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5 *Attorneys for Plaintiff Angelica Cosio*
6 *and the Certified Class*

ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco

05/14/2020
Clerk of the Court
BY: MADONNA CARANTO
Deputy Clerk

7 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**

8 **COUNTY OF SAN FRANCISCO**

9 ANGELICA COSIO, an individual, on her
10 own behalf and on behalf of all others
11 similarly situated,

12 Plaintiff,

13 v.

14 INTERNATIONAL PERFORMING
15 ARTS ACADEMY, LLC, a California
16 limited liability company, BARBIZON
17 SCHOOL OF SAN FRANCISCO, INC., a
18 California corporation, LION
MANAGEMENT GROUP INC., a
California corporation, ANTHONY
LOUIS LIONETTI, LARRY D.
LIONETTI, LENA QUESADA
LIONETTI, LENA M. LIONETTI, and
DOES 1-100, inclusive,
Defendants.

No. CGC-16-551337

**DECLARATION OF ETHAN PRESTON
SUPPORTING PLAINTIFF ANGELICA
COSIO'S SUPPLEMENTAL BRIEFING**

The Honorable Anne-Christine Massullo
Department 304
Civic Center Courthouse
400 McAllister Street
San Francisco California 94102

Date: June 1, 2020
Time: 11:00 am

Complaint Filed: April 6, 2016

DECLARATION OF ETHAN PRESTON

1 1. My name is Ethan Preston. I am an attorney at law licensed to practice before all
2 of the courts of the State of California. I am counsel of record for Plaintiff Angelica Cosio
3 (“Cosio”), and have personal knowledge of the facts set forth in this declaration and could
4 competently testify thereto if called to do so, except where noted otherwise.

5 2. The parties participated in mediations with the Honorable Jeffrey S. Ross on July
6 5, 2019, and on September 20, 2019. On September 20, 2019, the parties executed a
7 Memorandum of Understanding. A true and correct copy of this Memorandum of Understanding
8 is attached to this Declaration as Exhibit 1. On January 3, 2020, after some additional
9 negotiation, the parties executed a Settlement Agreement. A true and correct copy of this
10 Settlement Agreement is attached to this Declaration as Exhibit 2.

11 3. On February 26, 2020, Plaintiff filed a motion for preliminary approval of the
12 Settlement Agreement, set for hearing on March 23, 2020. On March 18, Plaintiff’s counsel sent
13 an email to Defendant’s counsel, Iain MacDonald, to confirm that the \$40,000 monthly payment
14 had been made into the settlement fund. A true and correct copy of an email chain containing this
15 March 18 email, together with several other emails discussed below, is attached to this
16 Declaration as Exhibit 3. (See Ex. 3 at pp. 16-19.) In response, Defendant’s Counsel, Brad Kane,
17 sent an email to Plaintiff’s Counsel, which stated in relevant part:

18 As you are undoubtedly aware, the United States, the State of California, and the
19 particular cities in which Defendants operate are now under federal, state and
20 local emergency orders banning non-essential commercial activities due to the
21 Coronavirus Pandemic. There are further “stay in place orders” for the cities of
22 San Francisco and Los Angeles, where my clients primarily do business. The
seriousness of the situation is underscored by the severe disruption of many court
systems and the closure of public schools in California and New York.

23 The unintended and unforeseeable consequence of this governmental action has
24 resulted in Defendants being forced to cancel all classes in Los Angeles, San
25 Francisco, and New York. All employees were furloughed, except for some
administrative employees in New York. *Defendants intend to resume making
settlement payments when their business resumes.*

26 The *delay* in the March 5, 2020 payment, and likely the next few payments, is
27 solely the result of “an irresistible, superhuman cause” within the meaning of
Civil Code § 1511(2), which provides:

28 *The want of performance of an obligation, or of an offer of performance,
in whole or in part, or any delay therein, is excused by the following*

causes, to the extent to which they operate:

* * *

2. *When it is prevented or delayed by an irresistible, superhuman cause, or by the act of public enemies of this state or of the United States, unless the parties have expressly agreed to the contrary;*

(Emphasis added.)

Defendants hope that Plaintiff's counsel will join in our effort to save the settlement. Defendants propose to ask the Court on Monday, March 23, 2020 to adjust the payment schedule to reflect the reality of the current state of national, state and local emergency by pushing back the monthly payments starting March 5, 2020 for four (4) months. Should circumstances change, either party can petition the Court to address the unforeseen issue(s).

Otherwise, Defendants have no choice other than to ask the court to reject or revoke the settlement on the grounds of impossibility, seek the return of their \$200,000 good faith deposit and ask the Court to set the matter for trial.

(Ex. 3 at p. 13-15 [italics in original].) To the best of Plaintiff's counsel's knowledge,

Defendants have not made any further payments into the settlement fund, in violation of the Settlement Agreement and the Memorandum of Understanding.

4. On March 19, 2020, the Court emailed the parties a copy of its tentative order on the motion. A true and correct copy of the Court's March 19 tentative order is attached to this Declaration as Exhibit 4.

5. On April 22, 2020, Plaintiff's counsel emailed a revised copy of the class notice, together with a draft amendment to the Settlement Agreement, to Defendants' counsel. Plaintiff's counsel drafted both the revised class notice and a draft amendment to the Settlement Agreement to conform to the issues raised in the Court's March 19 tentative order. A true and correct copy of the revised class notice is attached to this Declaration as Exhibit 5.

6. Plaintiff's counsel met and conferred via telephone, prompting Defendants' counsel's proposal of a payment calculator on April 29, 2020. (See Ex. 3 at pp. 2-3.)

7. On May 1, 2020, Plaintiff's counsel sent via email a draft amendment based upon Defendants' payment calculator, with minor modifications, which included a much longer timeframe than the four months originally proposed in Defendants' counsel's March 18 email. (See Ex. 3 at p. 14.)

8. Late in the evening of May 1, 2020, Defendant Larry Lionetti and Defendants'

1 counsel (Brad Kane) sent two emails, which Mr. Kane subsequently claimed were privileged to
2 my email address. On May 2, within less than 24 hours of receipt of these emails, I notified
3 Defendants' counsel of the emails I received and sequestered those emails, as required under
4 *State Compensation Insurance Fund v. WPS, Inc.* (1999) 70 Cal.App.4th 644.

5 9. The same day, Mr. Kane responded that (1) "the two emails should be
6 immediately destroyed and written confirmation provided that Mr. Preston has not shared the
7 contents with his co-counsel"; and (2) that "until inadvertently produced email issue is resolved,
8 Defendants will not be in a position to respond to Plaintiff's counter proposal."

9 10. On May 3, I replied via email that "the emails from Larry and yourself are not
10 privileged on several different grounds. Therefore, it is not appropriate to destroy the emails at
11 this time." My May 3 email proposed to sequester the emails until the settlement was complete.
12 Finally, my May 3 email stated in relevant part:

13 I want to reiterate that I have fully complied with the rule articulated in *Rico v.*
14 *Mitsubishi Motors Corp.* (2007) 42 Cal.4th 807 and *State Compensation*
15 *Insurance Fund v. WPS, Inc.* (1999) 70 Cal.App.4th 644. I sequestered the emails
16 at issue, and promptly disclosed receipt of those emails to Defendants' counsel.
The rule in *Rico* and *State Fund* does not automatically mandate destruction of the
17 emails, but contemplates negotiation and (if necessary) litigation over
18 Defendants' privilege claim.

19 [T]he lawyer receiving such materials . . . shall immediately notify the
20 sender that he or she possesses material that appears to be privileged. **The**
21 **parties may then proceed to resolve the situation by agreement or**
22 **may resort to the court for guidance with the benefit of protective**
23 **orders and other judicial intervention as may be justified.**

24 (*Id.* at p. 817 [quoting *State Compensation Ins. Fund v. WPS, Inc.* (1999) 70
25 Cal.App.4th 644, 656-57; followed, quoted by *McDermott Will & Emery LLP v.*
26 *Superior Court* (2017) 10 Cal.App.5th 1083, 1106].) A rule contemplating
27 negotiation and possibly litigation is logically inconsistent with any automatic
28 requirement for destruction of documents. McDermott Will & Emery LLP is more
explicit:

[T]he attorney receiving the materials must . . . immediately notify the
privilege holder the attorney has received materials that appear to be
privileged, attempt to reach an agreement with the privilege holder about
the materials' privileged nature and their appropriate use, and resort to the
court for guidance if an agreement cannot be reached.

(*McDermott Will & Emery LLP v. Superior Court, supra*, 10 Cal.App.5th at p.
1108].) None of your authorities requires destruction (as opposed to
sequestration) of the emails at issue.

(emphasis in original).

11. On May 7, 2020, Defendants' counsel sent an email which (1) stated "no further

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15. Pursuant to Code of Civil Procedure section 2015.5, I declare under penalty of perjury under the laws of California that the foregoing is true and correct.

Dated: May 13, 2020

By:  _____
Ethan Preston

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EXHIBIT 1

Memorandum of Understanding

This Memorandum of Understanding (“**MOU**”) is entered into between Plaintiff Angelica Cosio, individually and on behalf of all others similarly situated (collectively, “**Plaintiffs**”), on the one hand, and Defendants International Performing Arts Academy, LLC, Barbizon School of San Francisco, Inc., Lion Management Group, Inc., Larry D. Lionetti, and Lena Quesada Lionetti (“**Defendants**”), on the other hand, and their respective counsel of record. Plaintiffs and Defendants are collectively referred to as the “**Parties**.” This Settlement is subject to the terms and conditions set forth below. This Settlement is also expressly subject to the approval of the Court.

RECITALS

1. On April 5, 2016, Plaintiff commenced this action by filing a putative class action complaint against Defendants captioned, *Angelica Cosio, and individual, on her own behalf and of all others similarly situated v. International Performing Arts Academy, LLC, et al.*, No. CC-16-551337, in the Superior Court of California, County of San Francisco. The operative Fifth Amended Complaint (“5AC”), filed on March 1, 2017, alleges that Defendants violated the Krekorian Act under Labor Code Section 1702.

2. On September 11, 2018, the Court entered an order granting class certification.

The class is defined as:

All natural persons who were California citizens at the time Cosio's original complaint was filed (April 5, 2016) who (a) signed a contract so that the Class member, the Class member's child (or other beneficiary) could participate in a showcase operated by International Performing Arts Showcase (IPAS); (b) paid IPAS for such contract; and (c) such payment was made on or after April 5, 2012; (d) excluding any such payments that were (i) a percentage of the income earned by the Class member's beneficiary in the entertainment industry; or (ii) consisted entirely of reimbursement for out-of-pocket costs actually incurred by IPAS on behalf of the Class member's beneficiary for services rendered by an independent third party.

3. Defendants deny any liability or wrongdoing of any kind associated with the claims alleged by Plaintiffs.

4. In light of the above, the Parties agreed to mediate this action and participated in two full-day mediation sessions in San Francisco, California before the Honorable Jeffrey Ross on July 5, 2019, and September 20, 2019.

5. As a result of the mediation sessions, the Parties reached a resolution of the case and agreed to the material terms of this MOU, the full terms of which will be set forth in a Settlement Agreement.

6. Counsel for Plaintiffs and the proposed settlement class (“**Class Counsel**”) believe that they have conducted a thorough investigation into the facts of the case, the financial resources of the Defendants to fund a class action, and further, have diligently litigated the alleged claims that members of the settlement class may have against Defendants. Based on their own independent investigation and evaluation, Class Counsel is of the opinion that settlement with Defendants for the consideration and on the terms set forth in this MOU is fair, reasonable, and adequate, and is in the best interest of the members of the settlement class in light of all known facts and circumstances.

TERMS

NOW, THEREFORE, in consideration of the mutual covenants, promises, warranties and other consideration set forth in this Agreement, the value and sufficiency of which is hereby acknowledged, the Parties hereby agree, subject to the Court’s approval, as follows:

1. Incorporation of Recitals. The recitals set forth above are incorporated into this MOU.

2. Settlement Contingent Upon Court Approval. The terms of this Settlement are subject to approval by the Court (“Court Approval”). If the Settlement is not approved by the Court, then the Parties expressly reserve all of their rights, remedies and defenses.

3. If the Settlement Does Not Become Final. If the Settlement does not become final because of the Court’s refusal to approve the Settlement, the Settlement will be deemed null and void. In such an event, the Parties will resume the litigation as if the Settlement had not been entered, and the terms and provisions of this Agreement will have no further force and effect and may not be used in this litigation or any other action for any purpose.

4. Settlement Class. For the purposes of this Settlement only, the “**Settlement Class**” is defined as follows:

All natural persons who were California citizens at the time Cosio's original complaint was filed (April 5, 2016) who (a) signed a contract so that the Class member, the Class member’s child (or other beneficiary) could participate in a showcase operated by International Performing Arts Showcase (IPAS); (b) paid IPAS for such contract; and (c) such payment was made on or after April 5, 2012; (d) excluding any such payments that were (i) a percentage of the income earned by the Class member's beneficiary in the entertainment industry; or (ii) consisted entirely of reimbursement for out-of-pocket costs actually incurred by IPAS on behalf of the Class member's beneficiary for services rendered by an independent third party.

Members of the Settlement Class are referred to as “**Settlement Class Members**.”

Defendants provided a class list in 2019 that included 1,135 Class Members, which includes from April 5, 2012, through December, 2018. Defendants will provide Plaintiffs the names of and contact information for the October 2019 Showcase attendees after the event is concluded.

5. Settlement Date. The Settlement will become effective on the date on which all of the following have occurred: (a) execution of the Settlement Agreement by all Parties, Class Counsel, and counsel for Defendants; (b) certification of the proposed Settlement Class for settlement purposes; (c) entry of a final order and judgment (“**Judgment**”) by the Court approving this Settlement and dismissal of the case with prejudice in accordance with the terms of the Settlement Agreement; and (d) finality of the Judgment by virtue of it having become final and nonappealable through (i) the expiration of all allowable periods for appeal or discretionary appellate review without an appeal or request for discretionary appellate review having been filed, or (ii) final affirmance of the Judgment on appeal or remand, or final dismissal or denial of all such appeals and requests for discretionary review (the “**Settlement Date**”).

6. Gross Settlement Common Fund: A gross settlement common fund amount of \$720,000 will be funded by Defendants as follows:

Within 30 days following the execution of a Settlement Agreement, Defendants will deposit \$200,000 into a Trust Account for the benefit of Settlement Class Members, to be held by Macdonald Fernandez, LLP (“Trust Settlement Account”).

After the initial \$200,000 deposit, the Defendants will deposit into the Trust Settlement Account \$40,000 for 10 months; and \$30,000 for 4 months. These sums will be deposited by the 5th day of each month, until the Gross Settlement Amount of \$720,000 is funded or Court Approval, whichever occurs first.

The monthly payments will be deposited into the Trust Settlement Account, until the entry of Order Granting Final Approval of Class Action Settlement. After entry of the Order, the sums in the Trust Account will be transferred and future monthly deposits will be made by the 5th day of each month into a Settlement Fund Account to be administered by the Claims Administrator appointed by the Court until the full \$720,000 has been paid.

If Defendants do not pay by the 5th day of the month for a scheduled payment, interest will accrue at ten percent (10%) per annum until the sum is paid.

7. Attorney’s Fees and Costs: Class Counsel will seek an attorney’s fees award from the Court, not to exceed one-third (33.33%) of the Gross Settlement Common Fund Amount. Defendants will not contest a fee amount not to exceed one-third (33.33%) of the Gross Settlement Common Fund Amount.

Class Counsel will seek litigation costs from the Court in an amount not to exceed \$60,000. However, if the pending dispute over the Realize CPA subpoena production costs is not resolved, then any such costs shall be in addition to the \$60,000. An itemization of costs will be submitted to the Court. Defendants will not contest litigation costs.

8. Class Representative Incentive Fee: For the risks taken and time expended as a Class Representative, Plaintiff Angelica Cosio will seek a Class Representative Incentive Fee in

the amount of \$10,000, subject to Court approval. Defendants will not contest the Class Representative Incentive Fee.

9. Settlement Class Notice: Notice of the Class Settlement will be administered by the Claims Administrator to be appointed by the Court. Class Counsel will ask the Court to appoint Atticus Administration. Defendants will not contest the appointment of Atticus Administration.

10. Notice to Settlement Class: The Claims Administrator will perform initial skip tracing methods to send out class notice and utilize additional skip tracing methods for those Notices that are returned as undeliverable.

Defendants are to provide Class Counsel with contracts and/or payment information for any Settlement Class Member that are in their possession, custody, or control, including DropBox, Google, or FileMaker within 10 days of the Order Granting Preliminary Approval of Class Action Settlement. Defendants are to provide Class Counsel and the Claims Administrator with the name, address, and telephone number and email address (where available) for all Settlement Class Members within 10 days of the Order Granting Preliminary Approval of Class Action Settlement.

Direct Mail Class Notice will be given to Settlement Class Members. Other forms of Notice will include posting on a website and other media sources, such as Facebook.

11. Distribution: The Settlement Class Members will receive a direct mail check of the pro rata amount of the Net Settlement Fund. A first disbursement will be sent within 21 days of the Settlement Effective Date. Settlement Class Members will have 90 days to cash their checks. A second disbursement will be sent within 21 days of the last payment of the Gross Settlement Amount. If there are checks not cashed, then those funds will be sent in subsequent distributions to the Class Members who did cash checks. This process will be followed with remaining distributions unless the costs of claims administration is greater than the amount to be distributed. At that point, any residual funds will be distributed *cy pres* to a charity.

12. Accuracy of Finances: During the period before Court Approval, Defendants will submit financial disclosures to the Court under seal on intervals determined by the Court. Defendants will expressly warrant the truthfulness, accuracy, and completeness of those financial disclosures made under penalty of perjury.

13. Breach of Settlement Agreement: In the event litigation is commenced to enforce the terms of this MOU, Defendants agree to pay the reasonable and necessary attorney's fees and costs for Plaintiffs to enforce settlement, if Defendants breach, after ten days' notice to Defendants' attorney without cure.

14. Operation of Showcases to Cease: Defendants expressly warrant that after the Showcase scheduled for October 2019, Defendants will not operate Showcase or any other Advance Fee Talent Representation Service as defined in California Labor Code § 1702 et seq.

15. Release: Class claims will not be released until after final payment is received pursuant to paragraph 6 above.

Plaintiff agrees to a Complete and General Release, which shall become effective as of the Settlement Effective Date, in consideration of Defendants' promises and agreements set forth herein and in the Settlement Agreement.

The Settlement Class Members will agree to a complete release of all claims in the case.

16. Opt-Outs: If more than five percent (5%) of Class Members opt-out of the Settlement, Defendants may elect to cancel the Settlement Agreement.

17. Settlement Agreement: Class Counsel will provide a draft long form Settlement Agreement and forms of Notice by no later than October 11, 2019. Defendants will provide their comments to the Settlement Agreement within 14 days of receipt of Plaintiffs' draft. In the event the parties cannot agree on any additional provisions, the provisions of this agreement shall govern.

18. Waiver of Five-Year Rule: Defendants agree that the five-year rule to bring the matter to trial, under Code of Civil Procedure Section 583.310, is hereby tolled and will not begin to run unless the Court disapproves the settlement or the defendants elect to cancel the Settlement Agreement pursuant to paragraph 16 above.

19. Stay of Litigation: Except for the preparation of preliminary and final approval of Settlement, the parties agree to a stay of further litigation and outstanding discovery.

20. Plaintiffs and Defendants agree to prepare a joint statement that Plaintiffs and Defendants have reached a settlement in the class action entitled *Angelica Cosio, and individual, on her own behalf and of all others similarly situated v. International Performing Arts Academy, LLC, et al.*, No. CC-16-551337, in the Superior Court of California, County of San Francisco. de § 1702 et seq. The language of the statement shall be included in the Settlement Agreement.

AGREED TO AND ACCEPTED:

Dated: September 20, 2019

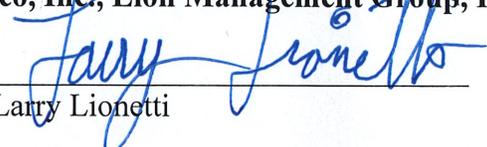
Plaintiff Angelica Cosio:

By: 
Angelica Cosio (Sep 20, 2019)

Angelica Cosio

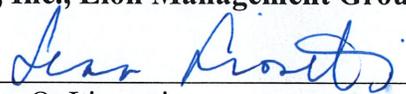
Dated: September 20, 2019

Defendant Larry Lionetti, as an individual, and on behalf of International Performing Arts Academy, LLC; Barbizon School of San Francisco, Inc., Lion Management Group, Inc.

