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18 SUPERIOR COURT OF THE STATE OF CALIFORNIA
19 FOR THE COUNTY OF LOS ANGELES - SPRING STREET COURTHOUSE

20 STEPHEN BROUGH and EDGAR
21 BECERRA, individuals, on behalf of
22 themselves and others similarly situated,

23 PLAINTIFFS,

24 GLOBAL PARATRANSIT, INC.; REZA
25 NASROLLAHY, an individual; and DOES 1
26 to 50, inclusive,

27 DEFENDANTS.

FILED
LOS ANGELES SUPERIOR COURT

JUN 11 2019

Sherril A. Carter, Executive Officer/Clerk
By Jana P. Rios, Deputy
Jana P. Rios

Case No. BC616177; Related Case BC619163
[Case Assigned for All Purposes to Hon.
Carolyn B. Kuhl]

NOTICE OF MOTION AND MOTION FOR
PRELIMINARY APPROVAL OF CLASS
SETTLEMENT; MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT THEREOF

[Filed concurrently with Declarations of Ari J.
Stiller and David Deason, and Proposed
Order]

Date: July 3, 2019
Time: 10:00 a.m.
Dept.: SSC - 12

Trial Date: None Set
Complaint Filed: April 7, 2016

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

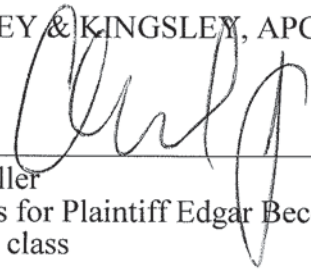
2 **PLEASE TAKE NOTICE** that on July 3, 2019 at 10:00 a.m. in Department 12 of the
3 above-entitled court, Plaintiffs Stephen Brough and Edgar Becerra will move the Court for an
4 Order of Preliminary Approval of the Settlement Agreement and Release ("Settlement"), a copy
5 of which is filed concurrently herewith.

6 The Motion will be made on the grounds that the proposed Class Settlement is fair,
7 adequate, reasonable, and in the best interest of the Class and the parties.

8 The Motion will be based on this Notice of Motion, the attached Memorandum of Points
9 and Authorities, the Declaration of Ari J. Stiller, the Settlement Agreement and Release, all other
10 papers and records on file in this action, and on such oral and documentary evidence as may be
11 presented at the hearing on this Motion.

12
13 DATED: June 11, 2019

KINGSLEY & KINGSLEY, APC

14
15 By: 

Ari J. Stiller
Attorneys for Plaintiff Edgar Becerra and the
proposed class

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs Stephen Brough and Edgar Becerra (“Plaintiffs”) submit this Memorandum of
4 Points and Authorities in support of Plaintiffs’ Motion for Preliminary Approval of the class
5 settlement reached between Plaintiffs and Defendants Global Paratransit, Inc. (“GPI”) and Reza
6 Nasrollahy (“Defendants”). By this Motion, Plaintiffs request that the Court:

7 (1) Grant preliminary approval of the Settlement Agreement and Release (“Settlement”
8 or “Settlement Agreement”), which is attached to the concurrently filed Declaration of Ari J. Stiller
9 as Exhibit “A”;

10 (2) Approve the proposed Notice to Class Members attached to the Declaration of Ari
11 J. Stiller as Exhibit “B,” and direct that the Notice be sent to Class Members in the manner set
12 forth in the Settlement Agreement; and

13 (3) Schedule a hearing on final approval of the proposed Settlement and Plaintiff’s
14 counsel’s application for an award of attorneys’ fees and litigation costs at which Class Members
15 may be heard (“Final Approval Hearing”).

16 **II. FACTUAL BACKGROUND AND PROCEDURAL HISTORY**

17 **A. Litigation Overview**

18 Defendant GPI operates a scheduled-ride service in the Los Angeles area, contracting with
19 private and public transportation providers. (Stiller Decl., ¶ 3.) Plaintiffs Brough and Becerra
20 worked as drivers for GPI and allege several wage and hour violations during their employment.
21 (Stiller Decl., ¶ 3.)

22 Plaintiff Brough filed a class action complaint against Defendants on April 7, 2016 (the
23 “Brough Action”), alleging causes of action for improper pay deductions under Labor Code §§
24 221, 223 and 300; failure to reimburse expenses under Labor Code § 2802; meal and rest break
25 liability under Labor Code § 226.7; failure to pay minimum wage and overtime under Labor Code
26 §§ 510, 1197, and 1198; derivative claims for inaccurate wage statements, waiting time penalties,
27 and unfair competition; and penalties pursuant to Labor Code § 2699, *et seq.* (“PAGA”). (Stiller
28 Decl., ¶ 4.) On May 2, 2016, Plaintiff Becerra filed a complaint based on similar allegations,

1 including overtime and meal and rest period violations. (Stiller Decl., ¶ 5.) On May 9, 2017,
2 Brough and Becerra filed a consolidated complaint encompassing both of their actions. (Stiller
3 Decl., ¶ 5.)

