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Attorneys for Class Plaintiffs

SEE SIGNATURE PAGE FOR ADDITIONAL  
COUNSEL FOR PLAINTIFFS

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
11 **COUNTY OF ORANGE**

13 MICHELLE MILLER, individually, TYSON  
14 THOMAS, individually, JEREMY PITARIO,  
15 individually and on behalf of all others  
16 similarly situated, and as private attorney  
17 generals on behalf of the general public, on  
18 behalf of themselves and all others similarly  
19 situated,

Plaintiffs,

vs.

20 RUTH'S CHRIS STEAK HOUSE, an unknown  
21 business organization; RCSH OPERATIONS,  
22 INC., an unknown business organization; and  
23 DOES 1 through 100, inclusive,

Defendants.

CASE NO. 03CC00435

Honorable Jonathan H. Cannon  
Department CX102

**CLASS ACTION**

**NOTICE OF MOTION AND MOTION  
FOR PRELIMINARY APPROVAL OF  
SETTLEMENT; MEMORANDUM OF  
POINTS AND AUTHORITIES;  
DECLARATION OF MIKE ARIAS IN  
SUPPORT THEREOF**

Date: August 11, 2005

Time: 1:30 p.m.

Dept: CX102

24  
25 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD HEREIN:

26 NOTICE IS HEREBY GIVEN that on August 11, 2005 at 1:30 p.m. or as soon  
27 thereafter as the matter may be heard in Department CX102 of the above referenced Court,  
28 Class Plaintiffs and will move the Court for an order granting preliminary approval of the

1 proposed Settlement with the Defendant, Approving the Proposed Form of Notice,  
2 Scheduling a Hearing on Final Approval and Scheduling a Hearing on Plaintiffs' Counsel's  
3 Application for an Award of Fees, Costs and Incentive Payments.

4 This motion is based on this Notice of Motion and Motion for Preliminary Approval  
5 of Settlement, the Memorandum of Points and Authorities, the Declaration of Mike Arias,  
6 and on the records and file herein, and on such evidence as may be presented at the hearing  
7 on the motion.

8 Dated: July 29, 2005

ARIAS, OZZELLO & GIGNAC, LLP

9  
10  
11 By: 

MIKE ARIAS, ESQ.  
MARK A. OZZELLO, ESQ.  
MIKAEL H. STAHLE, ESQ.  
ERIK J. EKBLAD, ESQ.  
Attorneys for Plaintiffs

14 RICHARD E. QUINTILONE II  
15 QUINTILONE & ASSOCIATES

16 LEE BURROWS  
17 CALLAHAN & BLAINE

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Class Plaintiffs respectfully submit this Memorandum in support of their Motion for  
4 Preliminary Settlement Approval pursuant to the Class Action settlement approval  
5 procedure described in *California Rules of Court*, Rule 1859. The parties to the Settlement  
6 request the issuance of an order: (1) Granting Preliminary Approval of the Proposed  
7 Settlement; (2) Approving the Proposed Form of Notice; (3) Scheduling a Hearing on Final  
8 Approval; and, (4) Scheduling a Hearing on Plaintiff’s Counsel’s Application for an Award  
9 of Fees, Costs, and Incentive Payments. The proposed settlement before this Court  
10 disposes of all causes of action against all of the Defendants and is binding on all parties to  
11 this action. The settlement also will benefit the Settlement Classes. Additionally, the  
12 parties agree that the total value under the Settlement Agreement is one million six hundred  
13 and twenty-five thousand dollars (\$1,625,000.00), including attorneys’ fees, costs,  
14 incentive payments, and the cost of claims administration up to fifty thousand dollars  
15 (\$50,000). (The Settlement Agreement is attached hereto as Exhibit “A”.)

