

BANNER LAW GROUP

ARNAB BANERJEE (SBN 252618)
11755 Wilshire Boulevard, Suite 1250
Los Angeles, California 90025
Telephone: 323-426-2991
Facsimile: 323-426-2975
arnab@bannerlawgroup.com

Attorneys for Plaintiff,
Edwin Molina

MEHTANI LAW OFFICES

AANAND MEHTANI (SBN 254556)
2801 Hyperion Avenue, Studio 104
Los Angeles, California 90027
Telephone: 213-291-6900
Facsimile: 213-260-6121
amehtani@mehtanilaw.com

Attorneys for Plaintiff,
Edwin Molina

LEVIAN LAW

K. KEVIN LEVIAN (SBN 227734)
1875 Century Park East, Suite 1025
Los Angeles, California 90067
Telephone: 310.277.7577
kl@levianlaw.com
Attorneys for Defendant, SBR Express, Inc.

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]

**JOINT STIPULATION OF CLASS
ACTION SETTLEMENT AND RELEASE**

Complaint Filed: December 3, 2020

CLASS ACTION SETTLEMENT AGREEMENT AND STIPULATION

1 This Class Action Settlement Agreement and Stipulation is entered into between Plaintiff
2 Edwin Molina ("Plaintiff"), and Defendant SBR Express, Inc. ("Defendant" or SBR") (collectively
3 with Plaintiff, the "Parties").

4 DEFINITIONS

5 1. Action. The "Action" means the class action lawsuit entitled *Molina v. SBR*
6 *Express, Inc.*, filed in the Superior Court of California, Los Angeles County, as case number
7 20STCV46159.

8 2. Agreement. "Agreement" shall refer to the instant Class Action Settlement
9 Agreement and Stipulation.

10 3. Attorneys' Costs. "Attorneys' Costs" refers to the amount to be reimbursed
11 for Class Counsel's litigation costs and expenses accrued in furtherance of the Action, and shall not
12 exceed a total of Fifteen Thousand Dollars and Zero Cents (\$15,000.00).

13 4. Attorneys' Fees. "Attorneys' Fees" refers to the amount to be awarded to
14 Class Counsel for the work it has performed in furtherance of the Action, and shall not exceed
15 Seventy Nine Thousand Five Hundred Eighty Three Dollars and Thirty-Three Cents (\$79,583.33),
16 which is one-third (33 1/3%) of the Total Settlement Amount.

17 5. SBR. "SBR" shall mean, SBR Express, Inc., its subsidiaries, acquired and
18 related entities.

19 6. Class Counsel. "Class Counsel" shall mean, collectively, Aanand Mehtani
20 of MEHTANI LAW OFFICES, and Arnab Banerjee of BANNER LAW GROUP, P.C.

21 7. Class Members, and the Class. "Class Members" (individually, "Class
22 Member") are all current and former employees of SBR who were or are employed in the State of
23 California as hourly or non-exempt employee during the Class Period.

24 8. Class Notice. "Class Notice" means the Notice of Class Action and PAGA
25 Settlement mutually agreed upon by the Parties and approved by the Court to be sent to the Class
26 Members and PAGA Members following preliminary approval that includes the scope of release
27 language for Settled Claims and Settled PAGA Claims, notifies Class Members and PAGA
28 Members of the Settlement, explains the Class Members' options, including how Class Members

1 may opt out or object to the Settlement, and explains the facts and methods based on which the
2 Class Members' and PAGA Members' estimated settlement payments are calculated, substantially
3 in the form attached hereto as **Exhibit A**.

4 9. Class Period. "Class Period" means December 3, 2016 to the date that the
5 Court preliminarily approves the Settlement.

6 10. Complaint. "Complaint" refers to the operative complaint in the Action.

7 11. Court. "Court" refers to the Los Angeles Superior Court or other court that
8 will approve the Agreement.

9 12. Day. "Day" or "days" refers to a calendar day(s) unless otherwise stated. If
10 any designated date or deadline falls on a weekend or holiday, the designated date or deadline will
11 occur on the next business day.

12 13. Defendants. "Defendants" means, collectively unless otherwise stated, SBR
13 Express, Inc.

