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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE

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

PLAINTIFFS,

v.

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

DEFENDANTS.

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

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

*[Filed concurrently with Notice of Motion and
Motion for Approval of Attorneys' Fees and
Costs, Declarations of Ari J. Stiller, Edgar
Becerra, Stephen Brough, Chris Pikus, John
Norton, Sahag Majarian, and David Deason,
Proposed Order, and Proposed Judgment]*

Date: November 12, 2019

Time: 10:00 a.m.

Dept.: 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 November 12, 2019 at 10:00 a.m. in Department 12 of
3 the above-entitled court, Plaintiffs Stephen Brough and Edgar Becerra will, and hereby do, move
4 the Court for an Order of Final Approval of Class Action Settlement. Plaintiffs move the Court for
5 an order:

6 1. Finally approving the Settlement Agreement and Release (“Settlement
7 Agreement”);

8 2. Affirming Plaintiffs Stephen Brough and Edgar Becerra as class representatives and
9 awarding each representative a service award of \$5,000.00;

10 3. Affirming Eric B. Kingsley and Ari J. Stiller of Kingsley & Kingsley, APC, Sahag
11 Majarian of the Law Offices of Sahag Majarian II, John Norton of Matthew Norton & Associates,
12 David Deason and Matthew Archbold of Deason & Archbold as Class Counsel;

13 4. Awarding attorney’s fees and costs as detailed in the concurrently-filed Motion for
14 Attorney’s Fees and Costs;

15 5. Awarding Rust Consulting, Inc. claims administration fees of \$25,000.00 for its
16 services as Claims Administrator; and,

17 6. Entering the Proposed Order Granting Final Approval of Class Action Settlement
18 and Proposed Final Judgment filed concurrently herewith.

19 This Motion will be made pursuant to California Code of Civil Procedure section 382 and
20 California Rules of Court, rule 3.769 on the grounds that the proposed Class Settlement is fair,
21 adequate, reasonable, and in the best interest of the Class and the parties.

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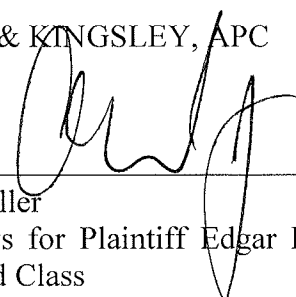
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1 The Motion will be based on this Notice of Motion, the attached Memorandum of Points
2 and Authorities, the Declarations of Ari J. Stiller, Chris Pikus, Edgar Becerra, Steven Brough,
3 David Deason, and on all other papers and records on file in this action, and on such oral and
4 documentary evidence as may be presented at the hearing on this motion.

5 DATED: October 17, 2019

KINGSLEY & KINGSLEY, APC

6
7 By: 

8 Ari J. Stiller

9 Attorneys for Plaintiff Edgar Becerra and the
10 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 Motion for Final
4 Approval of Class Settlement and request that the Court:

5 (1) Grant final approval of the settlement in this case pursuant to the Settlement
6 Agreement and Release (“Settlement” or “Settlement Agreement”), which is attached to the
7 concurrently filed Declaration of Ari J. Stiller as Exhibit “B”;

8 (2) Award attorney’s fees and costs as detailed in the concurrently-filed Motion for
9 Attorney’s Fees and Costs;

10 (3) Award Rust Consulting, Inc. claims administration fees of \$25,000.00 for its
11 services as Claims Administrator;

12 (4) Award class representative payments of \$5,000.00 to each named plaintiff; and,

13 (5) Enter judgment.

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

15 **A. Litigation Overview**

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

20 Plaintiff Brough filed a class action complaint against Defendants on April 7, 2016 (the
21 “Brough Action”), alleging causes of action for improper pay deductions under California Labor
22 Code sections 221, 223 and 300; failure to reimburse expenses under California Labor Code
23 section 2802; meal and rest break liability under California Labor Code section 226.7; failure to
24 pay minimum wage and overtime under California Labor Code sections 510, 1197, and 1198;
25 derivative claims for inaccurate wage statements, waiting time penalties, and unfair competition;
26 and penalties pursuant to California Labor Code section 2699, *et seq.* (“PAGA”). (Stiller Decl., ¶
27 4.) On May 2, 2016, Plaintiff Becerra filed a complaint based on similar allegations, including
28 overtime and meal and rest period violations. (Stiller Decl., ¶ 5.) On May 9, 2017, Brough and

