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22 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**

23 **FOR THE CITY AND COUNTY OF SAN FRANCISCO**

24 ANGELICA COSIO, an individual,  
25 on her own behalf and on behalf of all  
26 others similarly situated,

27 Plaintiff,

28 v.

29 INTERNATIONAL PERFORMING  
30 ARTS ACADEMY, LLC, a  
31 California limited liability company,  
32 BARBIZON SCHOOL OF SAN  
33 FRANCISCO, INC., a California  
34 corporation, LION MANAGEMENT  
35 GROUP INC., a California  
36 corporation, ANTHONY LOUIS  
37 LIONETTI, LARRY D. LIONETTI,  
38 LENA QUESADA LIONETTI,  
39 LENA M. LIONETTI, and DOES 1-  
40 100, inclusive,

41 Defendants.

Case No. CGC-16-551337

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF MOTION  
BY CERTIFIED CLASS FOR  
PRELIMINARY APPROVAL OF CLASS  
ACTION SETTLEMENT**

The Honorable A.C. Massullo  
Department 304  
Civic Center Courthouse  
400 McAllister Street  
San Francisco California 94102

Date: March 23, 2020  
Time: 11:00 a.m.

Complaint Filed: April 6, 2016

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**Treatises**

American Law Institute, Principles of the Law of Aggregate Litigation (2018)..... - 12 -  
Newberg on Class Actions (4th Ed. 2014) ..... - 12 -  
Weil & Brown, Cal. Practice Guide: Civ. Proc. Before Trial (The Rutter Group 2014) ..... - 13 -

**California Supreme Court Decisions**

*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429 ..... - 12 -  
*State v. Levi Strauss & Co.* (1986) 41 Cal.3d 460 ..... - 12 -

**California Court of Appeal Decisions**

*Cho v. Seagate Tech. Holdings, Inc.* (2009) 177 Cal.App.4th 734..... - 15 -  
*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794 ..... - 13 -, - 15 -  
*Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135 ..... - 13 -  
*In re Cellphone Termination Fee Cases* (2009)180 Cal.App.4th 1110 ..... - 11 -, - 12 -  
*In re Microsoft I-V Cases* (2006) 135 Cal.App.4th 706 ..... - 13 -, - 15 -  
*Mallick v. Superior Court* (1979) 89 Cal.App.3d 434 ..... - 12 -  
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..... - 12 -  
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*Stamburgh v. Superior Court* (1976) 62 Cal.App.3d 231 ..... - 13 -  
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**United States Circuit Court of Appeals Decisions**

*Class Plaintiffs v. City Of Seattle* (9th Cir. 1992) 955 F.2d 1268..... - 12 -  
*Priddy v. Edelman* (6<sup>th</sup> Cir. 1989) 883 F.2d 438..... - 13 -

1           **I.       INTRODUCTION**

2           California has struggled to protect aspiring young artists – child actors and models and  
3 their families – who dream of becoming Hollywood stars. A surface-level grasp of the  
4 industry, informed by the likes of American Idol, fosters a belief in these young artists that if  
5 they can just get themselves on stage in front of the right people—the talent scouts and agents  
6 who act as Hollywood’s gatekeepers—then they, too, can become a star. Unscrupulous  
7 businesses have long preyed upon the false hopes of these naïve young artists and their  
8 families by promising them a turn on stage in front of these “Industry Professionals,” in  
9 exchange for thousands of dollars in fees.

10           After trying and failing to reform these bad actors through regulation,<sup>1</sup> the Legislature  
11 finally decided to end such predation by categorically outlawing businesses—defined as  
12 Advance Fee Talent Representation Services (“AFTRS”)—that charge aspiring artists an  
13 upfront fee in exchange for offering auditions, or procuring (or attempting to procure) talent  
14 agents or talent managers.<sup>2</sup>

15           Plaintiff’s suit arises from Defendants’ alleged operation of an AFTRS. Defendants  
16 include a married couple, Larry and Lena Lionetti, who own and operate several interlocking  
17 companies, several of which are also defendants here, that have offered modeling and talent-  
18 related services across the United States for the past 30 years. Plaintiffs alleged that  
19 Defendants violated the Act by operating an AFTRS: they arrange so-called “Showcases” for  
20 aspiring artists in the form of auditions and meetings with talent agents and talent managers, in  
21 exchange for an upfront fee. Defendants’ contracts describe the Showcase as “the largest  
22

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23 <sup>1</sup> See, 1999 Cal. Stats. ch. 626; see also generally, Assem. Com. on Arts, Entertainment,  
24 Sports, Tourism, and Internet Media., Analysis of Assem. Bill No. 1319 as amended April  
25 15, 2009 (2009-2010 Reg. Sess.) April 28, 2009, pp. 3-5 (detailing legislative history of  
26 regulation of talent agents and advanced fee talent services) (attached as Exhibit A to  
27 Declaration of Ethan Preston filed in support of class certification on July 12, 2017).

28 <sup>2</sup> Assembly Bill No. 1319 (2009-2010 Reg. Sess.); codified at Cal. Labor Code section 1701  
*et seq.* (“the Act”); See also 2009 Cal. Stats. ch. 286 at § 1 (stated legislative purpose of Act  
was to “prohibit[ ]. . . unfair, . . . destructive, [and] unscrupulous . . . business practices by  
which the public has been injured in connection with talent services.”).