By: 
Larry Lionetti

Dated: September 20, 2019

Defendant Lena Q. Lionetti, as an individual, and on behalf of International Performing Arts Academy, LLC; Barbizon School of San Francisco, Inc., Lion Management Group, Inc.

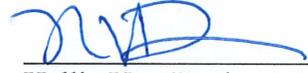
By: 
Lena Q. Lionetti

APPROVED AS TO FORM:

Dated: September 20, 2019

Attorneys for Plaintiffs and the Settlement Class:

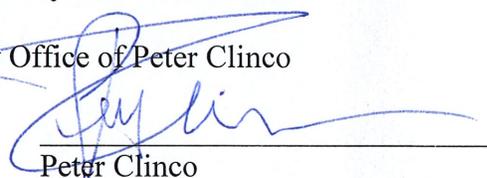
Aiman-Smith & Marcy

By: 
Hallie Von Rock

Dated: September 20, 2019

Attorneys for Defendants:

Law Office of Peter Clinco

By: 
Peter Clinco

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EXHIBIT 2

STIPULATION AND AGREEMENT OF SETTLEMENT

This Stipulation and Agreement of Settlement is entered into by and between Plaintiff Angelica Cosio, individually and on behalf of all others similarly situated (“Cosio” or “Plaintiff”), on the one hand, and Defendants International Performing Arts Academy, LLC, Barbizon School of San Francisco, Inc., Lion Management Group, Inc., Larry D. Lionetti and Lena Quesada Lionetti (“Defendants,” and together with Plaintiff, the “Parties”), on the other hand, subject to preliminary and final approval by the Court, by and through their respective counsel.

I. RECITALS

This Agreement is made with reference to and in contemplation of the following facts and circumstances.

1. Cosio’s Claims. On April 5, 2016, Plaintiff commenced this action by filing a putative class action complaint against Defendants captioned, *Cosio et al. v. International Performing Arts Academy, LLC, et al.*, No. CC-16-551337, in the Superior Court of California, City and County of San Francisco. The operative Fifth Amended Complaint, filed on March 1, 2017, alleges that Defendants violated the Krekorian Act under Labor Code section 1702, and the Unfair Competition Law under Business and Professions Code section 17200.
2. Class Certification: On September 11, 2018, the Court entered an order granting class certification.
3. Defendants’ Denial Of Liability. Defendants deny any liability or wrongdoing of any kind associated with the claims alleged by Plaintiff.
4. Settlement Agreement. The Parties engaged in good faith arm’s-length settlement negotiations, including two full-day mediation sessions in San Francisco, California before the Honorable Jeffrey Ross on July 5, 2019, and September 20, 2019. During the mediation, Defendants provided certain requested financial disclosures to Plaintiff, on which Plaintiff has relied in entering into this Agreement.

NOW, THEREFORE, in consideration of the promises and agreements set forth herein, it is hereby STIPULATED AND AGREED, subject to the Court's approval as required by Code of Civil Procedure section 382 and California Rules of Court, rule 3.769(a), that each and every Released Claim shall be fully and finally settled and compromised and dismissed with prejudice, and shall be fully discharged and released, upon and subject to the following terms and conditions:

II. DEFINITIONS

2.1 The "Action" means the certified class action entitled *Cosio et al. v. International Performing Arts Academy, LLC, et al.*, Case No. CC-16-551337, in the Superior Court of California, City and County of San Francisco.

2.2 "Agreement" means this Stipulation and Agreement of Settlement, including all exhibits hereto.

2.3 "Claim" means the Settlement Class Members' claim for Payment under the process or procedure as materially set forth in Section 4.4 below, subject to whatever changes or alterations are required by the Preliminary Approval Order.

2.4 "Class" and "Class Member" means those natural persons, including Plaintiff, who were California citizens on or after the time Cosio's original complaint was filed (April 5, 2016) who (a) signed a contract so that the Class member, the Class member's child (or other beneficiary) could participate in a showcase operated by International Performing Arts Showcase (IPAS); (b) paid IPAS for such contract; and (c) such payment was made on or after April 5, 2012; (d) excluding any such payments that were (i) a percentage of the income earned by the Class member's beneficiary in the entertainment industry; or (ii) consisted entirely of reimbursement for out-of-pocket costs actually incurred by IPAS on behalf of the Class member's beneficiary for services rendered by an independent third party.

2.5 "Class Counsel" means Ethan Preston of Preston Law Offices, Hallie Von Rock and Brent A. Robinson of Aiman-Smith & Marcy, P.C., Zach Broslavsky and Jonathan A.

Weinman of Broslavsky & Weinman, L.L.P., and David C. Parisi and Susanne Havens Beckman of Parisi & Havens L.L.P.

2.6 “Class Notice” means the method of notice to the Settlement Class set forth in Section 4.3 below.

2.7 The “Complaint” means the operative Fifth Amended Class Action Complaint filed by Plaintiff in the Action on March 1, 2017.

2.8 “Compensation” means the portion or portions of Settlement Fund paid to Settlement Class Members under the procedure and in the amount calculated under Section 6.3.

2.9 “Contracts” means those contracts that Class Members signed with International Performing Arts Academy, LLC and/or Lion Management Group, Inc. under which Defendants provided access to Defendants’ showcases.

2.10 “Court” means the Superior Court for the State of California, City and County of San Francisco.

2.11 “Cy Pres Recipient” means the entity(ies) identified in the Preliminary Approval Order as the recipient(s) of any portion of the Common Fund that remains after distribution of Compensation to the Class Members is complete, as described in Section 6.3(i).

2.12 “Defendants” means International Performing Arts Academy, LLC, Barbizon School of San Francisco, Inc., Lion Management Group, Inc., Larry D. Lionetti and Lena Quesada Lionetti.

2.13 “Defendants’ Counsel” means Peter Clinco of Law Offices of Peter Clinco.

2.14 “Effective Date” means 91 days after the final Payment is made, and the total Payments are complete, consistent with Section 6.1.

2.15 “Fee Application” means that written motion or application by which Class Counsel requests that the Court award attorneys’ fees and expenses under Section 9.1.

2.16 “Final” means the date the Judgment becomes final for all purposes because either (i) no appeal has been filed and sixty (60) days have lapsed since entry of the Judgment, or (ii) if

a timely appeal has been filed, the appeal is finally resolved, with no possibility of further appellate or other review.

2.17 “Final Approval” refers to the entry of the Final Approval Order, including the date thereof.

2.18 “Final Approval Order” means the order to be entered by the Court in the Action finally approving the Agreement and resolving all issues between the Parties, as provided for in Section 5.1 below.

2.19 “Final Hearing” means the hearing at which the Court will consider whether to finally approve the Agreement, enter the Final Approval Order and make such other rulings contemplated by this Agreement.

2.20 “Incentive Award Application” means that written motion or application by which Class Counsel requests that the Court approve an incentive award to Plaintiff under Section 9.2.

2.21 “Judgment” means a final judgment and order of dismissal with prejudice to be entered by the Court concurrently with the Final Approval Order.

2.22 “Macdonald Fernandez Trust Account” means segregated, interest-bearing, attorney-client trust account(s) at one or more FDIC-insured institutions held by Macdonald Fernandez, LLP for the benefit of the Class.

2.23 “Net Settlement Fund” means the portions of the Settlement Fund remaining after deducting the fees and costs of the Settlement Administrator, and the costs and fees that the Court may award under the Fee Application, as calculated in Section 6.3(d).

2.24 “Parties” means Defendants and Plaintiff.

2.25 “Payment” means the amounts paid into the Settlement Fund under the schedule provided in Section 6.1.

2.26 “Plaintiff” means named Plaintiff Angelica Cosio, individually, as designated representative of the certified Class, and as proposed representative of the Settlement Class.

2.27 “Preliminary Approval” refers to the entry of the Preliminary Approval Order, including the date thereof.

2.28 “Preliminary Approval Order” means an order to be entered by the Court in the Action, as provided for in Section 3.1 below.

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

2.30 “Settlement Administrator” means the person or firm retained by Plaintiff under Section 4.2 to perform such tasks and fulfill such duties as this Agreement requires from the Settlement Administrator, and who is not owned or otherwise controlled by Defendants.

2.31 “Settlement Class” and “Settlement Class Member” means, includes and refers to Class Members who do not validly exclude themselves from the Action as provided in Section 4.4 below.

2.32 “Settlement Fund” means the money paid to the Settlement Administrator and any interest accrued thereon as described in Section 6.1 below in order to compensate Settlement Class Members under this Agreement.

2.33 “Settlement Administrator Trust Account” means segregated, interest-bearing, attorney-client trust account(s) at one or more FDIC-insured institutions maintained by the Settlement Administrator for the benefit of the Settlement Class.

III. PRELIMINARY APPROVAL

3.1 Preliminary Approval Order. Under California Rules of Court, rule 3.769(c), the Parties will seek the Court’s approval of this Agreement by filing an appropriate Motion for Preliminary Approval and seeking entry of a Preliminary Approval Order to effectuate this Settlement. Consistent with California Rules of Court, rule 3.769(d) and (e), the Preliminary Approval Order shall specifically include the following:

- a. A ruling that the Class Notice under Section 4.3 (and the notice of the Fee Application and Incentive Award Application in Sections 9.1 and 9.2) is the only notice to the Class that is required, and that such notice satisfies the requirements of Due Process, California Rules of Court, rule 3.769(f) and any other applicable law.
- b. An order that designates the Settlement Administrator, expressly holds that the Settlement Administrator's services are, in part, for Defendants' benefit, and provides that if any Party terminates the Agreement consistent with Section 8.1 or the effectuation of the Agreement otherwise fails, there shall be no claim to the recovery of any money distributed out of the Settlement Fund prior to such termination or failure, such as fees paid to the Settlement Administrator.
- c. An order directing Defendants to review all available records containing contact information for Class Members, and provide Class Counsel with all documents sufficient to assemble complete contact information for each Class Member. Documents to be reviewed and produced shall include all documents in Defendants' possession, custody, or control, including in any DropBox, Google, or FileMaker systems within 10 days of Preliminary Approval. Complete contact information shall include mailing addresses, physical addresses, phone numbers, and email addresses, where available.
- d. An order directing Defendants to provide Class Counsel and the Settlement Administrator with the names, addresses, telephone numbers, and email addresses within their possession, custody, or control for Class Members within 10 days after Preliminary Approval.

- e. An order requiring Defendants to submit financial disclosures under penalty of perjury to the Court under seal on such intervals as the Court may require in the Preliminary Approval Order.
- f. A preliminary ruling that this Agreement is fair, reasonable, and adequate for the Class and within the range of possible approval; that Plaintiff fairly and adequately represents the interests of the Class; and that Class Counsel are adequate to act as counsel for the Settlement Class.
- g. An order designating the *Cy Pres* Recipient who may receive a portion of the Settlement Fund consistent with Section 6.3(i).
- h. An order which sets the time, date, and place for the Final Hearing not less than 120 days after entry of the Preliminary Approval Order, to determine whether there is sufficient reason to decline to approve the Agreement as fair, reasonable and adequate, and in the best interests of the Settlement Class, and why Judgment should not be entered thereon.
- i. An order that provides that the Parties may file a motion seeking entry of the Final Approval Order according to statutory deadlines, except that Plaintiff shall file her Incentive Award Application and Fee Application no later than 36 court days prior to the Final Hearing.
- j. An order staying all other actions, proceedings, or litigation which impair or threaten to impair the Court's jurisdiction over the modification, interpretation, administration, implementation, effectuation and enforcement of this Agreement and the Settlement, including any such action by the Parties or other Class Members.
- k. An order that provides a procedure for Class Members to exclude themselves from the Agreement which is materially consistent with Section 4.4 and sets a postmark deadline of 26 court days prior to the Final Hearing for Class Members to submit a valid request to exclude

themselves from the Agreement, after which no Class Member shall be allowed to opt-out of the Settlement Class.

- l. An order that provides a procedure for Class Members to object to the Agreement that is materially consistent with Section 4.5 and sets postmark deadline of 26 court days prior to the Final Hearing for Class Members to submit a valid objection to the Agreement, after which no Class Member shall be allowed to object to or to appeal from the Agreement.
- m. An order granting all relief necessary to effectuate Sections 10.1 to 10.15.
- n. An order staying all further litigation in the Action except as may be necessary to implement the Agreement or comply with the terms of the Agreement (including any litigation necessary to resolve any outstanding disputes relating to Realize CPA, LLC).

IV. NOTICE AND SETTLEMENT ADMINISTRATION

4.1 Costs of Notice and Administration. The costs of Class Notice and other fees of the Settlement Administrator shall be paid from the Settlement Fund.

4.2 Retention of Settlement Administrator. Within five (5) business days of Preliminary Approval (if not sooner), Plaintiff shall engage the Settlement Administrator. Defendants agree not to contest the appointment of Atticus Administration as the Settlement Administrator. The Settlement Administrator shall be responsible for performing the following functions in effectuating the Agreement:

- a. The Settlement Administrator shall prepare, print and disseminate the Class Notice to the Settlement Class as set forth in Section 4.3
- b. The Settlement Administrator shall keep track of requests for exclusion and objections to the settlement, including maintaining the original mailing envelope in which they were mailed.

- c. The Settlement Administrator shall promptly furnish to Class Counsel and Defendants' Counsel copies of any requests for exclusion, objections or other written or electronic communications from the Settlement Class which the Settlement Administrator receives.
- d. The Settlement Administrator shall prepare and mail checks containing Payments in accordance with this Agreement.
- e. The Settlement Administrator shall refer to Class Counsel all Class Member inquiries regarding matters not within the Settlement Administrator's duties specified herein.
- f. The Settlement Administrator shall apprise Class Counsel of its activities.
- g. The Settlement Administrator shall maintain adequate records of all its activities, including its invoices, its communications with the Parties (including Class Members), the updated list of Class Members' addresses, dates of each mailing of the Class Notice, returned mail and other communications, and attempted written or electronic communications with any Class Members. Either Party may inspect such records to confirm conformance with this Agreement.
- h. The Settlement Administrator shall perform such other tasks as the Class Counsel and Defendants' Counsel mutually agree.

4.3 Class Notice. Under, e.g., California Rules of Court, rule 3.769(f), the Settlement Administrator shall, within twenty-one (21) days after the entry of the Preliminary Approval Order, disseminate the Class Notice to Class Members, as follows:

- a. Before mailing any Class Notice, the Settlement Administrator shall use a National Change of Address database and any other commercially appropriate database of contact information to identify any outdated addresses for Class Members and to and update such addresses.

- b. The Settlement Administrator send Class Notice via first-class mail to each Class Member at his or her last known valid address, address correction requested. If any notice is returned with a new address, the Settlement Administrator will re-mail the notice to the new address and shall update the Class Member address list with all forwarding addresses.
- c. The Settlement Administrator shall maintain a website where Class Members may access the following documents, as they are filed with the Court as practicable: the Class Notice; the operative complaint and any other papers now on file with the Court that may be relevant; the Parties' motion for preliminary approval (which shall include this Agreement, which will be separately and distinctively labeled on the website); the Preliminary Approval Order; Class Counsel's Fee Application; and the Parties' motion for final approval. The Parties may also make available on the website any additional information that may assist the Class in understanding the Agreement and their rights and obligations thereunder, as well as any supplemental briefs supporting the motions for final approval and the Fee Application.
- d. The Class Notice shall clearly and concisely state in plain, easily understood language: (i) the nature of the action; (ii) the definition of the class certified; (iii) the class claims, issues, or defenses; (iv) that a class member may enter an appearance through an attorney if the member so desires; (v) that the court will exclude from the class any member who files a timely and valid request for exclusion; (vi) the time and manner for requesting exclusion; and (vii) the binding effect of a class judgment on members. A copy of the Class Notice shall be forwarded to Defendants' counsel for his approval, which approval shall not be unreasonably withheld.

- e. The Class Notice shall also clearly and concisely state in plain, easily understood language: (i) that Plaintiff has settled the Action without any admission of liability on the part of Defendants; (ii) identify Class Counsel and Defendants' Counsel; (iii) summarize the terms of the Agreement (i.e., that Defendants will create a \$720,000 Settlement Fund over 14 months, which will be distributed to Class Members in exchange for the release and dismissal of Released Claims); (iv) identify the amount of attorney's fees and litigation costs sought; (v) identify the amount of the incentive compensation for the named plaintiff sought; (vi) identify the *Cy Pres* Recipient; (vii) explain the time and manner for opting out of the Settlement or making an objection to the Agreement; and (viii) identify the time, date, and location for the Final Hearing.
- f. Further, the Notice shall advise Class Members that their Released Claims will be released and dismissed under the Agreement unless they submit a request for exclusion under Section 4.4.

4.4 Requests for Exclusion from the Action. The Settlement Administrator shall administer the receipt of any and all requests for exclusion from the Action. Any Class Member who submits a valid and timely request for exclusion shall not be bound by the terms of this Agreement. Any Class Member who desires to be excluded from the Action must send a written request for exclusion to the Settlement Administrator with a postmark date no later than 30 days prior to the Final Hearing. In such request, the Class Member must set forth his or her full name, address, telephone number and email address (if available), along with a statement that he or she wishes to be excluded. The Settlement Administrator shall provide a list of the names and addresses of each Class Member who submitted a valid exclusion to the Parties no later than 21 court days prior to the Final Hearing.

4.5 Objections to the Settlement. Any Class Member who intends to object to the fairness of this settlement must (1) file a written objection with the Court no later than 30 days prior to the Final Hearing and (2) mail or personally deliver a copy of the written objection to Class Counsel and Defendant's Counsel on the same day as the objection is sent to the Court. The Court will deem an objection filed on the day it is received by the Court, not necessarily when the objection is postmarked. In the written objection, the Class Member must state: his or her full name, address, telephone number, and email address (if available); the reasons for his or her objection; whether he or she intends to appear at the Final Hearing on his or her own behalf or through counsel; and identify every case in which he or she (or his or her counsel) has filed an objection to any class action settlement by the name of the court, the name and docket number of the case, the date of the objection, and any docket number assigned to the objection. Further, the Class Member must attach to his or her objection all evidence supporting the objection. Any Class Member who does not file a valid and timely objection to the settlement shall be barred from seeking review of the settlement by appeal or otherwise.

V. FINAL APPROVAL OF SETTLEMENT

5.1 Final Hearing. On a date to be set by the Court no less than 120 days after the entry of the Preliminary Approval Order, Plaintiff will seek entry of the Final Approval Order granting final approval of the Agreement and entering Judgment in the Action. The Final Approval Order will provide:

- a. A final ruling that the Action may be maintained as a class action on behalf of the Settlement Class for the purposes of effectuating the Agreement.
- b. A final ruling that this Agreement is fair, reasonable, and adequate for the Settlement Class; that Plaintiff and Class Counsel fairly and adequately represented the interests of the Settlement Class; and that the Class Notice

satisfied the requirements of Due Process, California Rules of Court, rule 3.769(f) and any other applicable law.

- c. A ruling that the Agreement represents a fair resolution of all Released Claims asserted on Agreement of the Settlement Class and fully and finally resolves and releases all such Released Claims; that Plaintiff and each Settlement Class Member shall be bound by the Agreement, including the release and dismissal contained in Sections 7.2 and 7.3; and that the Agreement is finally approved.
- d. An order holding that the Judgment is premised on Defendants' warranty of the truthfulness, accuracy, and completeness of their financial disclosures to the Court and to Class Counsel.
- e. An order requiring the distribution of the Settlement Fund consistent with Section 6.3, and that the Settlement Administrator maintain and distribute the Settlement Fund until all money within the Settlement Fund is distributed consistent with Section 6.3(i).
- f. An order setting a date on which the Parties shall report to the Court the total amount of the Settlement Fund that was actually paid to the Class Members, and the amount remaining in the Settlement Fund;
- g. An order that distribution of payment of the remaining Settlement Fund to the *Cy Pres* Recipient will further the purposes of the underlying causes of action, promote justice for all Californians, and/or will support projects that will benefit the class or similarly situated persons;
- h. An order directing the Parties to pay any unpaid residuals to the *Cy Pres* Recipient, consistent with Section 6.3(i).
- i. An order confirming the opt-outs from the Agreement.