1 Becerra filed a consolidated complaint encompassing both of their actions. (Stiller Decl., ¶ 6.)

2 **B. Discovery and Mediation**

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

17 After much deliberation, the parties entered a second full-day mediation on January 18,
18 2019, with respected mediator Hon. Gail Andler (Ret.) and were finally able to reach a settlement
19 in principle memorialized in a Memorandum of Understanding. (Stiller Decl., ¶ 10.) After
20 additional contentious negotiations, the Parties executed the final Settlement Agreement. (*Ibid.*)
21 As explained below, Plaintiffs recognized substantial risks based on the likelihood of success on
22 the merits, contested class certification issues, and Defendant's solvency. (Stiller Decl. ¶¶ 20, 42-
23 45.) Defendant denies any liability or wrongdoing associated with the claims alleged in the action.
24 (Ex. B, ¶ 4.1–4.2.) However, both Parties believe that the proposed Settlement is fair and
25 reasonable and in each Party's best interests. (Ex. B, ¶ 2.7, 3.2.)

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On July 3, 2019, the Court issued an Order preliminarily approving the settlement, approving the proposed Class Notice, ordering the Claims Administrator to send notice to the Settlement Class, and setting a date for the Final Approval and Fairness Hearing. (Stiller Decl., ¶ 11.)

III. THE PRELIMINARILY APPROVED SETTLEMENT

A. The Settlement Class

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

B. Settlement Amount

As detailed fully in the Settlement Agreement, the Settlement provides for Defendants to pay a non-reversionary Gross Settlement Amount of \$488,000. (Ex. B, ¶ 1.17). The parties agreed to the following allocation of the Settlement to determine the Net Settlement Fund for distribution to Class Members:

Gross Settlement Fund:	\$488,000.00
Attorneys’ Fees (1/3):	\$162,666.67
Estimated Case Costs:	\$22,000.00 ¹
Claims Administration:	\$ 25,000.00
Enhancement Payments:	\$ 10,000.00
(\$5,000.00 each to two Plaintiffs)	
PAGA Payment to LWDA:	<u>\$ 5,625.00²</u>
Net Settlement Fund:	\$262,708.33

The amount of each Class Member’s individual settlement payment is based on the number of pay periods worked by the participating Class Member during the Class Period. (Ex. B, ¶ 6.9.1.) This individual amount shall be determined by taking the number of each Participating Class

¹ The final cost amount is several thousand dollars above the initial estimate as noted in the concurrently filed Motion for Approval of Attorneys’ Fees and Costs.

² The total PAGA Payment is \$7,500. Pursuant to the PAGA statute, 25% of this amount (\$1,875.00) is to remain in the Net Settlement Fund to be distributed pro rata among Class Members, and 75% (\$5,625.00) is distributed to the LWDA.

1 Member's pay periods during the Class Period and dividing it by the total number of pay periods
2 worked by all Participating Class Members in the Class Period to determine his or her pro rata share
3 of the Net Settlement Amount. *Id.* The Settlement Agreement provides for an exclusion and pay
4 period dispute process. (Ex. B, ¶ 6.4.1.)

5 **C. Class Notice**

6 The procedures for giving notice to Class Members, as set forth in the Motion for
7 Preliminary Approval and approved by the Court, have been fully and properly carried out. (Pikus
8 Decl., ¶¶ 4, 5, 9, 10.) The Court approved the proposed Class Notice and directed the mailing of
9 the Notice by first-class mail to Class Members in accordance with the proposed implementation
10 schedule. (Stiller Decl., ¶¶ 12.)

11 On or about July 9, 2019, the Claims Administrator, Rust Consulting, received text for the
12 Class Notice from counsel. Rust formatted the notice and the parties approved the formatting.
13 (Pikus Decl., ¶ 6.) On or about July 15, 2019, defense counsel provided Rust with a mailing list
14 containing Class Members' names, Social Security numbers, hire and date of last check during the
15 Class Period, and last known addresses. (Pikus Decl., ¶ 7.) The list that Defendant sent contained
16 1,160 employees. (*Ibid.*)

17 Rust processed and updated the mailing addresses contained in the Class List utilizing the
18 National Change of Address ("NCOA") Database maintained by the U.S. Postal Service. (Pikus
19 Decl., ¶ 8.) In the event that any individual had filed a U.S. Postal Service change of address
20 request, the address listed with the NCOA was utilized for mailing of the Class Notice. (*Ibid.*)