16 As the resulting Settlement is the product of serious, informed, and arms-length  
17 negotiations and contains no deficiencies, it is worthy of preliminary approval by this Court  
18 under the operative standards of *CRC* Rule 1859 and applicable state law. Settlement  
19 discussions were conducted with the supervision and assistance of the Honorable Richard  
20 C. Neal (Ret.) of JAMS on March 22, 2005. The settlement is fair, adequate, and  
21 reasonable and provides relief consistent with the claims asserted. Accordingly,  
22 preliminary approval of the settlement at this time is appropriate.

23  
24 **II. SUMMARY OF CLAIMS AND ALLEGATIONS**

25 **A. Background of the Case**

26 The initial class action complaint in this matter was filed on November 1, 2003.

27 Defendant Ruth’s Chris Steak House (“Defendant”) is a restaurant chain with  
28

1 restaurants in 29 U.S. states, Puerto Rico, Canada, and Mexico. The essence of this lawsuit  
2 is that Defendant trained its managers to deny meal and rest break periods to its non-  
3 exempt employees at all eight of its locations in California. The affected employees  
4 include all waiters, bartenders, hosts, servers, and several other categories of hourly paid  
5 employees. Approximately eight hundred employees have been deprived of meal and rest  
6 breaks during their tenures as employees of Defendant. In addition, despite having a  
7 delineated and established vacation policy, Defendant failed to pay its hourly paid  
8 employees for accrued vacation time upon termination of employment.

9 The operative Third Amended Complaint – filed pursuant to the Settlement  
10 Agreement and stipulation of the parties – asserts causes of action for: (1) Failure to pay  
11 wages (accrued vacation time) in violation of *Labor Code* sections 201, 227.3; (2) Failure  
12 to provide rest periods and meal breaks in violation of *Labor Code* section 226.7 and IWC  
13 Wage Order 5-2001 ¶¶10, 11; and (3) Unlawful business practices in violation of *Business*  
14 & *Professions Code* sections 17200, *et seq.* It alleges three subclasses:

15 Subclass I ("Meal and Rest Class"): Every non-exempt employee  
16 who was employed by Defendant at any time in California on or  
17 after October 1, 2000 and the date of preliminary approval.

18 Subclass II ("Vacation Pay Class"): Every person who was  
19 employed by Defendant in California at any time between October  
20 1, 1999 and the date of preliminary approval, who worked in  
21 California for at least one anniversary year while averaging thirty  
22 (30) or more hours per workweek and who terminated employment  
23 with Defendant without receiving payment for earned, but unused,  
24 vacation time.

25 Subclass III ("Uniforms and Tools Class"): All members of  
26 Subclass I who receive payments under this Agreement for the rest  
27 period and meal period claims. Such individuals will be eligible to  
28 receive additional payments, described below, for allegedly being  
required to pay the cost of uniforms or tools.

### 29 **III. TERMS AND CONDITIONS OF THE SETTLEMENT**

The terms and conditions of the settlement provide or require that:

1. The Subclasses are defined as described above.
2. The Class Representatives are Michelle Miller, Tyson Thomas, and Jeremy

1 Pittario.

2 3. The Settling Plaintiffs are the Class Representatives and Traci Harrington.

3 4. The total amount of the Settlement Fund is one million six hundred and  
4 twenty-five thousand dollars and zero cents (\$1,625,000.00).

5 5. Any Settlement Class Member who objects to any aspect of the settlement  
6 may appear and be heard at the Final Approval Hearing. Any such person must submit a  
7 written notice of objection prior to the Settlement hearing upon the Court and the Class  
8 Counsel.

9 6. Settling Class Plaintiffs will release all claims that have or could have been  
10 asserted in the matters against the Settling Defendants. Class Plaintiffs will upon final  
11 approval also provide for dismissal of this action, with prejudice, as to the Settling  
12 Defendants.

13 7. Class Plaintiffs' counsel will request the Court to award from the settlement  
14 fund attorneys' fees in an amount not exceeding thirty percent (30%) of the settlement and  
15 reasonable costs and expenses. Additionally, Class Counsel and counsel for Traci  
16 Harrington will also seek incentive awards, not to exceed an aggregate total of twenty  
17 thousand dollars (\$20,000.00), for the Class Representatives and Traci Harrington for their  
18 efforts on behalf of the Settlement Class.

