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10
11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **FOR THE COUNTY OF LOS ANGELES – INGLEWOOD COURTHOUSE**

13 ULYSSES A. RIVAS, individually and on
14 behalf of all others similarly situated,

15 Plaintiff,

16 v.

17 CITY OF MANHATTAN BEACH, a Public
18 Corporation, and DOES 1 through 10,
19 inclusive,

20 Defendants.

Case No. 21STCV38784

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

**PLAINTIFF’S NOTICE OF
UNOPPOSED MOTION AND
UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT
AND CERTIFICATION OF THE
SETTLEMENT CLASS;
MEMORANDUM OF POINTS AND
AUTHORITIES**

[Filed Together with Declaration of Plaintiff’s Counsel; Declaration of Class Representative; and [Proposed] Order]

Date: April 7, 2023

Time: 8:30 a.m.

Dept.: 8

[Reservation No: SET BY COURT]

1 **TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on April 7, 2023, at 8:30 a.m., or as soon thereafter as
3 the matter may be heard in before the Honorable Ronald F. Frank in Department 8 of the Los
4 Angeles Superior Court located at One Regent Street, Inglewood, CA 90301, Plaintiff Ulysses A.
5 Rivas (“Plaintiff”) will and hereby move the Court for an order:

- 6 • Granting preliminary approval of the proposed **\$105,000** class action settlement
7 described herein and as set forth in the parties’ Class Action and PAGA Settlement
8 Agreement, attached as **Exhibit “1”** (collectively referred to herein as “Settlement
9 Agreement”) to the Declaration of Patricio Barrera filed herewith (“Barrera
10 Decl.”);
- 11 • Certifying the proposed Settlement Class for settlement purposes;
- 12 • Appointing Plaintiff Ulysses A. Rivas as the Class Representative;
- 13 • Appointing Patricio Barrera of Barrera & Associates as Class Counsel;
- 14 • Approving the proposed Notice of Proposed Class Action Settlement (“Class
15 Notice”) attached as **Exhibit “A”** to the Settlement Agreement;
- 16 • Appointing Phoenix Class Action Administration Solutions (“Phoenix”) as the
17 Settlement Administrator to administer the Settlement and preliminarily approving
18 Settlement Administration costs in the amount of up to \$2,500;
- 19 • Directing Phoenix to mail the Class Notice to the proposed Settlement Class;
- 20 • Approving the proposed deadlines as reflected in the [Proposed] Order lodged
21 together with this motion;
- 22 • Preliminarily approving the request for attorneys’ fees in the amount of \$40,600
23 and costs in an amount not to exceed \$10,000, as well as a service award of
24 \$15,000 to the Class Representative;
- 25 • Preliminarily approving the payment of \$3,750 to the Labor and Workforce
26 Development Agency (“LWDA”) as part of the \$5,000 allocation to the PAGA
27 claim asserted on behalf of all aggrieved employees; and
- 28 • Scheduling a hearing to consider final approval of the proposed settlement, at

1 which final approval hearing the Court would also consider entry of a proposed
2 final judgment, Class Counsel's application for an award of attorneys' fees and
3 reimbursement of costs and expenses, and the service award to the Class
4 Representative.

5 This motion is based on the following memorandum of points and authorities; the
6 Declaration of attorney Patricio Barrera and the Declaration of the Class Representative Ulysses
7 A. Rivas in support thereof; the [Proposed] Order lodged together with this motion, as well as
8 upon the pleadings and other records on file with the Court in this matter, and upon such
9 documentary evidence and oral argument as may be presented at the hearing on this motion.

10
11 DATED: March 17, 2023

BARRERA & ASSOCIATES

12
13 By: /s/ Patricio Barrera
14 Patricio T.D. Barrera
Attorneys for Plaintiff and Proposed Class

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **1. SUMMARY OF MOTION**

3 Plaintiff Ulysses A. Rivas (“Plaintiff”) seeks preliminary approval of the proposed class
4 action settlement, which Defendant City of Manhattan Beach (“Defendant”) do not oppose.
5 Subject to court approval, Plaintiff and Defendant have agreed to settle Plaintiff’s and the
6 proposed Class Members’ claims against Defendant for a total settlement amount of \$105,000.00
7 with no reversion (the “proposed Settlement”).¹ In addition to the payments to class members,
8 the proposed Settlement includes payment of Plaintiff’s attorneys’ fees and costs, the costs of
9 settlement administration, service award to the Class Representative and PAGA penalties.
10 Plaintiff also seeks to provisionally certify the following Class for settlement purposes, which
11 Defendant also do not oppose:²

12 All persons employed by the City who worked as a Dial-a-Ride driver in
13 California for the City from October 20, 2018 to March 10, 2023 (the “Class
14 Period”).