21 On August 8, 2019, Rust mailed Class Notices via First Class mail to the 1,160 Class
22 Members contained in the Class List. (Pikus Decl., ¶ 9.) The Class Notice advised Class Members
23 that they could opt out or submit an objection postmarked by October 7, 2019. (*Ibid.*) Eighty-five
24 (85) Class Notices were returned as undeliverable the first time. (Pikus Decl., ¶ 10.) Rust
25 performed address traces on all returned Class Notices. (*Ibid.*) Pursuant to this search, Rust
26 obtained updated addresses for 65 Class Members and re-mailed the notice. (*Ibid.*) Rust did not
27 obtain updated addresses for 20 undeliverable Notices of Settlement. (*Ibid.*) Ultimately, there were
28 29 undeliverable notice packets. (*Ibid.*) As of the close of the response period, one Notice of

1 Settlement was returned by the Post Office with forwarding addresses attached, which Rust
2 promptly re-mailed via First Class mail. (Pikus Decl., ¶ 11.)

3 Rust received seven requests for exclusion and one objection. (Pikus Decl., ¶¶ 13, 14.)
4 Class Counsel spoke to the objector and determined that she intended to opt-out instead of object
5 and she is therefore included among the opt-outs above. (Pikus Decl. ¶ 14; Stiller Decl. ¶ 57.)

6 **IV. THE COURT SHOULD ORDER FINAL APPROVAL OF THE SETTLEMENT**

7 Pursuant to the California Code of Civil Procedure section 1781(f), “a class action shall
8 not be dismissed or compromised without the approval of the court, and notice of the proposed
9 dismissal or compromise shall be given to all members of the Class in such manner as the court
10 directs...” In deciding whether to grant final approval to a proposed class settlement under
11 California Code of Civil Procedure section 382, the court’s overriding concern is whether the
12 proposed settlement is “fair, adequate, and reasonable.” (*Dunk v. Ford Motor Co.* (1996) 48
13 Cal.App.4th 1794, 1801.)

14 **A. The Settlement is Entitled to a Presumption of Fairness**

15 “A presumption of fairness exists where: (1) the settlement is reached through arm’s length
16 bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act
17 intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is
18 small.” (*Dunk v. Ford Motor Co.*, *supra*, 48 Cal.App.4th at p. 1802.) The proposed Settlement in
19 the present case meets all of the *Dunk* factors and is therefore entitled to a presumption of fairness.

20 As to the first *Dunk* factor, this settlement is the result of adversarial, non-collusive, and
21 arm’s length negotiations because the parties settled only after a contentious negotiation with a
22 respected mediator, Hon. Gail Andler (Ret.). (Stiller Decl. ¶10.) Second, as discussed above, the
23 Parties engaged in extensive written discovery, and additional informal discovery for mediation
24 purposes, to fairly evaluate the strength of the case and the risks associated with ongoing litigation.
25 (Stiller Decl. ¶ 8.) Class Counsel is thus qualified to evaluate the class claims and viability of the
26 defenses. Class Counsel believes that the settlement is fair, reasonable, adequate, and in the best
27 interests of the class and that the average recovery is substantial given the risks inherent in
28 litigation, the defenses asserted, and Defendant’s financial position. (Stiller Decl. ¶ 52-54.) Finally,

the fourth *Dunk* factor is satisfied because there were no objectors to the settlement. (Pikus Decl. ¶ 14.) As all of the *Dunk* factors are satisfied, this settlement is entitled to a presumption of fairness.

B. The Court Should Approve This Class Action Settlement Because it Satisfies Each of the *Kullar* factors

In *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128, the court set forth several factors that should be analyzed in determining whether to approve a class action settlement. These factors include: (1) the strength of Plaintiff's case; (2) the risk, expense, complexity and likely duration of further litigation; (3) the risk of maintaining class action status through trial; (4) the amount offered in settlement; (5) the extent of discovery completed and stage of the proceedings; (6) the experience and views of counsel; (7) the presence of a governmental participant; and (8) the reaction of the class members to the proposed settlement. The proposed settlement satisfies each of these factors.

