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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF LOS ANGELES – INGLEWOOD COURTHOUSE**

10 ULYSSES A. RIVAS, individually and on
11 behalf of all others similarly situated,

12 Plaintiff,

13 v.

14 CITY OF MANHATTAN BEACH, a Public
15 Corporation, and DOES 1 through 10,
inclusive,

16 Defendants.
17
18
19
20

Case No. 21STCV38784

[Assigned to: Hon. Ronald F. Frank, Dept. 8]

**DECLARATION OF PATRICIO T.D.
BARRERA IN SUPPORT OF MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

Date: April 7, 2023
Time: 8:30 a.m.
Dept.: 8

1 **DECLARATION OF PATRICIO T.D. BARRERA**

2 I, Patricio T.D. Barrera, declare as follows:

3 1. I am an attorney at law duly licensed to practice before all the courts of the States
4 of California and Texas. I am a principal of Barrera & Associates, the attorneys of record for
5 Plaintiff Ulysses A. Rivas (“Plaintiff”) and the Class in the above-entitled case. Through my
6 participation in this action, I have personal knowledge of the facts stated in this Declaration, and
7 if called upon to do so, could and would competently testify thereto.

8 2. This declaration is submitted in support of Plaintiff’s motion for preliminary
9 approval of a class action settlement in the above-captioned case.

10 3. I have been actively engaged in this litigation from its inception. I have diligently
11 litigated this case and will continue to do so. I have engaged in discovery, attended mediation,
12 and am of the opinion that the Settlement for the consideration and on the terms set forth is fair,
13 reasonable, and adequate and is in the best interests of the Class and Defendant in light of all
14 known circumstances and the expenses and risks inherent in litigation.

15 4. I became licensed to practice law in California in December 1990. I became a
16 member of the State Bar of Texas in October 1998. I am a member in good standing of the Bars
17 of California and Texas with no disciplinary record in either jurisdiction.

18 5. I formed Barrera & Associates in mid-2007, a law firm with its principal office
19 in El Segundo, California. Prior to forming Barrera & Associates, I was practicing law on my
20 own or with a law partner since 1998. Before starting my own law firm, I was associated with
21 Hancock, Rothert & Bunshoft LLP (which has merged with Duane Morris LLP), a full-service
22 litigation firm that represented the plaintiffs in a class action against Ford Motor Company
23 under California Business & Professions Code §17200 that resulted in the first-ever judicial
24 recall in a product defect case and a \$2.7 billion settlement for California consumers.

25 6. I am AV-Rated by Martindale-Hubbell. Since 1998, my practice has been
26 primarily dedicated to the representation of plaintiffs in cases stemming from civil rights
27 violations, employment discrimination and retaliation, consumer fraud and wage-and-hour
28 violations. I have tried over twenty-five jury trials in Southern California Superior Courts since

1 1996. I have had several bench trials and arbitrations. I am active in several professional
2 associations. I lecture on employment law and litigation topics as a Panelist at Continuing Legal
3 Education Seminars offered by the Los Angeles County Bar Association and Bridgeport
4 Continuing Education. In March 2011, I spoke on a panel concerning the topic of “recent
5 developments in employment law” at a LACBA Employment Law Symposium. In September
6 2012 and September 2017, I spoke on a CLE panel regarding depositions. In October 2013, I
7 spoke at the California Employment Lawyer’s Association Annual Employment Law
8 Conference in San Jose, California. I have been selected by *Los Angeles Magazine* as a
9 “Southern California Super Lawyer” in the area of employment law for each year from 2004 to
10 2018. I have been informed that I will appear in the 2019 *Super Lawyer* publication, as well. I
11 am a member of the Million Dollar Advocates Forum. I have been recognized as a Top 100
12 Trial Lawyer in California by the National Trial Lawyers. In July 2017, I was invited to become
13 a member of the American Board of Trial Advocates (ABOTA) and I am a member of ABOTA
14 and a Fellow in the ABOTA Foundation. I was recognized by the *Los Angeles Daily Journal* as
15 a 2018 top Labor and Employment Specialist in California in its July 18, 2018 publication. I
16 recently was nominated for CAALA Trial Lawyer of the Year and was informed that I was one
17 of the finalists for this prestigious award.

18 7. I also have experience handling complex employment litigation, including
19 representative actions and class claims in both California State and Federal court. I have also
20 handled numerous claims arising under California’s wage/hour laws before the California Labor
21 Commissioner and in the courts. I also advise employers how to handle employment-related
22 disputes, including potential wage and hour violations. In 2002, I was first appointed as class
23 counsel in a consumer fraud case, *Prata v. Bank One*, Los Angeles Superior Court Case No. BC
24 211965. This case settled on a class-wide basis after an appeal, *Prata v. Superior Court*, 91
25 Cal.App.4th 1128 (2001), a case in which I represented the plaintiff in a consumer case under
26 the UCL based on deceptive “same as cash” advertisements that the Second District Court of
27 Appeal held were deceptive as a matter of law. In 2003, I was appointed as class counsel in a
28 follow-up, consumer fraud case stemming from a related series of misrepresentations, *Prata v.*

1 *GE Capital*, LASC Case No. BC282010. Between 2004 and the present, I have been appointed
2 as class counsel in several wage and consumer cases, including the following matters:

- 3 • On July 28, 2021, the Honorable Maren Nelson of the Los Angeles Superior Court
4 granted final approval of a class action settlement in *Navar et al. v. Auto Buyline*
5 *Systems, Inc.*, Case No. BC716026, in which I was on of the attorneys named as
6 class counsel;
- 7 • On June 10, 2021, the Honorable William D. Claster of the Orange County Superior
8 Court granted final approval of a class action settlement in *Lopez v. Ottmo, Inc., et*
9 *al.*, Orange County Case No. 30-2017-00951422-CU-OE-CXC, in which I was one
10 of the attorneys named as class counsel.
- 11 • On May 14, 2021, the Honorable Sunshine Sykes of the Riverside County Superior
12 Court granted final approval of a class action settlement in *Gutierrez v. U.S.*
13 *Precision Sheet Metal, Inc.*, Riverside County Case No. RIC1822895, in which I was
14 one of the attorneys named as class counsel.
- 15 • On February 25, 2021, the Honorable Elihu M. Berle of the Los Angeles Superior
16 Court granted final approval of a class action settlement in *Aho v. Jackson Hewitt,*
17 *Inc., et al.*, LASC Case No. BC682490, in which I was one of the attorneys named as
18 class counsel.
- 19 • On December 13, 2019, the Honorable George H. Wu of the United States District
20 Court of the Central District of California granted preliminary approval of a class
21 action settlement in *Dawson v. Hertz Transporting, Inc.*, USDC Case No. CV 17-
22 8766-GW-JEMx, in which I was one of the attorneys appointed as class counsel.
- 23 • On October 15, 2019, the Honorable Amy Hogue of the Los Angeles Superior Court
24 granted final approval of a class action settlement in *Sanchez v. Ames Machine*
25 *Works*, Los Angeles Superior Court Case No. BC689594, in which I was one of the
26 attorneys named as class counsel.
- 27 • On August 23, 2019, the Honorable Sunshine S. Sykes of the Riverside County
28 Superior Court granted final approval of a class action settlement in *Camarena v.*

1 *Hillcrest Contracting, Inc.*, Riverside Case No. RIC1713119, in I was one of the
2 attorneys named as class counsel.

- 3 • On March 5, 2018, the Honorable David Cohn, Dept. S26 of the San Bernardino
4 Superior Court granted final approval of the class action settlement in *Munguia v.*
5 *Overeasly, Inc.*, San Bernardino Case No. CIVDS1513597, in which I was one of the
6 attorneys named as class counsel.
- 7 • On October 27, 2017, the Honorable Elihu M. Berle of the Los Angeles Superior
8 Court certified classes in *Party City Wage and Hour Cases*, JCCP Case No. 4781,
9 and I was one of the attorneys named as class counsel.
- 10 • On September 15, 2017, the Honorable Daniel S. Murphy of the Los Angeles
11 Superior Court granted final approval of a class action settlement in *Ford v. HKA*
12 *Enterprises, Inc., et al.*, LASC Case No. BC589771, in which I was one of the
13 attorneys named as class counsel.
- 14 • On March 1, 2016, the Honorable Elihu M. Berle granted final approval of a class
15 action settlement in *Spooner v. Iqbal, et al.*, LASC Case No. BC550689, in which I
16 was one of the attorneys named as class counsel.
- 17 • On September 8, 2014, the Honorable Amy D. Hogue granted final approval of the
18 class action settlement in *Teresa Hernandez v. W.K.S. Restaurant Corporation*,
19 LASC Case No. BC501654 in which I was one of the attorneys named as class
20 counsel.
- 21 • On July 26, 2013, the Honorable Elihu M. Berle granted final approval of a class
22 action settlement in *Joseph Kneafsey v. Alva-Amco Pharmcal Companies, Inc.*,
23 LASC Case No. BC454932;
- 24 • On May 21, 2012, the Honorable Jane Johnson granted final approval of a class
25 action settlement in a case that was pending for five years, wherein I was one of the
26 attorneys on the team of attorneys and law firms representing the plaintiffs and class
27 members in *Diaz v. ABM Industries, Inc., et al.*, LASC Case No. BC326932
28 (Consolidated with several cases, including a case filed on behalf of two plaintiffs by

1 this Declarant);

- 2 • The coordinated action captioned as *Wireless Advocates Wage and Hour Cases*
3 (*Turner v. Wireless Advocates*, LASC Case No. BC390412), JCCP 4600, in which
4 the Final Judgment was signed and entered by the Honorable Carl J. West on
5 February 14, 2011;
- 6 • On June 11, 2012, the Honorable Kenneth Freeman issued an Order granting final
7 approval of a class action settlement and Judgment thereon, in the case of *Sanchez v.*
8 *M.A. Law Group, et al.*, Los Angeles Superior Court Case No. BC438451, in a legal
9 malpractice case that settled on a class-wide basis where I was Lead Counsel for the
10 Class;
- 11 • On February 8, 2012, I was appointed by the Honorable Jane L. Johnson, as Class
12 Counsel in *Edwards v. Enterprise Holdings, Inc.*, LASC Case No. BC456875;
- 13 • On April 3, 2012, I was one of several class action attorneys appointed by the
14 Honorable John Shepard Wiley, Jr. as Class Counsel in two, related consumer fraud
15 cases stemming from allegations of deceptive advertising, labeling and packaging of
16 Kombucha teas, *Patch v. Millennium Products, Inc.*, LASC Case No. 448920,
17 related to *Fernandez v. Millennium Products, Inc.*, LASC Case No. 448347, with
18 final approval of the class action settlement in the Kombucha tea cases was granted
19 on July 10, 2012;
- 20 • In 2011, I was one of the attorneys appointed as Class Counsel in a case involving
21 wage and hour claims, *Mendoza v. Kaza Azteca America, Inc.*, LASC Case No. BC
22 424184.
- 23 • In 2010, I was one of the attorneys appointed as Class Counsel in a case involving
24 wage claims in an action that was certified as a class action, then settled, on a class-
25 wide basis: *Dubitsky v. Dawn Barnes Karate Kids*, LASC Case No. BC386022.
- 26 • In 2009, I was one of the attorneys appointed Class Counsel in the Riverside County
27 Superior Court wage and hour class action *Kashkari v. Resort Parking Services, Inc.*,
28 Case No. INC072782.

- 1 • In 2009, I was one of the attorneys appointed Class Counsel by the Los Angeles
2 Superior Court, the Honorable Mary Ann Murphy, in case for Labor Code violations,
3 *Houser v. Great Circle Family Foods, et al.*, LASC Case No. BC345742.
- 4 • In 2008, I was one of the attorneys appointed class counsel in *Woodruff v. Enterprise*
5 *Rent-A-Car Company, et al.*, LASC Case No. BC363401.
- 6 • In 2007, I was appointed as Class Counsel in a case involving wage claims for
7 unpaid overtime, and missed meals and rest breaks by the Honorable Paul Gutman in
8 *Brush v. Liberman Broadcasting, Inc.*, LASC Case No. BC334507;
- 9 • In 2006, I was appointed Class Counsel in an overtime wage case by the Honorable
10 James Dunn in *Lerma v. Universal Studios, Inc.*, LASC Case No. BC 326263; and
- 11 • In 2006, I was appointed Class Counsel by the Honorable Rita Ann Miller, in *Chang*
12 *v. ETTV, et al.*, LASC Case No. BC325222

13 8. Barrera & Associates handles employment cases on a contingency basis. My
14 firm is retained in this matter on a full contingent basis. Contingency work, such as this case, is
15 risky because one is only paid if the case settles, or if one prevails at trial or arbitration.
16 Although I try to do a good job in choosing my cases, sometimes, despite best efforts, I am not
17 successful. Sometimes the evidence does not come in as anticipated, or there is surprise
18 evidence, and the net result is that we lose, or settle for a lot less than anticipated. We
19 sometimes devote hundreds of hours to plaintiffs' employment cases and are paid nothing. The
20 risk increases if we advance costs, which we frequently do, because our clients have lost their
21 jobs. In addition, the risk is generally higher in employment cases than in personal injury cases
22 because of the amount of depositions and law and motion typically involved in prosecuting
23 these cases. The defense will usually file a motion for summary judgment. In addition,
24 frequently, there will not be insurance.