1 networking and resource opportunity for industry professionals - agents, managers, casting  
2 directors, choreographers and record executives.”<sup>3</sup> Plaintiff and the class members are  
3 students and family members who paid to attend these Showcases. All class members  
4 contracted to attend the Showcases under Defendants’ standardized, materially uniform  
5 contracts which offer services that the Act prohibits.

6 After four years of hotly contested litigation, Plaintiff and class counsel have obtained a  
7 proposed settlement that they believe is in the best interests of the class. The class claims are  
8 strong, and worth millions based solely on the merits. However, the evidence available to class  
9 counsel indicates that Defendants are impoverished, and lack adequate assets or revenues to  
10 fund either a settlement or judgment based upon the prospective damages that Defendants  
11 would be liable for at trial. As such, the proposed settlement is valued solely based  
12 Defendants’ apparent ability to pay. Such a settlement is arguably preferable to bankruptcy  
13 proceedings where it might take additional years for class members to collect what pennies  
14 would remain in the till. In addition, the Proposed Settlement precludes Defendants from  
15 operating an AFTRS in the future.

16 As is detailed below, the proposed settlement provides for Defendants to stop operating  
17 Showcases; to submit financial disclosures to the Court under penalty of perjury; and to pay  
18 \$720,000 to the class. In exchange, the class would release Defendants for the claims actually  
19 asserted in the operative complaint. Class members will receive notice and the opportunity to  
20 object or opt-out as each so chooses. Those who remain part of the settlement class will receive  
21 their share of the settlement funds via a direct mailing, with no claims process, and no  
22 reversion. The proposed settlement provides for class counsel to receive up to one-third of the  
23 settlement funds as their reasonable fee, plus up to \$60,000 in reimbursement for reasonable  
24 litigation costs expended in the litigation, each subject to Court approval. Finally, the proposed  
25 settlement authorizes the named Plaintiff to receive up to \$10,000, again subject to Court

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27 <sup>3</sup> Examples of Showcase contracts were introduced in the Motion for Class Certification.  
28 *See*, Declaration of Ethan Preston in Support of Class Certification at ¶¶ 30-32 (contracts  
generally), ¶ 32 (quoted material), Ex. I (actual contracts).

1 approval, as an incentive award to compensate for the substantial risks she undertook, and the  
2 sustained time and energy she has invested in litigating these claims on behalf of the class over  
3 the years.

4 **II. STATEMENT OF THE CASE.**

5 **A. The Class Action Allegations.**

6 Plaintiff's class action complaint generally alleges that Defendants operate and advertise  
7 their Showcases as an Advance-Fee Talent Representation Service, in direct violation of  
8 California Labor Code section 1702. The complaint alleges Defendants took hefty fees from  
9 each class member in exchange for attendance at a Showcase, in which Defendants offered to  
10 procure (or to attempt to procure) auditions, talent agents, and/or talent managers. The  
11 operative complaint states a cause of action under Labor Code section 1704.2, and for  
12 violations of California's Unfair Competition Law (Bus. & Prof. Code § 17200 *et seq.*).

13 Defendants deny any liability or wrongdoing of any kind associated with the claims  
14 alleged by Plaintiff.

15 **B. The Litigation.**

16 Plaintiff's initial complaint was filed on April 4, 2016. The complaint was amended  
17 four times following both formal and informal resolution of multiple attacks on the pleadings,  
18 including three separate orders resolving demurrers. Plaintiff filed her final and operative Fifth  
19 Amended Complaint ("5AC") on March 1, 2017. Defendants filed their operative answer on  
20 June 5, 2017.

21 Discovery was pursued exhaustively in this case. In total, Plaintiff filed seven  
22 affirmative motions to compel discovery as to Defendants, and three affirmative motions to  
23 compel subpoenas as to non-parties, while Defendants filed one motion to quash subpoenas.  
24 The Court ultimately heard and decided six of those discovery motions. *See*, Orders entered  
25 Mar. 3, 2017; Dec. 28, 2017; Apr. 5, 2019; Jun. 3, 2019; Aug. 8, 2019; and Sept. 4, 2019.

26 Plaintiff also vigorously addressed discovery misconduct by Defendants, and ultimately  
27 obtained two separate sets of orders restraining Defendants from engaging in improper  
28 communications, first with putative class members, and then with members of the certified



1 class. *See*, Orders entered Aug. 25, 2017; Sept. 5, 2017; Sept. 18, 2017; Oct. 11, 2017; Aug. 8,  
2 2018; and Jun. 28, 2019. After Defendants noticed an appeal from the first set of such orders,  
3 Plaintiff also obtained an order dismissing that appeal as taken from non-appealable orders.  
4 *See*, Remittitur entered Apr. 26, 2018.