19 8. The cost of the administration will be paid out of the settlement, in an  
20 amount not to exceed fifty thousand dollars (\$50,000). The Parties have secured an  
21 assurance from the selected administrator that, absent extraordinary circumstances not  
22 anticipated by the parties, administration costs should not exceed \$50,000. However, in the  
23 event reasonable administration costs exceed \$50,000, Defendant shall pay such excess.

24 **IV. THE CLASS ACTION SETTLEMENT APPROVAL PROCEDURE**

25 No action brought as a Class action may be settled, compromised, or dismissed  
26 without Court approval.

27 The procedures for submission of a proposed settlement for preliminary approval are  
28 discussed at *Newberg on Class Actions* §11.24-11.26. *Newberg* observes:

1 “When the parties to an action reach a monetary settlement,  
2 they will usually prepare and execute a joint stipulation of  
3 settlement which is submitted to the court for preliminary  
4 approval. The stipulation should set forth the central terms of  
the agreement, including but not limited to, the amount of the  
settlement, form of payment, manner of determining the  
Effective date of settlement and any recapture clause.”

5 Any settlement of Class litigation must be reviewed and approved by the court.  
6 This is done in two steps: an earlier conditional review by the trial court and then a  
7 detailed review during the period in which notice is distributed to the Class members for  
8 their comment or objections. The *Manual for Complex Litigation Second* states at §30.41  
9 (2002):

10 “Approval of Class action settlements involves a two step  
11 process. First, counsel submit the proposed terms of the  
12 settlement and the court makes a preliminary fairness  
13 evaluation. . . . If the preliminary evaluation of the proposed  
14 settlement does not disclose grounds to doubt its fairness or  
15 other obvious deficiencies, such as unduly preferential  
16 treatment of Class representatives or of segments of the Class,  
17 or excessive compensation for attorneys, and appears to fall  
within the range of possible approval, the court should direct  
that notice under Rule 23 (e) be given to the Class members of  
a formal fairness hearing, at which arguments and evidence  
may be presented in support of and in opposition to the  
settlement. For economy, courts have in appropriate cases  
permitted the notice under Rule 23 (c)(2) to be combined with  
the Rule 23(e) notice.”

18 Thus, the preliminary approval of the trial court is simply a conditional finding that  
19 the settlement appears to be within the range of acceptable settlements. As *Newberg*  
20 comments:

21 “The strength of the findings made by a judge at a preliminary  
22 hearing or conference concerning a tentative settlement proposal  
23 may vary. The court may find that the settlement proposal  
24 contains some merit, is within the range of reasonableness  
required for a settlement offer, or is presumptively valid subject  
only to any objections that may be raised at a final hearing.”

25 This Court will ultimately determine the reasonableness of any attorneys’ fees or  
26 repayment of costs advanced by Plaintiffs’ counsel. These are matters always set in the  
27 Court’s discretion after reviewing the applications. The Court must also factor in  
28 objections raised by Class members (the criteria for approval of final settlement are set

1 forth at *Newberg* commencing at §11.41). Class Plaintiffs request that this Court take the  
2 initial steps in this process by granting preliminary approval of the Settlement.

3 **V. THE PROPOSED SETTLEMENT FULFILLS ALL**  
4 **CRITERIA FOR PRELIMINARY SETTLEMENT APPROVAL**

5 The preliminary approval stage is an “initial assessment” of the fairness of the  
6 proposed settlement to be made by the Court on the basis of written submissions and  
7 informal presentations from the settling parties, if requested by the Court. These  
8 requirements have been fulfilled in the instant case by the submission to this Court of this  
9 Memorandum and Declaration of Mike Arias.