14 14. Effective Date. "Effective Date" of this Agreement means the first business
15 day following the last of the following occurrences: (i) if no timely objections are filed, or are
16 withdrawn prior to final approval, the date upon which the Court enters an order granting final
17 approval of the Joint Stipulation of Class Action Settlement and Release; or (ii) if a timely
18 objections are filed and not withdrawn or an appeal is filed, then the date of final resolution of that
19 appeal (including any requests for rehearing and/or petitions for *certiorari*), resulting in final and
20 complete judicial approval of the Settlement in its entirety, with no further challenge to the
21 Settlement being possible.

22 15. Final Judgment. "Final Judgment" means the judgment entered and filed by
23 the Court that: (1) finally approves this Agreement; and (2) awards and orders the payment of all
24 required amounts pursuant to the terms of this Agreement (approved Attorneys' Fees, Attorney's
25 Costs, Settlement Payments to Class Members and PAGA Payments to PAGA Members, *etc.*). The
26 Final Judgment will constitute a binding and final resolution, have full *res judicata* effect, and
27 discharge Defendants and Released Parties from liability for any and all claims by Named Plaintiff,
28

all Settlement Class Members as to all Settled Claims, and all PAGA Members and the State of California as to all Settled PAGA Claims as set forth in this Agreement.

16. Final Approval Hearing. “Final Approval Hearing” means the hearing at which the Court shall consider the motion for final approval of this Settlement and determine whether to fully and finally approve the fairness and reasonableness of this Settlement and Agreement, and enter the Final Approval Order and Final Judgment.

17. Final Approval Order. Means the order entered and filed by the Court granting final approval of the Settlement and entry of the Final Judgment.

18. General Release Payment. “General Release Payment” refers to the amount of Ten Thousand Dollars (\$10,000) to Named Plaintiff in exchange for their general release of all known and unknown claims against Defendant.

19. Last Known Address. “Last Known Address” means the most recently recorded mailing address for a Class Member and/or PAGA Member contained in Defendants’ payroll records.

20. Total Settlement Amount. “Total Settlement Amount” means a maximum total payment of Two Hundred and Thirty-Eight Thousand Seven Hundred and Fifty Dollars and Zero Cents (\$235,750.00), payable by Defendants under this Agreement. The Total Settlement Amount includes all: (1) payments to Class Members and payments to PAGA Members; (2) Attorneys’ Fees; (3) Attorney’s Costs; (4) Settlement Administration Costs; (5) LWDA’s portion of the PAGA Allocation; and (6) Service Payment. There will be no reversion of the Class Settlement Amount to Defendants. Except as otherwise stated in this Agreement, Defendants shall not be required to pay any amounts above the Total Settlement Amount to effectuate this Agreement, other than its share of payroll taxes in connection with the wages portion of the Settlement, including FICA, FUTA and SDI contributions (which it will pay in addition to the Total Settlement Amount). Each of the Class Members and PAGA Members shall be responsible for paying any additional taxes due on their settlement payment.

21. Named Plaintiff. “Named Plaintiff” means Plaintiff Edwin Molina.

22. Net Distribution Fund. “Net Distribution Fund” means the Total Settlement Amount, less the amount that the Court awards for: (1) the PAGA Allocation; (2) Attorneys’ Fees; (3) Attorneys’ Costs; (4) Settlement Administration Costs; and (5) Service Payment to Named Plaintiff.

23. Objection. “Objection” means an objection to the Settlement that a Settlement Class Member submits in writing to the Settlement Administrator. Each “Objection” must (1) contain the name, address, and telephone number of the Settlement Class Member objecting and the case name and number of the Action; (2) be signed by the Settlement Class Member; (3) be postmarked or fax stamped on or before the Response Deadline and returned to the Settlement Administrator at the specified address or fax number; and (4) give the legal and factual basis for their objection.

24. Opt Out Request. “Opt Out Request” means a request by a Class Member to be excluded from the Settlement of Settled Claims. Each “Opt Out Request” must (1) contain the name, address, and telephone number of the Class Member requesting exclusion and the case name and number of the Action; (2) be signed by the Class Member; (3) be postmarked or fax stamped on or before the Response Deadline and returned to the Settlement Administrator at the specified address or fax number; and (4) contain a statement something substantially similar to:

“I WISH TO BE EXCLUDED FROM THE SETTLEMENT OF CLASS CLAIMS IN THE *EDWIN MOLINA V. SBR EXPRESS, INC.* LAWSUIT. I UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I WILL NOT RECEIVE AN INDIVIDUAL SETTLEMENT PAYMENT FROM THE SETTLEMENT OF THE LAWSUIT. I UNDERSTAND THAT THE PAGA CLAIM WILL STILL BE RELEASED AND SETTLED.”