1. The Strength of Plaintiffs' Case

a. The Risks Associated with the Meal Break Claims

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

An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of 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

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

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1 Here, Defendants produced an accurate written meal period policy and a document entitled
2 Meal/Rest Period Issue Notice for class members to report a meal and/or rest period violation.
3 (Stiller Decl., ¶ 15.) Defendants also produced a Meal Period Advisory document for class
4 members to acknowledge receipt of the meal period policy. (*Ibid.*) Defendants' PMK, Mr. Harris,
5 testified that GPI's written policy has been in effect since the beginning of the class period. (Ex.
6 A at 100:4–7.)

7 Despite these written policies, Plaintiffs alleged that GPI required drivers to remain with
8 their vehicles during breaks, and thus the breaks were not "uninterrupted" within the meaning of
9 California Labor Code section 512. However, Defendant's PMK testified that Defendant's
10 dispatch system automatically schedules drivers' routes so they are free for a timely, uninterrupted
11 half-hour meal period on each shift. (Ex. A at 100:4–7.) According to the PMK, Defendant gives
12 drivers time to move their vehicles plus a half-hour break in which the driver can be away from
13 the vehicle. (Ex. A at 119:10 to 121:1.) Mr. Harris testified that, in instances where this is not
14 possible, drivers were instructed to complete an advisory form to receive a meal-period premium.
15 (Ex. A at 123:13 to 124:14.) While Plaintiffs believed that a meal period class could be certified
16 as Defendant maintained the same scheduling policy for all class members, Plaintiffs also
17 recognized risk on the merits based on the PMK testimony. (Stiller Decl. ¶ 16.)

18 Additionally, Plaintiffs allege that Defendant failed to provide second meal periods and did
19 not record those meal periods. However, Defendant's PMK testified that drivers logged second
20 breaks in a second daily trip log when the day's route were long enough to warrant a second break,
21 and that many drivers signed second meal-period waivers. (Ex. A at 126:8–19, 136:7–12.)
22 Moreover, some of the payroll records that Defendants produced contain a line item for
23 "Miscellaneous Hours," which Defendants argue encompasses meal and rest-period premium
24 payments. (Stiller Decl., ¶ 17.)

25 With this analysis in mind, there is significant risk of losing the meal period claim on the
26 merits or failing to certify it. The Court may determine that the written meal period policy complies
27 with California law, and in that scenario, the likelihood that Plaintiffs would have been able to
28 certify a meal period class would be diminished. (Stiller Decl., ¶ 18.) As Plaintiffs' analysis above

1 suggests, the extent to which GPI actually “provided” employees with lawful breaks according to
2 its policy would be disputed, justifying a discount from the maximum settlement value of this
3 claim. (Stiller Decl., ¶19.) Also, importantly, Defendants presented arguments regarding solvency
4 and the unique nature of its business relying on municipal contracts that may or may not be
5 renewed, and Plaintiffs’ counsel believed that this consideration warranted an additional discount
6 from the maximum value of the claim. (Stiller Decl., ¶ 20.)

7 Plaintiffs’ Counsel assessed the maximum potential liability on the meal period claim to
8 be approximately \$1,693,289.56, accounting for a violation on 1/3 of all shifts. (Stiller Decl., ¶
9 21.) Defendants dispute this calculation and argue that this violation rate is exaggerated. (*Ibid.*)

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

11 California law requires an employer “to authorize and permit the amount of rest break time
12 called for under the wage order for its industry.” (*Brinker, supra*, 53 Cal.4th at p. 1029.) Wage
13 Order 9-2001 applies to the present case and requires a 10-minute rest period “per four (4) hours
14 [of work] or major fraction thereof” for all shifts over 3.5 hours in length. Wage Ord. 9-2001,
15 § 12(A). The California Supreme Court recently clarified the meaning of the “or major fraction
16 thereof” requirement, holding that “[e]mployees are entitled to 10 minutes rest for shifts from three
17 and one-half to six hours in length, 20 minutes for shifts of more than six hours up to 10 hours, 30
18 minutes for shifts of more than 10 hours up to 14 hours, and so on.” (*Ibid.*) Unlike meal periods,
19 employers are not required to maintain records of employee rest periods. However, similar to the
20 standard for meal periods, liability can be predicated on the employer’s lack of a compliant policy.
21 (*Ibid.*)