4 **B. Discovery and Mediation**

5 The parties have vigorously litigated this action. On August 4, 2017, they conducted a full-
6 day mediation with Hon. Peter D. Lichtman (Ret.), but were unable to reach a settlement. (Stiller
7 Decl., ¶ 6.) They continued with litigation and discovery, including special interrogatories,
8 requests for production of documents, and requests for admissions. (Stiller Decl., ¶ 7.) This
9 discovery led to the production of the employee list and contact information of all putative class
10 members. (Stiller Decl., ¶ 7.) After significant meet-and-confer efforts, Defendants supplemented
11 their discovery responses twice and ultimately produced nearly 6,000 pages of pertinent
12 documents, including: the named Plaintiffs' personnel files and time and pay records, applicable
13 employment policies, time and pay records for a sample of class members during the relevant
14 period, and driver trip logs detailing the pick-up and drop-off times of trips completed by a sample
15 of class during the relevant period. (Stiller Decl., ¶ 7.) On July 18, 2018, Plaintiffs took the
16 deposition of GPI's person most knowledgeable, Darian Harris, regarding the claims alleged, and
17 the underlying policies and practices in this action. (Stiller Decl., ¶ 8.)

18 After much deliberation, the parties entered a second full-day mediation on January 18,
19 2019, with respected mediator Hon. Gail Andler (Ret.), and were finally able to reach a settlement
20 in principle memorialized in a Memorandum of Understanding. (Stiller Decl., ¶ 9.) After
21 additional contentious negotiations, the parties executed the final Settlement Agreement. As
22 explained below, Plaintiffs recognized substantial risks based on the likelihood of success on the
23 merits, contested class certification issues, and Defendant's solvency. (Stiller Decl. ¶ 10.)
24 Defendant denies any liability or wrongdoing associated with the claims alleged in the action.
25 (Ex. A, ¶ 4.1–4.2.) However, both parties believe that the proposed Settlement is fair and
26 reasonable and in each party's best interests. (Ex. A, ¶ 2.7, 3.2.)

1 **III. THE SETTLEMENT**

2 **A. The Settlement Class**

3 For purposes of settlement, the Class is defined as “all drivers who are or were employed
4 by Defendants within the State of California who worked one or more pay periods from April 7,
5 2012 to March 18, 2019.” (Ex. A, ¶ 1.4.) Based on documents and other informal discovery
6 produced by Defendants, there are approximately 1,100 employees in the Class. (Ex. A, ¶ 6.5.2.)

7 **B. Settlement Amount**

8 As detailed fully in the Settlement Agreement, the Settlement provides for Defendants to
9 pay a non-reversionary Gross Settlement Amount of \$488,000. (Ex. A, ¶ 1.17.) This amount
10 includes Settlement Administration Costs not to exceed \$25,000; attorney’s fees of 1/3 of the Gross
11 Settlement Amount, or \$162,666.67; litigation costs not to exceed \$22,000; requested
12 enhancements to the Named Plaintiffs of \$5,000 each; and the PAGA payment of \$7,500, 25% of
13 which, or \$1,875 is to remain in the Net Settlement Fund to be distributed pro rata among Class
14 Members pursuant to PAGA. (Ex. A, ¶¶ 1.14, 1.17, 1.23, 1.33, and 6.6.) The Net Settlement
15 Amount of \$262,708.33 will be distributed to Participating Class Members. (Ex. A, ¶ 1.19.)

16 The amount of each Class Member’s individual settlement payment is based on the number
17 of pay periods worked by the participating Class Member during the Class Period. (Ex. A, ¶ 6.9.1.)
18 This individual amount shall be determined by taking the number of each Participating Class
19 Member’s pay periods during the Class Period and dividing it by the total number of pay periods
20 worked by all Participating Class Members in the Class Period to determine his or her pro rata share
21 of the Net Settlement Amount. (*Ibid.*) The Settlement Agreement provides for an exclusion and pay
22 period dispute process. (Ex. A, ¶ 6.4.4.)

23 **C. Process for Administering Settlement after Preliminary Approval**

24 The detailed Notice Procedure established by the Settlement Agreement will efficiently
25 and accurately ensure that Notice is provided to the Class Members. (Ex. A, ¶ 6.3.) The parties
26 have agreed to use Rust Consulting, Inc., a reputable third-party claims administrator, to administer
27 the Settlement. (Ex. A, ¶ 1.34.) Defendant must provide Rust Consulting with a class contact list
28 with class member pay periods no later than 10 days after the Court grants preliminary approval

1 of the settlement. (Ex. A, ¶ 6.3.1.)

2 No later than 14 days after Defendant provides the class list to Rust, the Claims
3 Administrator will mail the Notice of Settlement to all class members using their last known
4 address after performing a change-of-address search. (Ex. A, ¶ 6.3.2.) The Notice of Settlement
5 will be substantially in the form attached to the Settlement Agreement as Exhibit 1 and attached
6 to the Declaration of Ari J. Stiller hereto as Exhibit “B”. (Ex. A, ¶ 1.19, 6.3.2; Stiller Decl. ¶ 15.)
7 Rust will perform an address search on returned mail and will promptly re-mail the Notice of
8 Settlement to an updated address, if any is found. (Ex. A, ¶ 6.3.3.)