25 **The Subject Settlement**

26 9. During the time prior to the filing of this action and after the settlement was
27 reached, I spent time meeting with my client and witnesses in this case and gathering evidence
28 to use against Defendant. I spent time interviewing Plaintiff and class members to investigate

1 and confirm that Defendant was not complying with California's wage laws. Mr. Rivas
2 provided detailed information in support of the claims, including documents and witness
3 information to support our investigation. I reviewed relevant data, including the hundreds of
4 pages of documents produced by Defendant. I personally reviewed, considered and reviewed
5 every page produced by Defendant, which took a substantial number of hours. I conducted a
6 detailed analysis of the sample records produced by Defendant to establish a violation rate and
7 damages model for the Class Period. I worked on every pleading, brief, and status report filed
8 with the Court and served upon opposing counsel in this case. I was involved in the analysis and
9 case evaluation, which led to the settlement. The final settlement was and is within the range of
10 recoveries that we anticipated based on the current state of the law, the fact Defendant
11 aggressively disputed liability, and Defendant's policies and practices.

12 10. I have performed a thorough study of California Wage and Employment Law
13 and the facts relating to the wage claims asserted by the Plaintiff in this case. I have concluded,
14 based upon my investigation and work in this case, and taking into account the sharply
15 contested issues involved, the expense and time necessary to pursue the action through trial, the
16 risks and costs for the prosecution of the case, the uncertainties of complex litigation, and the
17 benefits to be received by Plaintiff and the Class, that the settlement on a class wide basis with
18 Defendant on the terms set forth in the exhibits attached hereto, is fair, reasonable, adequate,
19 and in the best interests of the settlement class, including Plaintiff. The parties were well versed
20 in the law and evidence in support of their claims at the time of the mediation. In recommending
21 the settlement, I was concerned that a substantial verdict or Judgment would have resulted in an
22 appeal, thereby delaying and complicating the final disposition in this case. Although Plaintiff
23 and Plaintiff's Counsel believed they would prevail on the merits and at certification,
24 Defendant's settlement offer represented an excellent opportunity to provide a substantial
25 recovery in the near future to a class which includes 13 individuals, while eliminating any and
26 all concerns about uncertainty in the law and a possible change in California substantive law or
27 procedural rules, risk of not obtaining certification on any of the claims, risk of losing at
28 summary judgment or on the merits at trial, and risk of delays and losing on appeal.

1 11. Attached hereto as **Exhibit “1”** is a true and correct copy of the fully executed
2 Class Action and PAGA Settlement Agreement. Attached thereto as **Exhibit “A”** is a true and
3 correct copy of the Notice of Proposed Class Action Settlement (“Class Notice”). Exhibit 1 is
4 referred to as the “Settlement Agreement.”

5 12. Under the terms of the Settlement Agreement, the parties have agreed that all
6 class action claims brought on behalf of the 13 putative class members who worked as Dial-a-
7 Ride drives for Defendant in the State of California at any time from October 20, 2018 through
8 March 10, 2023, shall be fully and finally resolved for a total settlement amount of \$105,000
9 (“Gross Settlement Amount”). From the Gross Settlement Amount, the Settlement Agreement
10 calls for the following deductions to be made with the resulting number being a Net Settlement
11 Amount of at least \$32,500.00 that will be made available to approximate Class Members who
12 do not opt out of the Settlement (“Participating Class Members”), as follows:

- 13 • \$40,000.00 to Class Counsel for attorneys’ fees;
- 14 • Up to \$10,000.00 to Class Counsel for litigation costs and expenses;
- 15 • \$15,000 total to Plaintiff Ulysses A. Rivas as a Service Award for his time and
16 effort as the Class Representative;
- 17 • Up to \$2,500.00 to the Settlement Administrator for settlement administration
18 costs; and
- 19 • \$3,750 to the California Labor and Workforce Development Agency for PAGA
20 penalties.

21 13. The Settlement Agreement should be approved in light of two governing
22 California appellate decisions: *Clark v. American Residential Services LLC* (2009) 175
23 Cal.App.4th 785 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116.

24 14. According to *Clark* and *Kullar*, when deciding whether a class action settlement
25 is fair, adequate and reasonable, a court can consider several recognized factors that are set forth
26 in cases like *Dunk v. Ford Motors Co.* (1996) 48 Cal.App.4th 1794, 1801. Those factors that a
27 trial may consider during the approval process include (1) the extent of discovery completed
28 and the stage of the proceedings; (2) the strength of plaintiff’s case in light of the settlement

1 amount; (3) the risk, expense, complexity, and likely duration of further litigation, as well as the
2 risk of maintaining class action status through trial; (4) the experience and views of counsel; and
3 (5) the reaction of class members to the proposed settlement. *See Clark, supra*, 175 Cal.App.4th
4 at 799.

5 15. Before filing this lawsuit, I investigated and researched the facts and
6 circumstances underlying the pertinent issues and applicable law. This required thorough
7 discussions and interviews with Mr. Rivas and research into the various legal issues involved in
8 the case, namely, the current state of the law as it applied to various defenses, and meal period
9 and rest break law as well as the unique issues relating to the Defendant's business model of
10 worker classification and assignment of duties. I also engaged in extensive factual investigation
11 into the organization and operations of Defendant as a public entity. I ultimately determined that
12 Plaintiff's claims were well suited for class action adjudication owing to what appeared to be a
13 common course of conduct affecting a similarly situated group of employees.

14 16. I have actively litigated the cases since the filing of the complaint in October
15 2021. I conducted investigations into the facts of the case; speaking with the putative class
16 members regarding their job experiences at Defendant's businesses; engaging in extensive
17 informal discovery and meeting and conferring with defense counsel; analyzing the data and
18 records produced by Defendant; conducting an extensive review of hundreds of pages of
19 documents provided by Plaintiff and Defendant. I reviewed and analyzed extensive records, as
20 well as policy documentation, and other pertinent information. I scrutinized and analyzed the
21 documents to determine Defendant's degree of liability and amounts due in damages. From
22 these documents and discussions with defense counsel, I was able to determine, among other
23 things, the total number of Class Members during the applicable class period of 13 individuals
24 and the average rate of compensation for putative class members. This information enabled me
25 to run damage models based on the analyzed data in light of countervailing interpretations of
26 California law. This is in stark contrast with *Kullar*, where it is unclear whether that plaintiff
27 had even so much as reviewed any documents. *Kullar, supra* 168 Cal.App.4th at 129.

28 17. I also closely followed the case law relating to the claims in this action, as well

1 as the developing area of law under the Private Attorney General Act. The instant case was thus
2 at the pivot of the uncertain, though crucial, issue of wage-and-hour law. Accordingly, I closely
3 followed the developing case law.

4 18. Defendant vigorously contested liability, the amount of claimed damages, and
5 the propriety of class certification. In particular, Defendant argued that there was no way for
6 Plaintiff to prove the amount of meal and rest break policies or that the break policies affected
7 all employees similarly.

8 19. Throughout the pendency of this case, defense counsel and I engaged in
9 discussions and correspondence regarding the above issues, among others, as well as the risks of
10 further litigation and certifiability more generally; and from these communications the parties
11 agreed that this case was conducive to mediation given the complexity of the legal and factual
12 issues at play and the high level of risk present for both sides.

13 20. The settlement is the product of serious, informed, non-collusive, arm's-length
14 negotiations that lasted several months. The parties participated in a private mediation session
15 on in December 2022, with Steve Pearl, Esq., a well-respected mediator with extensive
16 experience in California wage and hour class action litigation. During the mediation, the parties
17 exchanged further information and discussed all aspects of the case, including the risks and
18 delays of further litigation and the risks to both parties of proceeding with a motion for class
19 certification, the law relating to Defendant's defenses, the law relating to Plaintiff's claims, the
20 evidence produced and analyzed, and the possibility of appeals, among other things. The parties
21 participated in ongoing discussions and negotiations on these topics through Mr. Pearl over a
22 period of weeks.

23 21. The parties have exchanged discovery regarding document and data production
24 sufficient for Plaintiff to adequately evaluate this case. I spent a significant number of hours
25 communicating with opposing counsel throughout the settlement discussions to negotiate the
26 final terms of settlement. The length and risks of trial and other normal perils of litigation, as
27 well as specific defenses regarding Plaintiff's claims were all weighed in reaching the proposed
28 Settlement. In addition, other affirmative defenses asserted by Defendant, class certification

1 issues, the difficulties of complex litigation, and the lengthy process of establishing specific
2 damages and various possible delays and appeals, were also all carefully considered by
3 Plaintiff's Counsel in agreeing to the proposed Settlement. The damages were further impacted
4 by the Covid-19 Pandemic, given the decreased in work shifts for class members during the
5 height of the shutdown.

6 22. As a result of continued settlement discussions following the mediation session,
7 with the assistance of mediator Steve Pearl, the parties agreed that this case was well suited for
8 settlement given the outstanding legal issues relating to Plaintiff's principal claims, as well as
9 the costs and risks to both sides that would attend further litigation. Thus, with Mr. Pearl's
10 assistance, the parties agreed, subject to Court approval, to enter into the Settlement Agreement
11 to resolve the claims in the above-entitled lawsuit. The proposed Settlement of \$105,000.00 for
12 the 13 class members represents an excellent resolution of this case. I believe that the proposed
13 Settlement as a whole is fair, reasonable, and in the best interest of the Class Members.

14 **Plaintiff's Causes of Action**

15 23. With regard to the strength of Plaintiff's case in light of the settlement amount,
16 the lawsuits assert claims for failure to provide meal and rest break periods and PAGA
17 violations thereupon.

18 24. Plaintiff's asserted claims were well grounded in the employment practices of
19 Defendant. Plaintiff contends that Defendant did not have any Code compliant policies or
20 practices regarding meal and rest breaks during the relevant time period.

21 25. Before discussing how Plaintiff valued the meal break claim, a brief overview of
22 the governing law is in order. To begin with what is certain, under California law an employer
23 must provide employees with uninterrupted meal periods of not less than 30 minutes before they
24 (the employees) exceed five hours of work (or, arguably, six hours). Labor Code §512.
25 Moreover, an employer must provide its employees with second meal periods before they (the
26 employees) exceed 10 hours work. Labor Code §512. An employer must pay each employee to
27 whom it fails to "provide" a meal period one hour of wages at his or her regular rate of pay "for
28 each workday that the meal or rest period is not provided." Labor Code §226.7.

1 26. Plaintiff contended that because of the policy of not scheduling breaks at the
2 worksite, their meal breaks were not timely provided and/or were regularly interrupted. Plaintiff
3 also contended that Defendant failed to keep required documentation of when the meal breaks
4 were taken, as required by California law. In light of these facts, Plaintiff’s Counsel argued that
5 Defendant faced substantial liability.

6 27. Defendant disagreed with Plaintiff’s Counsel’s interpretation of the above facts.
7 In particular, Defendant noted that their policies permitted the putative class members to take
8 lawful breaks. Moreover, Defendant pointed out that there was the potential for down time,
9 giving the putative class members plenty of time to take a break. By making meal periods
10 available, Defendant maintained that it had done all that it was required to do. According to
11 Defendant, because it had provided meal periods within the meaning of the statute, *see* Labor
12 Code §512, it faced limited meal period liability under Labor Code §226.7.

13 28. Defendant points to *Brinker* as establishing the proper legal standard for whether
14 an employer “provides” meal periods to employees. Consistent with *Brinker*, Defendant
15 contended that they did nothing to impede, discourage, or dissuade employees from taking their
16 meal periods and rest breaks and that it made these meal periods and rest breaks available.
17 Accordingly, Defendant was adamant that it had no liability.

18 29. Plaintiff’s Counsel disputed the legal merits of Defendant’s position as well as
19 Defendant’s factual contentions. In light of *Brinker*, I took Defendant’s arguments into
20 consideration.

21 30. The maximum exposure on this claim took into consideration the *Brinker*
22 decision and the difficulties in obtaining class certification. In light of these other
23 considerations, I applied appropriate discounts to the maximum exposure estimate for
24 settlement purposes.

