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Attorneys for Plaintiff Edwin Molina

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

EDWIN MOLINA, an individual,

Plaintiff,

vs.

SBR EXPRESS, INC., a California
corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No.: 20STCCV46159

CLASS AND PAGA ACTION COMPLAINT

[Assigned For All Purposes to
Hon. Elihu M. Berle]

**SUPPLEMENTAL MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT; MEMORANDUM
OF POINTS AND AUTHORITIES**

Date: September 28, 2022

Time: 10:00 a.m.

Place: Department 6

1 **TO THE HONORABLE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on September 28, 2022 at 10:00 a.m., or as soon thereafter as
3 counsel may be heard, in Department 6 of the above-captioned court, located at 312 North Spring Street,
4 Los Angeles, California 90012, the Honorable Elihu M. Berle presiding, Plaintiff Edwin Molina will,
5 and hereby does, move this Court to:

6 1. Preliminarily approve the settlement set forth in the Revised Joint Stipulation of Class
7 Action Settlement and Release, attached as Exhibit 1 to the Declaration of Arnab Banerjee ISO
8 Supplemental Motion for Preliminary Approval of Class Action Settlement.

9 2. Conditionally certify the proposed Settlement Class;

10 3. Appoint Edwin Molina as the representative for the Settlement Class;

11 4. Appoint Banner Law Group P.C. and Mehtani Law Offices, P.C. as Class Counsel;

12 5. Approve distribution of the proposed Notice of Class Action Settlement to the
13 Settlement Class;

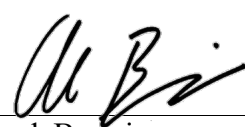
14 6. Appoint ILYM Group, Inc. as the Settlement Administrator; and

15 7. Set a hearing date for final approval of the settlement.

16 This Motion is based upon: (1) this Notice of Motion and Motion; (2) the Supplemental
17 Memorandum of Points and Authorities in support of Motion for Preliminary Approval of Class Action
18 Settlement; (3) the Declaration of Arnab Banerjee; (4) the Revised Joint Stipulation of Class Action
19 Settlement and Release; (5) the Revised Notice of Class Action Settlement; (6) the Revised [Proposed]
20 Order Granting Preliminary Approval of Class Action Settlement; (7) the Declaration of Edwin Molina
21 and (8) upon such other documentary and oral evidence or argument as may be presented to the Court at
22 or prior to the hearing of this Motion.

23 Dated: August 15, 2022

Respectfully submitted,

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25 By: 

26 Arnab Banerjee

27 **BANNER LAW GROUP, P.C.**

28 Attorney for Plaintiff Edwin Molina

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By: /s/ Aanand Mehtani
Aanand Mehtani

MEHTANI LAW OFFICES

Attorney for Plaintiff Edwin Molina

SUPPLEMENTAL MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

On July 14, 2022, the Court held a hearing on Plaintiff Edwin Molina's ("Plaintiff") motion preliminary approval of the Joint Stipulation of Class Action Settlement and Release. The Court asked the Parties to address the following concerns regarding the documents submitted:

- (1) Correct a typo regarding the settlement amount on the class notice which was different from the settlement agreement.
- (2) Revise the settlement agreement so that the release of claims is based on the funding of the settlement and not the effective date.
- (3) Revise the settlement agreement so that it does not prohibit Plaintiff or class counsel from discussing the terms of the settlement with class members and/or putative class members prior to filing for preliminary approval.
- (4) Revise the settlement agreement and notice so that the release language is identical
- (5) Revise the settlement agreement so that the PAGA release is specifically states that their PAGA claims will be released with or without opt-out.
- (6) Confirm that the settlement documents were submitted to the LWDA / DIR
- (7) Confirm the fee splitting agreement if any between Class Counsel
- (8) Explain why Plaintiff is receiving both a class representative enhancement payment and a payment for the general release of his individual claims.

Plaintiff has addressed each of these issues in the Revised Joint Stipulation of Class Action Settlement and Release,¹ the Revised Notice to Class Members which is Exhibit A to the Revised Settlement Agreement, the Declarations of Arnab Banerjee and Edwin Molina and this Supplemental Motion for Preliminary Approval.

¹ Hereinafter "**Revised Settlement Agreement**," attached as Exhibit 1 to the Declaration of Arnab Banerjee ISO Supplemental Motion for Preliminary Approval of Class Action Settlement. The Revised Notice to Class Members attached to the Revised Settlement Agreement as Exhibit A hereinafter "**Revised Notice**").