- j. An order overruling any objections from the Agreement (except for those objections that the Parties agree do not require a material modification of the Agreement, the Final Approval Order, or the Judgment).
- k. An order dismissing with prejudice all claims released under Sections 7.2, 7.3, and 7.4, entering Judgment on such claims, and permanently enjoining all Parties and all Settlement Class Member from bringing, joining or continuing to prosecute any claims released under the Agreement.
- l. An order granting all relief necessary to effectuate Sections 10.1 to 10.15.
- m. An order retaining jurisdiction of all matters relating to the modification, interpretation, administration, implementation, effectuation and enforcement of this Agreement and the Settlement, and enjoining any other action, proceeding or litigation which impairs or threatens to impair such jurisdiction, including any such action by the Parties or other Class Members.

VI. SETTLEMENT FUND

6.1 Settlement Fund. Within 30 days following the execution of this Agreement, Defendants will deposit \$200,000 into the Settlement Trust Account. After the \$200,000 deposit, Defendants then will pay \$40,000 to the Settlement Fund by the 5th day of every month after such initial Payment, for ten (10) months. After the last such \$40,000 Payment, Defendants will then pay \$30,000 to the Settlement Fund by the 5th day of every subsequent month, for four (4) months. Defendants will continue to make Payments until they have paid a total of \$720,000 into the Settlement Fund. The Settlement provides the payment schedule below:

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Deadline for payment	Scheduled payment amount	Total Settlement Fund
30 days after execution	\$200,000	\$200,000
Fifth day of March 2020	\$40,000	\$240,000
Fifth day of April 2020	\$40,000	\$280,000
Fifth day of May 2020	\$40,000	\$320,000
Fifth day of June 2020	\$40,000	\$360,000
Fifth day of July 2020	\$40,000	\$400,000
Fifth day of August 2020	\$40,000	\$440,000
Fifth day of September 2020	\$40,000	\$480,000
Fifth day of October 2020	\$40,000	\$520,000
Fifth day of November 2020	\$40,000	\$560,000
Fifth day of December 2020	\$40,000	\$600,000
Fifth day of January 2021	\$30,000	\$630,000
Fifth day of February 2021	\$30,000	\$660,000
Fifth day of March 2021	\$30,000	\$690,000
Fifth day of April 2021	\$30,000	\$720,000

If Defendants do not make timely payments under this Section, interest will accrue on unpaid sums at ten percent (10%) per annum until all unpaid sums are paid.

6.2 Maintenance of the Settlement Fund: Defendants will deposit the Payments into the Macdonald Fernandez Trust Account Settlement Trust Account until Defendants have paid \$720,000, or Final Approval, whichever comes first. After Final Approval, Defendants shall cause the Settlement Fund to be transferred from the Macdonald Fernandez Trust Account Settlement Trust Account to the Settlement Administrator Trust Account, and shall make all further Payments into the Settlement Administrator Trust Account.

6.3 Distribution of the Settlement Fund. The Settlement Administrator shall maintain the Settlement Fund until all money within the Settlement Fund is distributed pursuant to this

Agreement. The Settlement Administrator shall hold such funds for the benefit of the Settlement Class, Class Counsel, and Plaintiffs, and shall disburse the funds only in accordance with this Agreement or the Court's orders. The Settlement Administrator shall maintain and distribute the Settlement Fund as follows:

- a. As soon as commercially practicable and prior to the deadline for the motion for Preliminary Approval, the Settlement Administrator shall provide to the Parties an itemized invoice of all estimated expenses, costs, and fees it will incur in administering the Agreement. In addition, as soon as commercially practicable before the deadline for the motion for Final Approval, the Settlement Administrator shall provide its best estimate of the total cost of completion of the settlement and Claims process (including costs and fees incurred in the distribution of Compensation, such as mailing out checks containing Compensation, timely reissuing checks, processing returned mail, etc.) in order to assist in determining the Compensation paid to each Class Member. The Settlement Administrator shall reserve a portion of the Settlement Fund equal to this estimate, and pay itself all costs pending at the time it makes distributions of Compensation under Sections 6.3(e) and (i).
- b. The Settlement Administrator shall pay all Class Counsel's costs and fees which are approved by the Court, at the times indicated in Section 6.3(f).
- c. The Settlement Administrator shall pay all Incentive Awards to Plaintiffs which are approved by the Court, at the times indicated in Section 6.3(f).
- d. After deducting the payments identified in Sections 6.3(a) to (c) above from the Settlement Fund, the Settlement Administrator shall distribute all money remaining in the Settlement Fund ("Net Settlement Fund") to Class Members as set forth in Sections 6.3(e) and 6.3(i) in *pro rata* shares ("Compensation"), except that if Class Counsel receive sufficient

information to determine the amounts individual Settlement Class Members paid Defendants, the Compensation shall be a *pro rata* share of the Net Settlement Fund based on the total money paid to Defendants.

- e. The Settlement Administrator will make the first distribution of Compensation to the Settlement Class Members within twenty-one (21) days after the Agreement is Final. The Settlement Administrator will make the second distribution of Compensation within twenty-one (21) days after the last scheduled Payment is received. If the Settlement Fund receives or retains funds (other than reversion of uncashed Compensation checks) after the second distribution, the Settlement Administrator shall make additional distributions of Compensation as set forth in this Section.
- f. The Settlement Administrator will make the first distribution of any amounts awarded under the Incentive Award Application and/or Fee Application to Plaintiff and Class Counsel within twenty-one (21) days after the Agreement is Final. The Settlement Administrator will make the second distribution under the Incentive Award Application and/or Fee Application to Plaintiff and Class Counsel within twenty-one (21) days after the last scheduled Payment is received. Except as provided in the following two sentences, the second distribution under the Incentive Award Application and/or Fee Application to Plaintiff and Class Counsel shall include any remaining unpaid sums awarded. If the Settlement Fund receives or retains funds (other than reversion of uncashed Compensation checks) after the second distribution, the Settlement Administrator shall make additional distributions of any remaining unpaid fees and incentive awards to Plaintiff and Class Counsel at the same time it makes additional distributions of Compensation under Section 6.3(e). All such distributions of fees and incentive awards shall be in proportion to the distributions of

Compensation under Section 6.3(e), so as to avoid shifting contingent risk from Class Counsel onto the Settlement Class.

- g. The Settlement Administrator will distribute Compensation by mailing checks to Settlement Class Members' last known address. The Settlement Administrator will use any updated contact information received through, e.g., the Notice process, to address checks to the Settlement Class Members.
- h. Checks containing Compensation shall bear the date on which they are issued, and shall become invalid 90 days after such date of issuance. Once a check containing Compensation becomes invalid, no checks will be reissued and no Compensation will be paid to the recipient Settlement Class Member who failed to cash their check. The Settlement Administrator shall ensure that checks containing Compensation will state on their face that the recipient Settlement Class Member has 90 days from the date of issue to deposit the check, and that after that time no checks will be reissued, and no further Compensation will be paid to the Settlement Class Member.
- i. Within ten days after the last outstanding check containing Compensation becomes invalid under Section 6.3(h), the Settlement Administrator will determine whether the Compensation available for a subsequent distribution exceeds the costs of making such subsequent distribution. The Settlement Administrator will continue to make subsequent distributions of Compensation to those Class Members who cashed prior checks until the costs of making a subsequent distribution exceed the Compensation available for such subsequent distribution in the Settlement Fund. Within seven (7) days after the Settlement Administrator makes that

determination, the Settlement Administrator shall pay to the *Cy Pres* Recipient any remaining Settlement Fund.

- j. If the Parties terminate the Agreement under Section 9.1, the Settlement Administrator shall hold the Settlement Fund in the Settlement Administrator Trust Account pending further order of the Court. Once the Agreement becomes Final, the Settlement Administrator shall not return any portion of the Settlement Fund to Defendants under any circumstances.

VII. RELEASE AND DISMISSAL

7.1 Defendants' Warranty. Defendants expressly warrant the truthfulness, accuracy, and completeness of their financial disclosures to the Court and to Plaintiff. The Parties acknowledge the releases below in Sections 7.2 and 7.3 are premised on the truthfulness, accuracy, and completeness of Defendants' financial disclosures to the Court and to Plaintiff.

7.2 Plaintiff's Release. On the Effective Date, Plaintiff shall fully, finally and forever release, relinquish and discharge Defendants and Defendants' Counsel from any and all actions, causes of action, claims, demands, liabilities, obligations, fees, costs, sanctions, proceedings, and/or rights of any nature and description whatsoever. Without limiting the foregoing, Plaintiff's release specifically extends to all claims and potential claims that she does not know or suspect to exist in her favor as of or prior to the Effective Date. The Parties agree that this paragraph constitutes a waiver of California Civil Code section 1542 and any similar or comparable provisions, rights and benefits conferred by the law of any state or territory of the United States or any jurisdiction, and any principle of common law. California Civil Code section 1542 provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Plaintiff understands and acknowledges the significance of these waivers of California Civil Code Section 1542 and/or of any other applicable law relating to limitations on releases. In connection with such waivers and relinquishment, Plaintiff acknowledges that she is aware that they may hereafter discover facts in addition to, or different from, those facts which they now know or believe to be true with respect to the subject matter of the Agreement, but that they release fully, finally and forever all claims, and in furtherance of such intention, the release will remain in effect notwithstanding the discovery or existence of any such additional or different facts. The Parties acknowledge that this release of unknown claims is an essential and material term of this Agreement, and that without such release the Settlement would not have been agreed to. Notwithstanding the foregoing waiver, nothing in this Section 7.2 shall be construed to release claims arising from breach of this Agreement, including the warranty in Section 7.1.

7.3 Settlement Class Members' Release. As of the Effective Date of the Agreement, each Settlement Class Member shall be deemed to have fully, finally and forever released the Defendants from all Released Claims. Without limiting the foregoing, the Released Claims released pursuant to this Agreement specifically extend to all claims and potential claims that Settlement Class Members do not know or suspect to exist in their favor as of or prior to the Effective Date. The Parties agree (and by operation of law, all Settlement Class Members are deemed to agree) that this Section constitutes a waiver of California Civil Code section 1542 and any similar or comparable provisions, rights and benefits conferred by the law of any state or territory of the United States or any jurisdiction, and any principle of common law. California Civil Code section 1542 provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

By operation of law, each Settlement Class Member shall be deemed to understand and acknowledge the significance of these waivers of California Civil Code Section 1542 and/or of

any other applicable law relating to limitations on releases. In connection with such waivers and relinquishment, each Settlement Class Member shall be deemed to acknowledge that they are aware that they may hereafter discover facts in addition to, or different from, those facts which they now know or believe to be true with respect to the subject matter of the Agreement, but that they are deemed to release fully, finally and forever all Released Claims, and in furtherance of such intention, the release will remain in effect notwithstanding the discovery or existence of any such additional or different facts. The Parties acknowledge (and all Settlement Class Members by operation of law shall be deemed to have acknowledged) that the release of unknown Released Claims is an essential and material term of this Agreement, and that without such release the Settlement would not have been agreed to. Notwithstanding the foregoing waiver, nothing in this Section 7.3 shall be construed to release any claim which is not a Released Claim, such as claims arising from breach of this Agreement, including the warranty in Section 7.1.

VIII. TERMINATION OF AGREEMENT

8.1 Each Party shall have the right to terminate this Agreement if either (i) the Court declines to enter the Preliminary Approval Order or the Final Approval Order without material modification of the Agreement; (ii) the Agreement does not become Final by reason of a higher court reversing the Final Approval Order, and the Court thereafter declines to enter a further order or orders approving the Agreement without material modification; (iii) Defendants may in their sole discretion terminate this Agreement if more than five percent (5%) of Settlement Class members opt out or object to the Settlement Agreement; or (iv) Plaintiff may in her sole discretion terminate this Agreement if Defendants fail to make one or more Payments in a timely manner. If a Party elects to terminate this Agreement under this paragraph, that Party must provide written notice to the other Parties' counsel and the Court within thirty (30) days of the occurrence of the condition permitting termination.

8.2 If any Party terminates the Agreement consistent with Section 8.1, Defendants shall not seek to recover fees paid to the Settlement Administrator.

IX. ATTORNEYS' FEES AND COSTS AND INCENTIVE AWARD TO PLAINTIFF

9.1 Class Counsel may make a motion for an award of attorneys' fees and costs to be paid from the Settlement Fund to be heard at the Final Hearing. Defendants agree they will not contest any fee award that does not exceed one-third (33.33%) of the total Settlement Fund. Class Counsel will seek litigation costs from the Court in an amount not to exceed \$60,000. However, the \$60,000 limit on Class Counsel's costs above shall not apply to any costs due to Realize CPA, LLP for compliance with Plaintiff's subpoena, which may be recovered by Class Counsel without limitation under this Agreement. Plaintiff shall submit itemization of costs to the Court. Defendants will not contest litigation costs.

9.2 Plaintiff (or Class Counsel on her behalf) may make a motion for an incentive and/or service award to be paid out of the Settlement Fund to be heard at the Final Hearing. Defendants agree they will not contest any incentive and/or service award fee to Plaintiff that does not exceed \$10,000.

9.3 Resolution of Realize CPA, LLP's Costs of Compliance with Subpoenas. Being unable to resolve the issue whether Plaintiff is liable to Realize CPA, LLP for its costs of complying with subpoenas issued in the Action, and in light of Defendants' assertion they must indemnify Realize CPA, LLP for those costs, the Parties agree that Realize CPA, LLP may move the Court to award such costs to Realize, and may also move the Court to hear such motion on shortened time so long as Plaintiff is provided at least ten (10) court days to file her opposition papers from the date the moving papers are filed.

X. MISCELLANEOUS PROVISIONS

10.1 Cooperation. The Parties acknowledge that it is their intent to consummate the Agreement, and agree to cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of the Agreement and to exercise their best efforts to obtain preliminary and final approval of the Agreement from the Court, including in presenting such papers to the Court as may be necessary to effectuate the intent and purposes of the Agreement,

and complying with the Court's orders. Defendants agree to provide Class Counsel with all contracts, payment information, and/or contact information for any Class Member in Defendants' possession, custody, or control, including in the DropBox, Google, or FileMaker systems at the earliest possible time.

10.2 Tolling. By executing this Agreement, the Parties agree that the five-year rule under Code of Civil Procedure Section 583.310 is tolled through either termination of the Agreement under Section 8.1 or through the date Judgment becomes Final. The Parties further agree that such tolling is an essential and material term of this Agreement, and that without such tolling the Settlement would not have been agreed to. The tolling effect of this provision shall survive any termination of this Agreement.

10.3 Dispute Resolution. The Parties agree to meet and confer in good faith in regard to any dispute relating to the Agreement or to administration of the Agreement. Any dispute that cannot be resolved by the Parties shall be submitted to the Court. If Class Counsel give Defendants' Counsel notice of a breach of this Agreement, and Defendants do not cure the breach in ten (10) days, Plaintiff shall be entitled to seek an award of all reasonable and necessary attorney's fees and costs incurred by Plaintiff or Class Counsel in enforcing the settlement.

10.4 Governing Law. This Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of California, without regard to the choice-of-law principles thereof.

10.5 Integration Clause. This Agreement, including the Exhibits referred to herein, which form an integral part hereof, contains the entire understanding of the Parties with respect to the subject matter contained herein. There are no promises, representations, warranties, covenants, or undertakings governing the subject matter of this Agreement other than those expressly set forth in this Agreement. This Agreement supersedes all prior agreements and understandings among the Parties with respect to the settlement of the Action. This Agreement may not be changed, altered or modified, except in a writing signed by the Parties; if any such

change, alteration or modification of the Agreement is material, it must also be approved by the Court. This Agreement may not be discharged except by performance in accordance with its terms or by a writing signed by the Parties.

10.6 Competency Of Parties. The Parties, and each of them, acknowledge, warrant, represent and agree that in executing and delivering this Agreement, they do so freely, knowingly and voluntarily, that they had an opportunity to and did discuss its terms and their implications with legal counsel, that they are fully aware of the contents and effect of the Agreement and that such execution and delivery is not the result of any fraud, duress, mistake or undue influence whatsoever.

10.7 Authority. The person(s) signing this Agreement on behalf of Defendants warrant(s) and represent(s) that he, she, or they is/are authorized to sign on Defendants' behalf. The Plaintiff has personally signed this Agreement.

10.8 Construction. Each of the Parties has cooperated in the drafting and preparation of this Agreement. Hence, in any construction to be made of this Agreement, the same shall not be construed against any of the Parties. Before declaring any provision of this Agreement invalid, the Court shall first attempt to construe the provision valid to the fullest extent possible consistent with applicable precedent so as to find all provisions of this Agreement valid and enforceable. After applying this rule of construction and still finding a provision invalid, the Court shall thereupon interpret the invalid provision to the fullest extent possible to otherwise enforce the invalid provision. The invalidity of any one provision shall not render this Agreement otherwise invalid and unenforceable unless the provision found to be invalid materially affects the terms of this Agreement after application of the rules of construction set forth in this paragraph.

10.9 Titles. Titles or captions contained herein are inserted for the purpose of readability, convenience, and for reference, and in no way define, limit, extend, or describe the scope of this Agreement or any provision hereof.

10.10 No Waiver. Any failure of any Party to comply with any obligation, covenant, agreement, or condition herein may be expressly waived in writing, to the extent permitted under applicable law, by the Party or Parties entitled to the benefit of such obligation, covenant, agreement, or condition. A waiver or failure to insist upon compliance with any representation, warranty, covenant, agreement, or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

10.11 Notices/Communications. All requests, demands, claims and other communications hereunder shall: (a) be in writing; (b) be delivered by facsimile and email; (c) be deemed to have been duly given on the date received; and (d) be addressed to the intended recipients as set forth below:

If to Plaintiff or the Class:

Hallie Von Rock
Brent A. Robinson
AIMAN-SMITH & MARCY, P.C.
7677 Oakport Street, Suite 1150
Oakland, California 94621
(510) 817-2711 (telephone)
(510) 562-6830 (facsimile)
hvr@asmlawyers.com
bar@asmlawyers.com

Ethan Preston
PRESTON LAW OFFICES
4054 McKinney Avenue, Suite 310
Dallas, Texas 75204
(972) 564-8340 (telephone)
(866) 509-1197 (facsimile)
ep@eplaw.us

To Defendants:

Peter Clinco
1901 Avenue of the Stars, Suite 1100
Los Angeles, California 90067-6002
(310) 553-3400 (telephone)
(310) 553-3408 (facsimile)
peter@clinco.net

Each of the Parties may change the address to which requests, demands, claims or other communications hereunder are to be delivered by giving the other Parties notice in the manner set forth herein.

10.12 Calculation of Deadlines. California Rules of Court, Rule 1.10 and Rule 1.11 apply and control the calculation of any deadline or time period in this Agreement (except for the expiration of checks containing Payment). In particular, where the last day of any such time period, is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday. However, no deadlines in the Agreement (especially deadlines for timely requests for exclusion or objections) shall be extended by Code of Civil Procedure section 1013 or any other provision of law that extends time to respond to service of a paper via mail or electronic service.

10.13 Defendants' Warranty of Cessation of Showcases. Defendants expressly warrant and agree that, after the Showcase scheduled for October 2019, they will not own or operate showcases or any other Advance Fee Talent Representation Service, as defined in California Labor Code section 1702.1. The Parties further agree that such warranty is an essential and material term of this Agreement, and that without such warranty the Settlement would not have been agreed to.

10.14 Counterparts. This Agreement may be executed in one or more counterparts and, if so executed, the various counterparts shall be and constitute one instrument for all purposes and shall be binding on each of the Parties that executed it, provided, however, that none of the Parties shall be bound unless and until all Parties have executed this Agreement. For convenience, the several signature pages may be collected and annexed to one or more documents to form a complete counterpart. Photocopies of executed copies of this Agreement may be treated as originals.