10 The purpose of this preliminary evaluation is simply to determine whether the  
11 proposed Settlement is within the range of possible approval and thus whether notice to the  
12 class of the terms and conditions and the scheduling of a formal fairness hearing is  
13 worthwhile. (*See, Newberg on Class Actions, Settlement of Class Actions, §11.25; see*  
14 *also, Liebman v. J.W. Petersen Coal & Oil Co.* (N.D. Ill. 1973) 73 F.R.D. 531). Whether  
15 the settlement is within the range of approval in turn involves an initial examination by the  
16 *court* of the terms of the settlement to determine whether the proposal appears “reasonable  
17 on its face.” (*See, Magana v. Platzer Shipyard, Inc.*, (S.D. Tex. 1977) 74 F.R.D. 61, 79.  
18 Additionally, California courts favor class action settlement. *See, Stambaugh v. Superior*  
19 *Court* (1976) 62 Cal.App.3d 231, 236.

20 In reviewing a class action settlement for preliminary approval, the court has broad  
21 powers to determine whether a proposed settlement is fair under the circumstances of the  
22 case. *See, Mallick v. Superior Court* (1979) 89 Cal.App.3d 434, 438. To grant preliminary  
23 approval of any class action settlement, the court need find only that the settlement falls  
24 within the range of possible final approval. *See, 2 Newberg on Class Actions, Settlement of*  
25 *Class Actions, §11.25; see also, Holden v. Burlington Northern, Inc.*, (D. Minn. 1987) 665  
26 F.Supp. 1398, 1402; *In re Montgomery County Real Estate Antitrust Litigation* (D. Md.  
27 1979) 83 F.R.D. 305, 313.

28 There are three steps to the Court’s settlement approval process: (1) preliminary

1 approval of the proposed settlement at an informal hearing; (2) dissemination of notice of  
2 *the* settlement to all affected class members; and (3) a “formal fairness hearing,” or final  
3 settlement approval hearing, at which class members may be heard regarding the  
4 settlement, and at which evidence and argument concerning the fairness, adequacy, and  
5 reasonableness of the settlement is presented. The foregoing three-step settlement approval  
6 process is prescribed by the Manual for Complex Litigation, Third (Federal Judicial Center  
7 1995) §30.41, is widely followed by federal courts, and has been adopted by California  
8 courts. (Manual for Complex Litigation, Third §30.41 (2003); *see also*, *Bell v. American*  
9 *Title Ins. Co.* (1991) 226 Cal.App.3d 1589, 1599-1602 [describing settlement approval  
10 process]). This Settlement is extremely fair in terms of its net benefits to the Settlement  
11 Class members. The Settlement was the result of extensive discussions and negotiations  
12 between parties and a settlement conference mediated by the Honorable Richard C. Neal  
13 (Ret.) and reached only after Class Counsel and Defendants’ counsel had engaged in  
14 substantial investigation, document review, and extensive written discovery. As this Court  
15 is aware, the claims against the Defendants have been the subject of extensive scrutiny.  
16 Defendants have been represented by able counsel, who has vigorously defended the claims  
17 against the various Defendants. As such, the settlement is reasonable in light of: (1) the  
18 guaranteed continued vigorous representation by counsel, (2) the various defenses to  
19 liability; and (3) the overall difficulties in prosecuting an action of this nature. In short, the  
20 settlement has no deficiencies that would require this Court to reject the proposed  
21 settlement.

22 The Court should grant preliminary approval of a Class action settlement "if the  
23 preliminary evaluation of the proposed settlement does not disclose grounds to doubt its  
24 fairness or other obvious deficiencies, such as unduly preferential treatment of Class  
25 representatives or of segments of the Class, or excessive compensation for attorneys, and  
26 appears to fall within the range of possible approval...." *See*, *Manual for Complex*  
27 *Litigation*, Third, § 30.41 (West 2002); *see also*, *In re Shell Oil Refinery*, 155 F.R.D. 552,  
28 555(E.D.La1993) ("finding that, at the preliminary approval stage, the Court's only task is

1 to determine whether "the proposed settlement appears to be the product of serious,  
2 informed, non-collusive negotiations, has no obvious deficiencies, does not improperly  
3 grant preliminary preferential treatment to Class representatives or segments of the Class,  
4 and falls within the range of possible [judicial] approval.").

