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26 LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY

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28 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

COUNTY OF LOS ANGELES

20 NATHAN FLOWERS and DONDAY ORR,
21 on behalf of themselves and all others similarly
22 situated,

23 Plaintiffs,

24 v.

25 LOS ANGELES COUNTY
26 METROPOLITAN TRANSPORTATION
27 AUTHORITY; and DOES 1 TO 50,

28 Defendants.

Civil Case No. BC515136

Class Action

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

~~PROPOSED~~ ORDER GRANTING
MOTION FOR PRELIMINARY
APPROVAL OF CLASS SETTLEMENT

Date: March 20, 2020
Time: 9:00 a.m.
Department: 10
Trial Date: None Set

FILED
Superior Court of California
County of Los Angeles

MAR 19 2020

Sherri R. Carter, Executive Officer/Clerk of Court
By Aldwin Lim Deputy

ADDITIONAL COUNSEL

OFFICE OF THE COUNTY COUNSEL

COUNTY OF LOS ANGELES

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LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY

1 **[PROPOSED] ORDER**

2 WHEREAS, Plaintiff Donday Orr ("Plaintiff") and Defendant Los Angeles County
3 Metropolitan Transportation Authority ("Defendant" or "LACMTA") (collectively the
4 "Parties"), reached a settlement of this action subject to Court approval as represented in the
5 Joint Stipulation of Class Action Settlement filed on October 1, 2019, and as modified by the
6 Stipulation and Order Regarding Settlement, which was signed by the Court on March 13,
7 2020 (as modified, the "Settlement Agreement");

8 WHEREAS, Plaintiff has made an unopposed application to this Court for an order
9 preliminarily approving the settlement;

10 WHEREAS, Plaintiffs' operative fourth amended complaint alleges causes of action
11 for failure to pay minimum wages in violation of the California Labor Code;

12 WHEREAS, Defendant denies Plaintiffs' allegations in this action and denies liability
13 on all claims;

14 WHEREAS, pursuant to the Court's order of March 13, 2020, Plaintiffs' claims under
15 the Labor Code Private Attorneys General Act of 2004, Labor Code § 2698 *et seq.* ("PAGA")
16 have been dismissed with prejudice, in light of authorities cited by Defendant in its February
17 7, 2020 filing indicating that PAGA is inapplicable to public entity employers; and

18 WHEREAS, having read and considered the Settlement Agreement, the motion for
19 preliminary settlement approval and accompanying papers, the papers subsequently filed by
20 the parties, oral argument of counsel, the relevant statutory and case law, and the record in this
21 action, and the Court's order of March 13, 2020 (the "Preliminary Approval Order") granting
22 the Motion for Preliminary Approval of Class Settlement;

23 NOW THEREFORE, the Court hereby further orders and finds as follows, pursuant to
24 California Code of Civil Procedure § 382 and Rules 3.760 *et seq.* of the California Rules of
25 Court:

26 I. This Order hereby incorporates by reference the definitions of the Settlement
27 Agreement as though fully set forth herein, and all terms used herein shall have the same meaning
28 as set forth in the Settlement Agreement.

1 2. The Court has jurisdiction over this matter and venue is proper.

2 3. Pursuant to California Code of Civil Procedure § 382 and Rules 3.760 *et seq.* of
3 the California Rules of Court, the Court conditionally certifies and approves, for settlement
4 purposes only, a Settlement Class defined as all current and former Bus and Train Operators
5 employed by Defendant at any time from July 15, 2010 through the date of the Preliminary
6 Approval order, *i.e.*, through March 13, 2020. Moreover, consistent with ¶ 2(b)(ii) of that order,
7 former employees constitute a subclass certified for injunctive relief only.

8 4. The Court hereby preliminarily approves the proposed settlement upon the terms,
9 conditions, and all release language set forth in the Settlement Agreement. The Court finds that
10 the Settlement appears to be within the range of reasonableness necessary for preliminary
11 approval by the Court. It appears to the Court that the settlement terms are fair, adequate, and
12 reasonable, when balanced against the probable outcome of further litigation, given the risks
13 relating to liability, certification and damages. It further appears that extensive and costly
14 investigation and research has been conducted such that counsel for the Parties at this time are
15 reasonably able to evaluate their respective positions. It further appears to the Court that the
16 settlement at this time will avoid substantial additional costs by all parties, as well as the delay
17 and risks that would be presented by further prosecution of the action. It appears that the
18 settlement has been reached as a result of intensive, arms-length negotiations utilizing an
19 experienced third party neutral.