10.15 List of Exhibits.

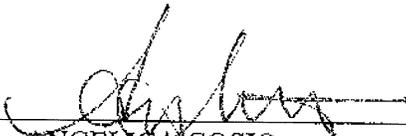
Attached to this Agreement are the following Exhibits:

Exhibit A Class Notice

[SIGNATURES APPEAR ON THE FOLLOWING PAGES]

Agreed and accepted:

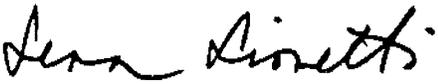
Dated: Jan. 3, ²⁰²⁰~~2019~~ *dc*

By: 
ANGELICA COSIO, on her own behalf, and on behalf of the Settlement Class

Dated: Dec. 29, 2019

By: 
LARRY D. LIONETTI, individually and on behalf of INTERNATIONAL PERFORMING ARTS ACADEMY, LLC, BARBIZON SCHOOL OF SAN FRANCISCO, INC., LION MANAGEMENT GROUP, INC.

Dated: Dec. 29, 2019

By: 
LENA QUESADA LIONETTI, individually and on behalf of INTERNATIONAL PERFORMING ARTS ACADEMY, LLC, BARBIZON SCHOOL OF SAN FRANCISCO, INC., LION MANAGEMENT GROUP, INC.,

Approved solely as to form:

Dated: Jan. 3, ²⁰~~2019~~ *HR*

By: 
Hallie Von Rock
Brent A. Robinson
AIMAN-SMITH & MARCY, P.C.
7677 Oakport St. Suite 1150
Oakland, California 94621
(510) 817-2711 (telephone)
(510) 562-6830 (facsimile)
hvr@asmlawyers.com
bar@asmlawyers.com

Ethan Preston (263295)
PRESTON LAW OFFICES
4054 McKinney Avenue, Suite 310
Dallas, Texas 75204
(972) 564-8340 (telephone)
(866) 509-1197 (facsimile)
ep@eplaw.us

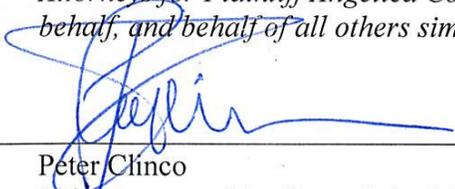
David C. Parisi
Suzanne Havens Beckman

PARISI & HAVENS LLP
100 Pine Street, Suite 1250
San Francisco, California 94111
(818) 990-1299 (telephone)
(818) 501-7852 (facsimile)
dparisi@parisihavens.com
shavens@parisihavens.com
Zack Broslavsky, Esq.
Jonathan A. Weinman, Esq.
BROSLAVSKY & WEINMAN, LLP
11620 Wilshire Boulevard, Suite 900
Los Angeles, CA 90025
310/575-2550
310/464-3550 fax
zbroslavsky@bwcounsel.com
jweinman@bwcounsel.com

Attorneys for Plaintiff Angelica Cosio, on her own behalf, and behalf of all others similarly situated

Dated: 12/29, 2019

By: _____


Peter Clinco
1901 Avenue of the Stars, Suite 1100
Los Angeles, California 90067-6002
(310) 553-3400 (telephone)
(310) 553-3408 (facsimile)
peter@clinco.net

Attorneys for Defendants

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EXHIBIT 3

Subject: Re: FW: [Cosio v. IPAA] Notice of Material Breach
From: Hallie Von Rock <hvr@asmlawyers.com>
Date: 5/6/20, 2:55 PM
To: Brad Kane <bkane@kanelaw.la>
CC: Ethan Preston <ep@eplaw.us>, "Iain A. Macdonald" <iMac@macfern.com>, peter clinco <peter@clinco.net>

Brad,

I am following up on the amendment sent to you on May 1, 2020. While the Court has granted our request to extend the deadline to submit our supplemental briefing, there are several documents to be finalized before May 18, including the amendment, our supplemental brief, and the notice. We cannot finalize our brief or the notice until we reach agreement on the amendment to the settlement agreement. The payment structure in the amendment sent on May 1, is aligned with your proposal, which you represented in our telephone conversation on April 29, 2020, was based on what would be workable for the Defendants.

Accordingly, please confirm that Defendants will work to finalize the terms of the amendment by this Friday, May 8, 2020. If we do not hear back from you, then we may have no choice but to file our supplemental briefing without amendment to the payment structure and inform the Court that Defendants have not been making payments as they agreed to in the Settlement Agreement that they signed and which was filed with the Court.

Thank you,

Hallie Von Rock
Aiman-Smith & Marcy
7677 Oakport Street, Suite 1150
Oakland, CA 94621
Tel - Direct: 510.817.2652
Fax: 510.562.6830

On Fri, May 1, 2020 at 1:53 PM Hallie Von Rock <hvr@asmlawyers.com> wrote:
Brad,

We have considered your proposal and made some minor adjustments regarding the payment schedule. In summary, we have agreed to payments to resume in January 2021, or 6 months after the SIP Orders have been lifted. Defendants will then make payments of \$20,000 for 9 months. Thereafter,

Defendants will make payments of \$40,000 each month, which can be prorated upon a financial certification that their monthly revenue is 65% less than Defendants' baseline gross revenue. The proposal is set forth in detail in the attached, under Section V, 5.1.

Since I understand there will need to be time on your side to discuss this proposal with Defendants, please confirm your agreement that we can email the Court and request that the supplemental briefing be extended by two weeks, to be due on May 18.

Thank you,

Hallie Von Rock
Aiman-Smith & Marcy
7677 Oakport Street, Suite 1150
Oakland, CA 94621
Tel - Direct: 510.817.2652
Fax: 510.562.6830

On Wed, Apr 29, 2020 at 2:30 PM Brad Kane <bkane@kanelaw.la> wrote:

Here is my proposed Payment Calculator, which lays out a series of robust/comprehensive steps for calculating future payments, while minimizing Court involvement:

- (i) Suspension of monthly payments until the later of: (i) January 15, 2021; or (ii) 6 months after States of Emergency in California (including San Francisco, Sacramento and Los Angeles municipalities) and New York City related to the Pandemic are fully lifted;
- (ii) Payments are then capped at a maximum of \$20,000.00 per month through January 15, 2022;
- (iii) Payments after January 15, 2022 are capped at a maximum of \$30,000 per month until paid in full;
- (iv) The above payments are subject to the following limitations:

(A) no monthly payment due in any month where Defendants experience Extreme Financial Difficulties. Extreme Financial Difficulty is defined as gross monthly income less than X% of the historic monthly average, so that monthly “nut” is covered;

(B) scaled ratably monthly payments will be due where the gross income exceeds X% of the historic monthly average but remains less than 100% of that average; and

(C) the full maximum monthly payment is due if the monthly gross income meets or exceeds 100% of the historic gross monthly income;

For purposes of illustration, where the Defendants’ gross monthly income > X % of historic monthly average but less than 100% of that average payments will be scaled. If X equals 75% of that average, each percentage point above 50% requires payment 2% of the Maximum Monthly Payment.

In a month, where Defendants’ reach 90% of the historic average gross monthly income, then Defendants would pay 80% of the Maximum Monthly Payment.

Finally, we propose that Iain McDonald review the monthly bank statements to confirm Defendants financial position.

Brad S. Kane

Kane Law Firm

1154 S. Crescent Hts. Blvd.

Los Angeles, CA 90035

Tel: (323) 697-9840

Fax: (323) 571-3579

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From: Ethan Preston <ep@eplaw.us>
Sent: Wednesday, April 29, 2020 9:28 AM
To: Brad Kane <bkane@kanelaw.la>
Cc: Hallie Von Rock <hvr@asmlawyers.com>; Iain A. Macdonald <iMac@macfern.com>; peter clinco <peter@clinco.net>
Subject: Re: FW: [Cosio v. IPAA] Notice of Material Breach

Sorry, I'm re-sending this: I noticed Peter was not included in my prior email.

Thanks,

Ethan

On 4/29/20 10:09 AM, Ethan Preston wrote:

That's fine with me.

On Apr 28, 2020 4:10 PM, Brad Kane <bkane@kanelaw.la> wrote:

Folks,

Thank you for your good wishes and understanding.

Kevin is now home.

Does 2:30 p.m. tomorrow work for everyone?

Best,

Brad

Brad S. Kane

Kane Law Firm

1154 S. Crescent Hts. Blvd.

Los Angeles, CA 90035

Tel: (323) 697-9840

Fax: (323) 571-3579

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From: Ethan Preston <ep@eplaw.us>

Sent: Tuesday, April 28, 2020 11:44 AM

To: Hallie Von Rock <hvr@asmlawyers.com>; Brad Kane <bkane@kanelaw.la>

Cc: Brent A. Robinson <bar@asmlawyers.com>; Iain A. Macdonald <iMac@macfern.com>

Subject: Re: FW: [Cosio v. IPAA] Notice of Material Breach

Brad, so sorry for any medical emergency in this environment. Stay safe.

On 4/28/20 11:48 AM, Hallie Von Rock wrote:

Brad,

We hope he is OK. Yes, tomorrow works. I am available most of the day. Let me know what time works for you.

Take care,

Hallie

On Tue, Apr 28, 2020 at 9:42 AM Brad Kane
<bkane@kanelaw.la> wrote:

Folks,

I apologize, but can we reschedule our call to tomorrow.

I have to take my boyfriend to urgent care. (Not Coronavirus related.)

Best,

Brad

Brad S. Kane

Kane Law Firm

[1154 S. Crescent Hts. Blvd.](#)

[Los Angeles, CA 90035](#)

Tel: (323) 697-9840

Fax: (323) 571-3579

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From: Brad Kane
Sent: Friday, April 24, 2020 2:11 PM
To: Hallie Von Rock <hvr@asmlawyers.com>
Cc: Brent A. Robinson <bar@asmlawyers.com>; Iain A. Macdonald <iMac@macfern.com>; Ethan Preston <ep@eplaw.us>
Subject: RE: FW: [Cosio v. IPAA] Notice of Material Breach

Hallie,

Health always come first.

Tuesday at 12:30 p.m. works for me.

If 12:30 p.m. does not work for anyone, please let us know by 6 p.m. today. Otherwise, we are set for 12:30 p.m.

Best,

Brad

Brad S. Kane

Kane Law Firm

[1154 S. Crescent Hts. Blvd.](#)

[Los Angeles, CA 90035](#)

Tel: (323) 697-9840

Fax: (323) 571-3579

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From: Hallie Von Rock <hvr@asmlawyers.com>

Sent: Friday, April 24, 2020 2:04 PM

To: Brad Kane <bkane@kanelaw.la>

Cc: Brent A. Robinson <bar@asmlawyers.com>; Iain A. Macdonald <iMac@macfern.com>; Ethan Preston <ep@eplaw.us>

Subject: Re: FW: [Cosio v. IPAA] Notice of Material Breach

All,

I apologize, but forgot that I rescheduled a doctor appointment that had been cancelled for Tuesday. Can we speak earlier? I need to leave by 1:30 PST.

Thank you,

Hallie Von Rock

Aiman-Smith & Marcy

[7677 Oakport Street, Suite 1150](#)

[Oakland, CA 94621](#)

Tel - Direct: 510.817.2652

Fax: 510.562.6830

On Thu, Apr 23, 2020 at 7:32 PM Brad Kane
<bkane@kanelaw.la> wrote:

Hallie,

We will call in at 12:30 p.m. of Friday, April 4, 2020, if you are still available.

Best,

Peter and Brad

Brad S. Kane

Kane Law Firm

[1154 S. Crescent Hts. Blvd.](#)

[Los Angeles, CA 90035](#)

Tel: (323) 697-9840

Fax: (323) 571-3579

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From: Hallie Von Rock <hvr@asmlawyers.com>
Sent: Thursday, April 23, 2020 12:03 PM
To: Brad Kane <bkane@kanelaw.la>
Cc: Brent A. Robinson <bar@asmlawyers.com>;
Iain A. Macdonald <iMac@macfern.com>; Ethan
Preston <ep@eplaw.us>
Subject: Re: FW: [Cosio v. IPAA] Notice of Material Breach

Brad,

Soon after we received your email, we received the Court's tentative ruling. We have spent the last couple of weeks complying with the Court's order to revise the settlement agreement, the class notice, and drafting a supplemental brief. If you

reviewed the proposed amendment to the settlement, you can see that we addressed the concerns raised in your email about defendants' inability to make timely payments given the Stay In Place (SIP) Orders. We agreed to payments not being resumed until 30 days after the SIP Orders have been lifted. We are willing to discuss a reasonable further extension based upon defendants' finances.

Are you available for a teleconference on Friday between 11:30 - 1:30? Please let me know what works for you.

We can use our conference call number:

Dial-in number: 510-817-2670

PIN: 5432

Thank you,

Hallie Von Rock

Aiman-Smith & Marcy

[7677 Oakport Street, Suite 1150](#)

[Oakland, CA 94621](#)

Tel - Direct: 510.817.2652

Fax: 510.562.6830

On Wed, Apr 22, 2020 at 6:03 PM Brad Kane

<bkane@kanelaw.la> wrote:

Hallie,

Your April 22, 2020 email is the first communication from Plaintiffs' counsel, since my clients' March 18, 2020 email. The lack of any prior acknowledgement of my clients' extreme hardship has exacerbated an already difficult situation. We are available on Friday, April 24, 2020 to discuss the path forward. Let us know what time works best for you.

Kindest regards,

Peter and Brad

Brad S. Kane

Kane Law Firm

[1154 S. Crescent Hts. Blvd.](#)

[Los Angeles, CA 90035](#)

Tel: (323) 697-9840

Fax: (323) 571-3579

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this e-mail in error, please notify me by replying to this message and permanently delete the original and any copy of this e-mail and any printout thereof.

From: Brad Kane
Sent: Wednesday, March 18, 2020 6:51 PM
To: bar@asmlawyers.com; 'Peter Clinco' <peter@clinco.net>
Cc: 'Hallie Von Rock' <hvr@asmlawyers.com>; 'Ethan Preston' <ep@eplaw.us>; 'Iain A. Macdonald' <iMac@MacFern.com>
Subject: RE: [Cosio v. IPAA] Notice of Material Breach

Dear Brent, Hallie and Ethan:

As you are undoubtedly aware, the United States, the State of California, and the particular cities in which Defendants operate are now under federal, state and local emergency orders banning non-essential commercial activities due to the Coronavirus Pandemic. There are further “stay in place orders” for the cities of San Francisco and Los Angeles, where my clients primarily do business. The seriousness of the situation is underscored by the severe disruption of many court systems and the closure of public schools in California and New York.

The unintended and unforeseeable consequence of this governmental action has resulted in Defendants being forced to cancel all classes in Los Angeles, San Francisco, and New York. All employees were furloughed, except for some administrative employees in New York.

Defendants intend to resume making settlement payments when their business resumes.

The *delay* in the March 5, 2020 payment, and likely the next few payments, is solely the result of “an irresistible, superhuman cause” within the meaning of Civil Code § 1511(2), which provides:

The want of performance of an obligation, or of an offer of performance, in whole or in part, or any delay therein, is excused by the following causes, to the extent to which they operate:

* * *

2. When it is prevented or delayed by an irresistible, superhuman cause, or by the act of public enemies of this state or of the United States, unless the parties have expressly agreed to the contrary;

(Emphasis added.)

Defendants hope that Plaintiff’s counsel will join in our effort to save the settlement. Defendants propose to ask the Court on Monday, March 23, 2020 to adjust the payment schedule to reflect the reality of the current state of national, state and local emergency by pushing back the monthly payments starting March 5, 2020 for four (4) months. Should circumstances change, either party can petition the Court to address the unforeseen issue(s).

Otherwise, Defendants have no choice other than

to ask the court to reject or revoke the settlement on the grounds of impossibility, seek the return of their \$200,000 good faith deposit and ask the Court to set the matter for trial.

Let me know your thoughts.

Kindest Regards,

Peter and Brad

Brad S. Kane

Kane Law Firm

[1154 S. Crescent Hts. Blvd.](#)

[Los Angeles, CA 90035](#)

Tel: (323) 697-9840

Fax: (323) 571-3579

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From: bar@asmlawyers.com
<bar@asmlawyers.com>
Sent: Wednesday, March 18, 2020 4:16 PM
To: 'Peter Clinco' <peter@clinco.net>
Cc: 'Hallie Von Rock' <hvr@asmlawyers.com>;
'Ethan Preston' <ep@eplaw.us>; Brad Kane
<bkane@kanelaw.la>; 'Iain A. Macdonald'
<iMac@MacFern.com>
Subject: [Cosio v. IPAA] Notice of Material
Breach

Peter,

Iain reports that Defendants have breached their promise under the settlement agreement to make the first \$40k payment by March 5, 2020. Please regard this email as notice of breach sufficient to trigger the 10-day period to cure under the settlement agreement.

Given the preliminary approval hearing set for Monday, and given that Defendants have now been in breach for nearly two weeks, Defendants should either deposit immediately, or be prepared to explain to the Court at the hearing why they have failed to do so.

Respectfully,

Brent A. Robinson

Aiman-Smith & Marcy

From: Iain A. Macdonald <iMac@MacFern.com>
Sent: Wednesday, March 18, 2020 3:56 PM
To: Brent Robinson <bar@asmlawyers.com>
Cc: Hallie Von Rock <hvr@asmlawyers.com>;
Ethan Preston <ep@eplaw.us>; Peter Clinco
<peter@clinco.net>; Brad Kane
<bkane@kanelaw.la>
Subject: RE: [Cosio v. IPAA] Status of Trust Fund

Brent, \$200K deposited some time ago remains the balance of the account; \$40,000 deposit not yet made

Iain A. Macdonald

MACDONALD | FERNANDEZ LLP
Turnaround Bankruptcy Insolvency Litigation



[221 Sansome Street](#), Third Floor

San Francisco, CA 94104
Tel: (415) 362-0449 Ext. 203 | Fax: (415)
394-5544

www.macfern.com

Modesto Office

914 Thirteenth Street

Modesto, CA 95354

Tel: (209) 549-7949 | Fax: (209) 236-0172

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From: Brent Robinson <bar@asmlawyers.com>

Sent: Wednesday, March 18, 2020 2:12 PM

To: Iain A. Macdonald <iMac@MacFern.com>

Cc: Hallie Von Rock <hvr@asmlawyers.com>;

Ethan Preston <ep@eplaw.us>; Peter Clinco

<peter@clinco.net>; Brad Kane

<bkane@kanelaw.la>

Subject: [Cosio v. IPAA] Status of Trust Fund

Iain,

As you may know, we have the preliminary approval hearing in this case on Monday. At that time, I would like to be able to appraise the Court on the balance of the trust fund, and confirm that Defendants are making timely payments as promised.

According to the settlement agreement, the trust fund should currently contain \$240,000, with the first \$40k payment having been made by March

5, 2020.

Please reply to confirm both that the current balance is as provided in the agreement, and that the first \$40k payment was timely made.

Respectfully,

Brent A. Robinson

Aiman-Smith & Marcy

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EXHIBIT 4

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO
DEPARTMENT 304

ANGELICA COSIO,

Plaintiff,

v.

INTERNATIONAL PERFORMING ARTS
ACADEMY, LLC, ET AL.,

Defendants.

Case No. CGC-16-551337

TENTATIVE RULING RE PLAINTIFF’S
MOTION FOR PRELIMINARY APPROVAL

TENTATIVE RULING

The Court requests a supplemental filing. Below, the Court identifies issues that should be addressed and raises certain questions.

I. Class Certification

This action was certified as a class action. (See Sept. 11, 2018 Order, 5-7, 20.) The Court generally agrees with Plaintiff’s assertion that there is no need to relitigate the class certification issue. (See Motion, 4 n.4.) However, the Court requires a further clarification of the class definition and its genesis.

1 First, the Court is not clear what the settlement class is. The definition in the Proposed Settlement
2 does not match the definition in the Proposed Notice, which itself uses two different formulations of the
3 definition. (Compare Proposed Settlement ¶ 2.4 [including individuals who were California citizens on or
4 after April 5, 2016]; with Proposed Notice, 3, 6 [including only individuals who were California citizens
5 on April 5, 2016].)¹

6 Second, the Court requests a further explanation of the genesis of the class definition. It does not
7 appear to match the definition laid out in the certification order, but at least one formulation of the class
8 definition does appear to track the definition that the parties derived from the certification order in their
9 contemporaneous proposed class notice. (See Sept. 11, 2018 Order, 5-7, 20; Oct. 15, 2018 Joint
10 Statement re Class Notice, Ex. A at 5; see also Dec. 18, 2018 Order, 1-2.) In short, the Court is seeking to
11 confirm that the settlement class is substantially the same as the certified class.