25 31. Plaintiff also contended that Defendant did not provide Class Members with paid
26 10-minute rest breaks for every four hours or major fraction thereof worked. Plaintiff pointed to
27 Defendant’s lack of policy allowing class member to leave the premises during rest periods, and
28 therefore did not relieve class members of control. Defendant maintained that it did provide

1 lawful rest breaks, as the putative class members could take breaks during the downtime of their
2 workday. Moreover, according to Defendant, unlike meal periods, rest breaks need not be
3 recorded. As these considerations would likely depress the damages *vel non* ultimately awarded,
4 I applied appropriate discounts to the rest-break claim.

5 32. In light of the foregoing, I took into consideration, when assessing damages
6 under this cause of action, the chances of prevailing on the derivative causes of action, as well
7 as the additional hurdles of prevailing under this cause of action, including recent case law, and
8 applied the appropriate discounts.

9 33. The Labor Code Private Attorneys General Act, Labor Code §2699 et seq.,
10 allows plaintiffs to obtain civil penalties on behalf of themselves and other Class Members for
11 Defendant's violation of any provision of the Labor Code enumerated under Labor Code
12 §2699.5. Where civil penalties are provided in the statute, those civil penalties are recoverable;
13 where no civil penalties are recoverable, Labor Code §2699(f) establishes civil penalties of one
14 (\$100) for each aggrieved employee per pay period for the initial violation and two hundred
15 dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.
16 Pursuant to Labor Code §2699(i), seventy-five (75) percent of the penalties recovered must be
17 allocated to the Labor and Workforce Development Agency (LWDA), with the remaining
18 twenty-five (25) percent allocated to the affected employees. The limitations period as for all
19 penalties is limited to one year prior to the filing of the complaint.

20 34. The provisions of the Labor Code potentially triggering PAGA penalties in this
21 case include but are not limited to Labor Code sections §201, 202, 203, 204, 210, 226(a), 226.7,
22 510, 512(a), 1194, 1197, 1197.1, 1198 and 2802. Defendant asserted that regardless of the
23 results of the other claims PAGA penalties are not mandatory but permissive. Defendant
24 maintained that in addition to its strong arguments against the underlying claims it had a strong
25 argument that, given the current unsettled state of law, it would be unjust to award maximum
26 PAGA penalties.

27 35. Plaintiff, in addition to the class claims, also sought to recover PAGA penalties
28 on behalf of themselves and other aggrieved employees for Defendant's violations of the Labor

1 Code. While Plaintiff brought various Labor Code violations, the primary Labor Code
2 violations were based upon not receiving compliant meal and/or rest breaks and being issued
3 defective wage statements. PAGA penalties are subject to a one-year statute of limitations.
4 Code Civ. Proc., § 340; *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1199.
5 Under PAGA, Defendant is subject to a civil penalty which, pursuant to Labor Code section
6 2699(f)(2),1 is calculated by multiplying the total number of wage payments made by \$100.00.
7 *See Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1209 (holding that until an
8 employer is cited or informed that employer has violated the Labor Code, only the “initial”
9 penalty rate applies).

10 36. I calculated damages under this cause of action by multiplying the number of
11 active Class Members (because of the shorted statutory period for this claim), by the civil
12 penalties that each could be awarded for the Labor Code sections enumerated under Labor Code
13 §2699.5 that were applicable in this case, and then applied discounts in light of the
14 countervailing arguments with regard to the other causes of action, and moreover the Court’s
15 power to award “a lesser amount than the maximum civil liability.”

16 37. As verified by discovery, Defendant paid bi-monthly, which resulted in a lower
17 exposure to Defendant on PAGA claims than if they had compensated workers on a weekly
18 basis. The analysis of the maximum civil penalty presumed that there was at least one meal
19 period violation for each workweek during the entire PAGA period. Plaintiff did not stack
20 multiple Labor Code violations alleged in the Complaint for this calculation and did not attack
21 claims that are either duplicative or derivative of the class claims. The total amount of penalties
22 for which the Defendant would be likely to be found liable at trial would be less than the
23 maximum civil penalty based on allocating risk factors.

24 38. Here, the extent of discovery concerning the PAGA claim was sufficient to
25 enable me to evaluate the strength and value of the claim for purposes of Settlement. My
26 investigation was sufficient to (1) confirm that Defendant utilized the same alleged meal period
27 practice or policy at its California location during the PAGA period, (2) tabulate with the total
28 number of potential Labor Code violations at issue during the PAGA period, (3) identify the

1 total number of individuals falling within the definition of “Aggrieved Employee” for the
2 PAGA period, and (4) determine and evaluate Defendant’s affirmative defenses in this action.
3 Based on my experience litigating wage and hour claims, such investigation was sufficient to
4 determine the potential value of the PAGA claim, and to evaluate the strength of this claim for
5 purposes of Settlement.

6 39. The proposed Settlement is the product of extensive and on-going arms-length
7 negotiations between the Parties. The Parties attended mediation before Steve Pearl, Esq., a
8 well-regarded and experienced mediator. The mediation process was hard fought. Thereafter,
9 with the assistance of the mediator, negotiations of the Settlement details continued for months,
10 whereupon the finalized Settlement Agreement that is the subject of this Motion was finally
11 agreed upon, and then subsequently executed.

12 40. The Parties have agreed to allocate from the \$105,000 Class Action Settlement
13 58,000 to the award of penalties under PAGA. Pursuant to *Labor Code* section 2699(i):

14 “Civil penalties recovered by aggrieved employees shall be distributed
15 as follows: 75 percent to the Labor and Workforce Development
16 Agency for enforcement of labor laws and education of employers and
17 employees about their rights and responsibilities under this code, to be
18 continuously appropriated to supplement and not supplant the funding
to the agency for those purposes; and 25 percent to the aggrieved
employees.”

19 Consequently, of this \$5,000, \$3,750.00 (75%) will be made payable to the LWDA and the
20 balance, \$1,250 (25%) will be paid to all eligible current and former workers of Defendant.

21 41. Defendant has agreed to provide payment to each of these individuals in
22 accordance with the Settlement Agreement attached hereto as Exhibit 1.

23 42. The relative strength of the PAGA claim brought by Plaintiff weighs in favor of
24 the Court finding that the Settlement is fair, adequate, and reasonable, as Defendant maintained
25 defenses to the theory of penalty-liability put forward by Plaintiff which, if successful, had the
26 potential to substantially reduce or eliminate recovery. Defendant maintained that even though
27 meal periods may not have always been recorded that the manager permitted the employees in
28 their team to take a meal and/or rest periods during the workday.

1 43. Defendant maintained that even if the Court did award penalties, the forgoing
2 circumstances would cause the Court to substantially reduce the penalties awarded based on the
3 discretionary factors contained in Cal. *Lab. Code* § 2699(e)(2) (“In action by an aggrieved
4 employee ..., a court may award a lesser amount than the maximum civil penalty amount
5 specified by this part if, based on the facts and circumstances of the particular case, to do
6 otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.”).
7 In wage and hour class actions, defendants contend that the maximum civil penalty should not
8 be awarded because the statutory penalties overlap the civil penalties and thus would be
9 providing a double recovery for the same violation, and this would amount to an award that was
10 unjust and arbitrary.

11 44. Approval of the proposed Settlement is appropriate in light of the risk, expense,
12 and complexity of further litigation. As discussed above, the proposed Settlement takes into
13 consideration the specific factual and legal hurdles faced by the Plaintiff in establishing
14 Defendant’s penalty-liability in this case, which again, may have resulted in a net-zero recovery.
15 These risks – when balanced with the fact that the Settlement achieved a reasonable recovery,
16 and that further litigation posed a risk of diminishing such recovery by increasing litigation
17 expenses – weigh strongly in favor of Settlement approval. The Parties agreed that to maximize
18 the recovery for the class members was a noteworthy objective in the Settlement. In this case,
19 class members actually lost money and suffered actual damages. Therefore, compensating the
20 class members was of paramount importance. Therefore, in order to maximize the class
21 members’ recovery, less money would have to go to LWDA for the PAGA penalties. The
22 Parties agreed that under these circumstances, allocating \$5,000 for PAGA was fair and
23 reasonable in light of the harm allegedly realized by the class members.

24 45. In my opinion, the number of penalties negotiated under the terms of the
25 Settlement reached by the Parties is fair and represents a good recovery for the State of
26 California and the Aggrieved Employees. I believe that continued litigation of this case may
27 have produced better results, if any, at the cost of significant litigation expenses for all Parties.

28 46. The Parties seek Court approval, therefore, for the PAGA penalties to be
distributed as noted herein.

1 47. Pursuant to California Labor Code 2699(1), the Settlement Agreement has been
2 provided to the Labor and Workforce Development Agency (“LWDA”) on March 17, 2023.

3 48. The foregoing discussion has sought to explain how the settlement amount is
4 adequate in light of the merits of the case by explaining the legal basis for each of Plaintiff’s
5 causes of action, summarizing the evidence that I gathered in support of those causes of action,
6 and evaluating Defendant’s legal and factual arguments against those causes of action. The
7 conclusion to be drawn from the foregoing analysis is that neither liability nor damages was
8 clear-cut, which is why the parties elected to settle this matter. I had to apply appropriate
9 discounts in light of the real defenses in this case because they posed real risks to being able to
10 recover anything. Thus, this settlement, like most others, was the product of compromise.

11 49. In sum, the settlement amount is fair and reasonable in light of the strengths and
12 weaknesses of Plaintiff’s case.

13 **Risk, Expense and Likely Duration of Further Litigation**

14 50. The next *Clark/Kullar* factors, identified in the heading above, recognize that
15 settlements take into consideration the risks and expenses posed by further litigation and, in the
16 class-action context, the risk of non-certification. Consequently, it is appropriate that the trial
17 court should keep these considerations in mind when judging the adequacy of class-action
18 settlements.

19 51. Further litigation of this case posed real risks for a number of reasons. First,
20 there were the risks of unfavorable rulings on the merits of the various indeterminate legal
21 issues outlined in the previous section. In that section it was observed that almost every cause of
22 action was subject to some unique indeterminacy of its own.

23 52. Through the settlement process, Plaintiff’s counsel took into consideration the
24 benefit to Class Members to receive a real monetary benefit at this time. The Class Members’
25 damages were also adversely affected by the Covid-19 pandemic as they were not working as
26 many, or any, shifts during the pandemic shut-down.

27 53. Finally, it is usually preferable to reach an early resolution of a dispute because,
28 in addition to what has already been said, such resolutions save time and money that would

1 otherwise go to litigation. Most cases settle sooner or later. If this case ended up settling after
2 further litigation, the settlement amount would have taken into account the additional costs
3 incurred, and there might have been less money available for Class Members after all was said
4 and done. This is not just an abstract contention. The parties were moving into the phase of this
5 litigation where, assuming the parties proceeding the certification motion hearing, they would
6 have had to depose a large number of people such as employees and customers in order to
7 confirm certification and thereafter establish liability for trial. Discovery disputes would have
8 certainly arisen. In contrast, the settlement provides real benefits for Class Members here and
9 now. The benefits are not insignificant for anyone, especially given the current economic
10 climate. Consequently, the risk and expense of further litigation outweighed any benefit that
11 might have been gained otherwise.

12 **Experience and Views of Counsel**

13 54. I am well qualified because of my experience, knowledge, and resources to act as
14 counsel and represent Plaintiff and the putative class in this action. I have represented
15 employees in numerous class-action lawsuits involving wage and hour violations in California.
16 A significant percentage of my practice is devoted to litigating wage and hour violations, and
17 the bulk of these cases are class actions. I have obtained favorable settlements against a range
18 of defendants in wage and hour class actions.

19 55. Barrera & Associates is actively involved in both class action and individual
20 employment litigation matters on an ongoing basis. Our firm deals regularly with class action
21 litigation and individual employment litigation, many of which also involve wage and hour
22 components. I have experience is helpful in assessing the reasonableness of settlements such as
23 the one at issue here; and from this experience I conclude that this lawsuit could not have been
24 settled on better terms than provided under the present settlement agreement.

25 56. In sum, I am experienced in employment class-action litigation, and is adequate
26 to represent the putative class in the instant action.

27 **Reaction of Class Members to the Proposed Settlement**

28 57. It is premature to address this factor now, at the preliminary-approval stage.

1 However, we can address the notification procedure. The notification procedure set out in the
2 Settlement Agreement provides the greatest likelihood that each and every Class Member will
3 receive the Settlement Documents. Under the Settlement Agreement, the Settlement
4 Administrator will send the Class Notice via first-class mail to each Class Member with
5 instructions to the postmaster to return any Class Notices that are undeliverable. Before mailing
6 the Class Notice, the Settlement Administrator will perform an address search in order to verify
7 the accuracy of the addresses provided by Defendant. If any Class Notices are returned
8 undeliverable, the Settlement Administrator will promptly forward them to any address
9 appearing on the returned envelope or, if there is no forwarding address, the Settlement
10 Administrator will take reasonable and necessary steps to re-mail the returned Class Notices to
11 those Class Members.

