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Plaintiffs NATHAN FLOWERS and DONDAY ORR
7

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF LOS ANGELES

10 UNLIMITED JURISDICTION

11 NATHAN FLOWERS *et al.*,

12 Plaintiffs,

13 v.

14 LOS ANGELES COUNTY
15 METROPOLITAN TRANSPORTATION
AUTHORITY; and DOES 1-50,

16 Defendants.
17
18
19

Civil Case No. BC515136

CLASS ACTION

ASSIGNED FOR ALL PURPOSES TO THE
HONORABLE WILLIAM F. HIGHBERGER,
DEPARTMENT 10

NOTICE OF SETTLEMENT

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TO THE COURT, ALL PARTIES, AND THE PARTIES' ATTORNEYS OF
RECORD:

PLEASE TAKE NOTICE that the fully executed class action settlement agreement is
attached hereto.

DATED: October 1, 2019

Respectfully submitted,

THE TIDRICK LAW FIRM LLP



By:

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ORR

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16 *Additional counsel listed on next page*

17 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

18 **COUNTY OF LOS ANGELES**

19 NATHAN FLOWERS *et al.*,

20 Plaintiffs,

21 v.

22 LOS ANGELES COUNTY
23 METROPOLITAN TRANSPORTATION
AUTHORITY; and DOES 1 TO 50,

24 Defendants.

CASE NO. BC515136

Assigned to Hon. William F. Highberger

**JOINT STIPULATION OF CLASS
ACTION SETTLEMENT**

Action Filed: July 15, 2013

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Attorneys for Individual and Representative Plaintiffs
NATHAN FLOWERS and DONDAY ORR

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JOINT STIPULATION OF CLASS ACTION SETTLEMENT

This Joint Stipulation of Class Action Settlement (“Agreement” or “Stipulation of Settlement” or “Stipulation” or “Settlement”) is made and entered into by and between DONDAY ORR (“Plaintiff”), on behalf of himself and all others similarly situated, on the one hand, and the LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY (“Defendant”), on the other hand, (collectively, the “Parties”), and is subject to the terms and conditions below, and to the Court’s approval. The Parties expressly acknowledge that this Agreement is entered into solely for the purpose of compromising significantly disputed claims and that nothing in this Agreement is an admission of liability or wrongdoing by Defendant. If for any reason the Agreement is not approved by the Court, it will be of no force or effect, and the Parties will be returned to their respective positions immediately prior to and as if they had never executed this Agreement as more fully set forth below.

DEFINITIONS

The following definitions are applicable to this Agreement. Definitions contained elsewhere in this Agreement will also be effective:

1. “Action” means the civil action pending in the Los Angeles Superior Court, titled NATHAN FLOWERS, et al. v. LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY; and DOES 1-50, Case No. BC515136.

2. “Attorneys’ Fees and Costs and Service Award” means and includes attorneys’ fees and costs approved by the Court for Class Counsel’s litigation and resolution of the Action, any service payment to Named Plaintiff for his participation in this Action, and all costs incurred and to be incurred by Class Counsel in the Action, including, but not limited to, costs associated with documenting the Settlement, securing the Court’s approval of the Settlement, and obtaining entry of the Judgment terminating the Action. Class Counsel will request Attorneys’ Fees and Costs and Service Award not to exceed five hundred thousand dollars (\$500,000), specifically, attorneys’ fees and costs not to exceed four hundred eighty-

1 five thousand dollars (\$485,000) and a service award to Named Plaintiff not to exceed
2 \$15,000. Defendant has agreed not to oppose this request for Attorneys' Fees and Costs and
3 Service Award. Any portion of the Attorneys' Fees and Costs and Service Award not awarded
4 to Class Counsel and/or Named Plaintiff will not be paid to Class Counsel and/or Named
5 Plaintiff. The Parties agree that, with the exception of the Settlement Administration Expenses,
6 under no circumstances shall Defendant be obligated to pay any amount over the Attorneys'
7 Fees and Costs and Service Award under the terms of this Agreement. The Court shall have no
8 power to increase the amount of the Attorneys' Fees and Costs and Service Award over the
9 amount specified in this paragraph.

10 3. "Settlement Administrator" means CPT Group or any other third-party class
11 action settlement administrator agreed to by the Parties and approved by the Court for the
12 purposes of administering this Settlement. The Parties each represent that they do not have
13 any financial interest in the Settlement Administrator or otherwise have a relationship with the
14 Settlement Administrator that could create a conflict of interest.

15 4. "Settlement Administration Expenses" means the costs payable to the
16 Settlement Administrator for administering this Settlement, including, but not limited to,
17 establishing a post office box, toll free number, and toll free facsimile number for the return of
18 Class Member communications, printing, distributing (including with appropriate postage), and
19 tracking documents for this Settlement, any searches to locate any Class Members, and
20 providing necessary certification of completion of notice, reports and declarations, and other
21 responsibilities set forth in this Agreement and as requested by the Parties. Settlement
22 Administration Expenses shall be borne by Defendant, up to an amount not to exceed nineteen
23 thousand dollars (\$19,000).

24 5. "Response Deadline" shall be the deadline by which Class Members must fax or
25 postmark to the Settlement Administrator valid Requests for Exclusion, or file and serve a
26 Notice of Objection to the Settlement. The Response Deadline will be sixty (60) calendar days
27 from the initial mailing of the Notice Packet by the Settlement Administrator, unless the 60th
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1 day falls on a Sunday or Federal holiday, in which case the Response Deadline will be
2 extended to the next day on which the U.S. Postal Service is open. The Response Deadline for
3 Requests for Exclusion will be extended fifteen (15) calendar days for any Class Member who
4 is re-mailed a Notice Packet by the Settlement Administrator in accordance with the notice
5 procedure described in Paragraphs 35 through 38 of this Agreement, unless the 15th day falls
6 on a Sunday or Federal holiday, in which case the Response Deadline will be extended to the
7 next day on which the U.S. Postal Service is open. The Response Deadline may also be
8 extended by express agreement between Class Counsel and Defendant.