9 **D. Process for Class Members to Respond to Class Notice**

10 Class members will have an opportunity to request exclusion from the Settlement Class
11 (i.e. opt out) and to object to the Settlement at the Final Approval Hearing. (Ex. A, ¶ 6.4.1–2.) In
12 order for any Settlement Class member to validly exclude himself or herself from the Settlement
13 Class, she or he must mail a written request for exclusion to the Settlement Administrator no later
14 than sixty (60) days after the date the Settlement Administrator mails the Notice of Settlement to
15 the Settlement Class. (Ex. A, ¶¶ 1.31, 6.4.1.)

16 A class member making an objection may submit a written objection or appear at the Final
17 Approval Hearing with or without filing or serving any written objection. (Ex. A, ¶ 6.4.2.) The
18 Settlement Class member may appear personally or through an attorney, at his or her own expense,
19 at the Final Approval hearing to present an objection directly to the Court. (Ex. A, ¶ 6.4.2.) Any
20 written objection must be submitted no later than 60 days after the Notice of Settlement is sent,
21 and an attorney who will represent an individual objecting to this Settlement who has not filed a
22 written objection must file a notice of appearance no later than sixty (60) days after the Notice of
23 Settlement is sent (the “Response Period Deadline”). (Settlement Agreement, ¶¶ 1.31, 6.4.2.)

24 **E. The Class Members’ Release**

25 The scope of the Release in this matter is tailored to the claims raised in Plaintiffs’ operative
26 consolidated complaint. Participating Class Members will release Defendants from claims based
27 on the facts and circumstances “pled or arising out of or reasonably related to the transactions and
28 occurrences pled in the Complaint, which are or could be the basis of claims that Defendants failed

1 to pay wages, minimum wages, or overtime; made improper deductions from wages; failed to
2 provide lawful meal or rest periods; kept or provided inaccurate records under Labor Code section
3 226 or 2810.5; failed to pay lawful wages upon termination or resignation; or engaged in unfair
4 business practices or is subject to penalties under PAGA during the Class Period.” (Ex A., ¶ 1.29.)

5 **F. Funding the Settlement**

6 This Settlement shall be funded in a single payment within fourteen (14) days after the
7 Court enters the final approval order, or January 20, 2020, whichever is later, to a Qualified
8 Settlement Fund established by the Claims Administrator. (Ex. A, ¶¶ 1.13, 1.28, and 6.11.)

9 **IV. ARGUMENT**

10 **A. Plaintiff Requests Approval of This Class Action Settlement**

11 The case of *Kullar v. Foot Locker Retail, Inc* (2008) 168 Cal.App.4th 116, 128, sets forth
12 several factors that courts analyze in determining whether to approve a class action settlement.
13 These factors include: (1) the strength of plaintiff’s case; (2) the risk, expense, complexity and
14 likely duration of further litigation; (3) the risk of maintaining class action status through trial; (4)
15 the amount offered in settlement; (5) the extent of discovery completed and stage of the
16 proceedings; (6) the experience and views of counsel; (7) the presence of a governmental
17 participant; and (8) the reaction of the class members to the proposed settlement.

18 The proposed settlement satisfies each of these factors. Class Counsel conducted extensive
19 discovery before entering into settlement negotiations in this matter, which included written
20 discovery, the production of nearly 6,000 pages of relevant policies, time and pay data and records,
21 and Defendant’s deposition. (Stiller Decl., ¶ 16.) Plaintiffs believe that their strongest claims were
22 for meal and rest period violations based on the theory that drivers were not scheduled for breaks
23 and had to remain with their vehicles while on break. (Stiller Decl., ¶ 16.) However, as described
24 below, discovery revealed risks with this theory, and pay records showed many instances where
25 Defendants paid meal and/or rest period premium wages. This discovery permitted Class Counsel
26 to evaluate the strengths and weaknesses of the case and the risks associated with ongoing
27 litigation. (Stiller Decl., ¶ 16.)

1 **1. The Strength of Plaintiffs' Case**

2 **a. The Risks Associated with the Meal Break Claims**

3 The core claims in this case were for meal and rest period violations, but discovery revealed
4 significant risks for these claims regarding liability and class certification. Labor Code § 512
5 provides in relevant part:

6 An employer may not employ an employee for a work period of more than
7 five hours per day without providing the employee with a meal period of
8 not less than 30 minutes An employer may not employ an employee
for a work period of more than 10 hours per day without providing the
employee with a second meal period of not less than 30 minutes

9 Under this rule, “[e]mployers must afford employees uninterrupted half-hour periods in
10 which they are relieved of any duty or employer control and are free to come and go as they
11 please.” (*Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1037.) In order for a meal
12 period to qualify as a lawful break under California law, an employer must (1) relieve its
13 employees of all duty; (2) relinquish control over their activities; (3) permit them a reasonable
14 opportunity to take an uninterrupted 30-minute break; and (4) not impede or discourage them from
15 doing so. (*Id.* at p. 1040.)