12 **II. Notice**

13 **A. Process**

14 The Court raises the following issues and questions for the parties to consider with respect to the
15 notice process:

- 16 • Before approving the method of giving notice – i.e., mailed notice combined with a settlement
17 website – the Court should have an understanding of the data available and the costs anticipated in
18 connection with the notice plan as compare to the costs of potential alternative plans.² In that
19 vein, it appears that the parties do not know, and will not know, the state of play in terms of class
20 size and contact information until after preliminary approval. (See Proposed Settlement ¶ 3.1(c)-
21 (d).) At present, the parties should state: (1) Whether Defendants have mailing addresses for all
22 class members; (2) Whether Defendants have email addresses for all class members; and (3) The
23

24
25 ¹ As an aside, it is unclear how citizenship will be verified or if it will be assumed. To the extent the
26 citizenship requirement was only included to avoid removal and is practically unenforceable, it is not
27 clear that the requirement needs to be included in the definition of the settlement class. (See Sept. 11,
2018 Order, 5.) The parties may express their opinions on this issue.

28 ² The anticipated notice cost is \$17,028. (Robinson Decl., Ex. D.) The Court does not have information
as to the cost of email notice or some combination of email and mailed notice – e.g., emails to class
members for whom mailing addresses are not available or for whom mail is returned as undeliverable
without a forwarding address.

1 anticipated costs and benefits of sending mailed notice, emailed notice, and/or some combination
2 of the two (i.e., emailed notice to individuals for whom there are no known mailing addresses).

- 3 • The deadline to respond to the notice (1) should be clarified; and (2) should be at least 60 days
4 after notice is disseminated. (See Proposed Settlement ¶¶ 4.4-4.5; Proposed Order ¶¶ 13-14.) The
5 proposal appears to be as follows: (1) Notice will be mailed 21 days after the preliminary
6 approval order is entered (Proposed Settlement ¶ 4.3); (2) The final approval hearing will be held
7 120 days or more after the preliminary approval order is entered (Proposed Settlement ¶ 5.1); and
8 (3) The response to the notice will be due either 30 days before final approval (Proposed
9 Settlement ¶¶ 4.4-4.5) or 26 court days (Proposed Order ¶¶ 13-14) before final approval. It
10 appears that either proposal will allow adequate time to respond, but to ensure that the Court sets
11 clear deadlines that afford adequate time to respond the parties should submit a revised proposed
12 order, with a copy emailed to this department in Word-editable format, that includes bracketed
13 language that the Court will replace with a date certain. For example, paragraph ten of the present
14 proposed order would provide: “The Settlement Administrator shall issue notice to the class [21
15 calendar days after entry of this order].”
- 16 • There should be a deadline for the administrator to re-mail notice if the notice is returned with a
17 forwarding address. (Compare Proposed Settlement ¶ 4.3(b).)
- 18 • Is it the parties’ position that there is nothing that can be done if notice is returned without a
19 forwarding address because all reasonable efforts to obtain an updated address will have been
20 exhausted before the initial mailing? (Proposed Settlement ¶ 4.3(a)-(b).)
- 21 • Will the parties reject all requests for exclusion that do not strictly comply with the requirements?
22 (See Proposed Settlement ¶ 4.4; Proposed Notice, 7; Proposed Order ¶ 13.) Will the administrator
23 make a reasonable effort to give potential opt-outs an opportunity to cure technical deficiencies?
- 24 • The requirements for objecting are too onerous. (See Proposed Settlement ¶ 4.5.)³ The
25 requirements should be no more onerous than the requirements for opting out. First, objectors are
26

27 ³ This paragraph is based on the provisions in the settlement agreement itself. The Court recognizes that
28 the requirements in the Proposed Notice may supersede those requirements. (See Proposed Order ¶ 14;
Proposed Notice, 8.) The requirements therein are also too onerous. Moreover, the Court requests that
the parties provide one uniform set of requirements across all papers to avoid confusion.

1 not required to file anything with the Court. They should be directed to send their objections to
2 the administrator in the same manner and by the same deadline as is required for opt outs.

3 Second, the Court is not presently persuaded that objectors should be burdened with an obligation
4 to disclose the objections they have submitted in the past, including all of the information required
5 by the Proposed Settlement. Third, the same observations above regarding the requests for
6 exclusion apply equally to objecting. For example, the Court does not intend to approve a notice
7 plan that would discard an objection as invalid because the objector failed to specify whether she
8 would attend the final approval hearing or because an objector described a document but failed to
9 attach it.

10 **B. Substance**

11 The Court raises the following issues and questions for the parties to consider with respect to the
12 notice substance:

- 13 • The parties are asked to confirm that all settlement class members can read English.
- 14 • Each reference to Plaintiff in the Class Notice should be in the singular.
- 15 • The spacing in the Class Notice should be cleaned up, especially around links.
- 16 • Page 1, Header: The header should begin with the case name and number. The words “City and”
17 should be removed.
- 18 • Page 1, Summary Table: “Do Nothing” and “Object” should be discussed separately. However, it
19 should be clear that under either option an individual is electing to participate in the settlement and
20 will be mailed one or more settlement checks if the settlement is approved. The table should state
21 the manner in which a reader can update his or her address and/or direct the reader to the pertinent
22 portion of the notice.
- 23 • Page 3, Section 1; Page 6, Section 9: The notice should define the class once. Defining it twice
24 can create confusion, especially where the definitions are not identical. It would be best to define
25 the class on the front end, and refer back to that class definition as necessary later in the notice.
26 The class definition in the notice also does not match the class definition in the Proposed
27 Settlement. There is no class definition in the Proposed Order. All documents should use a
28 common class definition.

- 1 • Page 3, Section 1, Final Paragraph; Page 11, Section 26: There are two references to updating
2 addresses in the notice. Updating addresses is likely to be important for class members who want
3 to receive both distributions, the latter of which is anticipated to be more than a year in the future.
4 There should be a distinct section of the notice explaining the need to update address information
5 and the mechanism for doing so, which will remain available through the deadline to cash the
6 checks from the final distribution.
- 7 • Page 4, Section 4, Page 6, Section 9: The Court would prefer if the parties did not paraphrase or
8 interpret orders in the notice. For example, class certification was granted only in part. As
9 phrased, the notice may be confusing without disclosing that fact, but explaining it may bog down
10 the notice in a tangential discussion. With respect to section 4, the parties may explain Plaintiff's
11 reasons for pursuing class relief and the fact that class certification was granted in part, as to a
12 specified theory which the parties may describe in the notice. The parties should direct the reader
13 to a way to access the relevant order. The parties should include directions to use the Court's
14 website to access the full docket in this action. (See [https://www.sfsuperiorcourt.org/online-](https://www.sfsuperiorcourt.org/online-services)
15 [services.](https://www.sfsuperiorcourt.org/online-services)) With respect to section 9, the parties should refer to the class definition found earlier in
16 the notice. The parties should then modify the last two sentences to read: "If you are included in
17 the class definition, you are in the Class and will be affected by this Settlement if it is approved
18 unless you opt out."
- 19 • Page 5, Section 8: Plaintiff should state the estimated verdict value of this case. As described in
20 the motion, that figure is \$24 million plus reasonable attorneys' fees and costs.
- 21 • Page 5: The first sentence under "Who is Included in the Settlement" should be removed.
- 22 • Page 6, Second Paragraph, First Sentence; Page 6, Fourth Paragraph: "Pro-rata" means
23 proportional. It does not inform a reader how the pot will be split up. For example, a pro-rata
24 distribution could be based on the proportion of fees each class member paid to Defendants during
25 the class period. Here, it appears that when the parties say pro-rata, they mean equal. If that is the
26 case, the word "pro-rata" should be replaced with "equal." If there is a possibility that there will
27 be a pro rata distribution based on the amounts paid by each class member, that should be
28 disclosed. (See Proposed Settlement ¶ 6.3(d).) Further, the parties should be very careful when

1 providing an estimate of the settlement shares. For example, the estimate here omits the
2 administration costs, which were quoted at around \$17,000.

- 3 • Page 6, Fifth Paragraph: The notice should give the class some idea how much of the recovery
4 will be paid in the first check and how much of the recovery will be paid in the second check, if
5 possible.
- 6 • Page 6, Eighth Paragraph: “33.333%” should be replaced with “one-third.” $.33333 \times 720,000 =$
7 $239,997.6$.
- 8 • Page 8, Section 14: This section should state that class members who do nothing will be mailed
9 their settlement payment at their address of record. It should refer the reader to the section that
10 addresses updating an address.
- 11 • Page 8, Section 17: The parties should clearly disclose the scope of the release. Is it true that the
12 release only extends to “the claims that this Settlement resolves”? What does that mean? The
13 release itself is discussed separately below, but the reader should be able to understand the scope
14 of the release from the notice.
- 15 • Page 10, Section 19: “Even if the Court rejects your objection, you cannot thereafter exclude
16 yourself from the Class” should be changed to “If the Court rejects or overrules your objection,
17 you cannot thereafter exclude yourself from the Class but you will be mailed a settlement payment
18 if the settlement is approved.”
- 19 • Page 10, Section 21, Second Paragraph: This paragraph should be substantially revised or
20 removed. First, the section addressing objecting covers the process for requesting to appear at the
21 final approval hearing. If this section needs to revisit that issue, it should do so by referring the
22 reader to the prior section. Second, the class members should not submit anything directly to the
23 Court. The class members should only send materials to the administrator, which will in turn
24 direct those materials to the parties. The parties will file any documents that should be filed.
- 25 • Page 11, Section 24: “You won’t have to pay these fees and expenses” should be removed. The
26 fees and expenses will be paid from a common fund that would otherwise go to the class.
- 27 • Page 11, Section 26: This section should include directions for accessing the full case file on the
28 Court’s website, a link to which was provided above.

- If the parties make any changes in the settlement in response to this tentative ruling, the parties should also make conforming changes in the notice.

III. Distribution

A. Process

The Court raises the following issues and questions for the parties to consider with respect to the distribution process:

- It is somewhat difficult to follow the interplay between the redistribution of funds from uncashed checks and the two-round distribution process. (See Proposed Settlement ¶ 6.3(e)-(f), (h)-(i).) Specifically, it appears that the parties contemplate a round of re-distributions after each distribution, ending with a cy pres payment. It is unclear whether individuals who fail to cash their check in the first round of distributions will receive a check in connection with the second distribution. The parties are asked to express their opinions on the following approach: (1) The first round of checks are distributed to all participating class members; (2) Uncashed funds return to the pot; (3) The second round of checks are distributed to only those participating class members who cashed their check in the first round, with all remaining funds owed to the class; and (4) As feasible, further checks are sent to dispose of funds that were not claimed through the second round of checks, until a cy pres payment is made. This approach may maximize efficiency in terms of sending checks to class members who will actually receive them, reducing wasted administration expenses. Whatever approach is adopted, it must be clearly explained in the notice and the notice must stress the importance of updating address information to ensure checks are mailed to the correct address.
- The administrator should only make a further distribution of checks to the class members if the amount of remaining funds exceeds the administrative costs so as to make that distribution economically feasible. (Compare Proposed Settlement ¶ 6.3(i).)

B. Substance

The Court's understanding is that the parties intend to distribute the payment to the class in equal shares, unless there is enough information to make a proportional distribution based on the amount each class member paid Defendants. The parties are asked to confirm that this is the approach taken in the

1 Proposed Settlement, the language is somewhat ambiguous as a result of the use of the term pro rata. (See
2 Proposed Settlement ¶ 6.3(d).) As construed, the approach appears generally reasonable. It may be better
3 to predicate any proportional distribution on payments made during the class period, rather than all
4 payments made at any time.

5 **IV. Release**

6 “Released Claims” means “all claims for remedies or relief actually alleged in the Action by
7 Plaintiff, on behalf of herself and the Settlement Class, as of the Effective Date, including but not limited
8 to: all remedies or relief available for violations of California Labor Code section 1702 as alleged, and all
9 remedies or relief available for violations of California Business and Professions Code section 17200 as
10 alleged.” (Proposed Settlement ¶ 2.29.) “Action” “means th[is] certified class action[.]” (*Id.* at ¶ 2.1
11 [this cases name and number, as well as the court in which this action is proceeding, are included in the
12 definition, but omitted here].) This definition is narrowly tailored to this action.

13 The release itself injects ambiguity into the scope of the release. One sentence provides:
14 “Without limiting the foregoing, the Released Claims released pursuant to this Agreement specifically
15 extend to all claims and potential claims that Settlement Class Members do not know or suspect exist in
16 their favor as of or prior to the Effective Date.” (*Id.* at ¶ 7.3.) A subsequent sentence provides:
17 “Notwithstanding the foregoing waiver, nothing in this Section 7.3 shall be construed to release any claim
18 which is not a Released Claim, such as claims arising from the breach of this Agreement, including the
19 warranty in Section 7.1.” (*Ibid.*) The parties are asked to clarify the intended scope of the release in the
20 proposed settlement. (Compare Motion, 6-7 [stating that the class will give a “general release” of only
21 the claims that meet the definition of Released Claims].)

22 **V. Miscellaneous Items**

23 **A. Submission of Financial Data Under Seal**

24 The settlement is premised on an inability to pay. One mechanism by which the inability to pay
25 will be demonstrated is by a requirement that Defendants file certain financial information under seal.
26 (See Proposed Order ¶ 8.) Ostensibly, the Court will then consider that information, to which the class is
27 not privy, to rule on final approval. The parties have not shown that the Court is permitted to allow
28 Defendants to file the relevant information under seal pursuant to the Rules of Court. The parties should

1 either: (1) Show that the information can permissibly be filed under seal pursuant to California law; or (2)
2 Consider alternatives, such as (a) public filing or (b) submission of the information to Plaintiff's Counsel
3 only, after which Plaintiff's Counsel will offer the Court an opinion on Defendants' ability to pay.

4 **B. Realize CPA, LLP's Costs**

5 The Court asks Plaintiff to clarify whether Plaintiff intends to seek to recover any costs she owes
6 to Realize CPA, LLP from the common fund. (See Proposed Settlement ¶ 9.3.) If so, the notice should
7 clearly explain the mechanics at play. (See Proposed Notice, 6-7.) The question of whether Plaintiff is
8 permitted to recover those costs from the common fund will be deferred until final approval.

9 **C. Settlement Administrator**

10 The parties ask the Court to approve Atticus Administration as the administrator. The parties
11 should provide sufficient information, such as a declaration from the administrator, to demonstrate that
12 the administrator is qualified to fill that role.

13 **D. Proposed Order**

14 First, the Court does not intend to approve the cy pres beneficiary at the preliminary approval
15 stage. (Compare Proposed Order ¶ 15.) The Court will consider the propriety of the cy pres beneficiary
16 at final approval on a record that includes evidence from a person with personal knowledge to establish
17 that the proposal is consistent with any applicable law.

18 Second, the parties have not cited authority supporting their request for the Court to stay other
19 cases. (Compare Proposed Order ¶ 16.)

20 Third, it is unclear what paragraph 17 means or why the Court should enter such a ruling at
21 preliminary approval. (See Proposed Order ¶ 17.)

22 As noted above, the parties should submit a Word-editable proposed order. That order should
23 remove these paragraphs or the supplemental filing should include a brief explaining why any of these
24 paragraphs should be included in the order. That order should also include a class definition.

25 **E. Permanent Injunction Against Class Members**

26 The Court is unlikely to issue an injunction against other actions or against the filing of other
27 actions by class members. (See Proposed Settlement ¶ 5.1(k), (m).) If judgment is entered, it will have
28 res judicata effect. Class members should not be subject to contempt sanctions, especially without actual

1 notice. Moreover, the parties have not demonstrated that this court has jurisdiction to enjoin other court
2 proceedings. However, the Court will not resolve questions regarding the proposed final approval order
3 or proposed judgment until final approval.

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EXHIBIT 5

Cosio v. International Performing Arts Showcase, et al., Case No. CGC-16-551337
Superior Court of California
County of San Francisco

IF YOU ENTERED INTO A CONTRACT WITH INTERNATIONAL PERFORMING ARTS SHOWCASE, INTERNATIONAL PERFORMING ARTS ACADEMY LLC, AND/OR LION MANAGEMENT GROUP, INC. (“IPAS”), AND PAID ON THAT CONTRACT ON OR AFTER APRIL 6, 2012, SO THAT YOU OR YOUR CHILD (OR OTHER BENEFICIARY) COULD PARTICIPATE IN A SHOWCASE OPERATED BY IPAS, A PROPOSED CLASS ACTION SETTLEMENT MAY AFFECT YOUR RIGHTS.

A court authorized this notice. This is not a solicitation from a lawyer.

A settlement has been reached in the class action lawsuit filed against International Performing Arts Academy, LLC, Lion Management Group, Inc., and Larry and Lena Lionetti (collectively, “Defendants”). A description of the lawsuit is included at Page **ZX**.

The proposed settlement provides for you to receive money in exchange for releasing your claims against the Defendants. Your legal rights are affected, and you have a choice to make now:

YOUR LEGAL RIGHTS AND OPTIONS IN THIS LAWSUIT	
DO NOTHING	<p>Stay in this lawsuit. Receive a share of the settlement proceeds. Give up certain rights.</p> <p>By doing nothing, you participate in the proposed settlement reached in this lawsuit, which may result in money and other benefits for you and other Class members, including the mailing of one or more settlement checks to your address if approved. However, by doing nothing, you give up any right(s) to sue Defendants separately for the same legal claims asserted in this lawsuit. Because checks will be sent to your address, you should verify also your address on the following page.</p>
OBJECT	<p>Stay in this lawsuit. Object to the proposed settlement.</p> <p>By objecting, you will remain in this lawsuit, and raise concerns you may have about the proposed settlement to the Court’s attention. If your objection is overruled, you will still participate in the proposed settlement reached in this lawsuit, which may result in money and other benefits for you and other Class members, including the mailing of one or more settlement checks to your address if approved. If your objection is overruled, you will still give up any right(s) to sue Defendants separately for the same legal claims asserted in this lawsuit. Because checks will be sent to your address, you should verify also your address on the following page.</p>
ASK TO BE EXCLUDED	<p>Get out of this lawsuit. Get no benefits from it. Keep certain rights.</p> <p>If you ask to be excluded from this lawsuit, you won’t share in the money and other benefits provided in the proposed settlement. By asking to be excluded from this lawsuit, you keep any right(s) to sue Defendants separately for the same legal claims asserted in this lawsuit. However, you may lose the right to sue Defendants separately if you do not do so within the statute of limitations.</p>

Your options are explained in more detail in this notice. To object, or to ask to be excluded, you must act before **ZX**.

WARNING: Verify that your mailing address is correct. If you choose to do nothing or object, any settlement proceeds will be sent to your mailing address as it appears here:

ZX Name
ZX Address
ZX City, State, Zip

If your name and/or address listed on this Notice needs to be updated, you must complete the enclosed Change of Name or Address Form and return it to the Settlement Administrator with a postmarked date of not later than **ZX**.

It may take up to two years to complete all the distributions provided for by the settlement agreement. If you need to update your address again within that time, you must either (1) email your updated address to **ZX**, or (2) send an "Address Update" in the form of a letter sent by mail to: *Cosio v. IPAA c/o Atticus Administration*, P.O. Box 1440, Minneapolis, MN 55440, stating that you want to update your address for *Cosio v. International Performing Arts Academy, LLC, et al.* Be sure to include your name, new address, telephone number, and email address, and sign the letter.