20 5. The revised proposed Notice of Settlement, attached hereto as **Exhibit A**, is
21 approved as to form and content. The Notice of Settlement shall be distributed as set forth below
22 to all Settlement Class members, excluding members of the subclass of former employees, given
23 that (1) the subclass does not release any damages claims and is certified for injunctive relief
24 only, *see* Order of March 13, 2020, at ¶ 2(b), and (2) case law holds that notice is not required for
25 class settlements for injunctive relief only. *See, e.g., Lowry v. Obledo*, 111 Cal. App. 3d 14, 23
26 (1980); *Gonzales v. Jones*, 116 Cal. App. 3d 978, 986 (1981); *cf. Fed. R. Civ. Proc. 23(b)(2)*.

27 6. The Court preliminarily appoints Steven G. Tidrick and Joel B. Young of The
28 Tidrick Law Firm LLP as Settlement Class Counsel.

1 7. The Court preliminarily appoints Donday Orr as Class Representative for the
2 Settlement Class.

3 8. The appointment of CPT Group as the Settlement Administrator is approved.

4 9. No later than forty-five (45) calendar days after the date of this order granting
5 preliminary approval, Defendant shall provide to the Settlement Administrator, in electronic
6 form, a complete list of all Settlement Class members (excluding former employees), which
7 Defendant will diligently and in good faith compile from its records. The list will be formatted in
8 Microsoft Office Excel and will include each person's full name, last known mailing address in
9 Defendant's HR system of record, and Social Security number (the "Class List").

10 10. Within fifteen (15) business days after receiving the Class List from Defendant,
11 the Settlement Administrator will send via United States first class mail the Notice of Settlement
12 to all individuals on the Class List. Prior to mailing the Notice of Settlement, the Settlement
13 Administrator will perform a search based on the National Change of Address Database for
14 information to update and correct for any known or identifiable address changes.

15 11. The "Response Deadline" shall be the deadline by which Settlement Class
16 members must fax or postmark to the Settlement Administrator valid Requests for Exclusion, or
17 file and serve a Notice of Objection to the Settlement. The Response Deadline will be sixty (60)
18 calendar days from the initial mailing of the Notice Packet by the Settlement Administrator,
19 unless the 60th day falls on a Sunday or Federal holiday, in which case the Response Deadline
20 will be extended to the next day on which the U.S. Postal Service is open. The Response Deadline
21 for Requests for Exclusion will be extended fifteen (15) calendar days for any Settlement Class
22 member who is re-mailed a Notice Packet by the Settlement Administrator in accordance with the
23 notice procedure described below, unless the 15th day falls on a Sunday or Federal holiday, in
24 which case the Response Deadline will be extended to the next day on which the U.S. Postal
25 Service is open. The Response Deadline may also be extended by express agreement between
26 Class Counsel and Defendant.

27 12. Any Notice Packets returned to the Settlement Administrator as non-deliverable on
28 or before the Response Deadline shall be sent promptly via regular First-Class U.S. Mail to the

1 forwarding address, and the Settlement Administrator will indicate the date of such re-mailing on
2 the Notice Packet. If no forwarding address is provided, the Settlement Administrator shall
3 promptly attempt to determine the correct address using a skip-trace, or other search using the
4 name, address and/or Social Security number of the Settlement Class member involved, and will
5 then perform a single re-mailing. Those Settlement Class members who are sent a re-mailed
6 Notice Packet will have between the later of (i) an additional fifteen calendar (15) days or (ii) the
7 Response Deadline to fax or postmark a Request for Exclusion or file and serve an objection to
8 the Settlement.

9 13. The notice to be provided as set forth in the preceding three paragraphs is hereby
10 found to be the best means practicable of providing notice under the circumstances and, when
11 completed, shall constitute due and sufficient notice of the Settlement Agreement and the Final
12 Approval hearing to all persons affected by the Settlement Agreement, in full compliance with
13 due process and notice requirements of California Code of Civil Procedure § 877.6.

14 14. Any Settlement Class member who elects to be excluded from the Settlement
15 Agreement must submit a request for exclusion. The request for exclusion must: (a) set forth the
16 name, address, telephone number and last four digits of the Social Security number of the
17 Settlement Class member requesting exclusion; (b) be signed by the Settlement Class member;
18 (c) be returned by mail or facsimile to the Settlement Administrator at the address specified in the
19 Notice Packet; (d) clearly state that the Settlement Class member does not wish to be included in
20 the Settlement; and (e) be faxed or postmarked on or before the Response Deadline. The Court
21 retains the discretion to treat as valid requests for exclusion that do not strictly comply with these
22 requirements.