5 After extensive adversarial briefing and factual development by the parties, the Court  
6 entered an order granting class certification, and defining the same class as defined in the  
7 settlement. *See*, Orders entered Sept. 11, 2018; and Dec. 21, 2018.<sup>4</sup>

8 Finally, the Court has held that Defendants have a right to a jury trial on Plaintiff's  
9 claims for damages under Labor Code section 1704.2, but not on Plaintiff's claim for  
10 injunctive relief under the UCL. *See*, Order entered Feb. 21, 2019.

### 11 **C. The Settlement Negotiations.**

12 On February 28, 2018, the parties first mediated their dispute before the Hon. Edward  
13 A. Infante (Ret.), but were unable to reach a resolution. Thereafter, the parties requested and  
14 the Court ordered a stay of the action to permit the parties to engage in informal discovery to  
15 independently evaluate Defendants' contention that they lack the necessary funds and assets to  
16 pay a settlement based upon the prospective damages that Defendants would be liable for at  
17 trial. *See*, Stipulated Order entered Mar. 7, 2018. When those efforts failed, the Court lifted the  
18 stay and set final briefing and the hearing on class certification. *See*, Order entered Jul. 19,  
19 2018.

20 After class certification, the Court permitted Defendants' previous attorneys to  
21 withdraw from the case pursuant to a stipulation by all Defendants and the former counsel. *See*,  
22 Order entered Dec. 17, 2018.

23 The parties then agreed to again attempt mediation in January 2019 with Mr. Richard  
24 Phelps, but the mediation was cancelled by Defendants after Plaintiff refused to defer formal

25 \_\_\_\_\_  
26 <sup>4</sup> Because the class definition used in the proposed settlement is the same as was previously  
27 certified by the Court, Plaintiff does not otherwise address the merits of class certification in  
28 these papers. To the extent that the Court deems it necessary to separately certify a  
settlement class, the same grounds for certification exist here as were presented at the prior  
order granting class certification.

1 discovery aimed at discovering Defendants’ financial condition. Thereafter, Plaintiff engaged  
2 in extensive formal discovery by subpoenaing relevant documents from Defendants’ financial  
3 institutions and their tax preparers. *See, e.g.*, Orders entered Apr. 5, 2019; Jun. 3, 2019; Aug. 8,  
4 2019; and Sept. 4, 2019.

5 Finally, the parties agreed to judicial mediation, and thereafter benefited from the  
6 exhaustive efforts of the Hon. Jeffrey S. Ross to mediate their dispute, first at a mediation held  
7 on July 5, 2019, and continuing through to a second mediation held on September 20, 2019. It  
8 was only at this final mediation that the parties were able to reach a settlement in principle, and  
9 only after Defendants provided certain financial disclosures on which Plaintiffs relied in  
10 agreeing to settle. *See*, Robinson Decl., Exhibit A (Settlement Agreement) at Factual Recital  
11 No. 4 (stating reliance on financial disclosures). However, negotiation of the final settlement  
12 terms was not completed, and the settlement agreement executed until January 2020.

### 13 **III. SUMMARY OF THE PROPOSED SETTLEMENT.**

14 The Proposed Settlement provides for Defendants to stop operating Showcases, requires  
15 Defendants to submit financial disclosures to the Court under penalty of perjury, provides  
16 Defendants to pay a total of \$720,000 to the class, provides for disbursements to class  
17 members via checks directly mailed with no requirement that claims be made, and permits  
18 class members an opportunity to object or opt-out following notice.

#### 19 **A. Defendants Will Stop Operating Showcases, Submit Financial Disclosures** 20 **Under Penalty of Perjury, and Pay \$720,000 to the Class.**

21 As part of the Proposed Settlement, Defendants have expressly warranted that after the  
22 final Showcase, which took place October 2019, Defendants “will not own or operate  
23 showcases or any other Advance Fee Talent Representation Service, as defined in California  
24 Labor Code section 1702.1.” *Id.* at § 10.13.

25 The Proposed Settlement provides for the Court to order “Defendants to submit  
26 financial disclosures under penalty of perjury to the Court under seal on such intervals as the  
27 Court may require in the Preliminary Approval Order.” *Id.* at § 3.1(e). Any judgment resulting  
28 from the Proposed Settlement, as well as any release by Plaintiff or the settlement class, is

1 expressly conditioned on “Defendants’ warranty of the truthfulness, accuracy, and  
2 completeness of their financial disclosures to the Court and to Class Counsel.” *Id.* at § 5.1(d)  
3 (condition of judgment), § 7.1 (condition of releases).

4 In addition, the Proposed Settlement provides for Defendants to pay a total amount of  
5 \$720,000. Due to the Defendants’ limited financial resources, the parties agreed to structured  
6 payments, whereby Defendants made an initial \$200,000 payment in December 2019, and with  
7 \$40,000 monthly installments to be made, starting on March 5, 2020, until the total amount has  
8 been paid. *See*, Robinson Decl., Exhibit A (Settlement Agreement) at § 6.1. By the preliminary  
9 approval hearing, Defendants will have paid \$240,000, with payment in full to occur by April  
10 5, 2021. *Id.* at § 6.1. Where Defendants fail to make timely payments, interest will accrue on  
11 amounts unpaid at a rate of 10% per annum. *Id.* Plaintiff retains the right to terminate the  
12 agreement if one or more installment payments are late, subject to a 10-day cure period  
13 following notice. *Id.* at § 8.1 (right to terminate), § 10.3 (cure).