II. SETTLEMENT TERMS

The principal settlement terms, which were not changed by any of the revisions, if approved, would provide considerable monetary relief for the approximately thirty-three (“33”) current and former employees of Defendant SBR Express, Inc. (“Defendant” and, collectively with Plaintiff, the “Parties”). As a reminder, the principal terms of the settlement provide for the following:

- (1) A Settlement Class defined as: All non-exempt or hourly paid drivers of Defendants who worked in California from December 3, 2016, through the date that the Court preliminarily approves the Settlement (“Class Members”).
- (2) A non-reversionary Gross Settlement Amount of \$238,750. The Gross Settlement Amount includes:
 - (a) Settlement Administration Costs (\$10,000.00)
 - (b) PAGA Settlement Amount (\$10,000.00),
 - (c) Class Representative Enhancement Payment (\$5,000), and the General Release Payment (\$10,000).
 - (b) Attorneys’ fees in the amount of one-third of the Gross Settlement Amount (or \$79,583.33), and litigation costs and expenses not to exceed \$15,000, to Banner Law Group, P.C. and Mehtani Law Offices (“Plaintiff’s Counsel”).

The Settlement was negotiated by the Parties at arm’s length after two mediations with Mr. Steve Mehta, Esq. and Mr. Mark Lemke, Esq. respectively. Upon approval, the average net payment to each class member before taxes would be \$3,292.93 from the Net Settlement Fund.

III. REVISIONS AND SUPPLEMENTAL INFORMATION

A. Typo regarding settlement amount

A typo on one part of the settlement agreement and the class notice, indicated that the settlement amount was of \$235,750 instead of \$238,750 (Two Hundred and Thirty-Eight Thousand Seven Hundred and Fifty Dollars)—which is the actual. This has been corrected so that all documents correctly and consistently state that the settlement amount is \$238,750.

(Revised Settlement Agreement ¶ 21 at p. 4 & Revised Class Notice, § 3 at p. 2.)

B. Release Based on Funding Date

Previously, the release of the Settled Claims and the Release of Settled PAGA Claims were based on the Effective Date of the settlement which was defined as: “the first business day following the last of the following occurrences: (i) if no timely objections are filed, or are withdrawn prior to final approval, the date upon which the Court enters an order granting final approval of the Joint Stipulation of Class Action Settlement and Release; or (ii) if a timely objections are filed and not withdrawn or an appeal is filed, then the date of final resolution of that appeal (including any requests for rehearing and/or petitions for *certiorari*), resulting in final and complete judicial approval of the Settlement in its entirety, with no further challenge to the Settlement being possible.”

The Parties have revised the settlement agreement so that the release of the Settled Claims and the Settled PAGA claims will now occur on the Funding Date, which is a newly defined term meaning “the date on which Defendants will deposit the Total Settlement Amount into an account established by the Settlement Administrator, which shall be no later than fourteen (14) business days after the Effective Date.” (Revised Settlement Agreement ¶ 18 at p. 4.)

C. Revised Confidentiality Agreement

The Court flagged two provisions of the original settlement agreement in Paragraphs 65.b-c which prohibited Plaintiff and Class Counsel from discussing the terms of the agreement and the negotiations prior to filing for preliminary approval. The Parties have omitted those provisions in the revision so there is no ambiguity, and they are free to discuss the settlement and all of its terms with any class member or putative class member who wishes to discuss the settlement. (*See* Revised Settlement Agreement ¶ 66.)

D. Consistent Release Language

The Court previously raised the fact that the relase langauge of the settlement agreement and notice, though substantively the same were not listed in the exact way across all documents. Plaintiff has revised the Settlement Agreement so that the release is stated in the exact same way

1 as the Revised Notice. (Revised Settlement Agreement ¶¶ 37-38 at p. 9 & Revised Notice § 4 at
2 p. 4 & § 5 at p. 5.)

3 **E. PAGA Release Notice Language**

4 As stated in the previous section, the PAGA release language has revised so that the
5 language between the Revised Settlement Agreement and Notice are the same. In addition, the
6 notice states in bold all-caps language: **PAGA MEMBERS CANNOT OPT-OUT OR**
7 **EXCLUDE THEMSELVES FROM THE PAGA RELEASE AND WILL RECEIVE A**
8 **PAGA PAYMENT EVEN IF THEY OPT-OUT OF THE CLASS SETTLEMENT.**

9 (Revised Notice § 5 at p. 5.)

10 **F. Notice to the DIR / LWDA**

11 Counsel for Plaintiff’s previously submitted the Settlement Agreement and Motion for
12 Preliminary Approval to the LWDA on May 10, 2022. (Declaration of Arnab Banerjee ISO
13 Supplemental Motion for Preliminary Approval of Class Action Settlement ¶ 2, Exh. 2) On
14 August 15, 2022, counsel for Plaintiff submitted the Revised Settlement Agreement and will
15 submit this supplemental motion to the LWDA on that same day. (*Id.* ¶ 3, Exh. 3)

16 **G. Fee Splitting Agreement**

17 Class Counsel Banner Law Group and Mehtani Law Offices have a 50-50 fee splitting
18 agreement. (*Id.* ¶ 5.) Plaintiff was informed of this agreement and has agreed to the fee
19 splitting agreement in writing. (*Id.*) No other lawyer is receiving any fees from the settlement.
20 (*Id.*)

21 **H. Mr. Molina is Entitled to a Class Representative Enhancement and A**
22 **General Release Payment**

23 The Revised Settlement Agreement provides for both a Class Representative
24 Enhancement and a General Release Payment to be paid to Mr. Molina. Mr. Molina should
25 receive both payments considering the different purposes they serve.