15 This proposed Settlement will resolve all of Plaintiff and the above-defined Class
16 Members’ released claims against Defendant.

17 **2. PROCEDURAL HISTORY AND FACTUAL BACKGROUND**

18 Defendant City of Manhattan Beach is a public entity that provides services to its
19 residents, including bus services to its elderly and/or disabled residents. Plaintiff was a
20 commercial driver of the buses for Defendant City with over sixteen years of commercial driver
21 experience as a city employee. Plaintiff and absent class members provided services through
22 Defendant’s Dial-a-Ride program. Putative class members were paid hourly. Plaintiff brought
23 this action individually and on behalf of all such persons providing similar service for Defendant
24 during the Class Period. Plaintiff alleged that during the class period, Defendant violated the
25 California Labor Code through systemic violations, including:

- 26
 - Defendant’s policy of depriving putative class members of lawful meal breaks;

27 _____
28 ¹ A copy of the fully executed “Class Action and PAGA Settlement Agreement” is attached as **Exhibit “1”** to
the Declaration of Patricio T.D. Barrera (“Barrera Decl.”) (referred to as the “Settlement Agreement”).

² Paragraph 1.5 and 1.12 of the Settlement Agreement.

- Defendant’s policy of depriving putative class members of lawful rest breaks; and
- Defendant’s failure to timely pay all wages due.

Plaintiff contended that Defendant’s policies and procedures, on their face, failed to comply with the mandates of the California Labor Code, and Defendant enforces policies or procedures that were compliant with such provisions. Each of the putative class members were governed by the same practices and requirements. Thus, common issues predominate as these company-wide policies and practices concerning the wage and hour violations addressed herein affect all putative class members.

The Parties actively litigated the case since the filing of the complaint in October 2021. The Defendant produced extensive documents in response to Plaintiff’s informal requests for documents and information. The parties engaged in a mediation with Steve Pearl on December 13, 2022, that resulted in a settlement. Plaintiff reviewed the documentation provided by Defendant. The parties subsequently engaged in continued settlement discussions with Mr. Pearl. As a result of these efforts, the parties were ultimately able to reach the subject settlement. There were extensive settlement discussions thereafter to finalize the detailed terms of the subject Settlement Agreement.

Plaintiff has vigorously prosecuted this case and Defendant have vigorously contested it. This discovery and investigation has included, among other things, (a) inspection and analysis of hundreds of pages of documents, including earning statements, work schedules, and time records of a sample of employees, as well as the records of Mr. Rivas; (b) inspection and analysis of documents produced by putative class members and interviews of putative class members; (c) analysis of potential class-wide damages; and (d) research of the applicable law with respect to the claims asserted in the actions and the potential defenses thereto.

This proposed Settlement was reached after Class Counsel thoroughly reviewed all available evidence and after arm’s-length bargaining by the parties, including attendance at the mediation session. The extensive informal discovery conducted in this case, and the information exchanged through the parties’ negotiations, are sufficient to assess reliably the merits of the respective parties’ positions and to compromise the issues on a fair and equitable basis.

1 **3. SUMMARY OF THE SETTLEMENT TERMS**

2 Under the terms of the fully executed Settlement Agreement, Defendant agree to pay a
3 settlement amount of \$105,000 (“Total Settlement Amount”).

4 The Net Settlement Amount will be used to fund payments to Class Members who do not
5 opt out of the Settlement (“Participating Class Members”). The Net Settlement Amount shall be
6 calculated by deducting the following amounts from the Gross Settlement Amount, if approved
7 by this Court: (1) \$40,000 to Class Counsel for attorneys’ fees; (2) not to exceed \$10,000 to Class
8 Counsel for litigation costs and expenses; (3) \$15,000.00 in total to the Class Representative as a
9 service award as approved by the Court; (4) \$3,750.00 to the California Labor and Workforce
10 Development Agency for PAGA Penalties; and (5) \$2,500.00 to the Settlement Administrator to
11 administer the settlement.

12 The Net Settlement Amount shall be distributed to Participating Class Members who do
13 not opt-out of the Settlement. No affirmative action is needed by a Class Member to become a
14 Participating Class Member. The Parties agree that the Net Settlement Amount shall be used to
15 fund Individual Settlement Payments. The Parties agree that the Net Settlement Amount shall be
16 divided between all Participating Class Members based on the number of Shifts they worked for
17 Defendant during the Class Period as Dial-a-Ride drivers.

18 An Individual Class Payment will be calculated by (a) dividing the Net Settlement
19 Amount by the total number of Shifts worked by all Participating Class Members for Defendant
20 as Dial-a-Ride drivers and (b) multiplying the result by each Participating Class Member’s Shifts
21 worked as a Dial-a-Ride drive. The proposed Individual Class Payment will be included in the
22 Class Members’ Notice Packets.