12 58. The Class Notice itself fully apprises Class Members of the nature of the lawsuit,
13 the claims involved, the terms of the settlement, their options under the proposed Settlement,
14 and their right to opt-out of, or object to, the proposed Settlement and the deadline to do so. It
15 notifies Class Members of the contact information for the Settlement Administrator and for
16 Plaintiff's Counsel so that Class Members can speak to attorneys conversant with the legal and
17 factual issues involved in this case. The efforts taken to ensure that Class Members receive the
18 Class Notice and are well informed about the proposed Settlement, and the fact that class
19 members need not submit to a claims process to be paid their money owed, suggests a favorable
20 response.

21 59. The proposed Settlement provides for payments to participating Settlement Class
22 Members that do not opt-out of the settlement, requiring no affirmative action on the part of the
23 class member to receive monies owed to them under the settlement. Each Settlement Class
24 Members' share of the settlement will be based upon the number of Shifts he or she actually
25 worked for Defendant during the Class Period.

26 **Conclusion of the Clark/Kullar Analysis**

27 60. As is clear from the preceding *Clark* and *Kullar* analysis has concluded, this
28 settlement is more than fair, reasonable, and adequate. I conducted a thorough investigation of

1 the subject wage-and-hour practices and engaged in noncollusive, arm's-length negotiations in
2 order to reach a settlement. Defendant has agreed to pay fair value to settle Plaintiff and putative
3 class members claims given the existence of the numerous legal hurdles and challenges that
4 faced Plaintiff. From my substantial experience with wage-and-hour-class-action lawsuits, this
5 case could not have settled on better terms under the circumstances. I therefore request that the
6 settlement be granted preliminary approval so that those persons whom it was intended to
7 benefit shall be afforded the opportunity to determine its adequacy for themselves.

8 **Request for Attorneys' Fees**

9 61. The settlement calls for the payment of \$40,000, or 38% of the settlement fund,
10 in attorneys' fees to Plaintiff's Counsel. This request is fair, reasonable, and adequate to
11 compensate Plaintiff's Counsel for the substantial work this firm has put into this case and,
12 moreover, the risk they assumed by taking it in the first place. Additionally, it is consistent with
13 the contingency-fee agreement entered into by Plaintiff. Based on my experience, I am aware
14 that the common and acceptable rate for contingency representation in wage-and-hour class
15 action litigation is normally 40% before trial, with the range being from 35% up to 50%.

16 62. The attorney fee award is intended to reimburse Plaintiff's Counsel for all
17 uncompensated work that we have already done over the past year and a half-plus and for all the
18 work we will continue to do in carrying out and overseeing the notification to the Class
19 Members, communicating with Class Members regarding the proposed Settlement, and
20 administering the settlement if it is preliminarily approved.

21 63. Plaintiff's Counsel took this case on a contingent-fee basis against a public entity
22 represented by a reputable defense firm. When we take contingent cases, we must pay careful
23 attention to the economics involved. Accordingly, when we take contingent cases, we anticipate
24 that we shall, if successful, receive a fee that exceeds our normal hourly rate; otherwise, the risk
25 is often too great to bear. Even when we work long hours, the number of hours in a day is
26 limited. Because of this, when we take on one particular matter, we are unable to take on other
27 matters. When Plaintiff's Counsel became involved in this case, we realized the time
28 commitment that it would entail, and we were forced to turn down matters that we otherwise

1 could have handled. We were forced to do so because of the thorough factual investigation and
2 development this case required. In sum, this case claimed a significant portion of Plaintiff
3 Counsel's time and attention throughout its pendency.

4 64. The requested attorneys' fees are reasonable for the services provided to Class
5 Members and for the benefits they will receive. Indeed, even with a modest multiplier under the
6 lodestar theory, *see Bihun v. AT&T Information System* (1993) 13 Cal.App.4th 976, 997,
7 Plaintiff Counsel's fees would still be justified.

8 **Service Awards to Class Representative**

9 65. The Class Representative Ulysses A. Rivas is entitled to a reasonable service
10 payment for his efforts and initiative in bringing and helping to prosecute this action. He
11 assumed a great risk by challenging Defendant's wage-and-hour policies and bringing suit
12 against them. Mr. Rivas first took it upon himself to learn about the law and confer with others
13 about the issues he was facing. As is outlined in the declaration submitted by Mr. Rivas, he
14 spent a considerable amount of time investigating his claims and pursuing those claims on
15 behalf of the proposed Class.

16 66. The courage it took to stand up to a current employer in this way should not be
17 underestimated. Few people want to file lawsuits, especially against their employers. This
18 aversion was and is especially prominent given the tenuous economic climate. In addition, by
19 suing his employer, Mr. Rivas increased his risks of retaliation by potential prospective
20 employers. He has now cost Defendant a substantial sum of money through his courage in
21 vindicating his rights and the rights of past and present workers. Such conduct will not be
22 ignored by a prospective employer who has to choose between an applicant who has never sued
23 a prior employer and one who has. This risk is particularly real in the information age, where
24 employers can easily perform background checks of prospective employees.

25 67. Plaintiff did not allow his fears of the potential repercussions of being a class
26 representative deter him from acting for the benefit of Class Members. Quite the contrary,
27 Plaintiff has been intimately involved in this case since its inception. He has devoted a
28 substantial amount of time to helping Plaintiff's Counsel effectively develop and prosecute this

1 action at every stage of the litigation. On numerous occasions, Plaintiff discussed virtually
2 every aspect of this case with Plaintiff's Counsel. He provided Plaintiff's Counsel with
3 information about Defendant and about the industry generally, reviewed documents, produced
4 documents, identified witnesses, and consulted Plaintiff's Counsel throughout the litigation.
5 Plaintiff was present in person throughout the December 2022 mediation session and conferred
6 with Plaintiff's counsel and the mediator throughout. Plaintiff monitored the progress of the
7 litigation with Plaintiff's Counsel and reviewed and signed the Settlement Agreement.

8 68. Plaintiff has diligently, adequately, and fairly represented the Class Members,
9 and has not placed his interests above any member of the putative class. All parties are in
10 agreement that Plaintiff is entitled to an enhancement for his time and effort in this matter.
11 Such service awards to class representatives have been a common feature of settlements
12 negotiated by Plaintiff's Counsel, and they have been routinely approved by trial courts.

13 69. In light of the foregoing, Plaintiff's Counsel believes that the service award of
14 \$15,000 to Plaintiff Ulysses A. Rivas is fair and reasonable. Although Plaintiff's Counsel
15 appreciates that the Court has a duty to ensure that class representatives are not
16 overcompensated at the expense of the class, modest service awards in employment class
17 actions such as this one are necessary not only to compensate class representatives for the time
18 they spend in the case, but also, and more importantly, to encourage aggrieved employees to
19 challenge questionable employment practices notwithstanding the very real consequences they
20 may face.

21 **Settlement Administrator**

22 70. In regard to the Settlement Administrator, the parties have agreed that Phoenix
23 Class Action Administration Solutions, Inc. ("Phoenix") will handle the notice and claims
24 administration of the proposed Settlement. The parties respectfully request that the Court
25 appoint Phoenix as the Settlement Administrator as the entity has extensive experience in the
26 handling and processing of administering a class action settlement.

27 ///

28 ///

EXHIBIT 1

CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND CLASS NOTICE

This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and between plaintiff Ulysses Rivas (“Plaintiff”) and defendant City of Manhattan Beach (“City”). The Agreement refers to Plaintiff and Defendant collectively as “Parties,” or individually as “Party.”

1. DEFINITIONS.

- 1.1. “Action” means the Plaintiff’s lawsuit alleging wage and hour violations against City captioned Ulysses A. Rivas v. City of Manhattan Beach, initiated on October 20, 2021 and pending in the Superior Court of the State of California, County of Los Angeles, Case No. 21STCV38784.
- 1.2. “Administrator” means Phoenix Settlement Administrators, the neutral entity the Parties have agreed to appoint to administer the Settlement.
- 1.3. “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with Preliminary Approval of the Settlement.
- 1.4. “Aggrieved Employee” means a person employed by the City who worked as a Dial-a-Ride driver in California for the City during the PAGA Period.
- 1.5. “Class” means all persons employed by the City who worked as a Dial-a-Ride driver in California for the City during the Class Period.
- 1.6. “Class Counsel” means Patricio T.D. Barrera of Barrera & Associates.
- 1.7. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees and expenses, respectively, incurred to prosecute the Action.
- 1.8. “Class Data” means Class Member identifying information in the City’s possession including the Class Member’s name, last-known mailing address, Social Security number, and number of Class Period Workweeks and PAGA Pay Periods.
- 1.9. “Class Member” or “Settlement Class Member” means a member of the Class, as either a Participating Class Member or Non-Participating Class Member

(including a Non-Participating Class Member who qualifies as an Aggrieved Employee).

- 1.10. “Class Member Address Search” means the Administrator’s investigation and search for current Class Member mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Class Members.
- 1.11. “Class Notice” means the COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed to Class Members in English in the form, without material variation, attached as Exhibit A and incorporated by reference into this Agreement.
- 1.12. “Class Period” means the period from October 20, 2018 to March 10, 2023.
- 1.13. “Class Representative” means the named Plaintiff in the operative complaint in the Action seeking Court approval to serve as a Class Representative.
- 1.14. “Class Representative Service Payment” means the payment to the Class Representative for initiating the Action and providing services in support of the Action.
- 1.15. “Court” means the Superior Court of California, County of Los Angeles.
- 1.16. “City” means named Defendant the City of Manhattan Beach.
- 1.17. “Defense Counsel” means Brian P. Walter of Liebert Cassidy Whitmore.
- 1.18. “Effective Date” means the date by when both of the following have occurred: (a) the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) if no Participating Class Member objects to the Settlement, the day the Court enters Judgment; (b) if one or more Participating Class Members objects to the Settlement, the day after the deadline for filing a notice of appeal from the Judgment; or if a timely appeal from the Judgment is filed, the day after the appellate court affirms the Judgment and issues a remittitur.
- 1.19. “Final Approval” means the Court’s order granting final approval of the Settlement.

- 1.20. "Final Approval Hearing" means the Court's hearing on the Motion for Final Approval of the Settlement.
- 1.21. "Final Judgment" means the Judgment Entered by the Court upon Granting Final Approval of the Settlement.
- 1.22. "Gross Settlement Amount" means \$105,000 (one hundred five thousand dollars) which is the total amount the City agrees to pay under the Settlement except as provided in Paragraph 9 below. The Gross Settlement Amount will be used to pay Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees, Class Counsel Expenses, Class Representative Service Payment and the Administrator's Expenses.
- 1.23. "Individual Class Payment" means the Participating Class Member's pro rata share of the Net Settlement Amount calculated according to the number of Workweeks worked during the Class Period.
- 1.24. "Individual PAGA Payment" means the Aggrieved Employee's pro rata share of 25% of the PAGA Penalties calculated according to the number of Workweeks worked during the PAGA Period.
- 1.25. "Judgment" means the judgment entered by the Court based upon the Final Approval.
- 1.26. "LWDA" means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subd. (i).
- 1.27. "LWDA PAGA Payment" means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subd. (i).
- 1.28. "Net Settlement Amount" means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be paid to Participating Class Members as Individual Class Payments.
- 1.29. "Non-Participating Class Member" means any Class Member who opts out of the Settlement by sending the Administrator a valid and timely Request for Exclusion.
- 1.30. "PAGA Pay Period" means any Pay Period during which an Aggrieved Employee worked at least one shift for the City as a Dial-a-Ride driver during the PAGA Period.

- 1.31. "PAGA Period" means the period from August 16, 2020 to March 10, 2023.
- 1.32. "PAGA" means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).
- 1.33. "PAGA Notice" means Plaintiff's August 16, 2021 and October 6, 2021 letters to the City and the LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a).
- 1.34. "PAGA Penalties" means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount of \$5,000 (five thousand dollars), allocated 25% to the Aggrieved Employees in the amount of \$1,250 (one thousand two hundred fifty dollars), and the 75% to LWDA in the amount of \$3,750 (three thousand seven hundred fifty dollars), in settlement of PAGA claims.
- 1.35. "Participating Class Member" means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement.
- 1.36. "Plaintiff" means Ulysses A. Rivas, the named plaintiff in the Action.
- 1.37. "Preliminary Approval" means the Court's Order Granting Preliminary Approval of the Settlement.
- 1.38. "Preliminary Approval Order" means the proposed Order Granting Preliminary Approval and Approval of PAGA Settlement.
- 1.39. "Released Class Claims" means the claims being released as described in Paragraph 6.2 below.
- 1.40. "Released PAGA Claims" means the claims being released as described in Paragraph 6.2 below.
- 1.41. "Released Parties" means: the City and each of its former and present elected officials, officers, managers, attorneys, insurers, predecessors, successors, and assigns.
- 1.42. "Request for Exclusion" means a Class Member's submission of a written request to be excluded from the Class Settlement signed by the Class Member.
- 1.43. "Response Deadline" means 60 days after the Administrator mails Notice to Class Members and Aggrieved Employees, and shall be the last date on which Class Members may: (a) fax, email, or mail Requests for Exclusion from the Settlement, or (b) fax, email, or mail his or her Objection to the Settlement. Class Members to whom Notice Packets are resent after having been returned

undeliverable to the Administrator shall have an additional 14 calendar days beyond the Response Deadline has expired.