25. Parties. “Parties” shall mean Named Plaintiff, individually on behalf of themselves and on behalf of all Class Members, PAGA Members and interests of the LWDA, and Defendants.

26. PAGA Allocation. “PAGA Allocation” refers to the amount of Ten Thousand Dollars (\$10,000) which is allocated to the settlement of the Settled PAGA Claims.

1 27. PAGA Members. “PAGA Members” means all Class Members who are
2 employed or have been employed by Defendant in the State of California during the PAGA Period.

3 28. PAGA Period. “PAGA Period” means the period from December 3, 2019
4 through the date of the Preliminary Approval Order.

5 29. Preliminary Approval Order. “Preliminary Approval Order” is the Order
6 entered and filed by the Court that preliminarily approves the terms and conditions of this
7 Agreement, including approval of the Parties’ Agreement that specifies the content of notice and
8 manner in which notice will be provided to the Class and responded to by the Class.

9 30. Released Parties. “Released Parties” include Defendants and each of their
10 officers, directors, members, partners, owners, shareholders, employees, former employees, agents,
11 servants, attorneys, assigns, affiliates, independent contractors, volunteers, predecessors,
12 successors, parent companies and organizations, insurers, and any and all other persons, firms and
13 corporations in which Defendants may have an interest.

14 31. Response Deadline. The “Response Deadline” means the day that is forty-
15 five (45) days after the date the Class Notice is mailed to Class Members via First-Class U.S. Mail
16 and is the deadline to submit an Opt Out Request, Objection, and/or Dispute.

17 32. Service Payment. “Service Payment” refers to the amount of Five Thousand
18 Dollars (\$5,000) to Named Plaintiff in exchange for their service in furtherance of the Action.

19 33. Settlement. “Settlement” shall refer to the agreement of the Parties to settle
20 the claims as set forth and embodied in this Agreement.

21 34. Settlement Administrator. “Settlement Administrator” shall mean ILYM
22 Group, Inc. a neutral administrator as mutually chosen by the Parties and approved by the Court.

23 35. Settlement Administration Costs. “Settlement Administration Costs” refers
24 to the amount to be paid to the Settlement Administrator for the costs of administering this
25 Settlement, not to exceed Ten Thousand Dollars (\$10,000).

26 36. Settled Claims. “Settled Claims” are all claims, charges, complaints, liens,
27 demands, causes of action, obligations, damages and liabilities, that arise during the Class Period
28 that each Class Member had, now has, or may hereafter claim to have against the Released Parties

1 and that were asserted in the Complaint. The Settled Claims specifically include claims for all
2 alleged violations of the Labor Code and Wage Order cited in the Complaint.

3 37. Settled PAGA Claims. “Settled PAGA Claims” means any of the Settled
4 Claims that may serve as a basis for any claim under the Private Attorneys General Act (“PAGA”)
5 for any of the alleged California Labor Code violations in the Complaint.

6 38. Settlement Class/Settlement Class Member(s). “Settlement Class” or
7 “Settlement Class Member(s)” means all Class Members who have not timely and validly
8 submitted an Opt Out Request.

9 39. Settlement Proceeds Distribution Deadline. “Settlement Proceeds
10 Distribution Deadline” means a date that is fourteen (14) days after the Total Settlement Amount
11 has been deposited by Defendants.

12 40. Updated Address. “Updated Address” means a mailing address that was
13 updated by a reasonable address verification measure of the Settlement Administrator or by an
14 updated mailing address provided by the United States Postal Service for a Class Member or PAGA
15 Member.

16 RECITALS

17 41. The Action was filed on December 3, 2020 in the Superior Court of
18 California, County of Los Angeles. The Complaint alleges various wage and hour claims on behalf
19 of drivers who worked for Defendants from December 3, 2016.

20 42. Defendants filed an answer, and denied all allegations and claims asserted in
21 the Complaint on July 22, 2019.

22 43. Defendants and Class Counsel, on behalf of Named Plaintiff and Class
23 Members, attended mediation with Steve Mehta in July 2021. The matter did not resolve at
24 mediation, and the Parties proceed with formal discovery, including the exchange of written
25 discovery responses, policy documents, extensive time and payroll records for the class. The
26 parties then attended a second mediation on February 27, 2022 with Mark Lemke and were able to
27 resolve the matter.
28

1 44. The Parties agree that the terms and conditions of this Agreement are the
2 result of lengthy, intensive arms-length negotiations between the Parties after the benefit of
3 extensive discovery and assistance from an experienced employment law mediator. The Parties
4 agree that the Agreement is entered into in good faith as to each Class Member and PAGA Member
5 and that the Settlement is fair, reasonable and adequate as to each Class Member and PAGA
6 Member.