16 Here, Defendants produced a written meal period policy and a document entitled Meal/Rest
17 Period Issue Notice for class members to report a meal and/or rest period violation. (Stiller Decl.,
18 ¶ 19.) Defendants also produced a Meal Period Advisory document for class members to
19 acknowledge receipt of the meal period policy. (Stiller Decl., ¶ 19.) Defendants’ PMK, Mr. Harris,
20 testified that GPI’s written policy has been in effect since the beginning of the class period. (Ex.
21 C [Harris Depo.] at 100:4–7.)

22 Despite these written policies, Plaintiffs alleged that GPI required drivers to remain with
23 their vehicles during breaks, and thus the breaks were not “uninterrupted” within the meaning of
24 Labor Code § 512. However, Defendant’s PMK testified that Defendant’s dispatch system
25 automatically schedules drivers’ routes so they are free for a timely, uninterrupted half-hour meal
26 period on each shift. (Ex. C [Harris Depo.] at 100:4–7.) According to the PMK, Defendant gives
27 drivers time to move their vehicles plus a half-hour break in which the driver can be away from
28 the vehicle. (Ex. C [Harris Depo.] at 119:10 to 121:1.) Mr. Harris testified that, in instances where

1 this is not possible, drivers were instructed to complete an advisory form to receive a meal-period
2 premium. (Ex. C [Harris Depo.] at 123:13 to 124:14.) While Plaintiffs believed that a meal period
3 class could be certified as Defendant maintained the same scheduling policy for all class members,
4 Plaintiffs also recognized risk on the merits based on the PMK testimony.

5 Additionally, Plaintiffs allege that Defendant failed to provide second meal periods and did
6 not record those meal periods. However, Defendant's PMK testified that drivers logged second
7 breaks in a second daily trip log when the day's route were long enough to warrant a second break,
8 and that many drivers signed second meal-period waivers. (Ex. C [Harris Depo.] at 126:8–19,
9 136:7–12.) Moreover, some of the payroll records that Defendants produced contain a line item
10 for "Miscellaneous Hours," which Defendants argue encompasses meal and rest-period premium
11 payments. (Stiller Decl., ¶ 21.)

12 With this analysis in mind, there is significant risk of losing the meal period claim on the
13 merits or failing to certify it. The Court may determine that the written meal period policy complies
14 with California law, and in that scenario, the likelihood that Plaintiffs would have been able to
15 certify a meal period class would be diminished. As Plaintiffs' analysis above suggests, the extent
16 to which GPI actually "provided" employees with lawful breaks according to its policy would be
17 disputed, justifying a discount from the maximum settlement value of this claim. (Stiller Decl., ¶
18 22.) Also, importantly, Defendant presented arguments regarding solvency and the unique nature
19 of its business relying on municipal contracts that may or may not be renewed, and Plaintiffs'
20 counsel believed that this consideration warranted an additional discount from the maximum value
21 of the claim. (Stiller Decl., ¶ 23.)

22 Plaintiffs' Counsel assessed the maximum potential liability on the meal period claim to
23 be approximately \$1,693,289.56, accounting for a violation on 1/3 of all shifts. (Stiller Decl., ¶
24 24.) Defendant disputes this calculation and argues that this violation rate is exaggerated. (Stiller
25 Decl. ¶ 24.)

26 **b. The Risks Associated with the Rest Break Claims**

27 California law requires an employer "to authorize and permit the amount of rest break time
28 called for under the wage order for its industry." (*Brinker, supra*, 53 Cal.4th at p. 1029.) Wage

1 Order 9-2001 applies to the present case and requires a 10-minute rest period “per four (4) hours
2 [of work] or major fraction thereof” for all shifts over 3.5 hours in length. (Wage Ord. 9-2001, §
3 12(A).) The California Supreme Court recently clarified the meaning of the “or major fraction
4 thereof” requirement, holding that “[e]mployees are entitled to 10 minutes rest for shifts from three
5 and one-half to six hours in length, 20 minutes for shifts of more than six hours up to 10 hours, 30
6 minutes for shifts of more than 10 hours up to 14 hours, and so on.” (*Brinker, supra*, 53 Cal.4th at
7 p. 1029.) Unlike meal periods, employers are not required to maintain records of employee rest
8 periods. However, similar to the standard for meal periods, liability can be predicated on the
9 employer’s lack of a compliant policy. (*Brinker, supra*, 53 Cal.4th at p. 1029.)

10 Many of the same risks discussed above for Plaintiffs’ meal period claim were also present
11 for the rest period claim. Defendant produced a document entitled “Meal Periods and Rest Breaks
12 Policy” authorizing “one 10-minute paid rest break for every four hours worked or major portion
13 thereof.” (Stiller Decl., ¶ 25.) Defendant’s PMK testified that drivers were free to leave their
14 vehicles on rest breaks. (Ex. C [Harris Depo.] at 148:1–25.) Further, while the named Plaintiffs
15 claim that they did not receive all required rest periods, it would be difficult to prove class-wide
16 violations since rest periods do not need to be recorded. Taking this claim through class
17 certification could require expensive surveys and expert analysis—the cost of which would come
18 out of the class’s recovery. (Stiller Decl., ¶ 26.) Additionally, even if Plaintiffs prevailed at
19 certification, the damages at trial could be lowered to account for rest periods that employees
20 actually received. (Stiller Decl. ¶ 26.) The full value of this claim, without any discount, was
21 approximately \$1,693,289.56 accounting for a violation on 1/3 of all shifts, according to Plaintiff’s
22 calculations. Again, Defendant disputes these calculations. (Stiller Decl. ¶ 27.)