23 As to the PAGA Penalties, the Administrator will calculate each Individual PAGA
24 Payment by (a) dividing the amount of the Aggrieved Employees’ 25% share of PAGA Penalties
25 \$1,250 by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees
26 during the PAGA Period and (b) multiplying the result by each Aggrieved Employee’s PAGA
27 Period Pay Periods.

28 No amount of the Gross Settlement Amount shall revert back to Defendant. Each

1 Individual Settlement Payment will be allocated using the following formula: 25% of each
2 Individual Settlement Payment will be treated as wages and subject to normal tax withholding
3 and shall be reported to taxing authorities on an IRS Form W-2 and the remaining 75% of each
4 Individual Settlement Payment will be treated as prejudgment interest, penalties and statutory
5 non-wage payments on which there will be no tax withholding and for which an IRS Form 1099
6 (marked “Other Income”) shall be issued if the payment is above the minimum threshold required
7 for the issuance of a Form 1099. Participating Class Members and Aggrieved Employees assume
8 full responsibility and liability for any taxes owed on their Individual Class Payment and
9 Individual PAGA Payment received.

10 Participating Class Members shall have one hundred eighty (180) days from the date their
11 Individual Settlement Payment checks are dated to cash their settlement checks. Any checks that
12 are not cashed upon the expiration of that 180-day time period or for whom the Settlement
13 Administrator is unable to obtain a valid mailing address through the provided process shall be
14 distributed to the State of California State Controller’s Office Unclaimed Property Fund in the
15 name and for the benefit of the individual Class Member.

16 **4. LEGAL STANDARD FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENTS**

17 The settlement of a class action requires court approval. *Dunk v. Ford Motor Co.* (1996)
18 48 Cal.App.4th 1794, 1800; CAL. CIV. CODE §1781(f). California looks to federal authority for
19 guidance with class action settlements. *Dunk, supra*, 48 Cal.App.4th at 1801, n.7 (citing *Vasquez*
20 *v. Superior Court* (1971) 4 Cal.3d 800, 821). The decision to approve or reject a proposed
21 settlement is within the court’s discretion. *Wershba v. Apple Computer, Inc.* (2001) 91
22 Cal.App.4th 224, 234-35 (“In general, questions whether a settlement was fair and reasonable,
23 whether certification of the class was proper, and whether the attorney fee award was proper are
24 matters addressed to the trial court’s broad discretion.”). Accordingly, a court’s decision to
25 approve a class action settlement may be reversed only upon a strong showing of “clear abuse of
26 discretion.” *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026; *Class Plaintiffs v.*
27 *City of Seattle* (9th Cir. 1982) 955 F.2d 1268, 1276.

28 The approval process of any class action settlement is done in two steps: (1) an earlier

1 conditional review by the court; and (2) a later detailed review after the period during which
2 notice is distributed to class members for their comment or objections. Conte & Newberg,
3 *Newberg on Class Actions* §11.24 (4th Ed.). This procedure assures class members of the
4 protection of procedural due process safeguards, and enables the Court to fulfill its role as the
5 guardian of the interest of the settlement class.

6 Preliminary approval does not require a court to make a final determination that the
7 settlement is fair, reasonable, and adequate. Rather, that decision is made only at the final
8 approval stage, after notice of the settlement has been given to the class members and they have
9 had an opportunity to voice their views of the settlement or to exclude themselves from the
10 settlement. *See* CAL. R. CT. 3.769(g). In considering a potential class settlement, the court need
11 not reach any ultimate conclusions on the issues of fact and law which underlie the merits of the
12 dispute (*see City of Detroit v. Grinnell Corp* (2d Cir. 1974) 495 F.2d 448, 456), and need not
13 engage in a trial on the merits. *See Officers for Justice v. Civil Service Comm of City and Cty of*
14 *San Fran.* (9th Cir. 1982) 688 F.2d 615, 625. Neither formal notice nor a hearing is required for
15 the trial court to grant provisional class certification and preliminary approval; the court may grant
16 such relief upon an informal application by the settling parties, and may conduct any necessary
17 hearing in court or in chambers, at the court’s discretion. *Newberg*, at §11.25.

18 **5. PRELIMINARY APPROVAL OF THE PROPOSED SETTLEMENT IS APPROPRIATE**

19 To grant preliminary approval of a class action settlement, the trial court must determine
20 whether the settlement is fundamentally fair, adequate, and reasonable. *Dunk*, 48 Cal.App.4th at
21 1800. The court has broad powers to determine whether a proposed settlement is fair under the
22 circumstances of the case. *Id.* at 1801. To make this fairness determination, courts must consider
23 several relevant factors, including “the strength of the Plaintiff’s case, the risk, expense,
24 complexity and likely duration of further litigation, the risk of maintaining class action status
25 through trial, the amount offered in settlement, the extent of discovery completed and the stage
26 of the proceedings, [and] the experience and views of counsel.” *Id.* “The list of factors is not
27 exclusive and the court is free to engage in a balancing and weighing of the factors depending on
28 the circumstances of each case.” *Wershba*, 91 Cal.App.4th at 245. Courts give “proper deference

1 to the private consensual decision of the parties.” *Hanlon*, 150 F.3d at 1027.