14 Funds will initially be held in FDIC-insured, segregated, interest-bearing accounts  
15 administered by one of Defendants’ law firms, Macdonald Fernandez LLP, and held in trust for  
16 the benefit of the class. *Id.* at § 6.2. Upon final payment, the balance of the trust account will  
17 be transferred to an account administered by the Settlement Administrator for distribution. *Id.*

18 **B. The Class Will Generally Release Defendants.**

19 The Proposed Settlement separately provides for releases by Plaintiff and the settlement  
20 class.

21 Plaintiff will give the Defendants a general release from “any and all actions, causes of  
22 action, claims, demands, liabilities, obligations, fees, costs, sanctions, proceedings, and/or  
23 rights of any nature and description whatsoever,” including a waiver of California Civil Code  
24 section 1542 as to claims neither known nor suspected to exist. *Id.* at § 7.2.

25 Class members who remain in the settlement class will give the Defendants a general  
26 release, including a waiver of section 1542, only as to “Released Claims.” *Id.* at § 7.3.

27 “Released Claims” is defined as follows:  
28

1 “Released Claim” or “Released Claims” means all claims for  
2 remedies or relief actually alleged in the Action by Plaintiff, on  
3 behalf of herself and the Settlement Class, as of the Effective Date,  
4 including but not limited to: all remedies or relief available for  
5 violations of California Labor Code section 1702 as alleged, and all  
6 remedies or relief available for violations of California Business and  
7 Professions Code section 17200 as alleged.

8 *Id.* at § 2.29.

9 **C. The Class Will Receive Notice.**

10 The Proposed Settlement provides for two forms of notice: traditional notice mailed  
11 directly to the class members at last known addresses, plus a settlement website where relevant  
12 documents will be published.

13 **i. Traditional Notice Mailed Directly to Class Members.**

14 The Proposed Settlement provides for the form of notice to the class. *See*, Robinson  
15 Decl., Exhibit B (Class Notice). The form of notice comprehensively explains the settlement in  
16 terms understandable to laypersons, and includes all relevant deadlines as well as instructions  
17 for how to object or opt out.

18 To help ensure accurate class member contact information is used to send out notice,  
19 Defendants shall within 10 days of preliminary approval produce both a compiled class list to  
20 Plaintiff’s counsel, and produce “all available records containing contact information for Class  
21 Members, and provide Class Counsel with all documents sufficient to assemble complete  
22 contact information for each Class Member.” *See*, Robinson Decl., Exhibit A (Settlement  
23 Agreement) at § 3.1(c)-(d). Prior to mailing out notice, the Settlement Administrator will  
24 conduct a skip-trace using available databases to identify updated mailing addresses for class  
25 members. *Id.* at § 3.1(a).

26 Traditional notice is to be sent to class members via first-class mail 21 calendar days  
27 after entry of preliminary approval. *See*, Robinson Decl., Exhibit A (Settlement Agreement) at  
28 § 4.3.

**ii. Public Settlement Website.**

The Proposed Settlement provides for the Settlement Administrator to develop and

1 maintain a settlement website where class members and the general public may access relevant  
2 documents, including the class notice, the operative complaint, the preliminary approval  
3 papers, the preliminary approval order once available, the fee and incentive award application  
4 papers once available, and the final approval papers once available. *Id.* at § 4.3(c).

5 **D. The Class Will Have The Right to Object, Or The Right to Opt-Out.**

6 Class members will have until 26 court days prior to the final approval hearing to object  
7 or opt-out. *Id.* at § 3.1(k)-(l). *Cf.* § 3.1 (h) (providing for final approval hearing to be at least  
8 120 days after entry of preliminary approval order).<sup>5</sup> Class members who do not timely opt-out  
9 will remain bound by the settlement provided it receives final approval. *Id.* at § 3.1(k).

10 Objections and opt-outs will be governed by the Class Notice, which is an attachment to  
11 the settlement agreement, and which would be formally approved in the preliminary approval  
12 order if approval is granted.

13 To opt out, the Notice requires class members to:

14 either (1) email your request to be excluded to [settlement  
15 administrator website], or (2) send an “Exclusion Request” in the  
16 form of a letter sent by mail to: *Cosio v. IPAA* c/o Atticus  
17 Administration, P.O. Box 1440, Minneapolis, MN 55440, stating  
18 that you want to be excluded from *Cosio v. International*  
19 *Performing Arts Academy, LLC, et al.* Be sure to include your  
20 name, address, telephone number, email address, and a statement you  
21 wish to be excluded, and sign the letter. You must email or postmark  
22 your opt out **by [26 court days prior to final approval hearing]**.

23 *See*, Robinson Decl., Exhibit B (Class Notice) at p. 8, § 16.

24 To object, the Notice requires class members to do as follows:

25 All written objections, supporting papers and/or notices of intent to  
26 appear at the Final Approval Hearing must:

- 27 (a) clearly state your name, current address, telephone  
28 number, date, and contain your signature;
- (b) clearly identify the case name and number: *Cosio, et*

---

27 <sup>5</sup> Sections 4.4 and 4.5 of the Proposed Settlement erroneously state the objection and opt-out  
28 deadline as 30 calendar days prior to final approval. This inconsistency is the result of a  
mechanical error, and is contrary to the parties’ intent.