7 **TERMS AND CONDITIONS OF SETTLEMENT**

8 NOW THEREFORE, in consideration of the recitals listed above and the promises and set
9 forth below, and intending to be legally bound and acknowledging the sufficiency of the
10 consideration and undertakings set forth herein, Named Plaintiff, individually on behalf of himself
11 and on behalf of the Class Members and PAGA Members and LWDA, on the one hand, and
12 Defendants, on the other hand, agree that the Action shall be, and is finally and fully compromised
13 and settled on the following terms and conditions.

14 45. Non-Admission of Liability. The Parties enter into this Agreement to
15 resolve the Action and to avoid the burden, expense and risk of continued litigation. In entering
16 into this Agreement, Defendants do not admit, and specifically deny, that they have: violated any
17 federal, state, or local law; violated any regulations or guidelines promulgated pursuant to any
18 statute or any other applicable laws, regulations, or legal requirements; breached any contract; or
19 engaged in any other culpable, wrongful or unlawful conduct with respect to its employees or any
20 other person or entity. Neither this Agreement, nor any of its terms or provisions, nor any of the
21 negotiations connected with it or proceedings, payouts, or other events associated with it, shall be
22 construed as an admission or concession by Defendants of any such violation(s) or failure(s) to
23 comply with any applicable law by Defendants or any Released Parties. Except as necessary in a
24 proceeding to approve, interpret, or enforce the terms of this Agreement, this Agreement and its
25 terms and provisions shall not be offered or received as evidence in any action or proceeding to
26 establish any admission on the part of Defendants or to establish the existence of any condition
27 constituting a violation of, or noncompliance with, federal, state, local or other applicable law. The
28 Parties intend this Settlement to be contingent upon the Preliminary and Final Approval of this

1 Agreement; and in the event Final Approval of this Agreement is not obtained, the Parties do not
2 waive, and instead expressly reserve, their respective rights to prosecute and defend the Action as
3 if this Agreement never existed. In the event that Final Approval of this Agreement is denied by
4 the Court, fails to become effective, or is reversed, withdrawn, or modified by the Court or any
5 other court with jurisdiction over the Action, the Agreement shall become null and void *ab initio*
6 and shall have no bearing on, and shall not be admissible in connection with, further proceedings
7 in the Action.

8 46. Stipulation for Class Certification. The Parties stipulate to the certification
9 of the Class for purposes of this Settlement only. If, however, the Settlement does not become final
10 for any reason, the Parties' Agreement shall become null and void *ab initio* and shall have no
11 bearing on, and shall not be admissible in connection with, whether class certification would be
12 appropriate in any other context in the Action.

13 47. Release of Settled Claims. As of the Effective Date, Named Plaintiff and all
14 Settlement Class Members hereby do and shall be deemed to have fully, finally, and forever
15 released, settled, compromised, relinquished, and discharged any and all Settled Claims against any
16 and all Released Parties. The Settlement includes a release of all Settled Claims during the Class
17 Period by Settlement Class Members. The Parties agree that it is their intent that the terms set forth
18 in this Agreement will release any further attempt, by lawsuit, administrative claim or action,
19 arbitration, demand, or other action of any kind, by each and every Settlement Class Member to
20 obtain any recovery based on Settled Claims.

21 a. The Parties agree for settlement purposes only that, because the Class
22 Members are so numerous, it is impossible or impracticable to have each Class Member execute
23 this Agreement. Accordingly, the Class Notice will advise all Class Members of the binding nature
24 of the release of Settled Claims and Settled PAGA Claims and such notice shall have the same
25 force and effect as if the Agreement were executed by each Class Member.

26 b. Named Plaintiff and Class Counsel represent, covenant, and warrant
27 that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign,
28

1 transfer, or encumber to any person or entity any portion of any liability, claim, demand, action,
2 cause of action, or rights herein released and discharged, except as set forth herein.

3 c. The Parties agree that this is a settlement of disputed claims not
4 involving undisputed wages, and that Labor Code Section 206.5 is therefore inapplicable.