1.44. "Settlement" means the disposition of the Action effected by this Agreement and the Judgment.

1.45. "Shift" means any day during which a Class Member worked for the City as a Dial-a-Ride driver, during the Class Period.

2. RECITALS.

2.1. On October 20, 2021, Plaintiff commenced this Action by filing a Complaint alleging a cause of action against the City of Manhattan Beach for civil penalties under PAGA (Labor Code §2699 et seq.) for missed meal periods and rest periods. The First Amended Complaint filed on December 3, 2021, is the operative complaint in the Action (the "Operative Complaint.") The City denies the allegations in the Operative Complaint, denies any failure to comply with the laws identified in in the Operative Complaint and denies any and all liability for the causes of action alleged.

2.2. Pursuant to Labor Code section 2699.3, subd.(a), Plaintiff gave timely written notice to the City and the LWDA by sending the PAGA Notice on August 16, 2021, and by sending an Amended PAGA Notice on October 6, 2021.

2.3. On December 13, 2022, the Parties participated in an all-day mediation presided over by Mediator Steve Pearl which led to this Agreement to settle the Action.

2.4. Prior to mediation, Plaintiff obtained, through both formal and informal discovery, payroll and timekeeping records, City policies and procedures for Defendant's Dial-a-Ride drivers, and computer Routematch bus logs for Class Members that showed their daily work activities as Dial-a-Ride drivers. Plaintiff's investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 ("*Dunk/Kullar*").

2.5. The Court has not granted class certification.

2.6. The Parties, Class Counsel and Defense Counsel represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement.

3. MONETARY TERMS.

- 3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 9 below, the City promises to pay \$105,000.00 (one hundred five thousand dollars) and no more as the Gross Settlement Amount, and to separately pay any and all employer payroll taxes owed on the Wage Portions of the Individual Class Payments. The City has no obligation to pay the Gross Settlement Amount (or any payroll taxes) prior to the deadline stated in Paragraph 6.1 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to the City.
- 3.2. Payments from the Gross Settlement Amount. The Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts specified by the Court in the Final Approval:
- 3.2.1. To Plaintiff: Class Representative Service Payment to the Class Representative of not more than \$15,000 (fifteen thousand dollars) in addition to any Individual Class Payment and any Individual PAGA Payment the Class Representative is entitled to receive as a Participating Class Member. The City will not oppose Plaintiff's request for a Class Representative Service Payment that does not exceed this amount. As part of the motion for Class Counsel Fees Payment and Class Litigation Expenses Payment, Plaintiff will seek Court approval for any Class Representative Service Payments no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Representative Service Payment less than the amount requested, the Administrator will retain the remainder in the Net Settlement Amount. The Administrator will pay the Class Representative Service Payment using IRS Form 1099. Plaintiff assumes full responsibility and liability for employee taxes owed on the Class Representative Service Payment.
- 3.2.2. To Class Counsel: A Class Counsel Fees Payment of not more than 38.1%, which is currently estimated to be \$40,000 (forty thousand dollars) and a Class Counsel Litigation Expenses Payment of not more than \$10,000 (ten thousand dollars.) The City will not oppose requests for these payments provided that do not exceed these amounts. Plaintiff and/or Class Counsel will file a motion for Class Counsel Fees Payment and Class Litigation Expenses Payment no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to Class Counsel or any other Plaintiff's Counsel arising from any claim to any portion any Class Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The Administrator will pay the Class Counsel Fees Payment and Class Counsel Expenses Payment using one or more IRS 1099 Forms. Class Counsel assumes full responsibility and liability for taxes owed on the Class Counsel Fees Payment and the Class Counsel

Litigation Expenses Payment and holds the City harmless, and indemnifies the City, from any dispute or controversy regarding any division or sharing of any of these Payments.

- 3.2.3. To the Administrator: An Administrator Expenses Payment not to exceed \$2,500 except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less or the Court approves payment less than \$2,500, the Administrator will retain the remainder in the Net Settlement Amount.
- 3.2.4. To Each Participating Class Member: An Individual Class Payment calculated by
 - (a) dividing the Net Settlement Amount by the total number of Shifts worked as Dial-a-Ride drivers by all Participating Class Members during the Class Period and
 - (b) multiplying the result by each Participating Class Member's Shifts worked as a Dial-a-Ride driver.
- 3.2.4.1. Tax Allocation of Individual Class Payments. 25% of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. The 75% of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for interest and penalties (the "Non-Wage Portion"). The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment.
- 3.2.4.2. Effect of Non-Participating Class Members on Calculation of Individual Class Payments. Non-Participating Class Members will not receive any Individual Class Payments. The Administrator will retain amounts equal to their Individual Class Payments in the Net Settlement Amount for distribution to Participating Class Members on a pro rata basis.
- 3.2.5. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of \$5,000 to be paid from the Gross Settlement Amount, with 75% (\$3,750) allocated to the LWDA PAGA Payment and 25% (\$1,250) allocated to the Individual PAGA Payments.
 - 3.2.5.1. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties \$1,250 by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

3.2.5.2. If the Court approves PAGA Penalties of less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

4. SETTLEMENT FUNDING AND PAYMENTS.

- 4.1. Class Workweeks and Aggrieved Employee Pay Periods. Based on a review of its records to date, the City estimates there are 13 Class Members who collectively worked a total of 3546 Shifts, and 9 Aggrieved Employees who worked a total of 96 PAGA Pay Periods.
- 4.2. Class Data. Not later than 15 days after the Court grants Preliminary Approval of the Settlement, the City will simultaneously deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator employees who need access to the Class Data to effect and perform under this Agreement. The City has a continuing duty to immediately notify Class Counsel if it discovers that the Class Data omitted class member identifying information and to provide corrected or updated Class Data as soon as reasonably feasible. Without any extension of the deadline by which the City must send the Class Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Class Data.
- 4.3. Funding of Gross Settlement Amount. The City shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay the City's share of payroll taxes by transmitting the funds to the Administrator no later than 14 days after the Effective Date.
- 4.4. Payments from the Gross Settlement Amount. Within 14 days after the City funds the Gross Settlement Amount, the Administrator will mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payment. Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment and the Class Representative Service Payment shall not precede disbursement of Individual Class Payments and Individual PAGA Payments.
- 4.4.1. The Administrator will issue checks for the Individual Class Payments and/or Individual PAGA Payments and send them to the Class Members via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided.

The Administrator will cancel all checks not cashed by the void date. The Administrator will send checks for Individual Settlement Payments to all Participating Class Members (including those for whom Class Notice was returned undelivered). The Administrator will send checks for Individual PAGA Payments to all Aggrieved Employees including Non-Participating Class Members who qualify as Aggrieved Employees (including those for whom Class Notice was returned undelivered). The Administrator may send Participating Class Members a single check combining the Individual Class Payment and the Individual PAGA Payment. Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database.

4.4.2. The Administrator must conduct a Class Member Address Search for all other Class Members whose checks are returned undelivered without USPS forwarding address. Within 7 days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Class Member Address Search. The Administrator need not take further steps to deliver checks to Class Members whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Class Member whose original check was lost or misplaced, requested by the Class Member prior to the void date.

4.4.3. For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure Section 384, subd. (b).

4.4.4. The payment of Individual Class Payments and Individual PAGA Payments shall not obligate the City to confer any additional benefits or make any additional payments to Class Members (such as retirement contributions or bonuses) beyond those specified in this Agreement.

6. **RELEASES OF CLAIMS.** Effective on the date when the City fully funds the entire Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiff, Class Members, and Class Counsel will release claims against all Released Parties as follows:

6.1 Plaintiff's Release. Plaintiff and his or her respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release and discharge Released Parties from all claims, transactions, or occurrences that occurred during the Class Period, including, but not limited to: (a) all claims that were, or reasonably could have been, alleged, based on the facts contained, in the Operative Complaint, (b) all PAGA claims that were, or reasonably could have been,

alleged based on facts contained in the Operative Complaint, Plaintiff's PAGA Notice, or ascertained during the Action and released under 6.2, below, and (c) all other claims relating to Plaintiff's employment with the City, except for those claims that cannot legally be released as set forth below. ("Plaintiff's Release.") Plaintiff's Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, workers' compensation benefits that arose at any time, or based on occurrences outside the Class Period. Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that Plaintiff's Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiff's discovery of them.

6.1.1 Plaintiff's Waiver of Rights Under California Civil Code Section 1542.
For purposes of Plaintiff's Release, Plaintiff expressly waives and relinquishes the provisions, rights, and benefits, if any, of section 1542 of the California Civil Code, which reads:

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

6.2 Release by Participating Class Members Who Are Not Aggrieved Employees:
All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from (i) all claims that were alleged, or reasonably could have been alleged, based on the Class Period facts stated in the Operative Complaint and ascertained in the course of the Action including, any and all claims involving any alleged failure to provide meal or rest periods to Class Members and any payments or penalties owed for those meal or rest periods. Except as set forth in Section 6.3 of this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period.

6.3 Release by Non-Participating Class Members Who Are Aggrieved Employees:
All Non-Participating Class Members who are Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint and the PAGA Notices and ascertained in the course of the

Action, including any civil penalties for alleged failure to provide meal or rest periods to Class Members.

7. **MOTION FOR PRELIMINARY APPROVAL.** The Parties agree to jointly prepare and file a motion for preliminary approval (“Motion for Preliminary Approval”) that complies with the Court’s current checklist for Preliminary Approvals.

7.1 The City’s Declaration in Support of Preliminary Approval. Within 7 days of the full execution of this Agreement, but prior to the date by which Plaintiff must file the motion for preliminary approval of this settlement, the City will prepare and deliver to Class Counsel a signed Declaration from the City and Defense Counsel disclosing all facts relevant to any actual or potential conflicts of interest with the Administrator. In their Declarations, Defense Counsel and the City shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.

7.2 Plaintiff’s Responsibilities. Plaintiff will prepare and deliver to Defense Counsel all documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice, and memorandum in support, of the Motion for Preliminary Approval that includes an analysis of the Settlement under *Dunk/Kullar* and a request for approval of the PAGA Settlement under Labor Code Section 2699, subd. (f)(2)); (ii) a draft proposed Order Granting Preliminary Approval and Approval of PAGA Settlement; (iii) a draft proposed Class Notice; (iv) a signed declaration from the Administrator attaching its “not to exceed” bid for administering the Settlement and attesting to its willingness to serve; competency; operative procedures for protecting the security of Class Data; amounts of insurance coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant to any actual or potential conflicts of interest with Class Members; and the nature and extent of any financial relationship with Plaintiff, Class Counsel or Defense Counsel; (v) a signed declaration from Plaintiff confirming willingness and competency to serve and disclosing all facts relevant to any actual or potential conflicts of interest with Class Members, and/or the Administrator; (v) a signed declaration from each Class Counsel firm attesting to its competency to represent the Class Members; its timely transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), Operative Complaint (Labor Code section 2699, subd. (l)(1)), this Agreement (Labor Code section 2699, subd. (l)(2)); (vi) a redlined version of the parties’ Agreement showing all modifications made to the Model Agreement ready for filing with the Court; and (vii) all facts relevant to any actual or potential conflict of interest with Class Members and the Administrator. In their Declarations, Plaintiff and Class Counsel Declaration shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.

7.3 Responsibilities of Counsel. Class Counsel and Defense Counsel are jointly responsible for expeditiously finalizing and filing the Motion for Preliminary

Approval no later than 30 days after the full execution of this Agreement; obtaining a prompt hearing date for the Motion for Preliminary Approval; and for appearing in Court to advocate in favor of the Motion for Preliminary Approval. Class Counsel is responsible for delivering the Court's Preliminary Approval to the Administrator.

- 7.4 Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion for Preliminary Approval and/or the supporting declarations and documents, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant Preliminary Approval or conditions Preliminary Approval on any material change to this Agreement, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and otherwise satisfy the Court's concerns.