23 15. Any Settlement Class member who elects to object to the Settlement Agreement
24 must send his or her objection to the Settlement Administrator, Class Counsel, and Defendant's
25 counsel of record, delivered or postmarked by the Response Deadline. Any person who objects
26 must also file his or her objection with the Court by that date. For the objection to be valid, it
27 must include the objector's full name, signature, address, and telephone number, the basis for the
28 objection, and if the objector intends to appear at the Final Approval hearing, a statement to that

1 effect. Any member of the Settlement Class who does not file and serve a timely written objection
2 will be deemed to have waived any objections. The Court retains the discretion to consider
3 objections that do not strictly comply with these requirements.

4 16. No Settlement Class member is required to attend the Final Approval hearing to
5 indicate his or her approval or disapproval of the settlement. Members of the Settlement Class
6 need not appear at the Final Approval hearing or take any other action to indicate their approval.

7 17. The deadline for Plaintiff to file a motion for a service award and for an award of
8 attorneys' fees and costs shall be fourteen (14) days before the deadline for objections.

9 18. The deadline for Plaintiff to file a motion for final approval of the settlement, and
10 for the parties to file responses to any objections, shall be twenty-one (21) days after the
11 Response Deadline.

12 19. The final approval hearing shall be at 11:00 a.m. on September 11, 2020 in
13 Department 10 of the California Superior Court, County of Los Angeles, 312 North Spring Street,
14 Los Angeles, California 90012. The date and time shall be subject to continuance by the Court
15 without further notice to the Settlement Class other than that which may be posted on the Court's
16 website, online at <http://www.lacourt.org/casesummary/ui/>.

17 20. In the event the Court does not finally approve the settlement as contemplated by
18 the Settlement Agreement or the settlement does not become final for any other reason, the
19 settlement shall be null and void, and in such case the Parties shall be returned to their respective
20 statuses as of the date and time immediately prior to the execution of the Settlement Agreement,
21 and the Parties shall proceed in all respects as if the settlement had not been executed.

22 It is so ORDERED.

23 Dated 3/19, 2020

24 
25 Hon. William F. Highberger
26 Los Angeles Superior Court Judge
27
28

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 as 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 March 13, 2020 (collectively, "Operators"). Moreover, you have been identified as a current employee, and therefore not part of a subclass consisting of former employees. 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.** If you do nothing, you will be part of this Settlement and release all claims against LACMTA and any affiliated individuals and entities as described in more detail below. The benefits of the Settlement (specifically, changes in LACMTA's policies and practices) are described below. If you are part of the Settlement, you will not have the option of bringing your own legal action against

LACMTA or any affiliated individuals and entities based on the same challenged practice, or any other claim that you might have.

- **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, and if the Court overrules your objection and approves the Settlement, you will not have the option of bringing your own legal action against LACMTA or any affiliated individuals and entities based on the same challenged practice, or any other claim that you might have. The deadline for you to object is [DATE].
- **Exclude Yourself from the Settlement Class.** Excluding yourself from the Settlement Class will give you the option of initiating or proceeding with your own legal action against LACMTA and/or any affiliated individuals and entities based on the same challenged practice, or any other claim that you might have. *If you believe that you have a claim or potential claim for monetary damages against LACMTA and/or any affiliated individuals and entities, then you should exclude yourself from the Settlement Class, and you should not delay in initiating legal proceedings, because the statute of limitations (the deadline imposed by law within which you may initiate legal proceedings) may severely limit the time remaining for you to do so.* If you exercise this option, you would be well advised to seek a lawyer's professional opinion as to whether you should pursue your claims through the collective bargaining process, in small claims court, in an administrative (Berman) hearing before the California Labor Commissioner, in California Superior Court, in federal court, or in another forum. *If you exclude yourself from the Settlement Class, 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 Settlement Class, you may visit the following website: www._____.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 March 13, 2020.

What Are The Benefits of The Proposed Settlement?

Under the proposed Settlement, which the Court preliminarily approved on March 13, 2020, 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.

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 March 13, 2020 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 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, or any related damages, penalties, restitution, disgorgement, interest or attorneys' fees.

Moreover, pursuant to a stipulation and order signed by the Court on March 13, 2020: (1) there shall be no waiver of rights and benefits under California Civil Code § 1542; (2) there shall be no release of unknown claims; (3) there shall be no release of claims under the Private Attorneys' General Act, Labor Code § 2698, *et seq.* ("PAGA"), because there are no such claims to release given that they have been dismissed with prejudice; and (4) former Operators are a subclass and shall not release any damages claims.

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 March 13, 2020, the Court granted preliminary approval of 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 September 11, 2020 at 11:00 a.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:

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