5 Certification fulfills all the due process criteria where, as here, the settlement is  
6 evaluated by an informed court, and where, as here, the court utilizes a settlement approval  
7 process which includes notice to the Class and an opportunity to be heard.

#### 8 VI. CLASS SETTLEMENT NOTICE

9 The proposed notice meets the standards of applicable law. The method and the  
10 content of the notice to class members should be designed to fairly apprise them of the  
11 terms of the proposed settlements and the options available to them. *See, Philadelphia*  
12 *Housing Authority v. American Radiators & Standard Sanitary Corp.* 323 F.Supp. 364, 378  
13 (E.D. Pa. 1970). An appropriate notice is one which has a reasonable chance of reaching a  
14 substantial percentage of the class members. *See, Cartt v. Superior Court* (1975) 50  
15 Cal.App.3d 960, 974.

16 The proposed notices identify the settling Plaintiffs and Defendants, as well as a  
17 description of the lawsuit, the settlement classes, the settlement amounts, the proposed plan  
18 of allocation and the attorneys' fees that plaintiffs' counsel may receive. Furthermore, the  
19 proposed notices contain information on objecting to the settlement, as well as the schedule  
20 for the final approval hearing. In short, the proposed notice describes the proposed  
21 settlement with enough specificity to allow class members to receive sufficient information  
22 to decide whether they should accept the benefits offered or object to the settlement.

23 Further, *FRCP* Rule 23(c)(2) requires that all members of the Class that can be identified  
24 shall receive notice of the proposed settlement. Additionally, *CRC* Rule 1859(f) requires  
25 that:

26 "If the court has certified the action as a Class action, notice of  
27 the final approval hearing must be given to the Class members  
28 in the manner specified by the court. The Notice must contain  
an explanation of the proposed settlement and procedures for  
Class members to follow in filing written objections to it and in  
arranging to appear at the settlement hearing and state any

1 objections to the proposed settlement.”

2 Within thirty (30) days of the date on which the Court grants Preliminary Approval,  
3 the Class Administrator shall cause notice describing the proposed settlement and the  
4 Fairness Hearing to be provided to the Class Members as provided in the Settlement  
5 Agreement. Additionally, attached to the Notice are the Request for Exclusion form and  
6 the Proof of Claim for Vacation Pay Sub-Class.

7 The Proposed class notice and attachments will be mailed by the Class  
8 Administrator via first-class mail postage prepaid, to each member of the Class. (The  
9 Proposed Class Notice, Request for Exclusion form, and Proof of Claim for the Vacation  
10 Pay Sub-Class form are attached hereto as Exhibits “B”, “C” and “D” respectively.)  
11 Defendant shall make reasonable efforts to provide Class Plaintiffs' counsel with the last  
12 known names and addresses for each member of the Class. Said information will be  
13 provided in a reasonably accessible format (such as Excel or Access) that may include,  
14 without limitation, mailing label format. Prior to mailing the notice, the Class  
15 Administrator shall utilize the services of National Change of Address (NCOA) to correct  
16 any addresses as necessary. For any notice returned for the first time with a new address  
17 provided by the postal service, the Class Administrator shall utilize the new address and  
18 mail the notice a second time. For any notice returned for the first time by the postal  
19 service without a new address provided by the postal service, the Class Administrator shall  
20 perform one skip trace to obtain a current address for the Class Member in question and  
21 shall mail the notice a second time within five (5) days of receiving the notice of invalid  
22 address. The Class Administrator shall thereafter have no further obligation to seek a  
23 current address.

24 After the entry of the Preliminary Approval Order, counsel for Class Plaintiffs shall  
25 move the Court for an Order Granting Approval of the Class Notice, the Request for  
26 Exclusion form and the Proof of Claim form for the Vacation Pay Sub-Class.