WHAT THIS NOTICE CONTAINS

Basic Information.....	4
1. Why did I get this notice?	4
2. What is this lawsuit about?	4
3. What is a class action and who is involved?	5
4. Why is this lawsuit a class action?	5
The Claims In The Lawsuit.....	5
5. What does the lawsuit complain about?	5
6. How do Defendants answer?.....	6
7. Has the Court decided who is right?.....	6
8. What was the Plaintiff asking for?	6
Who Is Included In The Settlement.....	7
9. Am I part of this Settlement?	7
10. I'm still not sure if I am included.....	7
The Proposed Settlement	7
11. What would I receive in the Settlement?.....	7
12. What would I give up in the Settlement?	9
13. Why isn't there more money?.....	9
Your Rights And Options	9
14. What happens if I do nothing at all?	9
15. Why would I ask to be excluded?	9
16. How do I ask the Court to exclude me from the Settlement?.....	9
17. When will the Court decide whether to finally approve the Settlement?.....	11
The Lawyers Representing You.....	11
18. Do I have a lawyer in this case?.....	11
19. Should I get my own lawyer?	12
20. How will the lawyers be paid?.....	12
21. What do Plaintiff and Class Counsel think of this Settlement?.....	12
Getting More Information	13
22. Are more details available?	13

BASIC INFORMATION

1. Why did I get this notice?

A proposed class action settlement (the “Settlement”) has been reached between plaintiff Angelica Cosio (“Plaintiff”) and International Performing Arts Academy, LLC, Lion Management Group, Inc., and Larry and Lena Lionetti (collectively, “Defendants”) in the class action pending in San Francisco Superior Court, case number CGC-16-551337 (the “Action”), brought on behalf of the following individuals (the “Class”):

All natural persons who were California citizens at the time Cosio's original complaint was filed (April 5, 2016) who (a) signed a contract so that the Class member, the Class member's child (or other beneficiary) could participate in a showcase operated by International Performing Arts Showcase (IPAS); (b) paid IPAS for such contract; and (c) such payment was made on or after April 5, 2012; (d) excluding any such payments that were (i) a percentage of the income earned by the Class member's beneficiary in the entertainment industry; or (ii) consisted entirely of reimbursement for out-of-pocket costs actually incurred by IPAS on behalf of the Class member's beneficiary for services rendered by an independent third party.

Judge Anne-Christine Massullo of the Superior Court of California in and for the City and County of San Francisco (the “Court”) has preliminarily approved the Settlement. You have received this notice because Defendants’ records indicate that you are a member of the Class. This notice is designed to provide you with a brief description of the Action, inform you of the terms of the proposed Settlement, and discuss your rights and options in connection with the Action and the Settlement, including how you can object to the Settlement or elect not to participate in the Settlement. Unless you submit a timely and valid Request for Exclusion, if the Settlement is finally approved by the Court, it will be binding upon you.

If your name and/or address listed on this Notice needs to be updated, you must complete the enclosed Change of Name or Address Form and return it to the Settlement Administrator with a postmarked date of not later than ZX.

2. What is this lawsuit about?

Plaintiff’s claims in this lawsuit concern whether Defendants operate an Advance Talent Fee Representation Service (“AFTRS”).

California Labor Code section 1702.1(a) defines an AFTRS as follows:

A person who provides or offers to provide, or advertises or represents itself as providing, an artist, directly or by referral to another person, with one or more of the following services described below, provided that the person charges or receives a fee from or on behalf of an artist for photographs, Internet Web sites, or other reproductions or other promotional materials as an artist; lessons, coaching, seminars, workshops, or similar training for an artist; or for one or more of the

following services:

- (1) Procuring or attempting to procure an employment opportunity or an engagement as an artist.
- (2) Procuring or attempting to procure an audition for an artist.
- (3) Managing or directing the development of an artist's career.
- (4) Procuring or attempting to procure a talent agent or talent manager, including an associate, representative, or designee of a talent agent or talent manager.

3. What is a class action and who is involved?

In a class action lawsuit, one or more people called “Class Representatives” (in this case Angelica Cosio) sue on behalf of other people who have similar claims. The people together are a “Class” or “Class Members.” The person who sued is called Plaintiff. The companies and individuals sued (in this case, International Performing Arts Academy, LLC, Lion Management Group, Inc., and Larry and Lena Lionetti) are called Defendants. One court resolves the issues for everyone in the Class—except for those people who choose to exclude themselves from the Class.

4. Why is this lawsuit a class action?

The Court previously partially granted class certification pursuant to California Code of Civil Procedure 382, which governs class actions in California. Specifically, the Court certified this case as a class action based on Plaintiff's theory that Defendants violate the law by operating as an AFTRS. More information about why the Court certified the class is in the Court's Order, which is available at the Superior Court of California, City and County of San Francisco at <https://www.sfsuperiorcourt.com/online-services>, or at the Settlement website at ZX.

THE CLAIMS IN THE LAWSUIT

5. What does the lawsuit complain about?

The class action claims that were certified in this lawsuit allege that Defendants operated an AFTRS by receiving payments for artists to participate in a Showcase, and that such Showcase purportedly provided, or attempted to provide an artist, in addition to talent training, counseling, lessons and the like, with one or more of the following prohibited services described below:

- (1) Procuring or attempting to procure an employment opportunity or an engagement as an artist; or
- (2) Procuring or attempting to procure an audition for an artist; or

- (3) Procuring or attempting to procure a talent agent or talent manager, including an associate, representative, or designee of a talent agent or talent manager.

You can get a copy of the Plaintiff's Fifth Amended Class Action Complaint at the Superior Court of California, County of San Francisco, or at the Settlement website at ZX, or through Class Counsel, who can be reached at (510) 817-2711.

6. How did Defendants answer?

Defendants denied each and every allegation of Plaintiff's complaint, assert that they did nothing wrong, and say that they complied with California law which permits talent services that comply with California Labor Code section 1701 et. seq. Specifically, Defendants maintain that they do not operate an AFTRS, but instead offer talent training/counseling and host talent competitions that are not auditions, work opportunities, or agent signings. You can get a copy of Defendants' Answer to the Class Action Complaint at the Superior Court of California, County of San Francisco, or at the Settlement website at ZX, or through Class Counsel Aiman-Smith & Marcy, who can be reached at (510) 817-2711 or by email at hvr@asmlawyers.com, or Preston Law Offices, who can be reached by email at ep@eplaw.us, and/or at the following website: <http://eplaw.us/>.

7. Has the Court decided who is right?

The Court did not reach the merits of Plaintiff's complaint, or Defendants' answer, has not decided whether Plaintiff or Defendants are correct, and under the Settlement, the Court will not decide who was right.

8. What was the Plaintiff asking for?

Plaintiff asked in the complaint for Defendants to pay for the fees paid by class members for participation in Showcase, and that applicable fees should be trebled as set forth under the Labor Code, and to pay for Class Counsel's attorney's fees and costs. Plaintiff had also asked that Defendants be stopped from engaging in the alleged practices described above in the future. Plaintiff has estimated potential value of this case at trial is \$24 million, plus Plaintiff's reasonable attorneys' fees and costs.

WHO IS INCLUDED IN THE SETTLEMENT

9. Am I part of this Settlement?

The Court certified the class as defined in section 1 on page **ZX**.

If you are included in the class definition, you are in the Class and will be affected by this Settlement if it is approved unless you opt out.

10. I'm still not sure if I am included.

If you are still not sure whether you are included, you can get free help by calling or writing to the lawyers in this case, at the phone number or address listed on Page **ZX**.

THE PROPOSED SETTLEMENT

You need to decide whether to participate in the proposed Settlement. If you do not want to participate, you must ask to be excluded by **ZX**.

11. What would I receive in the Settlement?

Defendants have promised to pay a total of \$720,000, with payment to be made in monthly installments over 14 months.

From that amount, Defendants will pay to each participating Class Member equal share after deducting the costs of settlement administration, the Plaintiff's Class Representative Enhancement Payment, Class Counsel's reasonable attorneys' fees and reasonable litigation costs incurred on behalf of the Class, and additional specified third-party litigation costs. (However, if sufficient information is available, each participating Class Member will instead receive a share in proportion to the amount they paid to Defendants within the Class Period, after the previously-listed deductions are made.) The Settlement provides for a Class Representative Enhancement Payment of up to \$10,000 payable to Plaintiff, reasonable attorneys' fees of up to \$240,000 payable to Class Counsel, reasonable litigation costs of up to \$60,000 also payable to Class Counsel, and the payment of additional litigation costs associated with a third-party's compliance with subpoenas.

The amount each Class Member receives will depend on whether any Class Members elect not to participate in the Settlement; and the amounts awarded by the Court for the payment to Plaintiff for the Class Representative Enhancement Payment, to Class Counsel for their reasonable attorneys' fees and litigation costs, to the Settlement Administrator for the costs of administering the Settlement, and to Realize CPA, LLC for litigation costs associated with their compliance with Class Counsel's subpoenas. The precise amounts will be calculable once all timely and valid Requests for Exclusion are received, and the number of Participating Class Members is identified.

Class Members who participate in the Settlement will receive their share of the settlement after final Court approval of the Settlement. With each distribution, Class Members who fail to cash their checks within 90 days will be excluded from subsequent distributions, and any funds they would have

QUESTIONS? Call (510) 817-2711

otherwise received will be distributed to the rest of the Class in the following distributions. The first distribution will occur 21 days after the Settlement receives final approval, a final judgment is entered, and all rights to appeal or review are exhausted or after any appeal or review has been resolved in favor of the Settlement. The second distribution will occur within 21 days after Defendants' last scheduled payment under the Settlement. Additional distributions will then be made until the amount of funds available for distribution no longer exceeds the cost of making an additional distribution. After the last distribution is made, any remaining funds will be donated to the BizParentz Foundation, a non-profit corporation providing education, advocacy, and charitable support to parents and children engaged in the entertainment industry.

By way of example only, assume that no Class Member elected not to participate in the Settlement, that all payment amounts sought were awarded, that the Settlement Administrator's costs of administration are \$17,028, and that Realize CPA, LLC received nothing for its litigation costs, which leaves a net distribution fund of approximately \$392,972. Assuming there are 1,100 participating Class Members, this would result in each Class Member being sent a check for \$357.25 in the first distribution. Assuming 25% of participating class members fail to cash their check from the each distribution, and that the costs of subsequent distributions is \$10,000 per distribution, then each participating Class Member would be mailed a check for \$106.96 in the second distribution, and a check for \$19.49 in the third distribution. After the third distribution, a total of \$3,015.19 of undistributed settlement funds would remain, which is less than the assumed cost of another distribution, so that amount would then be donated to the BizParentz Foundation.

In addition to paying money to the Class, Defendants have agreed that after the Showcase scheduled for October 2019, Defendants will not operate Showcase or any other Advance Fee Talent Representation Service as defined in California Labor Code § 1702 *et seq.*

In addition to participating in the Settlement as a Class Member, the Plaintiff will seek approval from the Court for a payment of \$10,000 in recognition of her efforts and hard work in prosecuting the Action on behalf of Class Members, undertaking the risk of liability for attorneys' fees and expenses in the event she was unsuccessful in the prosecution of the Action, and for her Complete and General Release she is granting as part of the Settlement. If awarded by the Court, this payment, which will be paid in addition to Plaintiff's individual share of the settlement, will be made out of the total paid to the Class by Defendants under the Settlement.

Class Counsel have represented and continue to represent the Class on a contingency-fee basis. That means that attorneys' fees are paid only if money is recovered for the Class. It is common to award attorneys' fees as a percentage of the settlement amount negotiated by the attorneys for the Class. As part of the final approval hearing, Class Counsel will request up to \$240,000 for their attorneys' fees (representing one-third of the Total Settlement Amount) and up to \$60,000.00 for their costs incurred in connection with their work in the Action. Defendants have agreed to not oppose these payments. Class Members will not be required to pay Class Counsel for any other attorneys' fees, costs or expenses out of their own pockets if the Settlement Agreement and the fee request are finally approved by the Court. Payments of Class Counsel's attorneys' fees and litigation costs, as approved by the Court, will be made out of the total paid to the Class by Defendants under the Settlement.

Payments for the reasonable costs of administering the Settlement, including the Settlement Administrator's fees and expenses, will be made out of the total paid to the Class by Defendants under the Settlement.

You can get a copy of the Settlement Agreement at the Settlement website at ZX, or through Class Counsel Aiman-Smith & Marcy, who can be reached at (510) 817-2711 or by email at hvr@asmlawyers.com, or Preston Law Offices, who can be reached by email at ep@eplaw.us, and/or at the following website: <http://eplaw.us/>.

12. What would I give up in the Settlement?

In exchange for the benefits listed above, participating Class Members will give up their right to sue Defendants separately for the same legal claims asserted in this lawsuit.

13. Why isn't there more money?

Defendants claim they lack sufficient funds or assets to pay more than what is required in this proposed Settlement. After two years of efforts to test and investigate that claim, Plaintiff and Class Counsel have concluded that the proposed Settlement is the best possible outcome given Defendants' financial condition and the Defendants' defenses. As part of the Settlement, Defendants are required to submit comprehensive financial disclosures under penalty of perjury to the Court, and have guaranteed that those financial disclosures will be truthful, accurate, and complete.

YOUR RIGHTS AND OPTIONS

You have to decide whether to participate in the Settlement or ask to be excluded by ZX.

14. What happens if I do nothing at all?

By doing nothing you are staying in the Class and participating in the proposed Settlement. You will then mailed settlement checks with each distribution at your address. Because checks will be sent to your address, you should verify your address is correct, and update your address as appropriate according to the instructions on Page 2 of this Notice.

If you stay in, you will not be able to sue, or continue to sue, Defendants—as part of any other lawsuit—about the same legal claims that are the subject of this lawsuit.

15. Why would I ask to be excluded?

If you exclude yourself from the Settlement—which also means to remove yourself from the Settlement, and is sometimes called “opting-out” of the Settlement— you: (1) will not be legally bound by the Settlement or the Court's judgments in this class action; (2) will keep any rights you may have to sue Defendants for the legal claims that are or could have been included in this lawsuit or to bring a claim before the Labor Commissioner; and (3) won't get any money or benefits from the Settlement.

16. How do I ask the Court to exclude me from the Settlement?

To ask to be excluded, you must either (1) email your request to be excluded to ZX, or (2) send an “Exclusion Request” in the form of a letter sent by mail to: Cosio v. IPAA c/o Atticus

QUESTIONS? Call (510) 817-2711

Administration, P.O. Box 1440, Minneapolis, MN 55440, stating that you want to be excluded from *Cosio v. International Performing Arts Academy, LLC, et al.* Be sure to include your name, address, telephone number, email address, and a statement you wish to be excluded, and sign the letter. You must email or postmark your opt out **by ZX**.

17. If I do not ask to be excluded, can I still sue the Defendants for the same thing later?

No. Unless you exclude yourself from the Settlement, you give up the right to sue Defendants for the following claims:

As of the Effective Date of the Agreement, each Settlement Class Member shall be deemed to have fully, finally and forever released the Defendants from all claims for remedies or relief actually alleged in the Action by Plaintiff, on behalf of herself and the Settlement Class, as of the Effective Date, including but not limited to: all remedies or relief available for violations of California Labor Code section 1702 as alleged, and all remedies or relief available for violations of California Business and Professions Code section 17200 as alleged.

18. How can I object to this Settlement?

If you are a Class Member, you may object to the proposed Settlement in writing if you do not like any part of it. You must give reasons why you think the Court should not approve it. You can also object to the Class Representative Enhancement Payment. You can also object to Class Counsel's request for attorneys' fees and costs. The Court will consider your views.

To object, you must either (1) email your objection to ZX, or (2) send an "Objection" in the form of a letter sent by mail to: *Cosio v. IPAA c/o Atticus Administration*, P.O. Box 1440, Minneapolis, MN 55440, stating that you want to object to the proposed settlement in *Cosio v. International Performing Arts Academy, LLC, et al.* Be sure to include your name, address, telephone number, email address, and a statement describing their objections to the proposed settlement, and sign the letter. You must email or postmark your objection **by ZX**.

You may also ask the Court for permission to speak at the Fairness Hearing. To do so, you must either (1) email your request to ZX, or (2) send an "Notice of Intention to Appear in *Cosio v. IPAA*." in the form of a letter sent by mail to: *Cosio v. IPAA c/o Atticus Administration*, P.O. Box 1440, Minneapolis, MN 55440, stating that you want to address the Court regarding the proposed settlement in *Cosio v. International Performing Arts Academy, LLC, et al.* Be sure to include your name, address, telephone number, email address, and a statement that you wish to address the Court regarding the proposed settlement in *Cosio v. International Performing Arts Academy, LLC, et al.*, and sign the letter. You must email or postmark your request **by ZX**.

If the Court overrules your objection, you will be bound by the terms of the Settlement.

19. What is the difference between objecting and excluding?

Objecting tells the Court that you do not like the Settlement and it should not be approved. You can only object if you stay in the Class. If the Court rejects or overrules your objection, you cannot thereafter exclude yourself from the Class but you will be mailed a settlement payment if the settlement is approved. Excluding yourself is telling the Court that you do not want to be part of the Class. If you exclude yourself, you have no basis to object, because the case no longer affects you.

20. When will the Court decide whether to finally approve the Settlement?

The Court will hold a final approval hearing on ZX, 2020, at ZX, in Department 304 of the California Superior Court in and for the City and County of San Francisco, 400 McAllister Street, San Francisco, California 94102, to determine whether the Settlement should be finally approved as fair, reasonable, and adequate. The Court will also be asked to approve the requests for the Class Representative Enhancement Payment, the payments for the Class Counsel's Attorney Fees and Class Counsel's Costs, and the Settlement Administration Costs.

The hearing may be postponed without further notice to the Class. It is not necessary for you to appear at this hearing. If you have submitted an objection and indicated that you intend to appear in the manner set forth above, you may appear at the hearing and be heard. Class Members are advised to contact the Settlement Administrator or check the Court's online docket at <https://sfsuperiorcourt.org/online-services> to confirm the date has not been changed.

21. Do I have to attend the hearing?

No. Class Counsel will answer any questions the Court may have, but you may attend at your own expense. If you send an objection, you do not have to go to court to talk about it. As long as you emailed or mailed your written objection on time, the Court will consider it. You may also have your own lawyer attend at your expense, but it is not necessary to hire a lawyer.

If you want to attend the hearing and address the Court, you should follow the instructions in Section 18, page ~~ZX~~ of this Notice.

THE LAWYERS REPRESENTING YOU

22. Do I have a lawyer in this case?

The Court decided that the law firms of Aiman-Smith & Marcy, of Oakland, California, and Preston Law Offices, of Dallas, Texas, are qualified to represent you and all Class Members. The law firms are called "Class Counsel." The lawyers at Aiman-Smith & Marcy and Preston Law Office are

QUESTIONS? Call (510) 817-2711

experienced in handling similar cases against other companies.

23. Should I get my own lawyer?

You do not need to hire your own lawyer because Class Counsel is working on your behalf. But, if you want your own lawyer, that is your right. If you obtain your own lawyer, you can ask him or her to appear in Court for you if you want someone other than Class Counsel to speak for you. If you obtain your own lawyer, you may be responsible for paying for his or her services.

24. How will the lawyers be paid?

As part of the Settlement, Class Counsel may request to receive compensation for their fees and expenses. If the Court grants Class Counsel's request, the fees and expenses would be deducted from any money obtained for the Class.

25. What do Plaintiff and Class Counsel think of this Settlement?

Plaintiff, as Class Representative, and Class Counsel recognize the expense and length of continued proceedings necessary to litigate their disputes through trial and any possible appeals. Plaintiff and Class Counsel have also taken into account the uncertainty and risk of the outcome of further litigation, as well as the difficulties and delays inherent in such litigation. Plaintiff and Class Counsel are likewise aware of the burdens of proof necessary to establish liability for the class asserted in the Action, both generally and in response to Defendants' defenses thereto, and the difficulties in establishing damages for Class Members. Plaintiff and Class Counsel have also taken into account Defendants' agreement to enter into a settlement that confers substantial relief upon Class Members. Based on the foregoing, Plaintiff and Class Counsel have determined that the Settlement as set forth in the Settlement Agreement is a fair, adequate and reasonable Settlement and is in the best interests of Class Members.

GETTING MORE INFORMATION

26. Are more details available?

For additional information about this action, you may examine the court papers filed in this lawsuit online at <https://sfsuperiorcourt.org/online-services> as follows:

1. On the first row entitled “Case Query,” select the dark blue “Access Now” button on the right-hand side.
2. To confirm you are not a robot, click on the check-box, and then follow the on-screen instructions.
3. Once the “Civil Case Information Search” screen appears, enter the case number in the box (“CGC-16-551337”) and then select the “Search” button.
4. A new window or tab will appear. Along the upper portion of the window or tab are links to view the following portions of the Court’s docket: Register of Actions, Parties, Attorneys, Calendar, Payments, and Documents.
5. The Register of Actions page will allow you to review and download all documents filed in this action. By default, those documents appear in reverse chronological order grouped 10 documents per page, and include a link on the right-hand side titled “View” that allow you to review and download the filings of your choosing. You may also sort documents by chronological order, by title, and by amount of filing fee paid. You may also change the number of documents or “entries” shown. You may also use the search function on the upper right to search for specific words or phrases.
6. The Calendar page will show you all hearings in the case, including the updated date and time of the Final Approval Hearing.