2 The burden is on the proponent of the settlement to show that it is fair and reasonable.
3 *Wershba, supra*, 91 Cal.App.4th at 245. However, a presumption of fairness exists where: (1) the
4 settlement is reached through arm’s-length bargaining; (2) investigation and discovery are
5 sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar
6 litigation; and (4) the percentage of objectors is small. *Id.*; *Dunk, supra*, 48 Cal.App.4th at 1802;
7 *7-Eleven Owners v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1151.

8 **A. The Proposed Settlement Resulted from Arm’s-Length Negotiations Based**
9 **Upon Extensive Investigation and Informal Discovery**

10 The parties actively litigated both cases since the case was initially filed in October 2021.
11 There have been ongoing investigations and an exchange of informal discovery and documents.
12 Barrera Decl. ¶¶ 15-22. Furthermore, the parties engaged in a mediation session with Steve Pearl,
13 Esq., a well-respected mediator with experience in California class action litigation and extensive
14 follow-up discussions and negotiations. Barrera Decl. ¶20-22.

15 The parties were well aware of all aspects of the case including the risks and delays of
16 further litigation, the risks to both parties of proceeding with class certification, the law relating
17 to the subject claims, the evidence produced and analyzed, and the possibility of appeals, among
18 other things. *Id.* During all settlement discussions, the parties conducted their negotiations at
19 arms’ length in an adversarial position. Barrera Decl. ¶20. Arriving at a settlement that was
20 acceptable to both parties was not easy. Defendant and their counsel felt very strongly about its
21 ability to prevail on the merits and at certification. Plaintiff and Class Counsel believed that they
22 would have obtained class certification and prevailed at trial. *Id.* ¶¶10. The parties litigated the
23 case up until the settlement in January 2023. After much consideration by the parties as to their
24 respective positions and risks in continued litigation, the parties agreed that this case was well
25 suited for settlement given the legal issues relating to Plaintiff’s claims, as well as the costs and
26 risks to both sides that would attend further litigation. Barrera Decl. ¶¶20-22. The proposed
27 Settlement takes into account the strengths and weaknesses of each side’s position and the
28 uncertainty of how the case might have concluded at certification and/or trial. Barrera Decl. ¶¶23-

1 49. Class Counsel also reviewed hundreds of pages of documents produced by Defendant and
2 provided by the Named Plaintiff and other putative class members, and performed significant
3 research into the law concerning Defendant’s defenses. Barrera Decl. ¶¶9-16. The proposed
4 Settlement was based on this large volume of facts, evidence, and investigation. Barrera Decl.
5 ¶¶9-49. And, Class Counsel has extensive experience in employment class actions, including
6 extensive experience in California wage-and-hour litigation. Barrera Decl. ¶¶4-8.

7 **B. The Settlement is Fair, Reasonable, and Adequate.**

8 The proposed Settlement of \$105,000.00 represents an excellent resolution of this case.
9 Barrera Decl. ¶¶22, 48, 49. The proposed Settlement was calculated using information and data
10 uncovered through informal discovery, evaluations and computations of payroll and time records,
11 case investigation and the exchange of data. The proposed Settlement takes into account the
12 potential risks and reward inherent in any case and in particular with this case. Moreover,
13 considering all of the facts in this case the proposed Settlement amount represents a substantial
14 global recovery for all Class Members.

15 Based on a review of its records to date, the City estimates there are 13 Class Members
16 who collectively worked a total of 3546 Shifts, and 9 Aggrieved Employees who worked a total
17 of 96 PAGA Pay Periods. *See* Settlement Agreement at ¶4.1. The proposed Settlement provides
18 for a Net Settlement Amount of at least \$32,400 for the 13 class members that may be paid out to
19 all Class Members that do not opt-out of the settlement. Each Participating Class Member’s share
20 of the Net Settlement Amount will be based upon the number of Shifts he or she actually worked
21 during the Class Period. Barrera Decl. ¶59. There is no reason to doubt the fairness of the proposed
22 plan of allocation of the settlement funds for purposes of preliminary approval. Even at the final
23 approval stage, “[a]n allocation formula need only have a reasonable, rational basis [to warrant
24 approval], particularly if recommended by experienced and competent class counsel.” *In re*
25 *American Bank Note Holographies, Inc., Securities Litigation* (S.D.N.Y. 2001) 127 F.Supp.2d
26 418, 429-30.