1 al. v. International Performing Arts Academy LLC, et  
al., Case No. CGC-16-551337;

- 2 (c) be submitted to the Court by mailing the objection to:  
3 San Francisco Superior Court, Department 304, 400  
4 McAllister Street, San Francisco, California 94102;  
5 (d) also be mailed to the three law firms identified below  
[i.e. Class Counsel and Defendants' counsel]; and  
6 (e) be filed or postmarked on or before [26 court days  
prior to final approval hearing].

7 *See*, Robinson Decl., Exhibit B (Class Notice) at pp. 8-9, § 18.

8 **E. The Class Will Receive Payment *via* Direct Mailings with No Claims Process,  
9 and No Reversion.**

10 The Proposed Settlement provides for the net settlement fund<sup>6</sup> to be disbursed to the  
11 settlement class members via at least two direct mailings of checks. In addition to these two  
12 disbursements to settlement class members, the Proposed Settlement provides for additional  
13 disbursement if there are funds remaining that are greater than the cost of distribution.

14 **iii. Payments to Settlement Class Members.**

15 The Proposed Settlement provides for each settlement class member to receive a *pro*  
16 *rata* share of the net settlement fund via direct mailing of checks.<sup>7</sup> *Id.* at § 6.3(d), (g). Payment  
17 shall be made via a first disbursement to occur within 21 days following final approval, and a  
18 second disbursement to be made 21 days following receipt of the final installment payment  
19 from Defendants. *Id.* at § 6.3(e). Checks will be valid for 90 days after issuance, will state so  
20 on the face of the instrument, and will become void after that date. *Id.* at § 6.3(h).

21 After the second disbursement, the Settlement Administrator will evaluate whether  
22 adequate funds exist in the settlement fund to cover the cost of an additional disbursement, and  
23 if so, will make another disbursement to the class. *Id.* at § 6.3(i). Once the administrative cost

24 \_\_\_\_\_  
25 <sup>6</sup> The net settlement fund refers to the balance of the settlement fund after deductions are  
26 made for the attorneys' fees, incentive award, litigation costs, and settlement administration  
27 costs approved by the Court.

28 <sup>7</sup> However, if class counsel are able to do so with available record and information, the  
Proposed Settlement requires for each class member's share of the net settlement fund to be  
proportional to the amount of money each class member paid to Defendants to participate in  
Showcases. *Id.* at § 6.3(d).

1 of another disbursement exceeds the balance of the net settlement fund, then the balance will  
2 be paid to the *Cy Pres* Recipient, as detailed below. *Id.*

3 **iv. Reasonable Attorneys' Fees and Costs.**

4 First, the Proposed Settlement provides for payment to Plaintiff's counsel of up to one-  
5 third of the total settlement fund as reasonable attorneys' fees, subject to final approval via a  
6 noticed motion to be filed within the class notice period. *Id.* at § 9.1 (stating amount of fees), §  
7 3.1(i) (requiring fee and incentive award application 36 court days prior to final approval  
8 hearing), § 3.1(k) (requiring opt-outs or objections to be submitted 26 court days prior to final  
9 approval hearing). Payments to class counsel and to Plaintiff shall be proportional with the  
10 distributions to the class in order to avoid shifting contingent risk from class counsel onto the  
11 settlement class. *Id.* at § 6.3(f).

12 **v. Incentive Award.**

13 Second, the Proposed Settlement also provides for payment of an incentive award to  
14 Plaintiff personally of up to \$10,000, subject to final approval via noticed motion to be filed  
15 within the class period. *Id.* at § 9.2, § 3.1(i) (requiring fee and incentive award application 36  
16 court days prior to final approval hearing), § 3.1(k) (requiring opt-outs or objections to be  
17 submitted 26 court days prior to final approval hearing).

18 **vi. Reasonable Litigation Costs.**

19 Third, the Proposed Settlement also provides for payment to Plaintiff's counsel of up to  
20 \$60,000 for her reasonable litigation costs, subject to final approval. *Id.* at § 9.1. In addition,  
21 the Proposed Settlement separately provides for payment of the costs of compliance associated  
22 with the subpoenas to Realize CPA, LLP to the extent such costs are sought, and provides for  
23 such costs to be determined via noticed motion to be brought by Realize CPA, LLP should it  
24 choose to pursue them. *Id.* at § 9.3.

25 **vii. Settlement Administration Costs.**

26 Fourth, the Proposed Settlement also provides for payment of the costs of class notice  
27 and settlement administration incurred by the proposed Settlement Administrator, Atticus  
28 Administration. *Id.* at 4.1-4.5. The proposed Settlement Administrator has estimated of the

1 total cost of completion of the settlement process at \$17,028. *See*, Robinson Decl., Exhibit D.