22 Many of the same risks discussed above for Plaintiffs’ meal period claim were also present
23 for the rest period claim. Defendant produced a document entitled “Meal Periods and Rest Breaks
24 Policy” authorizing “one 10-minute paid rest break for every four hours worked or major portion
25 thereof.” (Stiller Decl., ¶ 23.) Defendant’s PMK testified that drivers were free to leave their
26 vehicles on rest breaks. (Ex. A at 148:1–25.) Further, while the named Plaintiffs claim that they
27 did not receive all required rest periods, it would be difficult to prove class-wide violations since
28 rest periods do not need to be recorded. Taking this claim through class certification could require

expensive surveys and expert analysis—the cost of which would come out of the class’s recovery. (Stiller Decl., ¶ 23.) Additionally, even if Plaintiffs prevailed at certification, the damages at trial could be lowered to account for rest periods that employees actually received. (Stiller Decl. ¶ 24.) The full value of this claim, without any discount, was approximately \$1,693,289.56 accounting for a violation on 1/3 of all shifts, according to Plaintiff’s calculations. Again, Defendant disputes these calculations. (Stiller Decl. ¶ 25.)

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

While Plaintiffs believe the core claims are for meal and rest period violations, Plaintiffs also alleged that GPI failed to pay Class Members for all hours worked on a derivative theory that GPI automatically deducted thirty (30) minutes from pay even if a meal break was not provided or was short.³

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

GPI argued that although most meal periods are recorded at exactly half-an-hour, that’s due to employees logging half-hour meal periods, not because of a policy to automatically deduct a half-hour on each shift regardless of the length of the break. (Stiller Decl. ¶ 27; Ex. A at 113:7–21, 134:19–135:9, 137:6 to 138:15.) The PMK testified that there are instances where employees take longer breaks, and the full break time is deducted. (Stiller Decl., ¶ 28.) Given that the time

³ 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, it appears that the rounding occurred at times in both in the employees’ favor and employer’s favor. Although such a policy could still disfavor employees in the long run, Defendant may have a 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. A 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 was unrecorded, there were some risks that the claim would not be certified. (Stiller Decl. ¶ 29.)
2 The full value of the auto-deduct claim amounted to approximately \$846,644.78. (Stiller Decl. ¶
3 30.)

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

5 California Labor Code section 221 provides: “[i]t shall be unlawful for any employer to
6 collect or receive from an employee any part of wages theretofore paid by said employer to said
7 employee.” This provision, when read together with California Labor Code sections 223 and 224,
8 prohibits an employer from deducting any amounts from an employee’s wages, except for
9 statutorily mandated amounts (e.g., tax withholdings, insurance premiums, or hospital dues).
10 Similarly, California Labor Code § 300 requires that prior to withholding any other amount from
11 wages, the employer must satisfy the attachment requirements, including but not limited to
12 entering into a separate written agreement which identifies the specific transaction to which the
13 attachment responds; if assignment is made by a married person, written consent of spouse is
14 required; and/or assignment must be notarized and accompanied by an itemized statement of
15 amount due.

16 Plaintiffs alleged that GPI did not meet these attachment requirements. Specifically,
17 passengers pay their bus fares to Class Members in a variety of ways including in cash, tokens,
18 credit cards, and coupons. (Stiller Decl., ¶ 31.) Plaintiffs allege that GPI violated these California
19 Labor Code sections by having Class Members retain the cash fares and then deducting those fares
20 from their wages. (Stiller Decl., ¶ 32.) In addition, GPI instructed Class Members that each of them
21 is responsible for the exact fare due, whether the Class Member receives it or not. Any discrepancy
22 according to GPI’s accounting records was deducted from the Class Members’ wages, reflected
23 on their wage statements as “cash o/s” or “cash advance.” (Stiller Decl., ¶ 32.)

24 Plaintiffs recognize significant risk for this claim on the merits and for class certification.
25 First, GPI argued that the cash payments were sporadic and most transactions were either by
26 coupon or credit card, thus creating predominant individualized inquires as to liability. (Ex. A at
27 76:21.) Plaintiffs argued that, even if cash payments are rare, GPI’s policy is to make drivers the
28 insurers for cash underpayments, such that the company deducts from the employees’ wages the

1 full fare that should have been paid even if the passenger, in fact, pays less than the full fare. (Stiller
2 Decl., ¶ 32.) However, Mr. Harris testified that the company often instructs drivers not to transport
3 passengers who don't pay the full fare and instructs drivers only to log the amount of cash fares
4 actually received, so pay discrepancies did not occur. (Ex. A at 80:17–81:13; 81:22–83:20.) The
5 cash deduction policy was common, but the extent to which that policy caused a legal violation in
6 a particular pay period would be highly contested if the case continued. (Stiller Decl., ¶ 34.)
7 Plaintiffs' Counsel assessed the maximum potential liability for the deduction claim to be
8 approximately \$173,816 assuming \$2 of cash shortage per workweek. (Stiller Decl., ¶ 35.)