9 6. “Request for Exclusion” means a timely letter submitted by a Class Member
10 indicating a request to be excluded from the Settlement. The Request for Exclusion must: (a)
11 set forth the name, address, telephone number and last four digits of the Social Security
12 number of the Class Member requesting exclusion; (b) be signed by the Class Member; (c) be
13 returned by mail or facsimile, to the Settlement Administrator at the specified address
14 indicated in the Notice Packet; (d) clearly state that the Class Member does not wish to be
15 included in the Settlement; and (e) be faxed or postmarked on or before the Response
16 Deadline.

17 7. “Class Counsel” means Steven G. Tidrick and Joel B. Young, The Tidrick Law
18 Firm LLP.

19 8. “Class Member(s)” or “Settlement Class” means Plaintiffs Donday Orr, Nathan
20 Flowers, and all current and former Bus and Train Operators employed by Defendant at any
21 time from July 15, 2010 through the date of preliminary approval.

22 9. “Class Period” means the period from July 15, 2010 through and including the
23 date of preliminary approval of class action settlement.

24 10. “Court” means the Superior Court of the State of California, County of Los
25 Angeles, or any other court taking jurisdiction of the Action.

26 11. “Effective Date” means the date after which Final Approval of the Settlement
27 can no longer be appealed by an objector in the event of an objection, or in the absence of any
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1 objections (or if all objections are withdrawn with Court approval prior to Final Approval) the
2 date after which Final Judgment has been entered in this Action and all rights of appeal have
3 expired and/or been exhausted. If objections are heard by the Court and overruled, and no
4 appeal is taken of the Judgment by an objector, then the Effective Date will be five (5)
5 calendar days after the time period to appeal the Settlement has expired. If any appeal is taken
6 from the Final Approval Order, then the Effective Date will be five (5) calendar days after all
7 appeals are withdrawn or after an appellate decision affirming the Final Approval Order and
8 Judgment becomes final. Defendant shall not be required to pay any portion of Attorneys’
9 Fees and Costs and Service Award or any other obligation pursuant to this Agreement, unless
10 and until all such appeals have been finally resolved or dismissed with prejudice, and the
11 Judgment is final and enforceable and there is no further recourse by an appellant or objector
12 who seeks to contest the Settlement.

13 12. “Final Approval Date” means the date on which the Court enters the Order of
14 Final Approval.

15 13. “Final Approval Hearing” means a hearing set by the Court, to take place on a
16 date established by the Court, for the purpose of (i) determining the fairness, adequacy, and
17 reasonableness of the Stipulation terms and associated Settlement pursuant to class action
18 procedures and requirements; (ii) determining the amount of the award of attorneys’ fees and
19 costs to Class Counsel; (iii) determining the amount of the service payment to Named Plaintiff;
20 and (iv) entering the Judgment.

21 14. “Final Judgment” means the Court’s order granting final approval of the
22 Settlement and entering judgment thereon in a form to be agreed upon by the Parties in
23 advance, subject to approval and modification by the Court.

24 15. “Named Plaintiff” shall mean Donday Orr.

25 16. “Notice” or “Notice of Settlement” shall mean the document attached to this
26 Agreement as Exhibit A, as may be modified by the Court.

27 17. “Notice of Objection” means a Class Member’s valid and timely written
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1 objection to the Agreement. For the objection to be valid, it must include the objector’s full
2 name, signature, address, and telephone number, the basis for the objection, and if the objector
3 intends to appear at the Final Approval hearing, a statement to that effect. The Parties will be
4 permitted to respond in writing to such objections within the time period set by the Court. Any
5 member of the Settlement Class who does not file a timely written objection will be deemed to
6 have waived any objections.

7 18. “Parties” shall mean the Named Plaintiff and the Los Angeles County
8 Metropolitan Transportation Authority.

9 19. “Preliminary Approval Date” means the date the Court enters an Order
10 approving the Stipulation of Settlement, and the exhibits thereto, and providing for notice to
11 the Class, an opportunity to opt out of the Class, an opportunity to submit timely objections to
12 the Settlement, a procedure for submitting claims, and setting a hearing on the fairness of the
13 terms of settlement, including approval of the attorneys’ fees and costs and service payment.

14 20. “Released Claims” shall mean the claims released by Named Plaintiff and each
15 Class Member who does not timely opt out of the Settlement, on behalf of themselves, their
16 heirs, spouses, executors, administrators, attorneys, agents, and assigns, which are all
17 applicable wage and hour claims, rights, demands, liabilities, penalties, fines, debts and causes
18 of action of every nature and description, whether known or unknown, arising from or related
19 to the claims asserted in the Action or that could have been asserted in the Plaintiffs’ Fourth
20 Amended Complaint based on the facts and circumstances alleged therein, including claims
21 based on California Labor Code sections 1194, 1194.2, 1197, 1197.1, 1198, and the Private
22 Attorneys' General Act, Labor Code section 2698, *et seq.*, or any related damages, penalties,
23 restitution, disgorgement, interest or attorneys’ fees.

24 21. “Released Parties” means Defendant and its current, former and future officers,
25 directors, members, managers, employees, consultants, partners, attorneys, insurers, and
26 agents, any successors, assigns, or legal representatives and any individual or entity who or
27 which could be jointly liable with Defendant and all persons or entities acting by, through,
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1 under, or in concert with any of them.