23 **c. The Risks Associated with the Unpaid Wages/Overtime Claim**

24 While Plaintiffs believe the core claims are for meal and rest period violations, Plaintiffs
25 also alleged that GPI failed to pay Class Members for all hours worked on a derivative theory that
26 GPI automatically deducted thirty (30) minutes from pay even if a meal break was not provided or
27 was short.¹

28 ¹ Plaintiffs had also argued that GPI implemented an unlawful rounding policy, where
employees’ hours were rounded down to reflect fewer hours than those actually worked. However,

1 Labor Code sections 510, 1194, and 1199 require employers to compensate employees at
2 or above the minimum wage rate for all hours worked, and at a rate of no less than 1.5 times the
3 regular rate of pay for any work in excess of eight hours in one workday and any work in excess
4 of 40 hours in any one workweek. (*Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 324; *see*
5 *also* Wage Order 9-2001, Code Regs. tit. 8, § 11090, subd. (3)(A)(1)(a).) In addition, “an employee
6 is entitled to . . . twice the ‘regular rate’ for work in excess of 12 hours in one day.” (*Huntington*
7 *Mem’l Hosp. v. Superior Court*, 131 Cal. App. 4th 893, 902 (2005).)

8 GPI argued that although most meal periods are recorded at exactly half-an-hour, that’s
9 due to employees logging half-hour meal periods, not because of a policy to automatically deduct
10 a half-hour on each shift regardless of the length of the break. (Stiller Decl. ¶ 29; Ex. C [Harris
11 Depo.] at 113:7–21, 134:19–135:9, 137:6 to 138:15.) The PMK testified that there are instances
12 where employees take longer breaks, and the full break time is deducted. Given that the time was
13 unrecorded, there were some risks that the claim would not be certified. (Stiller Decl. ¶ 29.) The
14 full value of the auto-deduct claim amounted to approximately \$846,644.78. (Stiller Decl. ¶ 29.)

15 **d. The Risks Associated with the Deduction Claim**

16 Labor Code § 221 provides: “[i]t shall be unlawful for any employer to collect or receive
17 from an employee any part of wages theretofore paid by said employer to said employee.” This
18 provision, when read together with Labor Code §§ 223 and 224, prohibits an employer from
19 deducting any amounts from an employee’s wages, except for statutorily mandated amounts (e.g.,
20 tax withholdings, insurance premiums, or hospital dues). Similarly, Labor Code § 300 requires
21 that prior to withholding any other amount from wages, the employer must satisfy the attachment
22 requirements, including but not limited to entering into a separate written agreement which
23 identifies the specific transaction to which the attachment responds; if assignment is made by a
24 married person, written consent of spouse is required; and/or assignment must be notarized and
25

26 it appears that the rounding occurred at times in both in the employees’ favor and employer’s favor.
27 Although such a policy could still disfavor employees in the long run, Defendant may have a
28 successful defense that its policy is facially neutral and thus satisfies the standard in *See’s Candy*
Shop, Inc. v. Superior Court (2012) 210 Cal.App.4th 889. (See Ex. C [Harris Depo.] at 67:16–23.)
Even if Plaintiffs succeeded on this claim, the damages would have been very small and would not
have resulted in additional penalties beyond those associated with the other wage claims.

1 accompanied by an itemized statement of amount due.

2 Plaintiffs alleged that GPI did not meet these attachment requirements. Specifically,
3 passengers pay their bus fares to Class Members in a variety of ways including in cash, tokens,
4 credit cards, and coupons. (Stiller Decl., ¶ 30.) Plaintiffs allege that GPI violated these Labor Code
5 sections by having Class Members retain the cash fares and then deducting those fares from their
6 wages. (Stiller Decl., ¶ 30.) In addition, GPI instructed Class Members that each of them is
7 responsible for the exact fare due, whether the Class Member receives it or not. Any discrepancy
8 according to GPI's accounting records was deducted from the Class Members' wages, reflected
9 on their wage statements as "cash o/s" or "cash advance." (Stiller Decl., ¶ 30.)