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

10 The risk analysis for each predicate claim likewise pertains to the derivative claims for
11 waiting time penalties and wage statement violations. Still, there are additional elements necessary
12 to recover on these claims, which impose additional risk. For example, there was risk that Plaintiff
13 could not demonstrate that Defendants' wage statement violations were "knowing and intentional"
14 as required by California Labor Code section 226(e) and that Plaintiffs could not recover for a
15 derivative wage-statement claim if the statements accurately reflected pay. (*See Maldonado v.*
16 *Epsilon Plastics, Inc.* (2018) 22 Cal.App.5th 1308, 1336.) Additionally, the "willfulness" element
17 to recover waiting time penalties under California Labor Code section 203 would have been
18 disputed and difficult to prove, and employers often contend that they did not know of any
19 violations giving rise to the need for pay at termination. While Plaintiffs dispute that not knowing
20 the law is a sufficient defense, Plaintiffs still had to acknowledge that this argument posed some
21 risk. (Stiller Decl. ¶ 38.) Finally, a recent case decided after this settlement was reached, *Naranjo*
22 *v. Spectrum Security Services, Inc.* (Cal. Ct. App., Sept. 26, 2019) 2019 WL 4686516, at *16, holds
23 that waiting time penalties are not available for unpaid meal and rest period premium wages. If the
24 predicate claims were certified and Plaintiff received a complete victory on derivative claims, the
25 maximum recovery would amount to approximately \$1,549,500 on the wage statement claim and
26 \$1,626,240 on the waiting time claim.

27 ///

28 ///

1 The Parties discounted the PAGA claim for multiple reasons. The PAGA statute gives
2 aggrieved employees the right to pursue specific Labor Code violations by way of a civil action.
3 (Lab. Code § 2699.3.) Here, the aggrieved employees' PAGA claims are predicated on the meal,
4 rest, and wage violations described above. (Stiller Decl. ¶ 39.) The Class is compensated for these
5 violations in the proposed settlement, and thus any PAGA recovery for these same violations
6 would be duplicative. (*Ibid.*)

7 Additionally, while PAGA provides a penalty of \$100 for each aggrieved employee per
8 pay period, it also gives the Court discretion to award less than the maximum penalty. (Lab. Code
9 § 2699(e).) Plaintiffs acknowledged a significant risk that the Court would reduce the PAGA
10 penalties due to the fact that Class Members are already directly compensated for the same
11 underlying conduct, and because Defendant faces financial risk due to the nature of its municipal
12 contract renewals. (Stiller Decl., ¶ 40.) The significant uncertainty associated with the PAGA
13 claims increased the Plaintiffs' risk of pursuing those claims and required a discount of their
14 settlement value. As such, Plaintiffs do not ascribe great value to the PAGA claim in this action,
15 making the Settlement's contemplated PAGA payment of \$7,500 appropriate. (Stiller Decl., ¶ 40.)

16 **2. The Risk, Expense, Complexity, and Likely Duration of Further** 17 **Litigation**

18 Given the risks outlined above, the issues in this case were complex and the risk for
19 Plaintiffs and the Class Members associated with this litigation was high, given the uncertainty.
20 (Stiller Decl., ¶ 42.) Moreover, there is significant expense associated with the class certification
21 process, which the Parties can avoid by entering into the contemplated settlement. (Stiller Decl., ¶
22 43.) If the Court did eventually certify a meal or wage class, trial of a case involving approximately
23 1,100 Class Members would require the retention of expensive expert witnesses, the accrual of
24 extensive litigation costs, and a significant time investment. (Stiller Decl., ¶ 44.) Finally, given the
25 complexity and unsettled nature of the issues in this case, it is likely that any outcome at trial would
26 have resulted in a lengthy and costly appeal. (Stiller Decl., ¶ 45.) An appeal would result in further
27 delay for the Class Members who are waiting for a resolution in this matter. (*Ibid.*)

28 ///

3. The Risk of Maintaining Class Action Status through Trial

This case has not been certified to be tried as a class action. (Stiller Decl., ¶ 46.) While Plaintiffs believe there is strong evidence to support certification of several possible subclasses (especially the meal period class), certification is always hard fought and subject to judicial discretion. Moreover, in class actions, decertification is always a possibility. (Stiller Decl., ¶ 47.) In attempting to certify a class, the parties would need to conduct multiple depositions, including of the named Plaintiffs and of several persons most knowledgeable regarding policies (in addition to the Darian Harris deposition already taken). (Stiller Decl. ¶ 48.) There is a risk for both sides as to what these additional depositions will reveal and whether they will support class certification to the extent expected. (Stiller Decl. ¶ 49.)