2 22. “Settling Parties” means Defendant, Named Plaintiff, and the Settlement Class.

3 23. “Stipulation of Settlement” or “Stipulation” or “Settlement” or “Agreement”
4 shall mean this Joint Stipulation of Class Action Settlement and Release, signed by counsel for
5 all Parties.

6 BACKGROUND AND PRELIMINARY REPRESENTATIONS

7 24. Conditional Certification. The Parties stipulate and agree to the conditional
8 certification of the Settlement Class for purposes of this settlement only. Should for whatever
9 reason the settlement not become final and effective as herein provided, the conditional class
10 certification shall immediately be dissolved without prejudice. Defendant reserves all rights it
11 has to oppose class certification and assert all applicable defenses should this Settlement not
12 become final and effective.

13 25. Investigation. The Parties have conducted significant investigation of the facts
14 and law. Such discovery and investigation included, *inter alia*, the exchange of information
15 through informal and formal discovery, numerous conferences between Class Counsel and
16 Defendant’s counsel, depositions, substantial document production, interviews of percipient
17 witnesses as well as the review of thousands of pages of Defendant’s work run reports and
18 route data prior to a mediation session with mediator Steven J. Rottman, Esq. Counsel for the
19 Parties investigated the law as applied to the facts discovered regarding the alleged claims of
20 the Class Members and potential defenses thereto, and the damages and penalties claimed by
21 the Class Members.

22 26. Benefits of Settlement to Class Members. Named Plaintiff and Class Counsel
23 recognize the risks, expense and length of continued proceedings necessary to litigate the
24 disputes in the Action through trial and through any possible appeals. Named Plaintiff and
25 Class Counsel also have taken into account the uncertainty and risks of the outcome of further
26 litigation, and the difficulties and delays inherent in such litigation. Named Plaintiff and Class
27 Counsel are also aware of the burdens of proof necessary to establish liability for the claims
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1 asserted in the Action, both generally and in response to Defendant's defenses thereto, and the
2 difficulties in establishing damages, penalties, and other relief sought in the Action. Named
3 Plaintiff and Class Counsel also have taken into account Defendant's agreement to enter into a
4 settlement that confers benefits upon the Class Members, which was reached after a full day of
5 mediation before an experienced mediator, Steven J. Rottman, in Los Angeles, California.
6 Based on the foregoing, Named Plaintiff and Class Counsel have determined that the
7 settlement set forth in this Agreement is fair, adequate, and reasonable and is in the best
8 interests of all Class Members. Based on their own investigation, discovery, and evaluation,
9 Defendant and Defendant's counsel also agree that the settlement is in the best interests of
10 Defendant and the Class Members.

11 27. No Admission of Liability. Nothing contained herein, nor the fact that the
12 Parties entered into a Settlement Agreement, is to be construed or deemed an admission of
13 liability, culpability, or any wrongdoing whatsoever on the part of Defendant or any of the
14 Released Parties. Defendant expressly denies any and all allegations of wrongdoing, including
15 without limitation, allegations that it unlawfully failed and refused to pay current and former
16 Bus and Train Operators for all compensable time.

17 AFFIRMATIVE RELIEF TO BE PROVIDED TO SETTLEMENT CLASS

18 28. In consideration of the dismissal and release of all claims asserted in the Fourth
19 Amended Complaint, Defendant agrees to take the following affirmative steps, without
20 admitting any liability:

- 21 28(a) Defendant shall in writing clarify that an Operator Schedule
22 Deviation Form (also known as an Overtime Slip) must be submitted
23 for any work performed outside of an Operator's scheduled shift;
24 and,
25 28(b) Defendant shall in writing clarify that Travel time includes all
26 preparatory time to perform tasks completed by an Operator prior to
27 departure.
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NAMED PLAINTIFF SERVICE PAYMENT

29. In exchange for Named Plaintiff executing a general release and in recognition of his effort in prosecuting this Action on behalf of Class Members, Defendant agrees not to oppose or impede any application or motion for a Class Representative Service Payment of no more than \$15,000 for Named Plaintiff to be paid by Defendant, which motion shall be heard at the time of the Final Approval Hearing. The amount of the service payment will be determined by the Court. The validity of this Settlement does not depend on the Court's approval of the service payment to the Named Plaintiff. If the Court reduces or denies the motion for service payment, the Court may still grant final approval to the Settlement. If approved by the Court, Defendant shall pay the approved service payment amount to the Named Plaintiff within thirty (30) days of the Effective Date via check sent by certified U.S. mail to the address provided by Class Counsel. Defendant shall issue a W-2 (or a 1099 form if Named Plaintiff is no longer employed by Defendant) for the full amount. Named Plaintiff will be solely and legally responsible to pay any and all applicable taxes on the payment made pursuant to this paragraph and will indemnify and hold Defendant harmless from any claim or liability for taxes, penalties, or interest arising as a result of the payment.

ATTORNEYS' FEES AND COSTS

30. Class Counsel shall file a motion for an award of reasonable attorneys' fees and costs not to exceed four hundred eighty-five thousand dollars (\$485,000). Defendant shall not oppose this motion. This award and amount shall include all fees and costs recoverable, including attorneys' fees and costs incurred after the date of this Settlement Agreement. Defendant shall not oppose this motion or any proposed order awarding fees and costs. Subject to Class Counsel providing counsel of record for Defendant with completed IRS Forms W-9 and appropriate and complete wiring instructions, Defendant shall pay any amounts due pursuant to this section and an Order of the Court within 30 days after the Effective Date by wiring the appropriate amount to a bank account designated for such purposes by Class Counsel. Defendant's payment of the Class Counsel Fees and Costs shall constitute full

1 satisfaction of the obligation to pay any amounts to any person, attorney or law firm for
2 attorneys' fees, expenses or costs in the Action incurred by any attorney on behalf of the
3 Plaintiffs and/or Class Members and shall relieve Defendant of any other claims or liability to
4 any other attorney or law firm for any attorneys' fees, expenses, and/or costs to which any of
5 them may claim to be entitled on behalf of the Plaintiffs and the Class Members.