27 In light of the above considerations, Class Counsel believes that the proposed Settlement
28 as a whole is fair, reasonable, and in the best interest of the Class Members. Barrera Decl. ¶¶22,

1 57. Although the recommendations of Class Counsel are not conclusive, the Court can properly
2 take them into account, particularly if Class Counsel appears to be competent, has experience
3 with this type of litigation, and significant discovery and investigation has been completed.
4 *Newberg* §11.47. Accordingly, the Court should grant preliminary approval.

5 **C. Value of Settlement.**

6 Pursuant to *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, Plaintiff has
7 conducted a significant amount of informal discovery and analysis of same in order to evaluate
8 the potential value and merit of all of their claims. Barrera Decl. ¶¶14-59. The discovery and
9 information obtained allowed Plaintiff to develop a damages model and complete evaluation of
10 the defenses that Defendant have asserted. Barrera Decl. ¶9. As outlined in paragraphs 23 through
11 68 of the Barrera Declaration, Class Counsel performed an extensive analysis of each and every
12 claim pursuant to *Kullar* prior to entering into the proposed Settlement.

13 **6. CERTIFICATION OF THE SETTLEMENT CLASS IS APPROPRIATE.**

14 For settlement purposes, the parties stipulate and agree that the requisites for establishing
15 class certification are met. *See* ¶8 of the Settlement Agreement (**Exhibit “1”** to Barrera Decl.).
16 Code of Civil Procedure §382 “authorizes class actions ‘when the question is one of a common
17 or general interest, of many persons, or when the parties are numerous, and it is impracticable to
18 bring them all before the court.’” *Sav-on Drug Stores, Inc. v. Sup. Ct* (2004) 34 Cal.4th 319, 326.
19 California courts certify class actions where the plaintiff identifies “both (1) an ascertainable class
20 and (2) a well-defined community of interest among class members.” *Id.*

21 Although Defendant contest the applicability of class certification for purposes of
22 litigation, the parties agree that within the context of settlement, the Settlement Class is
23 ascertainable and numerous as to make it impracticable to join all class members, common
24 questions of law and fact predominate, Plaintiff’s claims are typical of the claims of the Class
25 Members, a class action is superior to other available means for the fair and efficient resolution
26 of the case, Class Counsel will fairly and adequately protect the interests of the Settlement Class,
27 and that the implementation of separate actions by individual members of the Settlement Class
28 would create the risk of inconsistent or varying results. Accordingly, this Class is amenable to

1 class certification for settlement purposes as discussed below.

2 **A. The Proposed Class is Ascertainable and Sufficiently Numerous for Purposes**
3 **of Settlement.**

4 “Ascertainability is required in order to give notice to putative class members as to whom
5 the judgment in the action will be *res judicata*.” *Hicks v. Kaufman & Broad Home Corp.* (2001)
6 89 Cal.App.4th 908, 914. “A class is ascertainable if it identifies a group of unnamed plaintiffs
7 by describing a set of common characteristics sufficient to allow a member of that group to
8 identify himself or herself as having a right to recover based on the description.” *Bartold v.*
9 *Glendale Federal Bank* (2000) 81 Cal.App.4th 816, 828. The proposed class must also be
10 sufficiently numerous. *Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.

11 This action involves 13 Class Members. Barrera Decl., ¶10, Exhibit A. This class is
12 sufficiently numerous. *See Ghazaryan v. Diva Limousine, Ltd.* (2008) 169 Cal.App.4th 1524,
13 1531 n.5. Further, all Class Members can and will be identified by Defendant to the Settlement
14 Administrator through a review of their employment records for all persons who provided Dial-
15 a-Ride services to Defendant in California during the Class Period.

16 **B. The Class Members Share a Well-Defined Community of Interest for**
17 **Purposes of Settlement.**

18 The community of interest requirement “embodies three factors: (1) predominant common
19 questions of law or fact; (2) class representatives with claims or defenses typical of the class; and
20 (3) class representatives who can adequately represent the class.” *Sav-on, supra*, 34 Cal.4th at p.
21 326. “[T]he community of interest requirement for certification *does not mandate that class*
22 *members have uniform or identical claims.*” *Capitol People First v. Department of*
23 *Developmental Services* (2007) 155 Cal.App.4th 676, 692 (emphasis in original). Rather, courts
24 focus on the defendant’s internal policies and “pattern and practice . . . in order to assess whether
25 that common behavior toward similarly situated plaintiffs renders class certification appropriate.”
26 *Id.* (citing *Sav-on, supra*, 34 Cal.4th at 333).