27 ///

28 ///

1 **VII. CONCLUSION**

2 Based upon the foregoing, Class Plaintiffs respectfully request that this Court grant  
3 preliminary approval of the proposed Settlement between the Class and the Defendants by  
4 entering an order preliminarily approving the settlement.

5 Dated: July 29, 2005

ARIAS, OZZELLO & GIGNAC, LLP

6  
7 By: \_\_\_\_\_

8 MIKE ARIAS, ESQ.  
9 MARK A. OZZELLO, ESQ.  
10 MIKAEL H. STAHL, ESQ.  
11 ERIK J. EKBLAD, ESQ.  
12 Attorneys for Plaintiffs

RICHARD E. QUINTILONE II  
QUINTILONE & ASSOCIATES

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14 CALLAHAN & BLAINE  
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**DECLARATION OF MIKE ARIAS**

I, MIKE ARIAS, declare:

1. I am an attorney at law, duly licensed to practice before all courts in the States of California, New York, New Jersey and the District of Columbia. I am a partner in the firm of Arias, Ozzello & Gignac, LLP. I am also lead counsel for the Class. I am personally familiar with the matters stated herein, and if called upon to testify, I could and would testify accordingly.

2. I and my firm have been involved as lead counsel, liaison counsel, or co-counsel in well over 50 class actions.

3. As one of the Class Counsel who has taken the lead role in the matter, I have been actively involved in all aspects of the litigation in this matter. In addition to preparing many of the documents generated in this matter on behalf of Class Plaintiffs, I have reviewed each and every document generated by all the parties in the instant action.

4. I have also participated in most, if not all of the proceedings held in this matter, including without limitation, the mediation before the Honorable Richard C. Neal (Ret.) in this matter in addition to participating in several informal settlement discussions with Defense Counsel.

5. Based upon the investigation, research, motion practice, document review, discovery and analysis, my personal knowledge and experience, I believe the Settlement terms and conditions are in the best interests of the members of the Class. I further believe the Settlement is fair, reasonable and adequate.

6. The three (3) Class Representatives that aided not only the attorneys, but the entire class are: Michelle Miller, Tyson Thomas, and Jeremy Pittario.

7. The total amount of the Settlement Fund is one million six hundred twenty-five thousand dollars and zero cents (\$1,625,000.00).

8. Class Plaintiffs' counsel will request the Court to award from the settlement fund attorneys' fees in an amount not exceeding thirty percent (30%) of the settlement and

1 reasonable costs and expenses. Additionally, Class Counsel and counsel for Traci  
2 Harrington, plaintiff in *Harrington v. Ruth's Chris Steak House* (Los Angeles Superior  
3 Court Case No. BC324571), will also seek an award, not to exceed an aggregate total of  
4 twenty thousand dollars (\$20,000.00) for the Class Representatives and Traci Harrington  
5 and for their efforts on behalf of the Settlement Class.

6 9. The cost of the administration will be paid out of the settlement, in an  
7 amount not to exceed fifty thousand dollars (\$50,000). The Parties have secured an  
8 assurance from the selected administrator that, absent extraordinary circumstances not  
9 anticipated by the parties, administration costs should not exceed \$50,000. However, in the  
10 event reasonable administration costs exceed \$50,000, Defendant shall pay such excess.

11 10. A true and correct copy of the Settlement Agreement is attached to the  
12 Motion for Preliminary Approval of Settlement as Exhibit "A".

13 11. A true and correct copy of the Proposed Class Notice, Request for Exclusion  
14 form, and Proof of Claim for the Vacation Pay Sub-Class form are attached to the Motion  
15 for Preliminary Approval of Settlement, as Exhibits "B", "C", and "D" respectively.

16 I declare under penalty of perjury under the laws of the State of California that the  
17 foregoing is true and correct.

18 Executed this 29<sup>th</sup> of July, 2005, at Los Angeles, California.

19  
20  
21   
22 MIKE ARIAS, Declarant  
23  
24  
25  
26  
27  
28