6 RELEASES

7 31. In consideration of the mutual promises and covenants set forth or referred to in
8 this Agreement, the Named Plaintiff, and each and every Class Member that did not file a
9 timely Request for Exclusion, upon the Effective Date, shall be deemed to have fully, finally
10 and forever released, settled, compromised, relinquished and discharged any and all of the
11 Released Parties of and from any and all of the Released Claims that have arisen or might have
12 arisen at any time up to and including the Effective Date. The Parties further stipulate that
13 following a Final Approval Hearing and entry of Judgment, the Parties, including all
14 Settlement Class Members, shall be bound by the Judgment and barred and collaterally
15 estopped from the institution or prosecution of subsequent litigation of any and all Released
16 Claims against the Released Parties.

17 32. As further consideration and inducement for this Agreement and upon the
18 satisfaction or waiver of any conditions subsequent set forth in this Agreement, upon the
19 Effective Date, in addition to the claims being released by all Class Members, the Named
20 Plaintiff will provide the following additional release: Named Plaintiff, on his own behalf and
21 on behalf of his heirs, spouses, executors, administrators, attorneys, agents and assigns, fully
22 and finally releases the Released Parties from all claims, demands, rights, liabilities and causes
23 of action of every nature and description whatsoever, known or unknown, asserted or that
24 might have been asserted, whether in tort, contract, or for violation of any state or federal
25 statute, rule or regulation arising out of, relating to, or in connection with any act or omission
26 by or on the part of any of the Released Parties, including but not limited to any claims arising
27 out of or related to Named Plaintiff's employment, wages, hours, or working conditions with
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1 Defendant, committed or omitted prior to the date of Final Judgment. This additional release
2 includes all known and unknown claims.

3 33. Acknowledgement of California Civil Code Section 1542. Named Plaintiff
4 agrees and represents that he is aware of and familiar with the provisions of Section 1542 of
5 the California Civil Code which reads as follows:

6 “A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
7 THAT THE CREDITOR OR RELEASING PARTY DOES NOT
8 KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT
9 THE TIME OF EXECUTING THE RELEASE AND THAT, IF
10 KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY
11 AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR
12 OR RELEASED PARTY.”

13 With full awareness and understanding of the above provision with respect to the Released
14 Claims, Named Plaintiff waives and relinquishes any and all rights and benefits that he may
15 have under California Civil Code Section 1542, or the law of any other state or jurisdiction, or
16 common law principle, to the same or similar effect. Named Plaintiff understands that the
17 facts with respect to which this and all additional agreements are entered into may be
18 materially different from those the parties now believe to be true. Named Plaintiff accepts and
19 assumes this risk, and agrees that the release in this and any additional agreements shall remain
20 in full force and effect, and legally binding, notwithstanding the discovery or existence of any
21 additional or different facts, or any claims with respect to those facts.

22 In addition, the Parties agree that Civil Code Section 1542 will be set forth in writing in
23 the Notice of Class Action Settlement, which will be part of the packet provided to all Class
24 Members and shall apply to the Released Claims. This release will cover all Class Members
25 who do not opt out, regardless of whether they receive the Notice of Class Action Settlement.
26 The Section 1542 release will provide that Named Plaintiff and Class Members agree and
27 represent that they are aware of and are familiar with the provisions of California Civil Code
28 Section 1542, which provides as follows:

“A general release does not extend to claims that the creditor or releasing party does
not know or suspect to exist in his or her favor at the time of executing the release and

1 *that, if known by him or her, would have materially affected his or her settlement with*
2 *the debtor or released party.”*

3 With full awareness and understanding of the above provisions, Named Plaintiff and
4 Class Members waive and relinquish any and all rights and benefits that they may have under
5 California Civil Code Section 1542, or the law of any other state or jurisdiction, or common
6 law principle, to the same or similar effect, concerning the Released Claims. The scope of
7 Class Members’ release of unknown claims and waiver of rights set forth in this paragraph is
8 subject to modification by the Court in its discretion on or before the Final Approval Date.

9 PRELIMINARY APPROVAL

10 34. Class Counsel and Defendant's Counsel shall jointly submit to the Court this
11 Joint Stipulation of Class Action Settlement and exhibits thereto for preliminary approval by
12 the Court. Class Counsel will prepare and file the preliminary approval papers for the Court,
13 subject to Defendant’s prior review. The Court's preliminary approval of this Settlement shall
14 be embodied in an Order preliminarily approving the Settlement and providing for the Notice
15 of Settlement to be mailed to the Class in the format attached hereto as Exhibit A, subject to
16 any modifications by the Court, and which will also set the date for the final approval hearing.