27 The “common issues” requirement “involves analysis of whether the proponent’s ‘theory
28 of recovery’ is likely to prove compatible with class treatment.” *Capitol People, supra*, 155

1 Cal.App.4th at 690 (emphasis added), citing *Sav-on, supra*, 34 Cal.4th at 327. Furthermore, the
2 commonality inquiry centers on the “reasonableness” of the defendant’s labor policies as applied
3 to the potential class. *Ghazaryan, supra*, 169 Cal.App.4th at p. 1534.

4 Here, common issues of fact and law sufficiently predominate for purposes of settlement.
5 The settlement involves certain employment policies and practices that Plaintiff contends applied
6 to all Class Members. Despite same, Defendant have vigorously denied that certification would
7 be appropriate for litigation given its contention of compliance of their policies and individualized
8 implementation issues. Barrera Decl. ¶¶27-49. Plaintiff’s claims involve the contention that there
9 was a common practice of not providing Class Members lawful meal and rest breaks. *Id.*, See
10 Declaration of Class Representative Rivas filed concurrently herewith. For these reasons, this
11 case is readily amenable to class certification in the settlement context and the Court should
12 provisionally certify the Class for settlement purposes.

13 **7. REQUEST FOR ATTORNEYS’ FEES AND COSTS**

14 Class Counsel litigated this case extensively for over a year and have fully investigated
15 the claims against Defendant. Barrera Decl. ¶¶9-22. The ongoing work has been extensive,
16 demanding, and ultimately successful in achieving a substantial settlement resolution. Class
17 Counsel conducted informal investigations into the facts of the case; speaking to putative class
18 members regarding their job experiences at Defendant’s business; engaging in informal discovery
19 and engaging in a detailed analysis of the sample of time and payroll records of Defendant;
20 conducting an extensive review of hundreds of pages of documents provided by Plaintiff and
21 Defendant; preparing for and attending the mediation and engaging in extensive post-mediation
22 settlement discussions with counsel. *Id.* ¶¶15-22. Class Counsel will provide evidence as to time
23 worked, litigation efforts, and further argument at the time of filing their memorandum in
24 connection with the final fairness hearing in support of their requested the attorneys’ fees and
25 costs.

26 The proposed Settlement provides for Class Counsel to apply to the Court for an award of
27 attorneys’ fees in an amount of thirty-eight percent (38%) of the Settlement Amount (\$40,000)
28 and reimbursement of litigation costs incurred in an amount not to exceed \$10,000, which

1 Defendant does not oppose. The attorneys’ fees award is commensurate with (1) the risk the Class
2 Counsel took in bringing and litigating this case, (2) the extensive time, effort and expense
3 dedicated to the case, (3) the skill and determination they have shown, (4) the results they have
4 achieved throughout the litigation, (5) the value of the Settlement they have achieved for Class
5 Members, and (6) the other cases they turned down in order to devote their time and efforts to
6 this matter. The proposed Class Notice provides the Class Members with information as to the
7 actual amount of attorneys’ fees and costs sought in this matter. *See* Exhibit A to Exhibit 1.

8 Trial courts have “wide latitude” in assessing the value of attorneys’ fees and their
9 decisions will “not be disturbed on appeal absent a manifest abuse of discretion.” *Lealao v.*
10 *Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 41. Indeed, it is long settled that the “experienced
11 trial judge is the best judge of the value of professional services rendered in his court”
12 *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132. California law provides that attorney fee awards
13 should be equivalent to fees paid in the legal marketplace to compensate for the result achieved
14 and risk incurred. *See Lealao, supra*, 82 Cal.App.4th at 47. In *Lealao*, the court held that when
15 an action leads to a recovery that can be “monetized” with a reasonable degree of certainty, the
16 trial court should “ensure that the fee awarded is within the range of fees freely negotiated in the
17 legal marketplace in comparable litigation.” *Id.* at 50. In cases where class members present
18 claims against a maximum settlement fund and the settlement agreement provides that the
19 defendant agrees to pay the attorneys a percentage of the same, use of that percentage method is
20 appropriate. *Id.* at 32.

21 Class Counsel’s application for attorneys’ fees in light of the facts and circumstances
22 surrounding the case is well within the range of reasonableness. Historically, courts have awarded
23 fees as high as fifty percent (50%) of the common fund, depending on the circumstances of the
24 case. *Newberg* § 14.03; *see also In re Ampicillin Antitrust Litigation* (D. D.C. 1981) 526
25 F.Supp.494 (awarding attorneys’ fees in the amount of 45% of the \$7.3 million settlement fund);
26 *Beech Cinima, Inc. v. Twentieth-Century Fox Film Corp.* (S.D.N.Y. 1979) 480 F.Supp. 1195
27 (awarding approximately 53% of the settlement fund as attorney fees). California Courts
28 routinely approve attorneys’ fees at or about thirty-five percent (35%) of the settlement fund in

1 wage-and-hour cases. *See De Los Reyes v. Wireless Advocates LLC*, Los Angeles County Superior
2 Court, Case No. BC508224 (January 2015) (Hon. Elihu Berle); *Moore v. IKEA*, Los Angeles
3 Superior Court, Case No. BC263646 (Sept. 2006). (Hon. Peter Lichtman).