10 Plaintiffs recognize significant risk for this claim on the merits and for class certification.
11 First, GPI argued that the cash payments were sporadic and many transactions were either by
12 coupon or credit card, thus creating predominant individualized inquires as to liability. (Ex. C
13 [Harris Depo.] at 76:21.) Plaintiffs argued that, even if cash payments are rare, GPI's policy is to
14 make drivers the insurers for cash underpayments, such that the company deducts from the
15 employees' wages the full fare that should have been paid even if the passenger, in fact, pays less
16 than the full fare. (Stiller Decl., ¶ 31.) However, Mr. Harris testified that the company often
17 instructs drivers not to transport passengers who don't pay the full fare, and instructs drivers only
18 to log the amount of cash fares actually received, so pay discrepancies did not occur. (Ex. C [Harris
19 Depo.] at 80:17–81:13; 81:22–83:20.) The cash deduction policy was common, but the extent to
20 which that policy caused a legal violation in a particular pay period would be highly contested if
21 the case continued. (Stiller Decl., ¶ 32.) Plaintiffs' Counsel assessed the maximum potential
22 liability for the deduction claim to be approximately \$173,816 assuming \$2 of cash shortage per
23 workweek. (Stiller Decl., ¶ 33.)

24 **e. The Risks Associated with the Derivative Claims**

25 The risk analysis for each predicate claim likewise pertains to the derivative claims for
26 waiting time penalties and wage statement violations. Still, there are additional elements necessary
27 to recover on these claims, which impose additional risk. For example, there was risk that Plaintiff
28 could not demonstrate that Defendants' wage statement violations were "knowing and intentional"

1 as required by Labor Code section 226(e) and that Plaintiffs could not recover for a derivative
2 wage-statement claim if the statements accurately reflected pay. (See *Maldonado v. Epsilon*
3 *Plastics, Inc.* (2018) 22 Cal.App.5th 1308, 1336.) Additionally, the “willfulness” element to
4 recover waiting time penalties under Labor Code section 203 would have been disputed and
5 difficult to prove, and employers often contend that they did not know of any violations giving rise
6 to the need for pay at termination. While Plaintiffs dispute that not knowing the law is a sufficient
7 defense, Plaintiffs still had to acknowledge that this argument posed some risk. (Stiller Decl. ¶ 32.)
8 If the predicate claims were certified and Plaintiff received a complete victory on derivative claims,
9 the maximum recovery would amount to approximately \$1,549,500 on the wage statement claim
10 and \$1,626,240 on the waiting time claim.

11 The parties discounted the PAGA claim for multiple reasons. The PAGA statute gives
12 aggrieved employees the right to pursue specific labor code violations by way of a civil action.
13 (Lab. Code § 2699.3.) Here, the aggrieved employees’ PAGA claims are predicated on the meal,
14 rest, and wage violations described above. (Stiller Decl. ¶ 37.) The Class is compensated for these
15 violations in the proposed settlement, and thus any PAGA recovery for these same violations
16 would be duplicative. (*Ibid.*)

17 Additionally, while PAGA provides a penalty of \$100 for each aggrieved employee per
18 pay period, it also gives the Court discretion to award less than the maximum penalty. (Lab. Code
19 § 2699(e).) Plaintiffs acknowledged a significant risk that the Court would reduce the PAGA
20 penalties due to the fact that Class Members are already directly compensated for the same
21 underlying conduct, and because Defendant faces financial risk due to the nature of its municipal
22 contract renewals. (Stiller Decl., ¶ 38.) The uncertainty associated with the PAGA claims increased
23 the Plaintiffs’ risk of pursuing those claims and required a discount of those claims’ settlement
24 value. As such, Plaintiffs do not ascribe great value to the PAGA claim in this action, making the
25 Settlement’s contemplated PAGA payment of \$7,500 appropriate. (Stiller Decl., ¶ 39.)

26 **2. The Risk, Expense, Complexity, and Likely Duration of Further** 27 **Litigation**

28 Given the risks outlined above, the issues in this case were complex and the risk for

1 Plaintiffs and the Class Members associated with this litigation was high, given the uncertainty.
2 (Stiller Decl., ¶ 40.) Moreover, there is significant expense associated with the class certification
3 process, which the parties can avoid by entering into the contemplated settlement. (Stiller Decl., ¶
4 40.) If the Court did eventually certify a meal or wage class, trial of a case involving approximately
5 1,100 Class Members would require the retention of expensive expert witnesses, the accrual of
6 extensive litigation costs, and a significant time investment. (Stiller Decl., ¶ 41.) Finally, given the
7 complexity and unsettled nature of the issues in this case, it is likely that any outcome at trial would
8 have resulted in a lengthy and costly appeal. (Stiller Decl., ¶ 42.) An appeal would result in further
9 delay for the Class Members who are waiting for a resolution in this matter. (*Ibid.*)

10 **3. The Risk of Maintaining Class Action Status Through Trial**

11 This case has not been certified to be tried as a class action. (Stiller Decl., ¶ 43.) While
12 Plaintiffs believe there is strong evidence to support certification of several possible subclasses
13 (especially the meal period class), certification is always hard fought and subject to judicial
14 discretion. Moreover, in class actions, decertification is always a possibility. (Stiller Decl., ¶ 43.)
15 In attempting to certify a class, the parties would need to conduct multiple depositions, including
16 of the named Plaintiffs and of several persons most knowledgeable regarding policies (in addition
17 to the Darian Harris depositions already taken). (*Ibid.*) There is a risk for both sides as to what these
18 additional depositions will reveal and whether they will support class certification to the extent
19 expected. (*Ibid.*)

20 **4. The Amount Offered in Settlement**

21 It was very difficult for the parties to reach this Settlement. (Stiller Decl., ¶ 45.) They
22 arrived at it only after several rounds of negotiation, over the course of two full-day mediations,
23 aided by experienced mediators, and careful evaluation of the records substantiating the amount
24 of damages reasonably likely to be awarded to the class were the jury to award them the full value
25 of their claims. (*Ibid.*) As such, there can be no doubt that this settlement is the result of adversarial,
26 non-collusive, and arm's-length negotiations.