17 NOTICE TO THE SETTLEMENT CLASS

18 35. No later than thirty (30) calendar days after the Court issues the Preliminary
19 Approval Order, Defendant shall provide to the Settlement Administrator in electronic form, a
20 complete list of all Class Members that Defendant will diligently and in good faith compile
21 from its records. The class list will be formatted in Microsoft Office Excel and will include
22 each Class Member’s full name; last known mailing address in Defendant’s HR system of
23 record, Social Security number, and employment status (current or former) (“Class List”). The
24 Settlement Administrator shall maintain the Class List, and all data contained within the Class
25 List, as private and confidential and shall not disclose such data to any persons or entities other
26 than counsel for Defendant, unless otherwise required by law. The Settlement Administrator
27 shall not share or disclose any of the information contained in the Class List with Class
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1 Counsel. The information in the Class List is being supplied solely for purposes of the
2 administration of the Settlement and hence cannot be used by the Settlement Administrator for
3 any purpose other than to administer the Settlement.

4 36. Prior to mailing the Notice of Settlement to Class Members, the Settlement
5 Administrator will perform a search based on the National Change of Address Database for
6 information to update and correct for any known or identifiable address changes. Within
7 fifteen (15) business days after receiving the Class List from Defendant, the Settlement
8 Administrator will send via United States first class mail the Notice of Settlement to the
9 Settlement Class Members. The Notice of Settlement shall advise Settlement Class Members
10 of their options, which include: filing a Request for Exclusion; filing a Notice of Objection to
11 the Settlement; or taking no action. Any Notice Packets returned to the Settlement
12 Administrator as non-deliverable on or before the Response Deadline will be sent promptly via
13 regular First-Class U.S. Mail to the forwarding address, and the Settlement Administrator will
14 indicate the date of such re-mailing on the Notice Packet. If no forwarding address is
15 provided, the Settlement Administrator will promptly attempt to determine the correct address
16 using a skip-trace, or other search using the name, address and/or Social Security number of
17 the Class Member involved, and will then perform a single re-mailing. Those Class Members
18 who receive a re-mailed Notice Packet will have between the latter of (i) an additional fifteen
19 calendar (15) days or (ii) the Response Deadline to fax or postmark a Request for Exclusion or
20 file and serve an objection to the Settlement. The Settlement Administrator shall provide to
21 the Parties, and the Court upon request, proof of service of the Notice of Settlement to Class
22 Members by U.S. mail.

23 37. Beginning fourteen (14) days after the date on which the Notice of Settlement is
24 mailed, the Settlement Administrator shall provide to Class Counsel and Defense Counsel a
25 weekly status report that will be cumulative, reflecting the number of Settlement Class
26 Members who have filed a valid Request for Exclusion or a Notice of Objection.

27 38. If five percent (5%) or more of the total number of Settlement Class Members
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1 submit a timely and valid Request for Exclusion, then Defendant shall have the option, in its
2 sole and exclusive discretion, to void the Settlement. To exercise this option, Defendant must
3 send written notification to Class Counsel within ten (10) business days of receiving a report
4 from the Settlement Administrator following the Response Deadline of the total number of
5 timely and valid Requests for Exclusion. If Defendant chooses to exercise this option, the
6 effect will be precisely the same as if Final Approval did not occur, as discussed herein.

7 FINAL APPROVAL

8 39. Prior to the Final Approval Hearing, Named Plaintiff will move the Court for
9 entry of the Order of Final Approval (and associated entry of Judgment): (a) finding the
10 Settlement fair, reasonable, adequate, and in the best interests of the Settlement Class
11 Members, (b) approving the injunctive relief outlined above, (c) approving Class Counsel's
12 application for an award of attorneys' fees and costs, (d) approving the application for a service
13 payment to Named Plaintiff, and (e) dismissing the Action and releasing and barring any
14 further Released Claims by Settlement Class Members who do not opt out of the Settlement.
15 The Parties and their respective counsel shall make all reasonable efforts to secure entry of the
16 Order of Final Approval. The proposed Order of Final Approval (and the associated proposed
17 Judgment) shall be filed with the Court with the motion for Final Approval, or as otherwise
18 directed by the Court.

19 40. Prior to the Final Approval Hearing, concurrent with or prior to the motion for
20 final approval, Class Counsel shall file a motion seeking approval of attorneys' fees and costs
21 as set forth in this Stipulation as well as for Named Plaintiff's service payment. Named
22 Plaintiff and Class Counsel agree that they shall be responsible for justifying to the Court the
23 amounts of the attorneys' fees and costs and service payment, and they agree to submit, as
24 appropriate, the necessary materials to justify these payments. Defendant will not oppose the
25 amounts of attorneys' fees and costs and service payment sought, as long as they are consistent
26 with this Stipulation. If the Court (or any appellate court) awards less than the amount
27 requested for attorneys' fees and/or costs and/or service payment, only the awarded amounts
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1 shall be paid and shall constitute satisfaction of the obligations of Defendant under this
2 Stipulation with respect to attorneys' fees and/or costs and/or service payment.

3 41. Defendant shall have the sole right to void and withdraw from this Agreement if
4 at any time prior to the Final Approval Date: (a) five percent (5%) or more of all Settlement
5 Class Members opt out of the Settlement, as provided in Paragraph 38 above; or (b) the
6 Settlement is construed in such a fashion that Defendant would be required to pay more than
7 the agreed-upon attorneys' fees and costs or service payment, as provided in Paragraphs 29 and
8 30 above; or (c) the Court makes an order inconsistent with any of the material terms (as
9 determined by Defendant) of this Agreement; or (d) any pending litigation or litigation filed
10 prior to the Final Approval Date in any way prevents this Agreement from resolving all claims
11 identified in the Released Claims, as defined herein; or (e) Named Plaintiff or Class Counsel
12 breaches this Agreement.

