prior to entry of this Settlement. If this Settlement Agreement is voided, not approved by the Court or approval is reversed on appeal, it shall have no force or effect and no Party shall be bound by its terms except to the extent: (a) the Court reserves any authority to issue any appropriate orders when denying approval; and/or (b) there are any terms and conditions in this Settlement Agreement specifically stated to survive the Settlement Agreement being voided or not approved, and which control in such an event.

17. INCREASE IN WORKWEEKS

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

18. NOTICE OF JUDGMENT

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

19. MISCELLANEOUS PROVISIONS

A. Interpretation of the Agreement.

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

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

B. Further Cooperation.

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

C. Counterparts.

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

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

DocuSigned by:
5E5EE3A7403345F...

Dated: 8/25/2022, 2022

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.

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.

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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.

AGREED AS TO FORM:

Dated: ____________________, 2022

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

Dated: ____________________, 2022

____
JUSTIN F. MARQUEZ
Counsel for Plaintiff EDIN MARROQUIN

Dated: 8/30, 2022

Bashir Eustache tag
BASHIR E. EUSTACHE
Counsel for Defendant AMUSEMENT INDUSTRY, INC.

EXHIBIT A

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT AND DATE FOR FINAL APPROVAL HEARING

Mendoza et al. v. Amusement Industry Inc. d.b.a Westland Real Estate Group
(County of Los Angeles, California Superior Court Case No. 20STCV17212)

As a current or former non-exempt, hourly-paid California employee of Amusement Industry Inc. doing business as Westland Real Estate Group, you are potentially entitled to receive money from a proposed class action settlement.

Please read this Notice carefully. This Notice relates to a proposed settlement of class action litigation. If you are a Class Member, it contains important information about your right to receive a payment from the Settlement fund.

You have received this Notice of Class Action Settlement because the records of Amusement Industry Inc., doing business as Westland Real Estate Group ("Defendant") show you are a "Class Member," and therefore entitled to a payment from this class action Settlement. Class Members are all persons who worked for Defendant as non-exempt, hourly-paid employees at any time from March 12, 2017 through February 10, 2022 ("Class Period").

- The settlement is to resolve a class action lawsuit, *Mendoza v. Amusement Industry Inc.,* pending in the Superior Court of California for the County of Los Angeles, Case Number 21STCV09790 (the "Lawsuit"), which alleges that Defendant: (1) failed to pay overtime wages; (2) failed to pay minimum wages; (3) failed to provide compliant meal and rest periods or associated premium pay; (4) failed to timely pay wages upon termination or resignation; (5) failed to provide compliant wage statements; (6) failed to reimburse employees for business expenses; and (7) engaged in unfair competition. Based on these and other alleged Labor Code violations, Plaintiffs also sought penalties under the California Labor Code Private Attorney Generals Act ("PAGA").
- On _______________, the Los Angeles County Superior Court granted preliminary approval of this class action settlement and ordered that all Class Members be notified of the Settlement. The Court has not made any determination of the validity of the claims in the Lawsuit. Defendant vigorously denies the claims in the Lawsuit and contends that it fully complied with all applicable laws.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
DO NOTHING AND RECEIVE PAYMENT	Get a payment and give up your legal rights to pursue claims released by the settlement of the Lawsuit.
OPT OUT OF THE SETTLEMENT	Exclude yourself from the Settlement, get no payment for settlement of the class claims, and retain your legal rights to individually pursue the class claims that would otherwise be released by the settlement of the Lawsuit. If you worked from April 12, 2020 through February 10, 2022, ("PAGA Period") as a non-exempt, hourly-paid employee of Defendant, as well, then you will be deemed an "Aggrieved Employee" and you will still receive your share of the proceeds available from the settlement of the PAGA Released Claims, defined below, (your "Individual PAGA Payment") even if you opt out of the class settlement.

OBJECT TO THE SETTLEMENT	If you do not opt out, you may write to the Settlement Administrator, ILYM Group, Inc. about why you object to the settlement, and they will forward your concerns to counsel which will then be provided to the Court. If the Court approves the Settlement despite your objection, you will still be bound by the Settlement. You or your attorney may also address the Court during the Final Approval Hearing scheduled for [DATE AND TIME] in Department 11 of the Spring Street Courthouse of the Los Angeles County Superior Court, located at 312 N. Spring Street, Los Angeles, CA 90012.

The Final Approval Hearing on the adequacy, reasonableness, and fairness of the Settlement will be held at _______ __.m. on ___________________, in the Spring Street Courthouse of the Los Angeles County Superior Court, located at 312 N. Spring Street, Los Angeles, CA 90012 Department 12. You are not required to attend the Hearing, but you are welcome to do so.

Why Am I Receiving This Notice?

Defendant's records show that you currently work, or previously worked, for Defendant as a non-exempt, hourly-paid employee in the State of California at some point during the Class Period. You were sent this Class Notice because you have a right to know about a proposed settlement of a class action lawsuit, and about all of your options before the Court decides whether to finally approve the settlement. If the Court approves the settlement and then any objections and appeals are resolved, a "Settlement Administrator" appointed by the Court will make the payments described in this Notice. This Notice explains the Lawsuit, the settlement, your legal rights, what benefits are available, who is eligible for them, and how to get them.