2 **viii. Cy Pres.**

3 Fifth, where any funds remaining after all other disbursements are made, the Proposed  
4 Settlement provides for disbursement to a *Cy Pres* Recipient. *See*, Robinson Decl., Exhibit A at  
5 ¶ 6.3(i) (specifying disbursement), § 2.11 (providing for preliminary approval order to select  
6 *Cy Pres* Recipient). Plaintiff has recommended selection of BizParents Foundation as the *Cy*  
7 *Pres* Recipient. *See*, Proposed Order (filed herewith) at ¶ 15. BizParents Foundation describes  
8 itself as follows:

9  
10 The BizParentz Foundation is a non-profit corporation providing  
11 education, advocacy, and charitable support to parents and children  
12 engaged in the entertainment industry. The organization promotes a  
13 positive public image regarding child performers and educates the  
14 public regarding the safety and rights of child performers including  
15 child labor laws and regulations.

16 *See*, <http://www.bizparentz.org/>.

17 **F. Termination, If Any, Will Restore the *Status Quo Ante*.**

18 If the Proposed Settlement is terminated, whether by a party or because the Court denies  
19 approval, then the parties will be restored to the status quo to the extent practicable. *Id.* at § 3.1  
20 (no claim to fees paid to Settlement Administrator prior to termination), § 6.3(j) (Settlement  
21 Administrator to retain settlement funds pending further order of the Court), § 8.1 (termination  
22 conditions), § 8.2 (Defendants prohibited from recovering fees paid to Settlement  
23 Administrator); § 10.2 (5-year rule of Code of Civ. Proc. § 583.310 tolled through  
24 termination).

25 **IV. ARGUMENT.**

26 Approval of a class settlement is “[a] two-step process[.]” *In re Cellphone*  
27 *Termination Fee Cases* (2009)180 Cal.App.4th 1110,1118. “First, the court preliminarily  
28 approves the settlement and the class members are notified as directed by the court.” *Id.* (citing  
Cal. Rule of Court 3.769(c)-(f)). After the Court grants preliminary approval of the settlement  
and approves notice to the class, and the class has an opportunity to object to the settlement,



1 then “the [C]ourt conducts a final approval hearing to inquire into the fairness of the proposed  
2 settlement.” *In re Cellphone*, 180 Cal.App.4th at p. 1118.

3           While the Court’s decision on preliminary approval obviously differs from final  
4 approval, “the range of possible” settlements that could receive final approval necessarily  
5 informs the Court’s decision on preliminary approval. In that regard, the scope of the Court’s  
6 “inquiry must be limited to the extent necessary to reach a reasoned judgment that the  
7 agreement is not the product of fraud or overreaching by, or collusion between, the negotiating  
8 parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all  
9 concerned.” *Id.* at 1117-18 (citation, punctuation omitted). The preliminary approval of the  
10 class action settlement by the trial court is simply a conditional finding that the settlement  
11 appears to be within the range of acceptable settlements. *See*, California Rule of Court  
12 3.769(c)-(e); Newberg on Class Actions (4th Ed. 2014) at § 13.15; *North County Contractor’s*  
13 *Assn., Inc. v. Touchstone Ins. Services* (1994) 27 Cal.App.4th 1085, 1094-1095.

14           In general, the court has broad powers to determine whether a proposed settlement is fair  
15 under the circumstances of the case. *Mallick v. Superior Court* (1979) 89 Cal.App.3d 434, 438.  
16 At the preliminary review or approval hearing, a court may articulate misgivings about the  
17 settlement to be addressed by the parties before significant time and resources are invested in  
18 notifying the class of the proposed settlement. *See*, American Law Institute, Principles of the  
19 Law of Aggregate Litigation (2018) § 3.03, Comment a (“[T]he court should confer with counsel  
20 to identify any obvious flaws in the notice or any other defects (formal or substantive) that might  
21 jeopardize the settlement”).

22           As a matter of public policy, courts both encourage the use of the class-action device and  
23 favor settlement over continued litigation. *See, e.g., Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th  
24 429, 434 (“Courts have long acknowledged the importance of class actions as a means to prevent  
25 a failure of justice in our judicial system.”); *State v. Levi Strauss & Co.* (1986) 41 Cal.3d 460,  
26 471; *Class Plaintiffs v. City Of Seattle* (9th Cir. 1992) 955 F.2d 1268, 1276 (“[S]trong judicial  
27 policy . . . favors settlements, particularly where complex class action litigation is concerned.”).  
28 Settlement is favored, and settlement agreements are realistically assessed. *Stamburgh v.*

1 *Superior Court* (1976) 62 Cal.App.3d 231, 236; *Priddy v. Edelman* (6<sup>th</sup> Cir. 1989) 883 F.2d 438,  
2 447 (“The fact that plaintiff might have received more if the case had been fully litigated is no  
3 reason not to approve the settlement.”)

4 **A. The Proposed Settlement Is Presumptively Fair.**

5 Courts presume fairness where: (1) the settlement is reached through arm’s-length  
6 bargaining; (2) investigation is sufficient to allow counsel and the court to act intelligently; (3)  
7 counsel is experienced in similar litigation; and (4) the percentage of objectors is small. 7-  
8 *Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1146;  
9 *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802; *In re Microsoft I-V Cases* (2006)  
10 135 Cal.App.4th 706, 723. However, Class Members’ reaction to the proposed settlement will  
11 not be known until they receive notice and have the opportunity to object, opt-out, or  
12 participate. Thus, the final factor must await final approval. *See*, Weil & Brown, Cal. Practice  
13 Guide: Civ. Proc. Before Trial (The Rutter Group 2014) ¶ 14:139:18 (“Should the court  
14 receive objections to the proposed settlement, it will consider and either sustain or overrule  
15 them at the fairness hearing”).