Please do not contact the Court or the Court Clerk about this Notice.

Selected documents are also available for download and review at the Settlement website at ZX.

You may also seek advice and guidance of your own attorney at your own expense.

You may also speak to Class Counsel:

Hallie Von Rock
AIMAN-SMITH & MARCY
7677 Oakport Street, Suite 1150
Oakland, CA 94621
Tel: 800-798-8498(toll free) or 510-817-2711
Fax:510-562-6830
Website: www.asmlawyers.com
Email: hvr@asmlawyers.com

Ethan Preston
PRESTON LAW OFFICES
4054 McKinney Avenue, Suite 310
Dallas, Texas 75204
Tel: 972-564-8340
Fax: 866-509-1197
Email: ep@eplaw.us

DATE: May 4, 2020

QUESTIONS? Call (510) 817-2711

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EXHIBIT 6



**FILED
ALAMEDA COUNTY**

JAN 22 2019

CLERK OF THE SUPERIOR COURT

By  Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ALAMEDA

LAURA BARTONI, et al,

Plaintiffs,

v.

AMERICAN MEDICAL RESPONSE WEST,

Defendant.

No. RG08-382130

ORDER (1) GRANTING PLAINTIFFS' MOTION TO ENFORCE SETTLEMENT AGREEMENT; (2) GRANTING PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT (3) REQUIRING MOTION FOR APPROVAL OF CLASS NOTICE; AND (4) SHORTENING TIME FOR MOTION TO STAY

Date: 1/18/19
Time: 11:00 a.m.
Dept.: 21

The Motion of Plaintiffs to enforce the mediator's proposal that became a written agreement on or about 9/28/18 (the "Agreement") and for preliminary approval of class action settlement came on for hearing on 1/18/19, in Department 21 of this Court, the Honorable Winifred Smith presiding. Counsel appeared on behalf of Plaintiff and on behalf of Defendant. After consideration of the points and authorities and the evidence, as well as the oral argument of counsel, IT IS ORDERED: The Motion of Plaintiffs to enforce settlement agreement under CCP

1 664.6 is GRANTED. The Motion of Plaintiffs for preliminary approval of class action
2 settlement is GRANTED.

3
4 IDENTIFYING THE TWO SEPARATE MOTIONS

5 Plaintiffs filed a single motion for preliminary approval of class action settlement, but
6 there are actually two separate and distinct motions.

7
8 First, there is a motion to enforce settlement agreement under CCP 664.6 in which the
9 court resolves whether the Agreement is an enforceable settlement agreement between the
10 Plaintiff class and Defendant AMR. On this motion the court is deciding a contested matter
11 between the parties. The plaintiff class must demonstrate that the agreement was in writing, that
12 it was signed by the parties, and that it states the material terms of an agreement.

13 Second, there is a motion for preliminary approval of class action settlement under CRC
14 3.769(c), in which the court decides whether the proposed settlement is sufficiently adequate to
15 move to class notice and motion for final approval. On this motion, the court is acting as a
16 fiduciary for the absent class members, both ensuring that the class notice procedure provides
17 due process and that the terms of the proposed settlement are reasonably “fair, adequate and
18 reasonable.” (*Cellphone Termination Fee Cases* (2009) 180 Cal.App.4th 1110, 1117.) The court
19 is not giving final approval to the proposed settlement.
20

21
22 EVIDENCE

23
24 AMR filed an objection to evidence regarding statements in the Konecky declaration filed
25 11/16/18 regarding the amount of fees incurred and costs expended. The objections are
26

1 OVERRULED. Konecky states at para 1 that he is familiar with the case. The objections go to
2 weight, not admissibility. The court is not deciding fees and costs in these orders.

3 At the hearing on 1/18/19, the parties raised the issue of whether mediation
4 confidentiality (Evid Code 1115) applies to communications made after the parties had agreed to
5 a mediator's proposal but while they were trying to negotiate the terms of a detailed agreement.
6 The objections to evidence regarding the post-Agreement communications are OVERRULED.
7

8 The parties had an all-day mediation session on 9/11/18, mediator Ron Sabraw made a
9 mediator's proposal on 9/14/18, and the mediator informed the parties that they had an agreement
10 on 9/26/18. (Konecky Dec., para 17.) The parties then signed the mediator's proposal and it
11 became the Agreement. (Kun Dec., para 7; Rowekamp Dec., para 2.) As discussed below, the
12 Agreement is enforceable under CCP 664.6. The signing of the Agreement on or about 9/26/18
13 was the end of the mediation. (Evid. Code 1125(a)(1).) The subsequent negotiations regarding
14 the terms of a detailed agreement were not part of the mediation.
15

16 The Agreement stated that the parties shall consult with the mediator if they are unable to
17 agree on the language of a subsequent detailed agreement. There is no indication in the record
18 that the mediator was consulted in the disputes that arose after the signing of the Agreement.
19 Assuming that the mediator was involved, then the mediation that began on 9/11/18 and ended
20 with the signing of the Agreement was one mediation and the mediator's efforts to help the
21 parties draft a superseding detailed written agreement was a second mediation.
22

23
24 MOTION OF PLAINTIFFS TO ENFORCE SETTLEMENT AGREEMENT.

25 Following a day of mediation on 9/11/18, mediator Ron Sabraw made a mediator's
26 proposal. Both sides accepted and signed the Agreement. The Agreement stated that the parties

1 envisioned that counsel would prepare a superseding detailed agreement but that the Agreement
2 was enforceable under CCP 664.6.

3 CCP 664.6 states: “If parties to pending litigation stipulate, in a writing signed by the
4 parties outside the presence of the court or orally before the court, for settlement of the case, or
5 part thereof, the court, upon motion, may enter judgment pursuant to the terms of the settlement.”

6
7 All the relevant parties signed the Agreement at the conclusion of a day of mediation, the
8 apparent purpose of which was to try to reach an agreement. The circumstances demonstrate that
9 the parties intended the Agreement to be a binding contract.

10 The Agreement can be enforceable even though the parties failed to reach agreement on a
11 detailed agreement. The Agreement expressly states that it would be enforceable under CCP
12 664.6. This is consistent with case law. (*Blix Street Records, Inc. v. Cassidy* (2010) 191
13 Cal.App.4th 39, 48-49 [When parties intend that an agreement be binding, the fact that a more
14 formal agreement must be prepared and executed does not alter the validity of the agreement’].)

15
16 The Agreement can be enforceable even though it was not signed by all the members of
17 the plaintiff class. (*Reed v. United Teachers Los Angeles* (2012) 208 Cal.App.4th 322, 339.)

18 The Agreement can be enforceable even though it was for a class action settlement that
19 required subsequent court approval. (*Blix Street Records, Inc. v. Cassidy* (2010) 191
20 Cal.App.4th 39, 48-49 [“The necessity of bankruptcy court approval for a release in a settlement
21 agreement does not foreclose the ultimate enforceability of the settlement agreement”]; *Provost*
22 *v. Regents of University of California* (2011) 201 Cal.App.4th 1289, 1300 [“His interpretation
23 that the stipulated settlement was “ ‘not [to] be binding ... unless ... Regents ... formally
24 approved’ ” the final settlement agreement carries no weight. The parties’ “objective and outward
25 manifestations” control.”].)

1 The issue is whether the Agreement contained the “material terms” of the agreement.
2 “Although a judge hearing a section 664.6 motion may receive evidence, determine disputed
3 facts, and enter the terms of a settlement agreement as a judgment [citations], nothing in section
4 664.6 authorizes a judge to create the material terms of a settlement, as opposed to deciding what
5 terms the parties themselves have previously agreed upon.” (*Osumi v. Sutton* (2007) 151
6 Cal.App.4th 1355, 1360.)

7
8 AMR sought resolution of the claims against it in this lawsuit. The material terms for the
9 settlement of litigation for a payment of money are (1) defining who is bound by the agreement,
10 (2) defining the scope of the release binding those persons, and (3) the cost to the defendant for
11 obtaining the releases. Injunctive relief is not at issue in this lawsuit.

12 Who is bound by the Agreement. The Agreement states that it applies to the “Plaintiff
13 class.” The plaintiff class has three potential definitions. The plaintiff class can be defined as (1)
14 the class as defined in the class certification order filed 3/23/18 at 4-5, (2) the class as described
15 in the class notice that on 6/29/18 was mailed to the members of the class (Cooley Dec, para 7,
16 Exh A), or (3) the class as alleged in the Fifth Amended Complaint filed on 6/8/18. The court’s
17 tentative decision issued before the 1/18/19 hearing asked counsel to identify any differences and
18 counsel identified none. In the event that there are any differences, the “Plaintiff class” is
19 defined as class as alleged in the Fifth Amended Complaint filed on 6/8/18, as that was the
20 operative pleading when the parties entered into the Agreement.
21

22 The Plaintiff class was defined for various time periods, and the definition was modified
23 in the Agreement at para 1(f) to be from 6/23/04 through 12/1/18. The time frame in the
24 Agreement would supersede the time frames in any earlier definition of the plaintiff class.
25
26

1 AMR notes that the composition of the class could have been changed if persons within
2 the class definition opted-out of the class action. The class notice of 6/29/18 permitted members
3 of the class to opt out of the class. Three persons opted out of the class before the deadline of
4 7/30/18. (Cooley Dec., para 14, Notice para 3.) This was before the mediation and the signing
5 of the Agreement on 9/11/18, so AMR knew or should have known of the three opt outs as of the
6 signing of the Agreement.
7

8 AMR notes that the composition of the class could be changed in the future if persons
9 within the class definition are given a second opportunity to opt-out of the class action. Although
10 “some class action settlements allow a second opt-out opportunity, they are unusual and probably
11 result from the bargaining strength of the class negotiators rather than any due process concerns.”
12 (*Low v. Trump University, LLC* (9th Cir., 2018) 881 F.3d 1111, 1121.) The Agreement does not
13 state that the members of the class will be given a second opportunity to opt out of the class. The
14 court will not insert a term that is “unusual” and is not in the text of the Agreement.
15

16 Scope of the releases. The Agreement states that it is a “global settlement of all claims
17 asserted in [the] complaint, or that could have been asserted, including any derivative claims
18 under the Labor Code, along with any PAGA claims.” This is a release of all claims arising from
19 the facts alleged in the Fifth Amended Complaint even though the complaint might not have
20 asserted a claim based on a statute, regulation or legal theory. “A judgment pursuant to a class
21 settlement can bar subsequent claims based on the allegations underlying the claims in the settled
22 class action. This is true even though the precluded claim was not presented.” (*Villacres v. ABM*
23 *Industries Inc.* (2010) 189 Cal.App.4th 562, 586.) (See also *Carter v. City of Los Angeles* (2014)
24 224 Cal.App.4th 808, 820 [“A general release—covering “all claims” that were or could have
25
26

1 been raised in the suit—is common in class action settlements”].) (See also *Hesse v. Sprint*
2 *Corp.* (9th Cir. 2010) 598 F.3d 581, 590 [factual predicate rule].)

3 AMR asserts that it negotiated for a Civil Code 1542 general release from the named
4 plaintiffs. The Agreement does not include a Civil Code 1542 general release for the named
5 plaintiffs. The court will not insert that release into the text of the Agreement.

6
7 AMR argued at the 1/18/19 hearing that plaintiffs can in a single complaint assert both
8 individualized claims on their own behalf and class claims on behalf of a putative class. This is
9 true, but immaterial. The Fifth Amended Complaint filed 6/8/18 includes the first cause of
10 action for meal periods by the named plaintiffs individually, the second and third causes of action
11 on behalf of the class, and the fourth cause of action on behalf of the LWDA. Other than the
12 meal period claim, the relevant complaint did not appear to allege facts indicating that the named
13 plaintiffs had individualized claims.

14
15 AMR argued at the 1/18/19 hearing that the post-Agreement communications among the
16 parties indicated that the plaintiffs intended the settlement of the case to include a general release
17 by the named plaintiffs. The court applies the general principles of contract interpretation.
18 “Ordinarily, the objective intent of the contracting parties is a legal question determined solely by
19 reference to the contract’s terms.” (*Wolf v. Walt Disney Pictures & Television* (2008) 162
20 Cal.App.4th 1107, 1126.) The Agreement does not include a Civil Code 1542 general release
21 from the named plaintiffs. Post-contract conduct can reveal an ambiguity and be extrinsic
22 evidence regarding interpretation of an ambiguous contract term. (*Wolf*, 162 Cal.App.4th at 1133-
23 1134.) There was no ambiguity. Furthermore, the post-Agreement communications were clear
24 that plaintiffs were proposing terms that varied from the Agreement. The Kaufman email of
25 10/10/18 states, “Wanted to point out a few things, including where we have proposed terms that
26

1 varied from the mediator's proposal ... the release to be provided by the representative
2 plaintiffs." (Kun Dec., Exh C.)

3 AMR argued at the 1/18/19 hearing that counsel for the class willfully withheld
4 information that plaintiff Murray had potential individual discrimination and retaliation claims.
5 The Fifth Amended Complaint frames the claims at issue in this case. AMR asserts that
6 opposing counsel had a duty to disclose the possibility of a separate lawsuit when negotiating the
7 resolution of this lawsuit. Counsel for the class had no obligation to disclose that a named
8 plaintiff might have individual claims. Although the parties were in mediation, counsel for the
9 class was adverse to AMR and had no duty to AMR. (*Fox v. Pollack* (1986) 181 Cal.App.3d
10 954, 960.) This situation is factually distinct from *Aviation Data, Inc. v. American Express*
11 *Travel Related Services Co., Inc.* (2007) 152 Cal.App.4th 1522, where counsel's statements to
12 the court about a proposed settlement had material omissions and misrepresentations. Although
13 attorneys have a duty of honesty and candor to the court, they are not required to disclose all
14 material facts when negotiating with opposing counsel.
15
16

17 Cost to AMR for obtaining the releases. The Agreement states that AMR would pay the
18 total sum of \$17,000,000 plus the employer's portion of any payroll taxes attributable to putative
19 class members arising from the settlement.

20 AMR has no material interest in how that sum is allocated among the members of the
21 class. (*In re Cipro Cases I & II* (2004) 121 Cal.App.4th 402, 417 ["the allocation of the total
22 sum of damages among the individual class members is an internal accounting question that does
23 not directly concern the defendant"].) AMR has no material interest in how much of that sum is
24 paid to counsel as attorneys fees or for costs and how much is paid to the named plaintiffs as
25 incentive payments. (*Sanders v. City of Los Angeles* (1970) 3 Cal.3d 252, 263 [defendants had
26

1 no standing to contest an award of fees where “[t]he liability of defendants was not increased in
2 any way by reason of this award”].) AMR likewise has no interest in the portion of the sum that
3 is allocated to the PAGA claim or to the distribution of the residual from any uncashed checks.
4 The allocation of the funds among the members of the class, the attorneys, the named plaintiffs,
5 and for claims administration is an internal accounting matter that is relevant for the court’s
6 review of the fairness of the proposed class action settlement. AMR’s interest is in how much it
7 has to pay, not in how the funds are allocated.
8

9 At the hearing on 1/18/19, AMR asserted that it intended to file an opposition to the
10 anticipated motion for an award of attorneys’ fees and costs and for service awards. The
11 Agreement does not preclude AMR from filing an opposition. (Compare *Cellphone*
12 *Termination Fee Cases* (2009) 180 Cal.App.4th 1110, 1120 [“Class action settlements frequently
13 contain a “clear sailing” agreement, whereby the defendant agrees not to object to an attorney fee
14 award up to a certain amount”].) The court does not pre-judge the merit of the motion or of any
15 opposition.
16

17 At the hearing on 1/18/19, AMR asserted that the proposed PAGA allocation to the
18 LWDA was too small. AMR may file an opposition to the final approval regarding the proposed
19 PAGA allocation. Labor Code 2699(1)(2) states, “(2) The superior court shall review and
20 approve any settlement of any civil action filed pursuant to this part. The proposed settlement
21 shall be submitted to the agency at the same time that it is submitted to the court.” The LWDA
22 may appear and contest the amount of the PAGA allocation. In addition, on the motion for final
23 approval the court will review the amount of the PAGA allocation.
24
25
26

1 At the hearing on 1/18/19, AMR asserted that the proposed recipient of residual funds
2 was not appropriate. AMR may file an opposition to the final approval regarding the proposed
3 recipient of residual funds. (CCP 384(b).)

4 The Motion of Plaintiffs to enforce settlement agreement is GRANTED. The Agreement
5 is in writing, was signed by the parties, and states the material terms.
6

7
8 MOTION OF PLAINTIFFS FOR PRELIMINARY APPROVAL OF CLASS ACTION
9 SETTLEMENT

10 The Motion of Plaintiffs for preliminary approval of class action settlement is
11 GRANTED.

12 The Fifth Amended Complaint filed 6/8/18 asserts four claims (1) Failure to Provide
13 Meal Periods, (2) Failure to Provide Rest Periods; (3) Violation of Business & Professions Code
14 sections 17200, et seq. ("UCL") regarding meal and rest breaks, and (4) Civil penalties under
15 PAGA regarding meal and rest breaks. There are approximately 9,000 members of the class.
16

17 The Agreement states that the case preliminarily settled for a total of \$17,000,000. The
18 Agreement states that the \$17,000,000 includes attorneys' fees and costs, service awards to four
19 plaintiffs, costs if class notice and administration, and a PAGA payment.

20 The motion for preliminary approval addresses the internal accounting matters regarding
21 the proposed allocation of the \$17,000,000. (*In re Cipro Cases I & II* (2004) 121 Cal.App.4th
22 402, 417.) The proposed class action settlement would be on the following terms:
23

- 24 1. Attorneys' fees and costs of \$5,666,666 (33% of the settlement). (Konecky Dec.,
25 paras 61-63.)
26

- 1 2. Service awards of \$15,000 each to four named plaintiffs. (Konecky Dec., paras 59-
2 60.)
- 3 3. Cost of administration of \$37,000. (Cooley Dec., para 23.)
- 4 4. PAGA allocation of \$100,000, of which \$75,000 is paid to the LWDA. (Konecky
5 Dec., paras 53-58.)

6
7 After these expenses of \$5,838,666, the class would get \$11,161,334. This is an average of
8 approximately \$1,200 per class member.

9 The proposed settlement was mediated with the assistance of Ronald Sabraw. The court
10 gives "considerable weight to the competency and integrity of counsel and the involvement of a
11 neutral mediator in [concluding] that [the] settlement agreement represents an arm's length
12 transaction entered without self-dealing or other potential misconduct." (*Kullar v. Foot Locker*
13 *Retail, Inc.* (2008) 168 Cal.App.4th 116, 129.) (See also *In re Sutter Health Uninsured Pricing*
14 *Cases* (2009) 171 Cal.App.4th 495, 504.)

15
16 The motion makes an adequate analysis required by *Kullar v. Foot Locker Retail, Inc.*
17 (2008) 168 Cal.App.4th 116, and compare the best case scenario with the result of the settlement,
18 as well as explaining the challenges in the case. (Konecky Dec., paras 38-52.)

19 The scope of the proposed release is appropriate to the claims asserted in the case. The
20 release is for any and all claims that arise out of the facts asserted in the complaint. (*Hesse v.*
21 *Sprint Corp.* (9th Cir. 2010) 598 F.3d 581, 590 [factual predicate rule].)

22
23 The scope of the proposed release in the Agreement is broader than the scope of the
24 certified claims as identified in the previously sent class notice. The previously sent class notice
25 states at paragraph 6 that the court certified only the claim for failure to provide duty free rest
26 periods and that the class certification does not apply to any meal period or overtime claims.

1 (Cooley Dec., Exh A.) The previously sent class notice states at paragraph 3's box on "your
2 Rights and Choices," that "Your rights as to any other claims will be unaffected." (Cooley Dec.,
3 Exh A.)

4 This presents due process issues because it is possible that an absent class member
5 elected to stay in the class thinking that the class was only for claim X and the proposed
6 settlement would release claims X, Y, and Z. There are three ways to address the due process
7 concerns: (1) narrow the scope of the release, which would be contrary to the the Agreement; (2)
8 permit class members the opportunity to opt out of the class to avoid the broader release, which
9 would be contrary to the the Agreement; and (3) give notice to the absent class members and find
10 out what they think.