What Is This Case About?

Mario Angel Mendoza and Edin Marroquin were non-exempt, hourly-paid employees of Defendant. They are the "Plaintiffs" in this case and are suing on behalf of themselves and Class Members for Defendant's alleged failure to pay overtime wages, failure to pay minimum wages, failure to provide compliant meal and rest periods, or associated premium pay, failure to timely pay wages upon termination or resignation, failure to provide compliant wage statements, failure to reimburse employees for business expenses, and engaging in unfair competition.

Based on these and other alleged Labor Code violations, Plaintiffs also seek to recover penalties under the California Labor Code Private Attorney Generals Act.

Defendant denies all of the allegations made by Plaintiffs and denies that it violated any law. The Court has made no ruling on the merits of Plaintiffs' claims. The Court has only preliminarily approved this class action settlement. The Court will decide whether to give final approval to this settlement at the Final Approval Hearing.

Summary of the Settlement Terms

Plaintiffs and Defendant have agreed to settle this case on behalf of themselves and Class Members and Aggrieved Employees for the Gross Settlement Amount, which unless increased pursuant to the Settlement Agreement, amounts to $1,118,580.00. The Gross Settlement includes: (1) Administration Costs up to $11,275.00; (2) a service payment of up to $7,500.00 to each Plaintiff, for a total of $15,000.00, for their time and effort in pursuing this case and in exchange for a broader release of claims against Defendant; (3) up to 35% of the Gross Settlement Amount in attorneys' fees which, unless escalated pursuant to the Settlement Agreement, amounts to $391,503.00 (4) up to $30,000.00 in litigation costs to Class Counsel, according to proof; (5) a Technician Settlement Amount of $100,000.00; and (6) payment allocated to PAGA penalties in the amount of $50,000.00 from the Gross Settlement Amount. Pursuant to PAGA, seventy-five percent (75%) of the amount allocated toward PAGA ($37,500.00) will be paid to the LWDA and twenty-five percent (25%) ($12,500.00) will be distributed to Aggrieved Employees. After deducting these sums, a total of approximately $520,802 will be available for distribution to Class Members ("Net Settlement Amount").

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

Distribution to Class Members

Class Members who do not opt out of the settlement will receive a *pro rata* payment of the Net Settlement Amount based on the number of weeks worked by Class Members in non-exempt, hourly-paid positions for Defendants in California during the Class Period ("Eligible Workweeks"). Specifically, Class Members' payments will be calculated by dividing the number of Eligible Workweeks attributed to the Class Member by all Eligible Workweeks attributed to members of the Settlement Class, multiplied by the Net Settlement Amount. Otherwise stated, the formula for a Class Member is: (Individual's Eligible Workweeks ÷ total Settlement Class Eligible Workweeks) x Net Settlement Amount. In addition, Class Members who worked during the PAGA Period (*i.e.*, Aggrieved Employees) will receive a *pro rata* share of the $12,500.00 allocated as PAGA penalties, whether or not they opt out of the settlement, based on the number of workweeks worked by each Aggrieved Employee during the PAGA Period.

Furthermore, Class Members who worked as Technicians (*i.e.* 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), will also receive a portion of the Technician Settlement Amount. Technician Settlement Payments will be divided equally among the Technicians. In other words, Class Members who worked as Technicians will receive a portion of the $100,000.00 as follows: ($100,000 ÷ Total Number of Technician Class Members).

Defendant's records indicate that you worked [Eligible Workweeks] as a non-exempt, hourly-paid employee in California during the Class Period and [Eligible Workweeks] during the PAGA Period. Based on these records, your estimated payment as a Class Member would be [$Estimated Award] and your estimated payment as an Aggrieved Employee would be [$Estimated Award]. If you worked as a Technician, your estimated payment would be [$Estimated Technician Payment]. If you believe this information is incorrect and wish to dispute it, you must mail a dispute to the Settlement Administrator no later than [RESPONSE DEADLINE]. Please include any documentation you have that you contend supports your dispute.

Tax Reporting

100% of the payments for PAGA penalties to Aggrieved Employees will be allocated as penalties reported on IRS Form 1099. 20% of each Settlement Payment to Class Members who do not opt out of the settlement will be allocated as wages and reported on an IRS Form W-2, and 80% will be allocated as penalties and interest reported on IRS Form 1099. This notice is not intended to provide legal or tax advice on your Settlement Share.

Your Options Under the Settlement

Option 1 – *Do Nothing and Receive Your Payment*

If you do not opt out of the settlement, you are automatically entitled to your Individual Settlement Payment (*i.e.*, your share of the Net Settlement Amount) because you are a Class Member. If you do not dispute your settlement share calculation and do not opt out of the settlement, you will be bound by the entire release in the settlement and receive a your Individual Settlement Payment, as well as your Individual PAGA Payment if you are also an Aggrieved Employee. **In other words, if you are a Class Member, you do not need to take any action to receive the settlement payment(s) set forth above**.