4. The Amount Offered in Settlement

It was very difficult for the Parties to reach this Settlement. (Stiller Decl., ¶ 50.) They arrived at it only after several rounds of negotiation, over the course of two full-day mediations, aided by experienced mediators, and careful evaluation of the records substantiating the amount of damages reasonably likely to be awarded to the class were the jury to award them the full value of their claims. (*Ibid.*) As such, there can be no doubt that this settlement is the result of adversarial, non-collusive, and arm's-length negotiations.

In order to determine the approximate potential damages, Class Counsel analyzed class data and records. (Stiller Decl. ¶ 51.) The full value of the core meal and rest claims was approximately \$3,386,579.11, but this assumes a complete win on class certification, liability and a full award of all premium wages. (Stiller Decl. ¶ 52.) Once Class Counsel determined the maximum potential damages, they decided on a fair and reasonable settlement for the Class considering the risks outlined above and the likelihood of success on the merits. (*Ibid.*) Class Counsel believes that the Class had a moderate likelihood of success certifying the meal and rest period claims but faced liability risks, and a lower probability of success certifying the remaining claims and prevailing on them at trial. (Stiller Decl. ¶ 53.) There was also a significant risk that, if the Class litigated this case through certification or trial, Defendant would not be able to pay a judgment if its contracts were not renewed. (Stiller Decl. ¶ 54.) In light of the forgoing, Plaintiffs'

Counsel believes that the proposed Settlement Amount of \$488,000.00 is fair and reasonable. (Stiller Decl., ¶ 55.)

5. The Experience and Views of Counsel

Kingsley & Kingsley is experienced in prosecuting and defending employment litigation, and the firm has focused a substantial percentage of its practice since the year 2000 on wage, hour, and working condition violations. (Stiller Decl., ¶ 57.) The firm is well versed in class action litigation and has diligently and aggressively pursued this action. (*Ibid.*) Kingsley & Kingsley currently serves as class counsel for dozens of pending class action lawsuits in Northern, Central, and Southern California. (*Ibid.*) A list of representative cases that Kingsley & Kingsley has handled is included in the accompanying declaration of Ari J. Stiller. (*Ibid.*)

Since its inception in 2003, the law firm of Deason & Archbold has been certified as class counsel in numerous wage and hour class actions. A representative list of these cases is contained in the accompanying declaration of David Deason. (Deason Decl., ¶ 6.) In addition to the work done under the Deason & Archbold name, the partners of Deason & Archbold have fully litigated and settled numerous wage and hour actions while working for their previous employer, including several wage and hour class actions with hundreds of class members against large employers such as the Los Angeles Police Department, the City of Los Angeles, the County of San Bernardino, and Jamba Juice. (Deason Decl., ¶ 7.) After factoring in the risks explained above, Class Counsel believes that the proposed settlement is fair and reasonable. (Stiller Decl., ¶ 55.)

Sahag Majarian graduated from Loyola Law School in 1990. Since graduating, Sahag Majarian has been in private practice, primarily representing consumers against insurance companies and workers against employers. (Majarian Decl., ¶ 2.) He has devoted a significant portion of his practice to employment law and class actions and has been appointed as co-counsel for plaintiffs in no less than 50 wage and hour class action. (*Ibid.*) A representative list of cases is contained in the accompanying declaration of Sahag Majarian. (*Ibid.*) He has participated in over 150 class action mediations in employment class action cases. (Majarian Decl., ¶ 3.) He has also been designated co-counsel in various cases where he prevailed in contested class certification motions. A representative list of these cases is included in the accompanying declaration of Sahag

1 Majarian. (Ibid.)

2 John Norton has been licensed to practice law in California since 1992. (Norton Decl., ¶
3 17.) He has focused his practice on employment matters, including wage and hour issues. (Norton
4 Decl., ¶ 18.) He has been a member of the California Bar Association, Labor and Employment
5 Section since 2002. (Norton Decl., ¶ 20.) He has taken numerous classes in wage and hour and
6 employment issues. (Norton Decl., ¶ 21.) A representative list of these classes is included in the
7 accompanying declaration of John Norton. (*Ibid.*) A representative list of cases where he has been
8 appointed class counsel is included in the accompanying declaration of John Norton. (Norton
9 Decl., ¶22.)