27 In order to determine the approximate potential damages, Class Counsel analyzed class
28 data and records. (Stiller Decl. ¶ 46.) The full value of the core meal and rest claims was

1 approximately \$3,386,579.11, but this assumes a complete win on class certification, liability and
2 a full award of all premium wages. (Stiller Decl. ¶ 46.) Once Class Counsel determined the
3 maximum potential damages, they decided on a fair and reasonable settlement for the Class
4 considering the risks outlined above and the likelihood of success on the merits. (Stiller Decl. ¶
5 46.) Class Counsel believes that the Class had a moderate likelihood of success certifying the meal
6 and rest period claims but faced liability risks, and a lower probability of success certifying the
7 remaining claims and prevailing on them at trial. (Stiller Decl. ¶ 47.) There was also a significant
8 risk that, if the Class litigated this case through certification or trial, Defendant would not be able
9 to pay a judgment if its contracts were not renewed. (Stiller Decl. ¶ 47.) In light of the forgoing,
10 Plaintiffs' Counsel believes that the proposed Settlement Amount of \$488,000.00 is fair and
11 reasonable. (Stiller Decl., ¶ 48.)

12 **5. The Experience and Views of Counsel**

13 Kingsley & Kingsley is experienced in prosecuting and defending employment litigation,
14 and the firm has focused a substantial percentage of its practice since the year 2000 on wage, hour,
15 and working condition violations. (Stiller Decl., ¶ 49.) The firm is well versed in class action
16 litigation and has diligently and aggressively pursued this action. (*Ibid.*) Kingsley & Kingsley
17 currently serves as class counsel for dozens of pending class action lawsuits in Northern, Central,
18 and Southern California. (*Ibid.*) A list of representative cases that Kingsley & Kingsley has
19 handled is included in the accompanying declaration of Ari J. Stiller. (*Ibid.*)

20 Since its inception in 2003, the law firm of Deason & Archbold has been certified as class
21 counsel in numerous wage and hour class actions. A representative list of these cases is contained
22 in the accompanying declaration of David Deason. (Deason Decl., ¶ 6.) In addition to the work
23 done under the Deason & Archbold name, the partners of Deason & Archbold have fully litigated
24 and settled numerous wage and hour actions while working for their previous employer, including
25 several wage and hour class actions with hundreds of class members against large employers such
26 as the Los Angeles Police Department, the City of Los Angeles, the County of San Bernardino,
27 and Jamba Juice. (Deason Decl., ¶ 9.) After factoring in the risks explained above, Class Counsel
28 believes that the proposed settlement is fair and reasonable. (Stiller Decl., ¶ 51.)

1 **6. The Proposed Plan of Allocation Is Fair and Reasonable**

2 Plans of allocation are subject to the same standard of review as class action settlements;
3 they must be “fair, adequate and reasonable.” (*See, e.g., Officers for Justice v. Civil Service*
4 *Comm’n* (9th Cir. 1982) 688 F.2d 615, 624–625, 629–630.) Here, the proposed plan of allocation
5 compensates Class Members pro rata based on the number of pay periods worked by the Class
6 Member during the Class Period. The amount of each Class Member’s individual settlement
7 payment is based on the number of pay periods worked by the participating Class Member during
8 the Class Period. (Ex. A, ¶ 6.9.1) This individual amount shall be determined by taking the number
9 of each Participating Class Member’s pay periods during the Class Period and dividing it by the total
10 number of pay periods worked by all Participating Class Members in the Class Period to determine his
11 or her pro rata share of the Net Settlement Amount. (*Ibid.*) This allocation distributes Settlement
12 funds proportionally to each Class Member’s damages, and should therefore be approved as fair,
13 adequate, and reasonable.

14 **7. The Proposed Notice Fairly Apprises the Class Members of the Terms**
15 **of the Settlement and of the Class Members’ Rights**

16 Plaintiffs request that the Court approve the proposed plan and form of class notice,
17 attached as Exhibit 1 to the settlement, and filed concurrently herewith. The standard for
18 determining the adequacy of notice is whether the notice has “a reasonable chance of reaching a
19 substantial percentage of the class members.” (*Cartt v. Superior Court* (1975) 50 Cal.App.3d 960,
20 974.) Pursuant to the Settlement Agreement, the Notice will be sent to the last known address of
21 all Class Members, or to an updated address if one is located in the National Change of Address
22 Database. (Ex. A, ¶ 6.3.) If any notices are returned as undeliverable, the Administrator will
23 undertake another reasonable address verification measure, including a skip trace, to locate a valid
24 mailing address and will promptly send the Notice to the new address. (*Ibid.*) As such, the Notice
25 is likely to reach most, if not all, Class Members.