26 “Incentive awards are fairly typical in class action cases . . . Such awards are
27 discretionary and are intended to compensate class representatives for work done on behalf of
28 the class” *Rodriguez v. West Publ’g Corp.*, 563 F.3d 948, 958 (9th Cir. 2009) (citing 4

1 *William B. Rubenstein et al., Newberg on Class Actions* § 11:38 (4th ed. 2008)). These
2 payments work both as an inducement to participate in the suit and as compensation for time
3 spent in litigation activities. *See In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d at 463 (describing
4 the service award as an incentive to the class representatives).

5 Here, as will be explained in further detail in connection with Plaintiff's motion for final
6 approval (and accompanying motion for approval of attorney's fees and class representative
7 enhancement award), Mr. Molina participated in this lawsuit for nearly two years during which
8 he responded to informal discovery, participated remotely in two separate full day mediation,
9 and in total spent over 40 hours trying to vindicate the rights of his fellow employees.

10 (Declaration of Edwin Molina ISO Motion for Preliminary Approval of Class Action Settlement
11 ¶ 5.) Those efforts justify an enhancement award of at least the \$5,000 requested.

12 In addition, Mr. Molina has several individual claims and could have been filed
13 separately in another lawsuit. Specifically, in addition to the wage and hour violations that are
14 the subject of class claims, Mr. Molina has claims for discrimination and retaliation under the
15 Fair Employment & Housing Act and the California Labor Code, respectively. (Molina Decl.
16 ¶¶ 3-5.)

17 In short, Mr. Molina alleges that he was subjected to disparate treatment based on race
18 and that he was ultimately fired for complaining about wage and hour violations. If true, such
19 termination would constitute retaliation under Labor Code sections 98.6 and 1102.5, without
20 limitation. Mr. Molina's FEHA and Labor Code claims are subject to a three-year statute of
21 limitations which will expire in December 2022. The statutory period could be extended further
22 based on Mr. Molina's efforts to exhaust administrative remedies and/or by agreement of the
23 Parties.

24 Mr. Molina's priority has been the class claims and that remains the case. He believes it
25 is most important to address the wrongs on a larger scale on behalf of his colleagues. (Molina
26 Decl. ¶¶ 2, 6.) However, if the Court would allow, the most efficient way to deal with all of Mr.
27 Molina's individual claims would be to settle them now as Mr. Molina is willing to accept
28 Defendant's offer to do so. That offer – \$10,000 – is not excessive in light of the nature of his

1 claims which implicate important employment and civil rights and relate to an involuntary
2 termination of employment.

3 Upon Court approval, the vast majority of the total settlement will go to the class. And
4 Mr. Molina will provide additional consideration for his small individual settlement in the form
5 of a general release of all his known and unknown claims, something no other class member is
6 releasing. This general release is considerably broader than the separate, narrower release
7 required of the Class and courts have frequently recognized that a named plaintiff who is
8 providing a general release in addition to performing the duties as a class representative is
9 entitled to additional compensation. *See Billingshausen v. Tractor Supply Co.*, 306 F.R.D. 245,
10 267-68 (N.D. Cal. 2015) (awarding the plaintiff \$5,000 for the general release along with
11 \$10,000 enhancement payment for services as a class representative); *La Fleur v. Medical*
12 *Management Intern, Inc.*, No. 13-00398-VAP, 2014 WL 2967475, *8 (C.D. Cal. June 25,
13 2014) (finding that the \$15,000 enhancement payment is warranted in part because “the named
14 plaintiffs have released all claims against [defendant], unlike the remainder of the Class”). Thus,
15 Mr. Molina should be awarded his \$10,000 General Release.

16 Notably, the Revised Settlement Agreement (and the original settlement agreement)
17 states that if the General Release amount is not awarded then these claims would not be
18 released. (Revised Settlement Agreement ¶ 50 d. at p. 13.) Thus, if the General Release
19 payment is not approved, another action must be filed to vindicate these separate claims, which
20 will result in unnecessary expense to the Parties without any benefit to the class.

21 **IV. CONCLUSION**

22 The Parties have negotiated a fair and reasonable settlement of claims. Having addressed
23 the Court’s concerns regarding the settlement, the Parties request that the Court preliminarily
24 approve the settlement.

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Respectfully submitted,

Dated: August 15, 2022

By: 
Arnab Banerjee

BANNER LAW GROUP, P.C.
Attorney for Plaintiff Edwin Molina

Dated: August 15, 2022

/s/ Aanand Mehtani
Aanand Mehtani

MEHTANI LAW OFFICES
Attorney for Plaintiff Edwin Molina