16 **i. Proposed Settlement Reached Through Arms-Length Bargaining.**

17 This settlement followed protracted, deeply entrenched litigation by both sides,  
18 including multiple attacks on the pleadings by the Defendants, exhaustive formal discovery by  
19 Plaintiff, and a hotly disputed certification motion. Indeed, the parties were so far apart at the  
20 outset of negotiations that even the renowned class action mediator, Hon. Edward A. Infante  
21 (Ret.), failed to bring them together. Only through the meticulous and sustained efforts of a  
22 member of this Court, the Hon. Jeffrey S. Ross, over the course of two separate mediation  
23 sessions, were the parties able to find common ground and reach the Proposed Settlement.

24 In other words, there can be no dispute that this Proposed Settlement was reached  
25 through arms-length bargaining, such that a presumption of fairness is warranted.

26 **ii. Class Counsel’s Inquiry Has Been More Than Sufficient to Allow**  
27 **Counsel and the Court to Act Intelligently.**

28 As detailed in the Statement of the Case above, class counsel’s inquiry has been

1 exhaustive, with seven affirmative motions to compel discovery as to Defendants, and three  
2 affirmative motions to compel subpoenas as to non-parties, and six court orders resolving  
3 disputed discovery motions. Those efforts ultimately yielded several thousand pages of records  
4 relevant to the merits, including thousands of pages produced directly by Defendants, as well  
5 as thousands upon thousands of pages relevant to Defendants' financial condition that were  
6 produced by Defendants' financial institutions and accountants. *See*, Robinson Decl. at ¶ 11. In  
7 addition, Defendants provided verified financial disclosures at mediation on which Plaintiffs  
8 relied to reach the Proposed Settlement. *See*, Robinson Decl. at ¶ 12; Robinson Decl., Exhibit  
9 A (Settlement Agreement) at Recital 4 (stating reliance). This is a more than sufficient inquiry  
10 and ample information to allow counsel and the Court to act intelligently, and to support a  
11 presumption of fairness.

12 **iii. Class Counsel Is Experienced in Similar Litigation.**

13 Class counsel have extensive experience in similar litigation.

14 Mr. Preston has been a pioneer of class litigation targeting predatory talent industry  
15 practices. *See*, *DuFour v. BE LLC* (N.D. Cal. 2013) 291 F.R.D. 413. Moreover, Mr. Preston has  
16 for 13 years devoted his practice to litigating class actions on behalf of consumers, has acted  
17 independently as lead counsel or co-lead counsel in numerous consumer class actions, and was  
18 appointed co-lead counsel in the multi-district litigation case, *In re Portfolio Recovery*  
19 *Associates, LLC Telephone Consumer Protection Act Litigation* (S.D. Cal. June 23, 2016, No.  
20 11- 2295). *See, generally*, Preston Decl. at ¶ 3.

21 Aiman-Smith & Marcy, PC also has extensive experienced in class action and complex  
22 litigation, including numerous consumer class actions. *See*, Robinson Decl. at ¶ 21, and at  
23 Exhibit C (Firm *Curriculum Vitae*); *see, e.g.*, *Cohen v. FedEx Office and Print Services, Inc.*,  
24 Alameda County Superior Court Case No. RG17810621 (consumer class action under Fair and  
25 Accurate Credit Transactions Act); *Guess Outlet Stores Pricing Cases*, Los Angeles County  
26 Superior Court Case No. JCCP 4883 (consumer retail pricing class actions); *Hurtado, et al. v.*  
27 *Lowe's HIW*, U.S. District Court, Northern District, Case No. CV-11-1996 (consumer class  
28 action under Song-Beverly Credit Card Act); *Jones v. Armanino LLP*, Alameda County Superior

1 Court, Case No. RG 13-68105 (consumer class action for accounting negligence); *Mendes, et al.*  
2 *v. B-4 Partners, LLC, et al.*, Alameda County Superior Court, Case No. RG11603095,  
3 consolidated with *Noble v. Greenberg Traurig, LLP*, Alameda County Superior Court, Case No.  
4 RG11593201 (consumer class action for securities fraud, Ponzi scheme); *Westman, et al. v.*  
5 *Rogers Family Funeral Homes*, Contra Costa County Superior Court, Case No. C 98-03165  
6 (consumer class action for negligence); *Zimmelman Jewelry v. CrossCheck*, Sonoma County  
7 Superior Court, Case No. SCV 229654 (consumer class action for unfair business practices).