8. SETTLEMENT ADMINISTRATION.

- 8.1 Selection of Administrator. The Parties have jointly selected Phoenix Settlement Administrators to serve as the Administrator and verified that, as a condition of appointment, Phoenix Settlement Administrators agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of Administration Expenses. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.
- 8.2 Employer Identification Number. The Administrator shall have and use its own Employer Identification Number for purposes of calculating payroll tax withholdings and providing reports state and federal tax authorities.
- 8.3 Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury Regulation section 468B-1.
- 8.4 Notice to Class Members.
- 8.4.1 No later than three (3) business days after receipt of the Class Data, the Administrator shall notify Class Counsel that the list has been received and state the number of Class Members, PAGA Members, Workweeks, and Pay Periods in the Class Data.
- 8.4.2 Using best efforts to perform as soon as possible, and in no event later than 14 days after receiving the Class Data, the Administrator will send to

all Class Members identified in the Class Data, via first-class United States Postal Service (“USPS”) mail, the Class Notice substantially in the form attached to this Agreement as Exhibit A. The first page of the Class Notice shall prominently estimate the dollar amounts of any Individual Class Payment and/or Individual PAGA Payment payable to the Class Member, and the number of Workweeks and PAGA Pay Periods (if applicable) used to calculate these amounts. Before mailing Class Notices, the Administrator shall update Class Member addresses using the National Change of Address database.

8.4.3 Not later than 3 business days after the Administrator’s receipt of any Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS. If the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the most current address obtained. The Administrator has no obligation to make further attempts to locate or send Class Notice to Class Members whose Class Notice is returned by the USPS a second time.

8.4.4 The deadlines for Class Members’ written objections, Challenges to Workweeks and/or Pay Periods, and Requests for Exclusion will be extended an additional 14 days beyond the 60 days otherwise provided in the Class Notice for all Class Members whose notice is re-mailed. The Administrator will inform the Class Member of the extended deadline with the re-mailed Class Notice.

8.4.5 If the Administrator, the City or Class Counsel is contacted by or otherwise discovers any persons who believe they should have been included in the Class Data and should have received Class Notice, the Parties will expeditiously meet and confer in person or by telephone, and in good faith, in an effort to agree on whether to include them as Class Members. If the Parties agree, such persons will be Class Members entitled to the same rights as other Class Members, and the Administrator will send, via email or overnight delivery, a Class Notice requiring them to exercise options under this Agreement not later than 14 days after receipt of Class Notice, or the deadline dates in the Class Notice, whichever are later.

8.5 Requests for Exclusion (Opt-Outs).

8.5.1 Class Members who wish to exclude themselves (opt-out of) the Class Settlement must send the Administrator, by fax, email, or mail, a signed written Request for Exclusion not later than 60 days after the Administrator mails the Class Notice (plus an additional 14 days for Class Members whose Class Notice is re-mailed, if needed). A Request for Exclusion is a letter from a Class Member or his/her representative that reasonably communicates the Class Member’s

election to be excluded from the Settlement and includes the Class Member's name, address and email address or telephone number. To be valid, a Request for Exclusion must be timely faxed, emailed, or postmarked by the Response Deadline.

- 8.5.2 The Administrator may not reject a Request for Exclusion as invalid because it fails to contain all the information specified in the Class Notice. The Administrator shall accept any Request for Exclusion as valid if the Administrator can reasonably ascertain the identity of the person as a Class Member and the Class Member's desire to be excluded. The Administrator's determination shall be final and not appealable or otherwise susceptible to challenge. If the Administrator has reason to question the authenticity of a Request for Exclusion, the Administrator may demand additional proof of the Class Member's identity. The Administrator's determination of authenticity shall be final and not appealable or otherwise susceptible to challenge.
- 8.5.3 Every Class Member who does not submit a timely and valid Request for Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all benefits and bound by all terms and conditions of the Settlement, including the Participating Class Members' Releases under Paragraphs 6.2 and 6.3 of this Agreement, regardless whether the Participating Class Member actually receives the Class Notice or objects to the Settlement.
- 8.5.4 Every Class Member who submits a valid and timely Request for Exclusion is a Non-Participating Class Member and shall not receive an Individual Class Payment or have the right to object to the class action components of the Settlement. Because future PAGA claims are subject to claim preclusion upon entry of the Judgment, Non-Participating Class Members who are Aggrieved Employees are deemed to release the claims identified in Paragraph 6.4 of this Agreement and are eligible for an Individual PAGA Payment.
- 8.6 Challenges to Calculation of Shifts. Each Class Member shall have 60 days after the Administrator mails the Class Notice (plus an additional 14 days for Class Members whose Class Notice is re-mailed, if needed) to challenge the number of Shifts and PAGA Pay Periods (if any) allocated to the Class Member in the Class Notice. The Class Member may challenge the allocation by communicating with the Administrator via fax, email or mail. The Administrator must encourage the challenging Class Member to submit supporting documentation. In the absence of any contrary documentation, the Administrator is entitled to presume that the Shifts contained in the Class Notice are correct so long as they are consistent with the Class Data. The Administrator's determination of each Class Member's

allocation of Shifts and/or PAGA Pay Periods shall be final and not appealable or otherwise susceptible to challenge. The Administrator shall promptly provide copies of all challenges to calculation of Shifts and/or PAGA Pay Periods to Defense Counsel and Class Counsel and the Administrator's determination the challenges.

8.7 Objections to Settlement.

8.7.1 Only Participating Class Members may object to the class action components of the Settlement and/or this Agreement, including contesting the fairness of the Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Class Representative Service Payment.

8.7.2 Participating Class Members may send written objections to the Administrator, by fax, email, or mail. In the alternative, Participating Class Members may appear in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A Participating Class Member who elects to send a written objection to the Administrator must do so not later than 60 days after the Administrator's mailing of the Class Notice (plus an additional 14 days for Class Members whose Class Notice was re-mailed).

8.7.3 Non-Participating Class Members have no right to object to any of the class action components of the Settlement.

8.8 Administrator Duties. The Administrator has a duty to perform or observe all tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.

8.8.1 Website, Email Address and Toll-Free Number. The Administrator will establish and maintain and use an internet website to post information of interest to Class Members including the date, time and location for the Final Approval Hearing and copies of the Settlement Agreement, Motion for Preliminary Approval, the Preliminary Approval, the Class Notice, the Motion for Final Approval, the Motion for Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and Class Representative Service Payment, the Final Approval and the Judgment. The Administrator will also maintain and monitor an email address and a toll-free telephone number to receive Class Member calls, faxes and emails.

8.8.2 Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator will promptly review on a rolling basis Requests for Exclusion to ascertain their validity. Not later than 5 days after the expiration of the deadline for submitting Requests for Exclusion, the Administrator shall email a list to Class Counsel and Defense Counsel containing (a) the names and other identifying information of Class Members who have timely submitted valid Requests for Exclusion

(Exclusion List”); (b) the names and other identifying information of Class Members who have submitted invalid Requests for Exclusion; (c) copies of all Requests for Exclusion from Settlement submitted (whether valid or invalid).

- 8.8.3 Weekly Reports. The Administrator must, on a weekly basis, provide written reports to Class Counsel and Defense Counsel that, among other things, tally the number of: Class Notices mailed or re-mailed, Class Notices returned undelivered, Requests for Exclusion (whether valid or invalid) received, objections received, challenges to Shifts and/or Pay Periods received and/or resolved, and checks mailed for Individual Class Payments and Individual PAGA Payments (“Weekly Report”). The Weekly Reports must include provide the Administrator’s assessment of the validity of Requests for Exclusion and attach copies of all Requests for Exclusion and objections received.
- 8.8.4 Shift and/or Pay Period Challenges. The Administrator has the authority to address and make final decisions consistent with the terms of this Agreement on all Class Member challenges over the calculation of Shifts and/or Pay Periods. The Administrator’s decision shall be final and not appealable or otherwise susceptible to challenge.
- 8.8.5 Administrator’s Declaration. Not later than 14 days before the date by which Plaintiff is required to file the Motion for Final Approval of the Settlement, the Administrator will provide to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its due diligence and compliance with all of its obligations under this Agreement, including, but not limited to, its mailing of Class Notice, the Class Notices returned as undelivered, the re-mailing of Class Notices, attempts to locate Class Members, the total number of Requests for Exclusion from Settlement it received (both valid or invalid), the number of written objections and attach the Exclusion List. The Administrator will supplement its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible for filing the Administrator’s declaration(s) in Court.
- 8.8.6 Final Report by Settlement Administrator. Within 10 days after the Administrator disburses all funds in the Gross Settlement Amount, the Administrator will provide Class Counsel and Defense Counsel with a final report detailing its disbursements by employee identification number only of all payments made under this Agreement. At least 15 days before any deadline set by the Court, the Administrator will prepare, and submit to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of all payments required under this Agreement. Class Counsel is responsible for filing the Administrator's declaration in Court.

9. **CLASS SIZE ESTIMATES** Based on its records, the City estimates that, as of the date of this Settlement Agreement, (1) there are 13 Class Members and 3,546 Shifts during the Class period and (2) there were 9 Aggrieved Employees who worked 97 Pay Periods during the PAGA Period.
10. **THE CITY'S RIGHT TO WITHDRAW.** If the number of valid Requests for Exclusion identified in the Exclusion List exceeds 35% of the total of all Class Members, the City may, but is not obligated, elect to withdraw from the Settlement. The Parties agree that, if the City withdraws, the Settlement shall be void ab initio, have no force or effect whatsoever, and that neither Party will have any further obligation to perform under this Agreement; provided, however, the City will remain responsible for paying all Settlement Administration Expenses incurred to that point. The City must notify Class Counsel and the Court of its election to withdraw not later than seven days after the Administrator sends the final Exclusion List to Defense Counsel; late elections will have no effect.
11. **MOTION FOR FINAL APPROVAL.** Not later than 16 court days before the calendared Final Approval Hearing, Plaintiff will file in Court, a motion for final approval of the Settlement that includes a request for approval of the PAGA settlement under Labor Code section 2699, subd. (l), a Proposed Final Approval Order and a proposed Judgment (collectively "Motion for Final Approval"). Plaintiff shall provide drafts of these documents to Defense Counsel not later than seven days prior to filing the Motion for Final Approval. Class Counsel and Defense Counsel will expeditiously meet and confer in person or by telephone, and in good faith, to resolve any disagreements concerning the Motion for Final Approval.
- 11.1 Response to Objections. Each Party retains the right to respond to any objection raised by a Participating Class Member, including the right to file responsive documents in Court no later than five court days prior to the Final Approval Hearing, or as otherwise ordered or accepted by the Court.
- 11.2 Duty to Cooperate. If the Court does not grant Final Approval or conditions Final Approval on any material change to the Settlement (including, but not limited to, the scope of release to be granted by Class Members), the Parties will expeditiously work together in good faith to address the Court's concerns by revising the Agreement as necessary to obtain Final Approval. The Court's decision to award less than the amounts requested for the Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Administrator Expenses Payment shall not constitute a material modification to the Agreement within the meaning of this paragraph.
- 11.3 Continuing Jurisdiction of the Court. The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of (i) enforcing this Agreement and/or Judgment,

(ii) addressing settlement administration matters, and (iii) addressing such post-judgment matters as are permitted by law.

11.4 Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment reflected set forth in this Settlement, the Parties, their respective counsel, and all Participating Class Members who did not object to the Settlement as provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or appeals. If an objector appeals the Judgment, the Parties' obligations to perform under this Agreement will be suspended until such time as the appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect the amount of the Net Settlement Amount.

11.5 Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If the reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a material modification of this Agreement (including, but not limited to, the scope of release to be granted by Class Members), this Agreement shall be null and void. The Parties shall nevertheless expeditiously work together in good faith to address the appellate court's concerns and to obtain Final Approval and entry of Judgment, sharing, on a 50-50 basis, any additional Administration Expenses reasonably incurred after remittitur. An appellate decision to vacate, reverse, or modify the Court's award of the Class Representative Service Payment or any payments to Class Counsel shall not constitute a material modification of the Judgment within the meaning of this paragraph, as long as the Gross Settlement Amount remains unchanged.

12. **AMENDED JUDGMENT.** If any amended judgment is required under Code of Civil Procedure section 384, the Parties will work together in good faith to jointly submit and a proposed amended judgment.

13. **ADDITIONAL PROVISIONS.**

13.1 No Admission of Liability, Class Certification or Representative Manageability for Other Purposes. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by the City that any of the allegations in the Operative Complaint have merit or that the City has any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that the City's defenses in the Action have merit. The Parties agree that class certification and representative treatment is for purposes of this Settlement only. If, for any reason the Court does grant Preliminary Approval, Final

Approval or enter Judgment, the City reserves the right to contest certification of any class for any reasons, and the City reserves all available defenses to the claims in the Action, and Plaintiff reserves the right to move for class certification on any grounds available and to contest the City's defenses. The Settlement, this Agreement and Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).