11
12 The court will permit the plaintiffs to proceed to give class notice. Class notice gives the
13 absent class members the opportunity to state their opinions about the proposed settlement, and
14 the court takes those opinions into account on the motion for final approval. (*Dunk v. Ford*
15 *Motor Co.* (1996) 48 Cal.App.4th 1794, 1801 [trial court should "consider relevant factors, such
16 as ... the reaction of the class members to the proposed settlement'.]) Class notice is not a mere
17 formality. The court follows *Carter v. City of Los Angeles* (2014) 224 Cal.App.4th 808, 821,
18 which states: "If a class member thinks a release is too broad, he can seek to remedy that problem
19 through objection or intervention, and, if not satisfied with the result, he could appeal."

20
21 Because this is a significant issue, the class notice must prominently disclose that the
22 earlier notice stated that the case concerned X and that "Your rights as to any other claims will be
23 unaffected," that the case has preliminarily settled for a release of XYZ, that members of the
24 class cannot opt out, and that if members think that the release is too broad that they can file an
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1 objection to the settlement as a whole. (Cooley Dec., Exh D.) At final approval the court can
2 consider the objections, if any, of absent class members to the proposed settlement.

3 The proposed settlement would distribute the settlement funds with no claims process.
4 The Court preliminarily approves of that process. (Agreement at para 2; Konecky Dec., paras 26-
5 27.)

6 The proposed settlement would distribute any unclaimed funds to East Bay Community
7 Law Center. (Konecky Dec., paras 36-37.) CCP 384(a) as recently amended permits distribution
8 of residual to organizations that “promote justice for all Californians.” The EBCLC
9 preliminarily appears to meet that requirement. CCP 382.4 states: “an attorney for a party to the
10 action shall, in connection with the hearing for preliminary approval [must] notify the court if the
11 attorney has a connection to or a relationship with a nonparty recipient of the distribution that
12 could reasonably create the appearance of impropriety as between the selection of the recipient of
13 the money or thing of value and the interests of the class.” Plaintiffs provided the required
14 disclosure. (Konecky Dec., para 36.)

15 The Court will not approve the amount of attorneys' fees and costs until final approval
16 hearing. The Court cannot award attorneys' fees without reviewing information about counsel's
17 hourly rate and the time spent on the case. This is the law even if the parties had agreed that
18 Defendants will not oppose the motion for fees. (*Robbins v. Alibrandi* (2005) 127 Cal. App. 4th
19 438, 450-451.)

20 Counsel for the class state that they will seek fees of \$5,666,666, which is 33% of the
21 total fund. The court sets out its standard analysis below. Counsel may address that analysis in
22 the motion for final approval and fee application.
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1 When using the percentage of recovery approach, the court's benchmark for fees is 30%
2 of a total fund. *Laffitte v. Robert Half Internat. Inc.* (2016) 1 Cal.5th 480, 495, approved an
3 award of 33% and noted that the federal courts have a benchmark of 25%. *Schulz v. Jeppesen*
4 *Sanderson, Inc.* (2018) 27 Cal.App.5th 1167, 1175, states, "Although the trial court would be
5 acting within its discretion to award less than 31 percent, we note that 31 percent is not out of
6 line with awards in class actions, which, like this case, involve attorney fees to be paid by a
7 protected class and that require court approval." *Consumer Privacy Cases* (2009) 175
8 Cal.App.4th 545, 557 fn 13, states both "Empirical studies show that, regardless whether the
9 percentage method or the lodestar method is used, fee awards in class actions average around
10 one-third of the recovery" and "A fee award of 25 percent [i]s the "benchmark" award that should
11 be given in common fund cases." *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 fn 11
12 ["Using the percentage of the benefits to class claimants as a benchmark, class counsel's initial
13 award was 30.3 percent of the benefits, and the final fee award was 27.9 percent of the benefits.
14 This is not out of line with class action fee awards calculated using the percentage-of-the-benefit
15 method'.")

16 When cross-checking with the lodestar/multiplier, the court will evaluate the lodestar
17 based on reasonable fees that would have been charged at hourly rates and then apply a
18 multiplier. The multiplier includes contingent fee risk and other factors. The facts of this case
19 suggest that the case was very contested and that counsel spent significant time on discovery, law
20 and motion practice, and appellate proceedings.

21 There is less risk in a case with fee shifting statutes because counsel's potential fees are
22 not limited by and coupled to the monetary recovery. "The law does not mandate ... that attorney
23 fees bear a percentage relationship to the ultimate recovery of damages in a civil rights case."
24
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1 (*Harman v. City and County of San Francisco* (2007) 158 Cal.App.4th 407, 419.) (See also
2 *Heritage Pacific Financial, LLC v. Monroy* (2013) 215 Cal.App.4th 972, 1006-1007.)

3 The proposed settlement is based on the resolution of both the client's claims under the
4 Labor Code and the lawyers' claims for fees under any applicable statutory fee shifting
5 provisions. A fee shifting provision does not apply to the meal and rest break claims. (*Kirby v.*
6 *Immoos Fire Protection, Inc.* (2012) 53 Cal.4th 1244, 1248.) A fee shifting provision would
7 apply to the PAGA claim. (Labor Code 2699(g)(1).) (Fifth Amended Complaint, prayer for relief
8 para 8.) Viewed under a "fee shifting" rather than a "fee spreading" analysis, and not
9 apportioning among the various claims, the settlement would be a settlement of the class claims
10 for approximately \$11,400,000 with an award of fees against defendant of \$5,600,000.
11

12 The Court will not decide the amount of any service award until final approval hearing.
13 Plaintiffs must provide evidence regarding the nature of their participation in the action,
14 including a description of their specific actions and the amount to time they committed to the
15 prosecution of the case. (*Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th
16 785, 804-807.) The plaintiffs will need to address why there are 4 representative plaintiffs and
17 whether each should receive a service award of \$15,000.
18

19 The Court ORDERS that 10% of any fee award to be kept in the administrator's trust fund
20 until the completion of the distribution process and Court approval of a final accounting.
21

22 The Court will set a compliance hearing after the completion of the distribution process
23 and the expiration of the time to cash checks for counsel for plaintiff and the Administrator to
24 comply with CCP 384(b) and to submit a summary accounting how the funds have been
25 distributed to the class members and the status of any unresolved issues. If the distribution is
26 completed, the Court will at that time release any hold-back of attorney fees.

1
2 MOTION FOR APPROVAL OF CLASS NOTICE

3 Plaintiffs must file a motion for approval of class notice. The court's preliminary
4 approval of the proposed class settlement does not include approval of the proposed class notice.

5 The notice should be easy to understand for non-lawyers. Counsel should try to comply
6 with the standards in the S.E.C.'s plain English rules. (17 CFR 230.421.) The Court
7 understands that there can be a trade off between precise and comprehensive disclosures and
8 easily understandable disclosures, and is willing to err on the side of making the disclosures
9 understandable.
10

11 The class notice must prominently disclose and explain that the proposed settlement
12 would release broader claims than those described in the earlier class notice. By "prominently"
13 the court suggests something similar to a black box warning on prescription drugs.

14 At the hearing on 1/18/19, counsel for the class noted that some members of the class
15 were hired recently by AMR and did not receive the previously sent class notice and therefore
16 would not have the due process issue. Counsel may address that in their motion. The court's
17 tentative thought is that all members of the class should be sent the same notice.
18
19

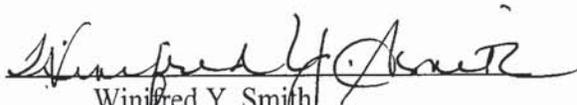
20 CASE MANAGEMENT

21 At the hearing on 1/18/19, counsel for the class observed that the case will reach the five
22 year limit of CCP 583.210 in mid-2019 and requested that the court stay all aspects of the case
23 other than proceedings related to the proposed settlement. The court will not sua sponte stay the
24 case. The court will shorten time for a motion to stay the case.
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The court ORDERS that plaintiffs may file a motion to stay on 7 court days notice and that AMR may file its opposition 2 court days before the hearing. For example, if plaintiffs file their motion on Wednesday 1/23/19, then AMR's opposition would be due Wednesday 1/30/19 and the court could hear the matter on Friday 2/1/19. The court hears motions on Fridays.

Dated: January ~~23~~ 2019


Winifred Y. Smith
Judge of the Superior Court

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EXHIBIT 7

Founded in August 2016, Atticus has administered 330 settlements and has distributed more than \$350 million in award payments. Collectively, the Atticus team has over 100 years of industry experience, and has managed over 3,000 settlements, and has distributed more than \$4 billion. Below is a partial listing of our cases, and the cases that our team has managed in the course of their careers.

Partial listing of Atticus' current cases and References

- Birbower v Quorn Foods Inc. -Consumer Food Labeling
- Guillen v AAA Limo-Consumer Finance
- Zamdio v Underground Rocket-CAFA
- Sears Trust
- Noll v Oxford-FLSA
- Kendall v Cubesmart-Consumer Finance
- Moskowitz v Atlanta Hawks-FACTA
- Santos v River Credit Works
- Tirado v Deluxe Auto Sales-Consumer Finance
- Chung v Alliance One-FDCPA
- Raff v Safeviah-Consumer Finance
- Diaz v Azona-Wage & Hour
- Ronsinbaum v Flowers Foods
- Marroquin v Premium Packaging-FLSA
- Hernandez v So Molo CO-FLSA
- The Bakery v Kenneth Pritt et al-Mass Tort
- Ramirez v Milton Roy-Wage & Hour
- Meyers v bebe Stores-TCPA
- Isabel Marquez v Tanimura & Antle-FLSA
- Camacho v Southwest Harvesting-FLSA
- Velasquez v SMD-Wage & Hour
- Right at Home Settlement-Consumer
- Park v United Collections-FDCPA
- McGlenn v Sprint-FLSA
- Redon v La Esperanza Farms-FLSA
- Home Advisor Settlement
- Morales v OPARC-Wage & Hour
- Loness v US Legal Services-Consumer Fraud
- In Re Managed Care Solutions-Healthcare Anti-Trust
- Kruzell v Suncoast Credit Union-FCRA
- Comofort v Fernandez Brothers-Wage & Hour
- Harris v General Motors-FCRA
- Jillal v Diesel Services-FLSA



- Padilla v Valadeo-Wage & Hour
- Coyle v Flowers-FLSA
- Espinoza v Alicia Accoyo-Wage & Hour
- Santiago v Northland Group-Insurance
- Vieste v Tacoma Screw-FACTA
- Matthews v Red Hill Country Club
- Tharpe v Sprint Corp
- USI Settlement
- Benefield v Springco Metal Coatings
- Watkins v Pressler Pressler
- Thomas v Goodman Manufacturing
- Bruce v Del Monte Foods
- Best v Twins Towing Inc
- Ahmed v Beverly Hills Rehabilitation Services
- Cook v Window Nation
- Costco-46 State FLSA
- Meyers v Mathis Brothers
- Vela-Cruz v AG Transport
- Ayala et al v Olsen Brothers Ranches
- Big Saver Foods-FACTA Settlement
- Huynh v Parker -Hannifin Corp
- Soto v Vander Tuig Dairy
- Vinnitsky v LA Overnight
- Molando v Dayton Superior
- Party City-FACTA Settlement
- Wesco Aircraft Hardware Corporation Settlement
- Russell v KeHE Distributors
- Exact Staffing Settlement
- Allard v MEd Impact
- Escalata v La Tapatia Mexican Market
- Massarani v Waterman
- Martinez v Providence Farms
- Milo's Chicken Jerky Settlement (Mawbry v Milo's Kitchen)
- Wall v Hewlett Packard Industries
- Daisy Castro v Caterpillar Logistics
- Schucker v Flowers Foods International
- Vega v BAR Dairy
- Xcel Health Settlement
- McCurley v Derst Bakery
- Rosenbloom v Jets Pizza
- Marquez v D 'Arrigo Brothers
- Johnson v Thomson Reuters
- Caudle v Sprint Cellular
- Ciaz v ND Travel Nurses
- Sparks v Service Finance Company
- Smentek v Sheriff of Cook County



- Ibanez v OC Burger Boys
- De La Rosa v Coca Cola
- Porreca et al v Flowers Baking Company
- Event Merchandising Settlement
- Lopez c George Amaral Ranches
- JKM Trading Settlement
- Crema v New Jersey National Golf Club
- Diaz v Arcona Farms
- Flowers Texas Settlement
- Miller v Flowers Foods of North Dakota
- Flowers Global Settlement
- Ali v Sutter Valley Medical
- Douillard v Sprint Cellular
- Patterson v Volkswagen
- Johnson v Oxnard Automotive Exchange
- Goh v NCR Corporation
- Blackburn v APTIM Services
- SIP ERISA Settlement
- Rench v HMI-Wage & Hour
- Matise v Dun & Bradstreet-Wage & Hour
- Lazy Boy Furniture Galleries Settlement-Wage & Hour
- Gruma Bakeries FLSA Settlement
- Flowers Global FLSA Settlement
- Hud son v Valley Hope Hospital-Data Breach
- Bennett v Alorcia-PAGA
- Shachno v Pendry-PAGA/ Wage and Hour
- Matise v Dun & Bradstreet
- Gray v HCI-BIPA
- Jimenez v The Growers Company
- Supplemental Income Trust Settlement-ERISA
- Reyers v Unified Grocers
- Lyons v Green
- Manni v Lazy-Boy
- Carter v Bed Bath & Beyond
- Wall v Ashbritt
- Schulte-BIPA Settlement
- Carrillo v Mabry Management-PAGA/ Wage & Hour
- Fisher v Behavioral Health Services-PAGA/ Wage & Hour
- OFCCP v Sprint
- Boehm v BMW North America
- Carter v City of Ferguson-Civil Rights
- Gould v Farmers Insurance-TCPA
- Juarez v Laguna Farms-PAGA
- Power v Sandbox Logistics
- Andrews v Prestige Care-PAGA
- Foster v Advantage Sales



- Deak v In and Out Burger-PAGA

Partial listing of cases the Atticus Team has managed

- Tardiff v. Knox Count
- Nilsen v. York Count
- Tyler v. Suffolk Count
- Braun v. Walmart
- Lundeen v Canadian Pacific Railroad
- Frank v. Gold'n Plump Poultry
- Mass tort Guidant defibrillator
- Cazenave v. Sheriff Charles C. Foti
- Brecher v. St. Croix County
- McCain v. Bloomberg
- Carnegie v Household
- High Sulfur Gasoline Product Liability Shell Oil
- Merrill Lynch Securities Litigation
- McKesson HBOC Securities Litigation
- Raytheon Co. Securities Litigation
- Bokusky v. Edina Realty
- Applied Card Bank Credit Card Litigation
- Sun Country Employee Litigation
- Dupont Chemical Pollution Litigation
- Haight v Bluestem Brands, Inc. -TCPA
- Dugan v TGIF-Wage and Hour/FLSA
- Dunkel v Warrior Energy-Energy-Wage & Hour
- Shelby v Miller Investment Group-Consumer Finance
- Salas v Watkins Manufacturing-FLSA
- Dull v IPS-Energy Sector Wage & Hour
- Wallach v FFG-TCPA
- Bourgeoisie v City of Baltimore-Consumer Fees
- Brown v Alley-FLSA
- Turner v ACD-Wage & Hour
- Villa v San Francisco 49'ers-Consumer Fees
- Thomas v Solvay
- Reid v Unilever-Mass Tort
- Zeller v PDC Corporation-FLSA
- Murr v Capital One-Consumer Fraud
- Redman v City of Chicago- Consumer Fees
- Ernst v Sterling-Dish Case-Consumer Fraud
- Ott-Publix-FLSA
- Ellsworth v US Bank-Consumer Finance
- Vidra v Midland Financial-Consumer Finance
- Vu v Performance Recovery



- Freeman v Berkeley Packaging-FLSA
- Martin v JTH-TCPA
- Walker v Core Power Yoga-Wage & Hour
- Froberg v Cumberland Packaging-Stevia in the Raw Settlement-False Labeling
- Debarsekin v L2T-FLSA & Wage and Hour
- Gay v Tom's of Maine-False Labeling
- Templeton Rye -False Labeling
- Belardes v Farm Fresh to You-FLSA
- Tin Cup Settlement-False Labeling
- Johnson v ScanSAT-Medical Billing Fees
- Garcia v EJ Amusement-FLSA and Wage & Hour
- Doran v Forever Grand Vacations-Consumer Fraud- Time Share
- Velasco v Chrysler Corp-Recall
- Covell v Sleep Train-Wage & Hour
- Torres v Kwon Yet Lung-FACTA
- Redman v IMAX-FACTA
- Target Date Breach-Financial Institutions
- In Re Motor Fuel- Hot Fuel Case- Consumer Fraud
- Haight v Bluestem-TCPA
- Martin v JTH-TCPA



Your Project Team

Chris Longley, JD – CEO and Co-Founder – Former President of Dahl Administration, a nationally recognized Claims Administration Company. Licensed Attorney, admitted to practice Minnesota, 8th Circuit and United States Supreme Court. During Longley's Tenure at Dahl, he successfully managed some of the highest profile cases in the last few years, including *In Re Motor Fuel* (Hot Fuel), an all-digital notice campaign with over 160 mm class members in 36 states and US Territories, and the Target Data Breach- Financial Institutions Settlement.

Roger Bauser – Operations, Co-Founder of Analytics LLC – One of the first Claims Administration companies in the US (founded in 1977), Roger has over 40 years of experience in the industry and has worked on some of the largest cases, including McKesson Securities Litigation, a billion-dollar securities class action settlement. In addition to Roger's time at Analytics, he also worked with Rust Consulting.

Bryn Bridley – Director of Project Management – Bryn has over 15 years of Project Management experience within the industry, having worked with two large Settlement Administrators, Rust Consulting and Dahl Administration. Bryn's past claims administration work included the day-to-day activities of several high-profile consumer, employment and other types of cases. Bryn has extensive experience with CAFA Notices and Class Certification campaigns. Bryn is an honor's graduate of the University of Minnesota-Duluth and enjoys running and camping in her free time.

Joel Prest – Director of Technology – Joel has 15 years of experience with software development and project management. Joel has expertise in designing scalable solutions to allow end users to work more efficiently with easy to use applications. Joel's prior work history includes Human Resource Management, which allows him to understand system payroll needs, HIPPA, and tax requirements necessary for employment related cases.

Jim Hardy, CPA (Inactive) – Co-Founder and CFO – Prior to co-founding Atticus, Jim held finance leadership positions over a twenty-year period in a variety of industries (contract manufacturing - implantable medical devices, sheet-fed printing, and commodity trading) where the wide-range of responsibilities and challenges from these experiences has enabled him to develop a versatile set of finance, administrative and operations skills.

Mike Gelhar – Practice Director, Employment & Distributions – Mike brings over 15 years of payroll experience in employment law case experience. Along with his payroll knowledge, Mike is also bringing his work experience as he managed the processing and distribution of one of the nation's largest Labor and Employment administrators. These cases ranged from a few hundred claimants to over 700,000 claimants in all 50 states, including Puerto Rico.

Kim Ness – Principal-Kim joins the Atticus team with over 23 years of Project Management experience in the settlement administration industry. Her class action experience includes managing over 325 projects in the consumer, finance, insurance, employment, securities, market conduct, consumer fraud, discrimination, public sector and regulated areas. She is a graduate of the University of Nebraska-Lincoln and, being born and raised in Nebraska, is a devoted, enthusiastic and hopeful Nebraska Cornhusker football fan.



Beth Paris – Project Coordinator-Beth joins the Atticus team as an experienced project coordinator and business analyst. Prior to joining Atticus, Beth worked for the judicial branch, specializing in Information Technology enhancements and efficiencies, for the day-to-day system functions within court operations. Beth is a certified Scrum Master with years of experience in team building, coaching and mentoring project teams. In her free time, she dedicates her attention to her animal rescue and enjoys the Minnesota summers at the family cabin.

Phil Hoelscher – Project Coordinator-Phil has been a Project Coordinator with the Atticus Administration since the beginning of 2019, after serving Atticus in the Customer Service Representative role for six months prior. Phil graduated from the University of MN, Duluth with a Bachelor of Fine Arts in Acting.