26 With respect to the contents of the Notice, the “notice given to the class must fairly apprise
27 the class members of the terms of the proposed compromise and of the options open to dissenting
28 class members.” (*Trotsky v. L.A. Fed. Sav. & Loan Ass’n* (1975) 48 Cal.App.3d 134, 151–52.)

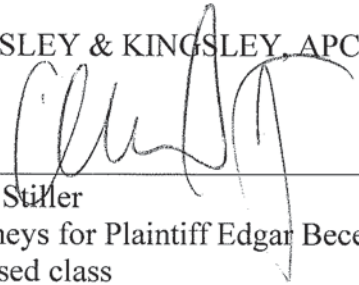
1 The purpose of a class notice is to give class members sufficient information to decide whether
2 they should accept the benefits offered, opt out and pursue their own remedies, or object to the
3 settlement. (*Ibid.*) Here, the Notice clearly explains the proposed Settlement and the options to
4 opt out or object at the Final Approval Hearing. (Ex. A and Ex. 1 thereto.) In short, the Court
5 should approve the proposed Notice of Settlement because it describes the proposed settlement
6 with enough specificity to allow Class Members to make an informed choice regarding whether to
7 participate.

8 **V. CONCLUSION**

9 Plaintiff respectfully submits that the proposed Settlement is fair, adequate, reasonable, and
10 in the best interest of the Class. Therefore, the parties respectfully request that the Court (1) grant
11 preliminary approval of the Settlement Agreement and all of its terms; (2) approve the proposed
12 form of notice and direct that the Notice be sent to Class Members in the manner set forth in the
13 Settlement Agreement; and (3) schedule a hearing on final approval of the Settlement and Class
14 Counsel's application for an award of attorneys' fees and litigation costs.

15 DATED: June 11, 2019

KINGSLEY & KINGSLEY APC

16
17 By: 

Ari J. Stiller
Attorneys for Plaintiff Edgar Becerra and the
proposed class

1 (PROOF OF SERVICE)
2 [CCP 1013(a)(3)]
3 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

4 I am employed in the County of Los Angeles, State of California. I am over the age of 18
5 years and not a party to the within action. My business address is 16133 Ventura Boulevard, Suite
6 1200, Encino, California 91436.

7 On June 11, 2019, I served all interested parties in this action the following documents
8 described as **NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF
9 CLASS SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN
10 SUPPORT THEREOF** by placing a true copy thereof enclosed in a sealed envelope addressed as
11 follows:

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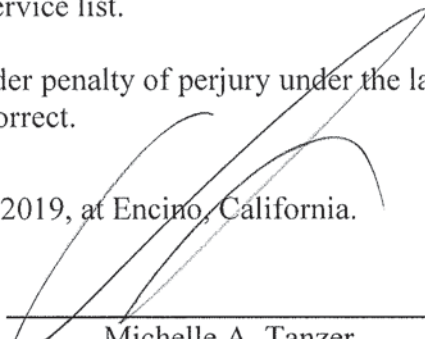
SEE ATTACHED PROOF OF SERVICE MAILING LIST
(CONT. NEXT PAGE)

[XX] (BY MAIL) I am "readily familiar" with the firm's practice of collection and processing
correspondence for mailing. Under that practice it would be deposited with U.S. postal
service on that same day with postage fully prepaid at Encino, California in the ordinary
course of business. I am aware that on motion of the party served, service is presumed
invalid if postal cancellation date or postage meter date is more than one day after date of
deposit for mailing in affidavit.

[XX] BY ELECTRONIC MAIL THROUGH CASE ANYWHERE: On interested parties set
forth on the attached service list.

[XX] (STATE) I declare under penalty of perjury under the laws of the State of California that
the above is true and correct.

Executed on June 11, 2019, at Encino, California.



Michelle A. Tanzer

1
2 **PROOF OF SERVICE MAILING LIST**
3
4

5 John Matthew Norton
6 **MATTHEW NORTON & ASSOCIATES**
7 5255 Naples Plaza, Suite 112
8 Long Beach, CA 90803
9 Attorneys for Defendants
10

11 Matthew F. Archbold
12 David D. Deason
13 **DEASON & ARCHBOLD**
14 17011 Beach Blvd., Suite 900
15 Huntington Beach, CA 92647
16 Attorneys for Defendants
17

18 Michael B. Adreani
19 Trevor R. Witt
20 **ROXBOROUGH POMERANCE NYE & ADREANI**
21 A Law Corporation
22 5820 Canoga Avenue, Suite 250
23 Woodland Hills, CA 91367
24 Attorneys for Defendants
25

26 **LAW OFFICES OF SAHAG MAJARIAN II**
27 Sahag Majarian II
28 18250 Ventura Blvd.
Tarzana, CA 91356
Attorney for Plaintiff Becerra and the Proposed Class