4 Class Counsel has borne all the risks and costs of litigation and will not receive any
5 compensation until recovery is obtained. Barrera Decl. ¶¶61-64. Any unused portion of the
6 litigation costs allocation of \$10,000 will be reincorporated into the Net Settlement Amount.
7 Class Counsel is well experienced in wage and hour class actions and used that experience to
8 obtain a great result for the class. Barrera Decl. ¶¶4-8. Considering the amount of the fee
9 requested, the work performed, and risks incurred, the requested fees and costs are reasonable
10 and should be awarded.

11 **8. THE PROPOSED CLASS NOTICE IS ADEQUATE**

12 California statutory and case law vests the court with broad discretion in fashioning
13 appropriate class notice. *See* CAL. CIV. CODE § 1781; *Cartt v. Superior Court* (1975) 50
14 Cal.App.3d 960, 973-74. The proposed Class Notice attached as Exhibit “A” to the Settlement
15 Agreement attached to the Barrera Declaration as Exhibit “1” provides information on the
16 meaning and nature of the Settlement, the terms and provisions of the proposed Settlement, the
17 relief the proposed Settlement will provide to the Settlement Class Members, the application of
18 Class Counsel for reimbursement of costs and attorneys’ fees, the date, time, and place of the final
19 settlement approval hearing; and the procedure and deadlines for participating, electing not to
20 participate, or submitting objections to the proposed Settlement. The proposed Class Notice is
21 consistent with class certification notices approved by numerous state and federal courts and is
22 formatted as proposed as a model form by the Los Angeles Superior Court’s Complex Panel.

23 The proposed Class Notice also fulfills the requirement of neutrality in class notices.
24 *Newberg*, at § 8.39. “Sufficient information about the case should be provided to enable class
25 members to make an informed decision about their participation.” *MCL* §21.311 at 413 (4th ed.
26 2007). The proposed Class Notice summarizes the proceedings to date and the terms and
27 conditions of the proposed Settlement in an informative and coherent manner. The proposed
28 Class Notice is “accurate, objective, and understandable to class members” *Mendoza v.*

1 *United States* (9th Cir. 1980) 623 F.2d 1338. The proposed Class Notice recognizes that the Court
2 has not yet granted final approval and apprises the Settlement Class members of how to object to
3 the proposed Settlement. The proposed Class Notice satisfies all due process requirements and
4 complies with the standards of fairness, completeness, and neutrality. FED. R. CIV. P. 23(c)(2)
5 and 23(e); *Newberg*, at §§8.21, 8.39; *MCL*, at §§ 21.311, 21.312; *See Cartt, supra*, 50 Cal.App.3d
6 at 960. Out of an abundance of caution and to ensure proper Notice, the Class Notice will be sent
7 by the Settlement Administrator to each Class Member in both Spanish and English. Accordingly,
8 the Court should approve the proposed Class Notice.

9 **9. APPOINTMENT OF PHOENIX CLASS ACTION ADMINISTRATION AS SETTLEMENT**
10 **ADMINISTRATION**

11 The parties have selected Phoenix Class Action Administration (“Phoenix”) as the
12 Settlement Administrator to administer the proposed Settlement. Barrera Decl. ¶70. The
13 Settlement Administrator has established an account for the payment of the installment settlement
14 payments by Defendant. The Settlement Administrator will print and distribute the Notice
15 Packets to the Class Members by First Class mail; establish a website, mailing address and
16 telephone number to receive Class Members’ inquiries about the proposed Settlement; receive,
17 review, and process all opt-outs, disputes, and objections to the proposed Settlement; receive and
18 process any written disputes and supporting documentation as to the validity of the information
19 regarding the number of Shifts worked by the Class Members provided by Defendant; handle
20 inquiries from Class Members regarding the proposed Settlement; calculate each Class Members’
21 Settlement Share of the Class Amount; mail the settlement checks to the Class Members; and
22 perform any other usual and customary duties for administering a class action settlement. The
23 Settlement Administrator’s fees and expenses shall be paid out of the Gross Settlement Amount
24 in the amount not to exceed \$2,500.00. Any portion of this allocation of \$2,500 that is not utilized
25 by the Settlement Administrator will be reincorporated into the Net Settlement Amount.
26 Accordingly, the Court should appoint Phoenix as the Settlement Administrator and direct
27 Phoenix to mail the Notice Packets to the Class Members in the manner and on the deadlines set
28

1 forth in the Court's Order.