13 42. If the Final Approval or Final Judgment does not occur, or if this Stipulation is
14 terminated or canceled pursuant to its terms, the Parties to this Stipulation shall be deemed to
15 have reverted to their respective status as of the date and time immediately prior to the
16 execution of this Stipulation and this Stipulation shall be deemed void ab initio. In such an
17 event, if this Stipulation is not approved by the Court substantially in the form agreed to by the
18 Parties, or if the Settlement set forth in the Stipulation is terminated, cancelled, declared void,
19 or fails to become effective in accordance with its terms, or if the Judgment does not become a
20 Final Judgment, or if the Final Approval Date does not occur, this Stipulation (except for those
21 provisions relating to non-admission, denial of liability set forth herein, and the confidentiality
22 agreements entered into by the Parties) shall be deemed null and void, its terms and provisions
23 shall have no further force and effect with respect to the Settling Parties and shall not be used
24 in this Action or in any other proceeding for any purpose, and any Judgment or order entered
25 by the Court in accordance with the terms of the Stipulation shall be treated as vacated, *nunc*
26 *pro tunc*.

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CONFIDENTIALITY

43. All proprietary and confidential documents or information that previously have been provided to Class Counsel and/or the Named Plaintiff from any individual, business entity or governmental agency pertaining to the claims and/or subject matter of this lawsuit shall be treated as, and shall forever remain, confidential. These documents and information shall not be disclosed to anyone other than the Court or agreed-upon mediator or arbitrator in connection with any proceedings to enforce any provision of this Agreement, including this Confidentiality provision. All the files, records, discovery, investigation, work papers and any other document, whether electronic or written, that describes or contains any confidential or proprietary information pertaining to Defendant, including its business operations, operation manuals, and Rulebooks, shall not be made available to or transferred to any other person and shall be kept and maintained confidential by Class Counsel. Within 30 days after the Effective Date, all proprietary and confidential documents or information belonging to Defendant that were provided to Class Counsel by any person, including Defendant, its current or former employees, or any other governmental agency, and subject to any Court Order sealing or ordering such documents to be subject to a protective order entered in this Action shall be destroyed, except that Class Counsel may maintain copies of all documents filed with the Court. Within 30 days after the Effective Date, certification of such destruction shall be provided to counsel of record for Defendant.

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MISCELLANEOUS PROVISIONS

44. Neither the acceptance nor the performance by Defendant of the terms of this Stipulation, nor any of the related negotiations or proceedings, is or shall be claimed to be, construed as, or deemed to be, an admission by Defendant of the truth of any of the allegations in the operative Complaint, the representative character of the Action, the validity of any of the claims that were or could have been asserted by Named Plaintiff and/or Class Members in the Action, or of any liability or guilt of Defendant in the Action. Nothing in this Stipulation shall be construed to be or deemed an admission by Defendant of any liability, culpability,

1 negligence, or wrongdoing toward Named Plaintiff, the Class Members, or any other person,
2 and Defendant specifically disclaims any liability, culpability, negligence, or wrongdoing
3 toward Named Plaintiff, the Class Members, and any other person. Each of the Parties has
4 entered into this Stipulation with the intention to avoid further disputes and litigation with the
5 attendant inconvenience, expenses, and contingencies.

6 45. This Agreement contains the entire agreement between the Parties relating to the
7 settlement and transaction contemplated by this Agreement, and all prior or contemporaneous
8 agreements, understandings, representations, and statements, whether oral or written and
9 whether by a Party or such Party's legal counsel, are merged into this Agreement.

10 46. The Parties agree to cooperate fully with one another to accomplish and
11 implement the terms of this Settlement. Such cooperation shall include, but not be limited to,
12 execution of such other documents and the taking of such other action as may reasonably be
13 necessary to fulfill the terms of this Settlement. The Parties to this Settlement shall exercise
14 reasonable efforts, including all efforts contemplated by this Settlement and any other efforts
15 that may become necessary by Court order, or otherwise, to effectuate this Settlement and the
16 terms set forth herein.

17 47. Named Plaintiff, Class Counsel and all attorneys associated with Class Counsel
18 agree that they will not issue any press releases, initiate any contact with the press, provide any
19 information to the press, or otherwise publicize or cause to be publicized this case, this
20 settlement, or the facts leading up to the case or settlement, and represent that they have not
21 done so prior to signing this Agreement. Class Counsel will not post anything on their website
22 relating to this matter. In addition, Class Counsel agree that they will not engage in any
23 advertising or distribute any marketing materials relating to the settlement of this Action that in
24 any way directly or indirectly identifies the Defendant, including but not limited to any
25 postings on any websites maintained by Class Counsel. Class Counsel will not communicate
26 with other wage-hour plaintiffs' counsel about this settlement. However, Class Counsel may
27 submit adequacy declarations in other cases identifying this case by name and number and the
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1 fact that they were appointed as class counsel in this Action.

2 48. The Named Plaintiff, by signing this Stipulation, is bound by the terms herein
3 and further agrees not to request to be excluded from the Settlement and not to object to any
4 terms of this Stipulation. Any such request for exclusion or objection shall therefore be void
5 and of no force or effect. Defendant, Class Counsel, and the Named Plaintiff waive their rights
6 to file an appeal, writ, or any challenge whatsoever to the terms of this Stipulation.

7 49. The Parties believe this Agreement is a fair, adequate and reasonable settlement
8 of the Action and have arrived at this Settlement after arm's-length negotiations and in the
9 context of adversarial litigation, taking into account all relevant factors, present and potential.
10 The Parties further acknowledge that they are each represented by competent counsel and that
11 they have had an opportunity to consult with their counsel regarding the fairness and
12 reasonableness of this Agreement.

13 50. Before declaring any provision of this Agreement invalid, the Court will first
14 attempt to construe the provision as valid to the fullest extent possible consistent with
15 applicable precedents so as to define all provisions of this Agreement valid and enforceable.