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

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

23 **7. The Reaction of the Class Members to the Proposed Settlement**

24 There were seven requests for exclusion from the Settlement. (Pikus Decl., ¶ 13.) Rust
25 received one (1) objection. The objection is from class member Crystal Le Cocq and states: “I
26 Crystal Le Cocq address is correct. I object.” On October 15, 2019, Counsel spoke with Ms. Le
27 Cocq and she indicated that she intends to opt-out instead of object. Therefore, Rust has included
28

1 this Class Member as an Opt-Out as stated above. (Pikus Decl., ¶ 14; Stiller Decl., ¶57). Attached
2 to the declaration of Chris Pikus is a true and correct copy of the objection, marked as Exhibit “B.”

3 At the same time, Class Counsel also received telephone calls from multiple Class
4 Members who voiced support for the settlement. (Stiller Decl., ¶ 58.) Thus, the reaction of Class
5 Members on the whole is positive and weighs in favor of approval.

6 **V. THE NAMED PLAINTIFFS’ ENHANCEMENTS**

7 The Class Representatives in this case, Stephen Brough and Edgar Becerra, should be
8 awarded enhancements of \$5,000.00 each. Their claims are typical of the Class Members’ claims.
9 (Stiller Decl., ¶ 81; Brough Decl., ¶4; Becerra Decl., ¶ 4.) The proposed Class Representatives are
10 adequate because they have diligently and fairly represented the Class and have not placed their
11 interests above those of any member of the Class. (Stiller Decl., ¶ 82; Brough Decl., ¶ 14; Becerra
12 Decl., ¶ 14.)

13 The time and effort that the Class Representatives spent in this matter is significant and
14 includes:

- 15 • providing information to Class Counsel regarding their relevant employment
- 16 experiences;
- 17 • compiling employment documents;
- 18 • conducting several telephone conferences with their attorneys to discuss the status of
- 19 the case and theories of liability; and,
- 20 • reviewing and signing the memorandum of understanding and long-form settlement
- 21 agreement.

22 (Stiller Decl. ¶ 83; Brough Decl. ¶ 5-12; Becerra Decl. ¶¶ 6, 7, 8, 9.) Thus, in addition to the sums
23 paid to Class Members, Defendant has agreed not to oppose a request by Class Counsel for an
24 enhancement payment to the Class Representatives of \$5,000.00 each, to be paid from the Gross
25 Settlement Amount. (Ex. B, ¶¶ 1.14, 6.11.3) Class Counsel considers this to be a fair and
26 reasonable enhancement. (Stiller Decl. ¶ 84.) The enhancements take into consideration the time,
27 effort, and expense incurred by Mr. Brough and Mr. Becerra in coming forward to litigate this
28 matter on behalf of all Class Members. (Stiller Decl. ¶ 85.) Additionally, the Class Representatives

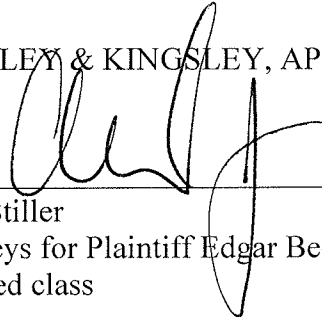
1 may have been at risk for paying Defendant's legal fees and costs in the event that Defendant
2 prevailed at trial. (*Ibid.*)

3 **VI. CONCLUSION**

4 Plaintiffs respectfully submit that the proposed Settlement is fair, adequate, reasonable, and
5 in the best interest of the Class. Therefore, they request that the Court (1) grant Final Approval of
6 the Settlement and all of its terms; (2) award attorneys' fees and costs in the amount detailed in
7 the concurrently filed Motion for Attorneys' Fees and Costs; (3) award Rust Consulting, Inc.
8 claims administration fees of \$25,000; (4) award the Named Plaintiffs enhancements of \$5,000.00
9 each; and (5) enter judgment.

10 DATED: October 17, 2019

KINGSLEY & KINGSLEY, APC

11
12 By: 

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