Class Members who do not submit a valid and timely opt out (pursuant to Option 2 below), will be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged the Released Parties of all Released Claims he or she may have or had upon final approval of this Settlement and payment by Defendants to the Settlement Administrator.

"Released Claims" refers to all claims against the Released Parties asserted in the Operative Complaint filed in the Mendoza Action, or any and all claims that may be asserted against the Released Parties based on the factual allegations in the Operative Complaint filed in the Action, or any and all claims that may be asserted against the Released Parties based on the factual allegations in the Action, as follows: For the duration of the Class Period, the release includes, for Participating Class Members: (a) all claims for failure to pay overtime wages; (b) all claims for failure to pay minimum wages; (c) all claims for failure to provide compliant meal periods, or associated premium pay; (d) all claims for failure to provide compliant rest periods, or associated premium pay; (e) all claims for the failure to timely pay wages upon termination or resignation; (f) all claims for non-compliant wage statements; (g) all claims for failure to reimburse employees for business expenses; (h) all claims for violation of Labor Code section 227.3; and (i) all claims asserted through California Business & Professions Code section 17200, *et seq*. arising out of the Labor Code violations referenced in the Operative Complaint (the "Class Released Claims").

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

"Released Parties" refers to Defendant and each of its past, present, and future respective subsidiaries, dba's, affiliates, parents, insurers and reinsurers, and company-sponsored employee benefit plans of any nature and their successors and predecessors in interest, including all of their officers, directors, shareholders, employees, agents, principals, heirs, representatives, accountants, auditors, consultants, attorneys, administrators, fiduciaries, trustees, and agents.

Option 2 – *Opt Out of the Settlement*

If you do not wish to receive your Individual Settlement Payment or release the Class Released Claims, you may exclude yourself by submitting a written request to be excluded from the Class. Your written request must expressly and clearly indicate that you do not want to participate in the Settlement, and you desire to be excluded from the Settlement. The written request for exclusion must include your name, last four (4) digits of your Social Security Number, and 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 you do not wish to participate in the Settlement. Sign, date, and mail your written request for exclusion by U.S. First-Class Mail to the address below.

ILYM Group, Inc.
[Add Mailing Address]

Your written request for exclusion must be mailed to the Administrator not later than [RESPONSE DEADLINE].

The proposed settlement includes the settlement of the PAGA Released Claims. An employee may not request exclusion from the settlement of a PAGA claim. Thus, if the Court approves the settlement, then even if you request exclusion from the settlement, if you are an Aggrieved Employee, you will still receive your Individual PAGA Payment and will be deemed to have released the PAGA Released Claims. A request for exclusion will preserve your right, if any, to individually pursue only the Class Released Claims.

Option 3 – *File an Objection to the Settlement*

If you wish to object to the Settlement, you may file an objection in writing stating why you object to the Settlement. Your written objection must provide your name, address, the last four digits of your Social Security Number, signature, a statement of whether you plan to appear at the Final Approval Hearing, and a statement of the reason(s) why you believe that the Court should not approve the Settlement. Your written objection must be mailed the Administrator no later than [RESPONSE DEADLINE]. Please note that you cannot both object to the Settlement and opt out of the Settlement. If you exclude yourself, then your objection will be overruled. If the Court overrules your objection, you will be bound by the Settlement and will receive your Settlement Share.

Final Approval Hearing

You may, if you wish, also appear at the Final Approval Hearing set for _________________ at ________ __.m. in the Department 12 of the Spring Street Courthouse of the Los Angeles County Superior Court, located at 312 N. Spring Street, Los Angeles, CA 90012, and orally object to the Settlement, discuss your written objections with the Court and the Parties, or otherwise comment on the Settlement at your own expense. You may also retain an attorney to represent you at the Hearing at your own expense.

Additional Information

This Notice of Class Action Settlement is only a summary of this case and the Settlement. For a more detailed statement of the matters involved in this case and the Settlement, you may call the Settlement Administrator at [PHONE NUMBER] or Class Counsel, whose information appears below:

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

Justin F. Marquez, Esq. (SBN 262417)
justin@wilshirelawfirm.com
WILSHIRE LAW FIRM
3055 Wilshire Blvd., 12th Floor
Los Angeles, California 90010
Tel: (213) 381-9988; Fax: (213) 381-9989

You may also visit the Settlement Administrator's website at [WEBSITE] to gain access to key documents in this case, including the Settlement Agreement, the Class Notice, the Order Granting Preliminary Approval of this Settlement, the Order Granting Final Approval of this Settlement, and the Final Judgment.

You may also refer to the pleadings, the Settlement Agreement, and other papers filed in this case, which may be inspected at the Spring Street Courthouse of the Los Angeles County Superior Court, located at 312 N. Spring Street, Los Angeles, CA 90012, during regular business hours of each court day. You may also obtain these documents through the Court's website at https://www.lacourt.org/casesummary/ui/.

All inquiries by Class Members regarding this Notice of Class Action Settlement and/or the Settlement should be directed to the Settlement Administrator.

PLEASE DO NOT CONTACT THE CLERK OF THE COURT, THE JUDGE, DEFENDANT, OR DEFENDANT'S ATTORNEYS WITH INQUIRIES.