16 51. No waiver of any condition or covenant contained in this Agreement or failure
17 to exercise a right or remedy by any of the Parties hereto will be considered to imply or
18 constitute a further waiver by such party of the same or any other condition, covenant, right or
19 remedy.

20 52. Neither Class Counsel nor any other attorneys acting for, or purporting to act
21 for, the Class, Settlement Class Members, or the Named Plaintiff, may recover or seek to
22 recover any amounts for fees, costs, or disbursements from Defendant except as expressly
23 provided herein.

24 53. This Stipulation may not be changed, altered, or modified, except in writing
25 signed by the Parties hereto and approved by the Court. This Stipulation may not be discharged
26 except by performance in accordance with its terms or by a writing used by the Parties hereto.

27 54. This Stipulation shall be binding upon and inure to the benefit of the Parties
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1 hereto and their respective heirs, trustees, executors, administrators, successors, and assigns.

2 55. This Stipulation shall become effective upon its execution by all of the
3 undersigned. The Settling Parties may execute this Stipulation in counterparts, and execution
4 of counterparts shall have the same force and effect as if all Settling Parties had signed the
5 same instrument.

6 56. The Court shall retain jurisdiction with respect to the implementation and
7 enforcement of the terms of the Stipulation, and all Parties hereto submit to the jurisdiction of
8 the Court for purposes of implementing and enforcing the Settlement embodied in this
9 Stipulation. Any action to enforce this Stipulation shall be commenced and maintained only in
10 the Court.

11 57. In the event that one or more of the Parties institutes any legal action or other
12 proceeding against any other Party to enforce the provisions of this Agreement or to declare
13 rights and/or obligations under this Agreement, the prevailing Party will be entitled to recover
14 from the non-prevailing Party reasonable attorneys' fees and costs, including expert witness
15 fees incurred in connection with any enforcement actions.

16 58. Named Plaintiff, through Class Counsel, at his own expense, may submit an
17 update to the Court regarding the status of the Parties' compliance with the terms of the
18 Settlement within one year after final approval of the Settlement.

19 59. Paragraph titles or captions contained in this Stipulation are inserted as a matter
20 of convenience and for reference, and in no way define, limit, extend, or describe the scope of
21 this Stipulation, or any provision thereof.

22 60. All amounts and procedures described in this Agreement will be subject to final
23 Court approval.

24 61. The Parties warrant that they understand and have full authority to enter into this
25 Agreement, and further intend that this Agreement will be fully enforceable and binding on all
26 Parties, and agree that it will be admissible and subject to disclosure in any proceeding to
27 enforce its terms, notwithstanding any mediation confidentiality provisions that otherwise
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1 might apply under federal or state law.

2 IN WITNESS WHEREOF, this Stipulation of Settlement is executed by the Parties and
3 their duly authorized attorneys, as of the day and year herein set forth.
4

5 Dated: August 23, 2019
6 _____


Donday Orr (Aug 23, 2019)

7 _____
8 DONDAY ORR

9 NAMED PLAINTIFF

10 Dated: _____

11 _____
12 LOS ANGELES COUNTY METROPOLITAN
13 TRANSPORTATION AUTHORITY

14 DEFENDANT

15 _____
16 Please Print Name and Title of Authorized
17 Signatory
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1 might apply under federal or state law.

2 IN WITNESS WHEREOF, this Stipulation of Settlement is executed by the Parties and
3 their duly authorized attorneys, as of the day and year herein set forth.
4

5
6 Dated: _____

_____ DONDAY ORR

7 NAMED PLAINTIFF

8
9 Dated: AUGUST 30, 2019

_____ LOS ANGELES COUNTY METROPOLITAN
10 TRANSPORTATION AUTHORITY

11 DEFENDANT

12 James Gallagher

13 JAMES GALLAGHER

14 Please Print Name and Title of Authorized
15 Signatory

16 CHIEF OPERATING OFFICER

Exhibit A

IN THE SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

Nathan Flowers et al. v. Los Angeles County Metropolitan Transportation Authority,
Case No. BC515136

NOTICE OF CLASS ACTION SETTLEMENT

This Notice is to advise you of your legal rights in connection with a settlement of a class action lawsuit involving the Los Angeles County Metropolitan Transportation Authority (“LACMTA” or “Defendant”) because you have been identified a member of the following Settlement Class: All current and former Bus and Train Operators employed by Defendant at any time from July 15, 2010 through [date of preliminary approval] (collectively, “Operators”). Your legal rights are affected by this Settlement whether you act or don’t act.

What Is This Case About?

This lawsuit is called *Nathan Flowers et al. v. Los Angeles County Metropolitan Transportation Authority*, Los Angeles County Superior Court Case No. BC515136 (“Lawsuit”). The individuals who brought this lawsuit on behalf of themselves and members of the Settlement Class are called “Plaintiffs.” Plaintiffs Nathan Flowers and Donday Orr alleged, on behalf of themselves and other similarly situated individuals, that Defendant fails to properly compensate Operators for time spent performing various tasks, including time spent completing mandatory reports, the differential between scheduled run times and actual run times, and time spent performing various pre-departure tasks, including tasks associated with making relief using a CEA vehicle. Plaintiff alleges that since the beginning of the proposed class period (*i.e.*, since July 15, 2010), Defendant’s compensation scheme has been illegal because it fails to compensate Operators for all straight time hours worked, in violation of Labor Code § 1194 and/or California Industrial Wage Commission Order 9-2001 (“Wage Order No. 9”). Plaintiffs seek declaratory and injunctive relief on a classwide basis.

LACMTA denies all of the allegations made against it in the Lawsuit. LACMTA expressly denies that it failed to compensate Operators for all straight time hours worked.