8 The extensive experience of class counsel in similar litigation further supports a  
9 presumption of fairness.

10 **B. The Proposed Settlement is Actually Fair.**

11 The fairness of a class action settlement is effectively a totality-of-the-circumstances test  
12 guided by factors identified in the caselaw. Under existing California law, factors relevant to  
13 evaluating fairness include, but are not limited to, the following:

- 14 • The strength of plaintiffs' case;
- 15 • The risk, expense, complexity, and likely duration of further  
litigation;
- 16 • The risk of maintaining class-action status through the trial;
- 17 • The amount offered in settlement;
- 18 • The extent of discovery completed and the stage of the  
proceedings;
- 19 • The experience and views of counsel;
- The reaction of the class members to the proposed settlement;  
and
- The presence of a governmental participant.

20 *Reed v. United Teachers Los Angeles* (2012) 208 Cal.App.4th 322, 336; *Cho v. Seagate Tech.*  
21 *Holdings, Inc.* (2009) 177 Cal.App.4th 734, 742–743; *In re Microsoft I-V Cases*, 135  
22 Cal.App.4th at 723; *Dunk*, 48 Cal.App.4th at 1800–1801. This list of factors is not exhaustive  
23 and should be tailored to each case. *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th  
24 224, 244–245.

25 Here, Plaintiff addresses each of these factors below as required,<sup>8</sup> but the ultimate reason  
26 why the Proposed Settlement is fair to the class is that Defendants have provided sufficient

27 \_\_\_\_\_  
28 <sup>8</sup> The reaction of class members is not addressed below because those reactions will not be

1 financial records that they lack adequate assets to fund either a settlement or judgment based  
2 upon the prospective damages that Defendants would be liable for at trial. As a result, the  
3 monetary component of the Proposed Settlement is based on their apparent ability to pay. Such  
4 a settlement is arguably preferable to standing in line with other creditors in bankruptcy  
5 proceedings. Furthermore, a significant benefit to class members – and society at large – is that  
6 Defendants have warranted they will not operate any AFTRS in the future.

7 **i. The Strength of Plaintiff’s Case.**

8 Simply put, the class’s claims are strong. Plaintiff has alleged that Defendants violated  
9 Labor Code sections 1702 and 1702.1, which prohibit charging aspiring artists a fee in  
10 exchange for attempting to procure work, talent agents, or auditions. The Court certified this  
11 case as a class action on the strength of common evidence alleging that Defendants do exactly  
12 that. Moreover, Labor Code section 1704.2 provides for treble damages plus reasonable  
13 attorneys’ fees and costs. As such, class counsel estimate the potential merits value of the class  
14 claims at \$24 million plus reasonable fees and costs.

15 **ii. Further Litigation Would Likely Occur in Bankruptcy Court.**

16 The information available to class counsel indicates that absent settlement, this litigation  
17 would ultimately proceed in Bankruptcy Court, where the class would likely be placed on equal  
18 footing with other unsecured creditors and forced to wait in line behind secured creditors. That  
19 further litigation would be highly complex, would likely require significant expense not least  
20 due to the required retention of a bankruptcy specialist, and would likely require several years  
21 to resolve. *See*, Robinson Decl. at ¶ 23(b).

22 **iii. The Amount Offered in Settlement.**

23 The Proposed Settlement provides for Defendants to pay \$720,000 to the class. This  
24 amount is valued solely based Defendants’ apparent ability to pay, and not upon the prospective  
25 damages that Defendants would be liable for at trial. *See*, Robinson Decl. at ¶ 20.

26 \_\_\_\_\_  
27 known until after notice is sent and reactions received. Similarly, the presence of a  
28 governmental participant is not addressed because no such participant is present here, which  
means that factor is neutral here.

1 In addition, in the Proposed Settlement, Defendants have agreed not to operate further  
2 Showcases or otherwise violate Labor Code sections 1702 and 1702.1 moving forward, which  
3 confers significant additional value to both the class as well as the general public.

4 **iv. The Extent of Discovery.**

5 As previously detailed, class counsel exhaustively pursued discovery in this case, with  
6 seven affirmative motions to compel discovery as to Defendants, three affirmative motions to  
7 compel subpoenas as to non-parties, six court orders resolving disputed discovery motions, and  
8 thousands upon thousands of documents gathered through formal and informal discovery.

9 **v. The Experience and Views of Counsel.**

10 As previously noted, class counsel have extensive experience in similar litigation.  
11 Class counsel have opined that this settlement is fair, adequate, and reasonable, and is in the  
12 best interests of the members of the class given the circumstances. *See*, Robinson Decl. at ¶  
13 23(c); Preston Decl. at ¶ 2.

14 **C. Proposed Schedule.**

15 If the Court were to grant the preliminary approval on the date of the hearing (March  
16 23, 2020), based on the deadlines set forth in the Proposed Settlement, Plaintiff requests that  
17 the final approval hearing be set for July 21, 2020, or as soon thereafter as the matter may be  
18 heard.

19 **V. CONCLUSION**

20 For the foregoing reasons, Plaintiff respectfully urges the Court to grant preliminary  
21 approval, and to enter an order to that effect that is materially consistent with the proposed  
22 order filed herewith.

23 Respectfully submitted,

24 February 27, 2020

AIMAN-SMITH MARCY  
PROFESSIONAL CORPORATION 

25 /s/ Brent A. Robinson

26 Brent A. Robinson

27 *Attorneys for Plaintiff Angelica Cosio and*  
28 *The Certified Class*