- 13.2 No Solicitation. The Parties separately agree that they and their respective counsel and employees will not solicit any Class Member to opt out of or object to the Settlement, or appeal from the Judgment. Nothing in this paragraph shall be construed to restrict Class Counsel's ability to communicate with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.
- 13.3 Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement together with its attached exhibits shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants, or inducements made to or by any Party.
- 13.4 Attorney Authorization. Class Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiff and the City, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.
- 13.5 Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Settlement Agreement, submitting supplemental evidence and supplementing points and authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of a mediator and/or the Court for resolution.
- 13.6 No Prior Assignments. The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in this Settlement.
- 13.7 No Tax Advice. Neither Plaintiff, Class Counsel, the City nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this

Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.

- 13.8 Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives, and approved by the Court.
- 13.9 Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
- 13.10 Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the internal laws of the state of California, without regard to conflict of law principles.
- 13.11 Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
- 13.12 Confidentiality. To the extent permitted by law, all agreements made, and orders entered during Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.
- 13.13 Use and Return of Class Data. Information provided to Class Counsel pursuant to Cal. Evid. Code §1152, and all copies and summaries of the Class Data provided to Class Counsel by the City in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. Not later than 90 days after the date when the Court discharges the Administrator's obligation to provide a Declaration confirming the final pay out of all Settlement funds, Plaintiff shall destroy, all paper and electronic versions of Class Data received from the City unless, prior to the Court's discharge of the Administrator's obligation, the City makes a written request to Class Counsel for the return, rather than the destructions, of Class Data.
- 13.14 Headings. The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.
- 13.15 Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.


13.16 Notice. All notices, demands or other communications between the Parties in connection with this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, or the day sent by email or messenger, addressed as follows:

To Plaintiff: Ulysses Rivas c/o Patricio Barrera, Barrera & Associates, 2298 E. Maple Avenue, El Segundo, CA 90245

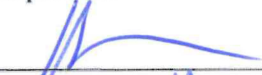
To The City of Manhattan Beach: c/o Brian P. Walter, and Jack Begley, Liebert Cassidy Whitmore, 6033 W. Century Blvd., Ste. 500, Los Angeles, CA 90045

13.17 Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.


13.18 Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process.




Ulysses Rivas For Plaintiff



Bruce Moe For the City



Patricio Barrera Counsel For Plaintiff



Brian P. Walter Counsel For the City

EXHIBIT A

COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL

The Superior Court for the State of California authorized this Notice. Read it carefully! It's not junk mail, spam, an advertisement, or solicitation by a lawyer. You are not being sued.

You may be eligible to receive money from an employee class action lawsuit (“Action”) against the City of Manhattan Beach (“City”) for alleged wage and hour violations. The Action was filed by City employee Ulysses Rivas (“Plaintiff”) and seeks payment of (1) premium payments for missed meal and rest periods for a class of employees who worked for the City as Dial-a-Ride drivers (“Class Members”) during the Class Period (October 20, 2018 to March 10, 2023); and (2) penalties under the California Private Attorney General Act (“PAGA”) for all Dial-a-Ride drivers who worked for the City during the PAGA Period (August 16, 2020 to March 10, 2023) (“Aggrieved Employees”).

The proposed Settlement has two main parts: (1) a Class Settlement requiring the City to fund Individual Class Payments, and (2) a PAGA Settlement requiring the City to fund Individual PAGA Payments and pay penalties to the California Labor and Workforce Development Agency (“LWDA”).

Based on the City’s records, and the Parties’ current assumptions, **your Individual Class Payment is estimated to be \$_____ (less withholding) and your Individual PAGA Payment is estimated to be \$_____.** The actual amount you may receive likely will be different and will depend on a number of factors. (If no amount is stated for your Individual PAGA Payment, then according to the City’s records you are not eligible for an Individual PAGA Payment under the Settlement because you didn’t work during the PAGA Period listed in the prior paragraph.)

The above estimates are based on the City’s records showing that **you worked _____ shifts** during the Class Period and **you worked _____ pay periods** during the PAGA Period. If you believe that you worked more shifts or pay periods during those time periods, you can submit a challenge by the deadline date. See Section 4 of this Notice.

The Court has already preliminarily approved the proposed Settlement and approved this Notice. The Court has not yet decided whether to grant final approval. Your legal rights are affected whether you act or not act. Read this Notice carefully. You will be deemed to have carefully read and understood it. At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement and how much of the Settlement will be paid to Plaintiff and Plaintiff’s attorneys (“Class Counsel”). The Court will also decide whether to enter a judgment that requires the City to make payments under the Settlement and requires Class Members and Aggrieved Employees to give up their rights to assert certain claims against the City.

If you worked for the City during the Class Period and/or the PAGA Period, you have two basic options under the Settlement:

- (1) **Do Nothing.** You don't have to do anything to participate in the proposed Settlement and be eligible for an Individual Class Payment and/or an Individual PAGA Payment. As a Participating Class Member, though, you will give up your right to assert Class Period wage claims and PAGA Period penalty claims against the City.
- (2) **Opt-Out of the Class Settlement.** You can exclude yourself from the Class Settlement (opt-out) by submitting the written Request for Exclusion or otherwise notifying the Administrator in writing. If you opt-out of the Settlement, you will not receive an Individual Class Payment. You will, however, preserve your right to personally pursue Class Period wage claims against the City, and, if you are an Aggrieved Employee, remain eligible for an Individual PAGA Payment. You cannot opt-out of the PAGA portion of the proposed Settlement.

The City will not retaliate against you for any actions you take with respect to the proposed Settlement.

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

<p>You Don't Have to Do Anything to Participate in the Settlement</p>	<p>If you do nothing, you will be a Participating Class Member, eligible for an Individual Class Payment and an Individual PAGA Payment (if any). In exchange, you will give up your right to assert the wage claims against the City that are covered by this Settlement (Released Claims).</p>
<p>You Can Opt-out of the Class Settlement but not the PAGA Settlement</p> <p>The Opt-out Deadline is _____</p>	<p>If you don't want to fully participate in the proposed Settlement, you can opt-out of the Class Settlement by sending the Administrator a written Request for Exclusion. Once excluded, you will be a Non-Participating Class Member and no longer eligible for an Individual Class Payment. Non-Participating Class Members cannot object to any portion of the proposed Settlement. See Section 6 of this Notice.</p> <p>You cannot opt-out of the PAGA portion of the proposed Settlement. The City must pay Individual PAGA Payments to all Aggrieved Employees and the Aggrieved Employees must give up their rights to pursue Released Claims (defined below).</p>

<p>Participating Class Members Can Object to the Class Settlement but not the PAGA Settlement</p> <p>Written Objections Must be Submitted by _____</p>	<p>All Class Members who do not opt-out (“Participating Class Members”) can object to any aspect of the proposed Settlement. The Court’s decision whether to finally approve the Settlement will include a determination of how much will be paid to Class Counsel and Plaintiff who pursued the Action on behalf of the Class. You are not personally responsible for any payments to Class Counsel or Plaintiff, but every dollar paid to Class Counsel and Plaintiff reduces the overall amount paid to Participating Class Members. You can object to the amounts requested by Class Counsel or Plaintiff if you think they are unreasonable. See Section 7 of this Notice.</p>
<p>You Can Participate in the _____ Final Approval Hearing</p>	<p>The Court’s Final Approval Hearing is scheduled to take place on _____. You don’t have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone or by using the Court’s virtual appearance platform. Participating Class Members can verbally object to the Settlement at the Final Approval Hearing. See Section 8 of this Notice.</p>
<p>You Can Challenge the Calculation of Your Shifts/Pay Periods</p> <p>Written Challenges Must be Submitted by _____</p>	<p>The amount of your Individual Class Payment and PAGA Payment (if any) depend on how many shifts you worked as a Dial-a-Ride driver and how many Pay Periods you worked as a Dial-a-Ride driver during the PAGA Period, respectively. The number Class Period Shifts and number of PAGA Period Pay Periods you worked according to the City’s records is stated on the first page of this Notice. If you disagree with either of these numbers, you must challenge it by _____. See Section 4 of this Notice.</p>

1. WHAT IS THE ACTION ABOUT?

Plaintiff is employed by the City. The Action accuses the City of violating California labor laws by failing to provide meal periods and rest breaks to its Dial-a-Ride drivers. Based on the same claims, Plaintiff has asserted a claim for civil penalties under the California Private Attorneys General Act (Labor Code §§ 2698, et seq.) (“PAGA”). Plaintiff is represented by attorneys in the Action: Patricio T.D. Barrera of Barrera & Associates (“Class Counsel.”) The City strongly denies violating any laws or failing to pay any wages and contends it complied with all applicable laws.

2. WHAT DOES IT MEAN THAT THE ACTION HAS SETTLED?

So far, the Court has made no determination whether the City or Plaintiff is correct on the merits. In the meantime, Plaintiff and the City hired an experienced, neutral mediator, Steve Pearl, in an

effort to resolve the Action by negotiating an to end the case by agreement (settle the case) rather than continuing the expensive and time-consuming process of litigation. The negotiations were successful. By signing a lengthy written settlement agreement (“Agreement”) and agreeing to jointly ask the Court to enter a judgment ending the Action and enforcing the Agreement, Plaintiff and the City have negotiated a proposed Settlement that is subject to the Court’s Final Approval. Both sides agree the proposed Settlement is a compromise of disputed claims. By agreeing to settle, the City does not admit any violations or concede the merit of any claims.

Plaintiff and Class Counsel strongly believe the Settlement is a good deal for you because they believe that: (1) the City has agreed to pay a fair, reasonable and adequate amount considering the strength of the claims and the risks and uncertainties of continued litigation; and (2) Settlement is in the best interests of the Class Members and Aggrieved Employees. The Court preliminarily approved the proposed Settlement as fair, reasonable and adequate, authorized this Notice, and scheduled a hearing to determine Final Approval.

3. WHAT ARE THE IMPORTANT TERMS OF THE PROPOSED SETTLEMENT?

1. The City Will Pay \$105,000 as the Gross Settlement Amount (Gross Settlement). The City has agreed to deposit the Gross Settlement into an account controlled by the Administrator of the Settlement. The Administrator will use the Gross Settlement to pay the Individual Class Payments, Individual PAGA Payments, Class Representative Service Payment, Class Counsel’s attorney’s fees and expenses, the Administrator’s expenses, and penalties to be paid to the California Labor and Workforce Development Agency (“LWDA”). Assuming the Court grants Final Approval, the City will fund the Gross Settlement not more than 14 days after the Judgment entered by the Court become final. The Judgment will be final on the date the Court enters Judgment, or a later date if Participating Class Members object to the proposed Settlement or the Judgment is appealed.
2. Court Approved Deductions from Gross Settlement. At the Final Approval Hearing, Plaintiff and/or Class Counsel will ask the Court to approve the following deductions from the Gross Settlement, the amounts of which will be decided by the Court at the Final Approval Hearing:
 - A. Up to \$40,000 (38.1% of the Gross Settlement) to Class Counsel for attorneys’ fees and up to \$10,000 for their litigation expenses incurred in litigating this case. To date, Class Counsel have worked and incurred expenses on the Action without payment.
 - B. Up to \$15,000 as a Class Representative Award for filing the Action, working with Class Counsel and representing the Class. A Class Representative Award will be the only monies Plaintiff will receive other than Plaintiff’s Individual Class Payment and any Individual PAGA Payment.
 - C. Up to \$2,500 to the Administrator for services administering the Settlement.

- D. Up to \$5,000 for PAGA Penalties, allocated 75% to the LWDA PAGA Payment and 25% in Individual PAGA Payments to the Aggrieved Employees based on their PAGA Period Pay Periods.

Participating Class Members have the right to object to any of these deductions. The Court will consider all objections.

- 3. Net Settlement Distributed to Class Members. After making the above deductions in amounts approved by the Court, the Administrator will distribute the rest of the Gross Settlement (the "Net Settlement") by making Individual Class Payments to Participating Class Members based on their Shifts worked during the Class Period.

4. Taxes Owed on Payments to Class Members. Plaintiff and the City are asking the Court to approve an allocation of 25% of each Individual Class Payment to taxable wages ("Wage Portion") and 75% to interest and penalties ("Non-Wage Portion."). The Wage Portion is subject to withholdings and will be reported on IRS W-2 Forms. The City will separately pay employer payroll taxes it owes on the Wage Portion.) The Individual PAGA Payments are counted as penalties rather than wages for tax purposes. The Administrator will report the Individual PAGA Payments and the Non-Wage Portions of the Individual Class Payments on IRS 1099 Forms.

Although Plaintiff and the City have agreed to these allocations, neither side is giving you any advice on whether your Payments are taxable or how much you might owe in taxes. You are responsible for paying all taxes (including penalties and interest on back taxes) on any Payments received from the proposed Settlement. You should consult a tax advisor if you have any questions about the tax consequences of the proposed Settlement.