The Court has made no ruling as to the merits of Plaintiffs’ claims or LACMTA’s defenses.

Your Legal Rights and Options in this Settlement

- **Do Nothing.** You do not need to do anything to be part of this Settlement.
- **Object.** You may write to the Court to say why you do not agree with the proposed Settlement. If you object, you will remain part of the Settlement Class. The deadline for you to object is [DATE].

- **Exclude Yourself from the Settlement Class.** By excluding yourself from the Settlement Class, you will have the option to bring your own lawsuit against LACMTA based on the same challenged practice, or any other claim that you might have. If you exclude yourself, then you may not object to the Settlement. The deadline for you to exclude yourself is [DATE].

More Information About Your Options and Legal Rights

The information contained in this Notice is only a summary of the Lawsuit and the Settlement. For more information about this case, including all key documents and forms with specific instructions on how to object to the Settlement and/or how to opt-out of the class, you may visit the following website: [www. \[redacted\] .com](http://www. [redacted] .com). You have **60 days from the date this notice was sent to you** to object to the Settlement or exclude yourself from the Settlement Class. Please read this Notice carefully and all of the information contained on the Website in order to make an informed decision about your legal rights.

Who are members of the Settlement Class?

Members of the Settlement Class include: All current and former Bus and Train Operators employed by Defendant at any time from July 15, 2010 through [date of preliminary approval].

What are the benefits of the proposed settlement?

Under the proposed Settlement, which the Court preliminarily approved on [date of preliminary approval], LACMTA will make certain changes to its policies and practices in exchange for the Settlement Class releasing claims against LACMTA. Specifically, Defendant has agreed to take the following affirmative steps:

- LACMTA shall in writing clarify that an Operator Schedule Deviation Form (also known as an Overtime Slip) must be submitted for any work performed outside of an Operator's scheduled shift; and,
- LACMTA shall in writing clarify that travel time includes all preparatory time to perform tasks completed by an Operator prior to departure.

Plaintiffs' counsel has estimated that the monetary value of the steps that Defendant has agreed to take exceeds \$1,190,220 over a 5-year period.

How could the settlement affect your legal rights?

If the Court approves the proposed settlement, members of the Settlement Class will release all legal claims against LACMTA and any affiliated individuals and entities as defined by the Settlement Agreement ("Released Parties") that accrued at any time between July 15, 2010 and [date of preliminary approval], whether known or unknown, that were asserted in the lawsuit

and/or based upon the same facts and allegations raised by Plaintiffs in the Lawsuit. Specifically, the Settlement Agreement provides:

In consideration of the mutual promises and covenants set forth or referred to in this Agreement, the Named Plaintiff, and each and every Class Member that did not file a timely Request for Exclusion, upon the Effective Date, shall be deemed to have fully, finally and forever released, settled, compromised, relinquished and discharged any and all of the Released Parties of and from any and all of the Released Claims that have arisen or might have arisen at any time up to and including the Effective Date.

...

“Released Claims” shall mean the claims released by Named Plaintiff and each Class Member who does not timely opt out of the Settlement, on behalf of themselves, their heirs, spouses, executors, administrators, attorneys, agents, and assigns, which are all applicable wage and hour claims, rights, demands, liabilities, penalties, fines, debts and causes of action of every nature and description, whether known or unknown, arising from or related to the claims asserted in the Action or that could have been asserted in the Plaintiffs’ Fourth Amended Complaint based on the facts and circumstances alleged therein, including claims based on California Labor Code sections 1194, 1194.2, 1197, 1197.1, 1198, and the Private Attorneys’ General Act, Labor Code section 2698, *et seq.*, or any related damages, penalties, restitution, disgorgement, interest or attorneys’ fees

What enhancement payment is the Class Representative seeking for the work he performed for the Class?

The Court has appointed Plaintiff Donday Orr as the class representative. Plaintiff Donday Orr is filing a motion asking the Court to award him a service award of no more than \$15,000 in exchange for his services in representing the Settlement Class. The Court will decide whether such a service award is fair and reasonable. You can see the complete motion for the service award at [[administrator’s website](#)].

What attorneys’ fees and what reimbursement of out of pocket costs are Class Counsel seeking?

Class Counsel is applying to the Court to be paid attorneys’ fees and costs in the aggregate amount of no more than \$485,000. The Court will decide whether the fees and costs Class Counsel seeks are fair and reasonable. You can see Class Counsel’s complete application for attorneys’ fees and costs at [[administrator’s website](#)].

When and where will the Final Approval hearing take place?

On [[date of preliminary approval](#)], the Court granted preliminary approval to the proposed settlement. After considering the comments and/or objections from Class Members, the Court will next decide whether to: (1) grant final approval of the settlement; (2) grant Class

Counsel's application for fees and costs; and (3) award a service award to the Class Representative. A hearing will be held on [DATE] at [INSERT TIME a.m/p.m.] in Department 10 of the California Superior Court, County of Los Angeles, 312 North Spring Street, Los Angeles, California 90012.

You may, but are not required to, attend the final approval hearing.

Who Can I Contact for More Information?

For obtaining copies of key documents, forms or help with accessing the website:

LACMTA Settlement Administrator

ADDRESS

Toll-free number: 1-xxx-xxx-xxxx

www._____.com

For questions pertaining to the Lawsuit and your legal rights and options pertaining to the Lawsuit:

The Tidrick Law Firm LLP -- Attorneys for the Class ("Class Counsel")

Steven G. Tidrick, Esq.

Joel B. Young, Esq.

1300 Clay Street, Suite 600

Oakland, CA 94612

(510) 788-5100