2 **10. APPROVAL OF THE SERVICE AWARD TO THE CLASS REPRESENTATIVE.**

3 Plaintiff requests that the Court preliminarily approve a service award for the Named
4 Plaintiff Ulysses A. Rivas in the amount of \$15,000 payable from the Total Settlement Amount.
5 It is within the Court's discretion to award the Settlement Class Representative for his efforts,
6 risk and work. *Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294, 299
7 (approving \$50,000 participation award to a single class representative). The criteria courts may
8 consider in determining whether to make an incentive award include: 1) the risk to the class
9 representative in commencing suit, both financial and otherwise; 2) the notoriety and personal
10 difficulties encountered by the class representative; 3) the amount of time and effort spent by the
11 class representative; 4) the duration of the litigation; and 5) the personal benefit (or lack thereof)
12 enjoyed by the class representative as a result of the litigation. *Id.* ¶¶60-64.

13
14 The service awards requested are fair and appropriate. Plaintiff spent a substantial amount
15 of time and effort in producing relevant documents and past employment records, and providing
16 the facts and evidence necessary to prove Plaintiff's allegations. Barrera Decl. ¶¶65-69; Decl. of
17 Ulysses A. Rivas. Mr. Rivas was available whenever Class Counsel needed him and actively tried
18 to obtain information that would benefit the Settlement Class. *Id.* Plaintiff attended meetings with
19 counsel, and was present in person throughout the mediation session that resulted in this
20 settlement. *Id.* In addition to the effort that Plaintiff put into pursuing the case, he also took on
21 great risk in pursuing a case against his current employer. Few people want to file lawsuits,
22 especially against their employers. By bringing a lawsuit against his employer, Plaintiff incurred
23 a real risk of retaliation from his present and future employers that will be present for the rest of
24 his work life. Barrera Decl. ¶66; Decl. of Ulysses A. Rivas. Plaintiff has cost Defendant a
25 substantial sum of money through his allegations on behalf of the Settlement Class. Barrera Decl.
26 ¶66. Such conduct may be considered by future employers when choosing between an applicant
27 who has never sued a prior employer and one that has. *Id.* Accordingly, it is appropriate and just
28 for Plaintiff to receive a reasonable service payment in the amount of \$15,000, in addition to his

1 share of the Net Settlement Amount, for his time and service as a Class Representative. Barrera
2 Decl. ¶¶65-69.

3 **11. PROPOSED DEADLINES FOR THE NOTICE PROCESS.**

4 Plaintiff also seeks approval at this preliminary approval stage of the proposed deadlines
5 for the notice process. *Newberg*, at § 11.26. The notice process entails mailing the Notice Packets
6 to all known and reasonably ascertainable Settlement Class Members based on Defendant's
7 payroll records. Within fifteen (15) days after notice of the Court's Order granting preliminary
8 approval, Defendant shall provide the Settlement Administrator with a verified list of all putative
9 Class Members, listing each putative Class Member's name, social security number, last known
10 address as recorded in Defendant's records, and the beginning and ending dates of that person's
11 period of service for Defendant within the Class Period. Within fourteen (14) days after receiving
12 the list of Class Members from Defendant, the Settlement Administrator shall mail the Class
13 Packets to the Class Members by First Class mail through the United States Postal Service. The
14 Class Notice is attached to the Settlement Agreement (Exhibit 1) as Exhibit A. Prior to mailing,
15 the Settlement Administrator will perform a change of address search to obtain any known or
16 identifiable address changes. The Notice Packets will be mailed to the updated addresses to the
17 extent they are different. Class Members will then have sixty (60) calendar days from the date of
18 the Initial Mailing of the Class Notice to timely opt-out of or submit a written objection to the
19 proposed Settlement. Each Class Member's unique Class Notice shall include his or her estimated
20 Settlement Share assuming no opt-outs.
21

22 **12. CONCLUSION**

23 For the foregoing reasons, Plaintiff respectfully requests that the Court grant preliminary
24 approval of the proposed Settlement; certify the proposed Settlement Class; appoint Ulysses A.
25 Rivas as the Class Representative; appoint Patricio Barrera of Barrera & Associates as Class
26 Counsel and preliminarily approve their request for attorneys' fees and costs; preliminarily
27 approve the service award request for the Class Representative; appoint Phoenix as the Settlement
28

1 Administrator; approve and direct the Settlement Administrator to mail the Notice Packets to the
2 proposed Settlement Class; and schedule a final approval hearing at the Court's convenience.

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DATED: March 17, 2023

BARRERA & ASSOCIATES

By: /s/ Patricio Barrera
Patricio T.D. Barrera
Attorneys for Plaintiff and the Class

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**

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