- 5. Need to Promptly Cash Payment Checks. The front of every check issued for Individual Class Payments and Individual PAGA Payments will show the date when the check expires (the void date). If you don't cash it by the void date, your check will be automatically cancelled, and the monies will be deposited with the California Controller's Unclaimed Property Fund in your name.

If the monies represented by your check is sent to the Controller's Unclaimed Property, you should consult the rules of the Fund for instructions on how to retrieve your money.

- 6. Requests for Exclusion from the Class Settlement (Opt-Outs). You will be treated as a Participating Class Member, participating fully in the Class Settlement, unless you notify the Administrator in writing, not later than _____, that you wish to opt-out. The easiest way to notify the Administrator is to send a written and signed Request for Exclusion by the _____ Response Deadline. The Request for Exclusion should be a letter from a Class Member or his/her representative setting forth a Class Member's name, present address, telephone number, and a simple statement electing to be excluded from the Settlement. Excluded Class Members (i.e., Non-Participating Class

Members) will not receive Individual Class Payments, but will preserve their rights to personally pursue wage and hour claims against the City.

You cannot opt-out of the PAGA portion of the Settlement. Class Members who exclude themselves from the Class Settlement (Non-Participating Class Members) remain eligible for Individual PAGA Payments and are required to give up their right to assert PAGA claims against the City based on the PAGA Period facts alleged in the Action.

7. The Proposed Settlement Will be Void if the Court Denies Final Approval. It is possible the Court will decline to grant Final Approval of the Settlement or decline enter a Judgment. It is also possible the Court will enter a Judgment that is reversed on appeal. Plaintiffs and the City have agreed that, in either case, the Settlement will be void: the City will not pay any money and Class Members will not release any claims against the City.
8. Administrator. The Court has appointed a neutral company, _____ (the "Administrator") to send this Notice, calculate and make payments, and process Class Members' Requests for Exclusion. The Administrator will also decide Class Member Challenges over Workweeks, mail and remail settlement checks and tax forms, and perform other tasks necessary to administer the Settlement. The Administrator's contact information is contained in Section 9 of this Notice.
9. Participating Class Members' Release. After the Judgment is final and the City has fully funded the Gross Settlement (and separately paid all employer payroll taxes), Participating Class Members will be legally barred from asserting any of the claims released under the Settlement. This means that unless you opted out by validly excluding yourself from the Class Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against the City for wages based on the Class Period facts and PAGA penalties based on PAGA Period facts, as alleged in the Action and resolved by this Settlement.

The Participating Class Members will be bound by the following release:

All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from all claims that were alleged, or reasonably could have been alleged, based on the Class Period facts stated in the Operative Complaint and ascertained in the course of the Action including, any and all claims involving any alleged failure to provide meal or rest periods to Class Members and any payments or penalties owed for those meal or rest periods. Except as set forth in Section 6.3 of the Settlement Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period.

10. Aggrieved Employees' PAGA Release. After the Court's judgment is final, and the City has paid the Gross Settlement (and separately paid the employer-side payroll taxes), all Aggrieved Employees will be barred from asserting PAGA claims against the City, whether or not they exclude themselves from the Settlement. This means that all Aggrieved Employees, including those who are Participating Class Members and those who opt-out of the Class Settlement, cannot sue, continue to sue, or participate in any other PAGA claim against the City based on the PAGA Period facts alleged in the Action and resolved by this Settlement.

The Aggrieved Employees' Releases for Participating and Non-Participating Class Members are as follows:

All Participating and Non-Participating Class Members who are Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint and the PAGA Notices and ascertained in the course of the Action, including any civil penalties for alleged failure to provide meal or rest periods to Class Members.

4. HOW WILL THE ADMINISTRATOR CALCULATE MY PAYMENT?

1. Individual Class Payments. The Administrator will calculate Individual Class Payments by (a) dividing the Net Settlement Amount by the total number of Shifts worked by all Participating Class Members, and (b) multiplying the result by the number of Shifts worked by each individual Participating Class Member.
2. Individual PAGA Payments. The Administrator will calculate Individual PAGA Payments by (a) dividing \$1,250 by the total number of PAGA Pay Periods worked by all Aggrieved Employees and (b) multiplying the result by the number of PAGA Period Pay Periods worked by each individual Aggrieved Employee.
3. Shift/Pay Period Challenges. The number of Class Shifts you worked during the Class Period and the number of PAGA Pay Periods you worked during the PAGA Period, as recorded in the City's records, are stated in the first page of this Notice. You have until _____ to challenge the number of Shifts and/or Pay Periods credited to you. You can submit your challenge by signing and sending a letter to the Administrator via mail, email or fax. Section 9 of this Notice has the Administrator's contact information.

You need to support your challenge by sending copies of pay stubs or other records. The Administrator will accept the City's calculation of Shifts and/or Pay Periods based on the City's records as accurate unless you send copies of records containing contrary information. You should send copies rather than originals because the documents will

not be returned to you. The Administrator will resolve Shift and/or Pay Period challenges based on your submission and on input from Class Counsel (who will advocate on behalf of Participating Class Members) and the City's Counsel. The Administrator's decision is final. You can't appeal or otherwise challenge its final decision.

5. HOW WILL I GET PAID?

1. Participating Class Members. The Administrator will send, by U.S. mail, a single check to every Participating Class Member (i.e., every Class Member who doesn't opt-out) including those who also qualify as Aggrieved Employees. The single check will combine the Individual Class Payment and the Individual PAGA Payment.
2. Non-Participating Class Members. The Administrator will send, by U.S. mail, a single Individual PAGA Payment check to every Aggrieved Employee who opts out of the Class Settlement (i.e., every Non-Participating Class Member).

Your check will be sent to the same address as this Notice. If you change your address, be sure to notify the Administrator as soon as possible. Section 9 of this Notice has the Administrator's contact information.

6. HOW DO I OPT-OUT OF THE CLASS SETTLEMENT?

Submit a written and signed letter with your name, present address, telephone number, and a simple statement that you do not want to participate in the Settlement. The Administrator will exclude you based on any writing communicating your request be excluded. Be sure to personally sign your request, identify the Action as *Ulysses A. Rivas v. City of Manhattan Beach*, LASC Case No. 21STCV38784, and include your identifying information (full name, address, telephone number, approximate dates of employment, and social security number for verification purposes). You must make the request yourself. If someone else makes the request for you, it will not be valid. **The Administrator must be sent your request to be excluded by _____, or it will be invalid.** Section 9 of the Notice has the Administrator's contact information.

7. HOW DO I OBJECT TO THE SETTLEMENT?

Only Participating Class Members have the right to object to the Settlement. Before deciding whether to object, you may wish to see what Plaintiff and the City are asking the Court to approve. At least 16 court days before the _____ Final Approval Hearing, Class Counsel and/or Plaintiff will file in Court (1) a Motion for Final Approval that includes, among other things, the reasons why the proposed Settlement is fair, and (2) a Motion for Fees, Litigation Expenses and Service Award stating (i) the amount Class Counsel is requesting for attorneys' fees and litigation expenses; and (ii) the amount Plaintiff is requesting as a Class Representative Service Award. Upon reasonable request, Class Counsel (whose contact information is in Section 9 of this Notice) will send you copies of

these documents at no cost to you. You can also view them on the Administrator's Website _____ or the Court's website _____.

A Participating Class Member who disagrees with any aspect of the Agreement, the Motion for Final Approval and/or Motion for Fees, Litigation Expenses and Service Award may wish to object, for example, that the proposed Settlement is unfair, or that the amounts requested by Class Counsel or Plaintiff are too high or too low. **The deadline for sending written objections to the Administrator is _____.** Be sure to tell the Administrator what you object to, why you object, and any facts that support your objection. Make sure you identify the Action as *Ulysses A. Rivas v. City of Manhattan Beach*, LASC Case No. 21STCV38784, and include your name, current address, telephone number, and approximate dates of employment for the City and sign the objection. Section 9 of this Notice has the Administrator's contact information.

Alternatively, a Participating Class Member can object (or personally retain a lawyer to object at your own cost) by attending the Final Approval Hearing. You (or your attorney) should be ready to tell the Court what you object to, why you object, and any facts that support your objection. See Section 8 of this Notice (immediately below) for specifics regarding the Final Approval Hearing.

8. CAN I ATTEND THE FINAL APPROVAL HEARING?

You can, but don't have to, attend the Final Approval Hearing on _____ at _____ in Department 8 of the Los Angeles Superior Court, Inglewood Courthouse, located at One Regent Street, Inglewood, CA 90301. At the Hearing, the judge will decide whether to grant Final Approval of the Settlement and how much of the Gross Settlement will be paid to Class Counsel, Plaintiff, and the Administrator. The Court will invite comment from objectors, Class Counsel and Defense Counsel before making a decision. You can attend (or hire a lawyer to attend) either personally or virtually via LACourtConnect (<https://www.lacourt.org/lacc/>). Check the Court's website for the most current information.

It's possible the Court will reschedule the Final Approval Hearing. You should check the Administrator's website _____ beforehand or contact Class Counsel to verify the date and time of the Final Approval Hearing.

9. HOW CAN I GET MORE INFORMATION?

The Agreement sets forth everything the City and Plaintiff have promised to do under the proposed Settlement. The easiest way to read the Agreement, the Judgment or any other Settlement documents is to go to _____'s website at _____. You can also telephone or send an email to Class Counsel or the Administrator using the contact information listed below, or consult the Superior Court website by going to (<http://www.lacourt.org/casesummary/ui/index.aspx>) and entering the Case Number for the Action, Case No. 21STCV38784. You can also make an appointment to

personally review court documents in the Clerk's Office at the Stanley Mosk Courthouse by calling (213) 830-0800.

DO NOT TELEPHONE THE SUPERIOR COURT TO OBTAIN INFORMATION ABOUT THE SETTLEMENT.

Class Counsel:

Name of Attorney: Patricio T.D. Barrera
Email Address: barrera@baattorneys.com
Name of Firm: Barrera & Associates
Mailing Address: 2298 E. Maple Avenue, El Segundo, CA 90245
Telephone: (310) 802-1500

Settlement Administrator:

Name of Company:

Email Address:

Mailing Address:

Telephone:

Fax Number:

10. WHAT IF I LOSE MY SETTLEMENT CHECK?

If you lose or misplace your settlement check before cashing it, the Administrator will replace it as long as you request a replacement before the void date on the face of the original check. If your check is already void you should consult the California Unclaimed Property Fund for instructions on how to retrieve the funds.

11. WHAT IF I CHANGE MY ADDRESS?

To ensure that you receive your check, you should immediately notify the Administrator if you move or otherwise change your mailing address after receiving this notice.

1 **PROOF OF SERVICE**
2 (C.C.P. §§ 1013a and 2015.5)

3 I, Rachel Olague, declare as follows:

4 I am employed in the County of Los Angeles, State of California. I am over the
5 age of eighteen and not a party to the within action. My business address is 2298 E. Maple
6 Avenue, El Segundo, CA 90245.

7 On March 17, 2023, I served the foregoing document(s) described as

- 8 • **PLAINTIFF'S NOTICE OF UNOPPOSED MOTION AND UNOPPOSED**
- 9 **MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION**
- 10 **SETTLEMENT AND CERTIFICATION OF THE SETTLEMENT CLASS;**
- 11 **MEMORANDUM OF POINTS AND AUTHORITIES**
- 12 • **DECLARATION OF PATRICIO T.D. BARRERA IN SUPPORT OF MOTION**
- 13 **FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**
- 14 • **DECLARATION OF PLAINTIFF ULYSSES A. RIVAS IN SUPPORT OF**
- 15 **MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION**
- 16 **SETTLEMENT**
- 17 • **DECLARATION OF JODEY LAWRENCE OF PHOENIX SETTLEMENT**
- 18 **ADMINISTRATORS IN SUPPORT OF MOTION FOR PRELIMINARY**
- 19 **APPROVAL [PROPOSED] AMENDED ORDER GRANTING PRELIMINARY**
- 20 **APPROVAL OF CLASS ACTION SETTLEMENT AND CERTIFICATION OF**
- 21 **THE SETTLEMENT CLASS**
- 22 • **PROOF OF SERVICE**

23 on the interested parties in this action as follows:

24 **SEE SERVICE LIST**



26 VIA CASE ANYWHERE: I hereby certify that this document was served from Los
27 Angeles, California, by e-mail delivery on the parties listed herein at their most
28 recent known email address or e-mail of record in this action through Case
Anywhere system.

I certify and declare under penalty of perjury under the laws of the State of
California that the foregoing is true and correct.

Executed on March 17, 2023, at El Segundo, California.

/s/ Rachel Olague

Rachel Olague

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SERVICE LIST

VIA ELECTRONIC SERVICE ONLY

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