5 48. Release of Settled PAGA Claims. As of the Effective Date, Named Plaintiff,
6 individually and on behalf of the State of California and all PAGA Members, hereby does and shall
7 be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and
8 discharged any and all of the Released Parties of and from any and all Settled PAGA Claims. The
9 Parties agree that it is their intent that the terms set forth in this Agreement will release any further
10 attempt, by lawsuit, administrative claim or action, arbitration, demand, or other action of any kind,
11 by each and every PAGA Member to obtain any recovery based on the Settled PAGA Claims.

12 49. Individual Release of Claims for Named Plaintiff. In addition to all other
13 releases set forth in this Agreement, and except as to claims specifically excluded, Named Plaintiff,
14 in consideration of the General Release Payment, makes the additional following general release
15 of all claims, known or unknown: Named Plaintiff releases the Released Parties from all claims,
16 demands, rights, liabilities, and causes of action of every nature and description whatsoever, known
17 or unknown, asserted or that might have been asserted, whether in tort, contract, or for violation of
18 any state or federal statute, rule, or regulation arising out of, relating to, or in connection with any
19 act or omission by or on the part of any of the Released Parties committed or omitted through the
20 execution of this Agreement. Named Plaintiff also specifically agrees and acknowledges that he is
21 waiving all claims under Title VII of the Civil Rights Act of 1964, the Equal Pay Act, the Americans
22 with Disabilities Act, the California Fair Employment and Housing Act, the Family and Medical
23 Leave Act, the Employee Retirement Income Security Act, the California Labor Code, California
24 Government Code, and California Business and Professions Code. (The release set forth in this
25 Paragraph shall be referred to as the "General Release"). Named Plaintiff agrees not to sue or
26 otherwise make a claim against any of the Released Parties that is in any way related to the General
27 Release to the maximum extent permitted by law. The General Release includes any unknown
28 claims Named Plaintiff does not know or suspects to exist in his favor at the time of the General

1 Release, which, if known, might have affected his respective settlement with, and release of, the
2 Released Parties by Named Plaintiff or might have affected his decision not to object to this
3 Settlement or the General Release. With respect to the General Release, Named Plaintiff stipulates
4 and agrees that he shall be deemed to have, and by operation of the Final Judgment shall have,
5 expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights and
6 benefits of Section 1542 of the California Civil Code, which states:

7 **A general release does not extend to claims that the creditor or releasing party**
8 **does not know or suspect to exist in his or her favor at the time of executing**
9 **the release and that, if known by him or her, would have materially affected**
10 **his or her settlement with the debtor or released party.**

11 This General Release shall not affect or bar any claims that Named Plaintiff may have for
12 Unemployment Insurance, claims under the National Labor Relations Act, or the right to receive
13 benefits under any retirement plan or to elect COBRA continuation of health insurance benefits.
14 Nor shall the General Release preclude Named Plaintiff from filing a charge with any applicable
15 administrative agency. Named Plaintiff understands and agrees, however, that by way of the
16 General Release, he individually releases any right to recover monetary damages in an action
17 brought by an administrative agency.

18 50. Settlement Payments and Calculation of Claims. Subject to final Court
19 approval and the conditions specified in this Agreement, and in consideration of the mutual
20 covenants and promises set forth herein, Defendants agree to make a payment or payments as set
21 forth herein totaling an amount of, but not to exceed, the Total Settlement Amount. The Total
22 Settlement Amount shall be apportioned as follows:

23 a. Attorneys' Fees. Class Counsel will apply to the Court for an award
24 of Attorneys' Fees, as defined above. The Attorneys' Fees shall be paid from and be deducted from
25 the Total Settlement Amount, and Defendants will not oppose such application. In the event the
26 Court approves an amount less than one-third (33 1/3%) of the Total Settlement Amount, the
27 unawarded amount shall become part of the Net Distribution Fund for allocation to Settlement
28 Class Members. Any reduction by the Court shall not constitute grounds for revocation or

1 cancellation of this Agreement by Named Plaintiff, however Plaintiff and Class Counsel shall
2 maintain the right to appeal any such reduction.

3 b. Attorneys' Costs. Class Counsel shall request approval of Attorneys'
4 Costs, as defined above, which will be paid and deducted from the Total Settlement Amount.
5 Defendants will not oppose such application. Any unawarded Attorneys' Costs shall become part
6 of the Net Distribution Fund for allocation to Settlement Class Members. Any reduction by the
7 Court shall not constitute grounds for revocation or cancellation of this Agreement by Named
8 Plaintiff, however Plaintiff and Class Counsel shall maintain the right to appeal any such reduction.
9 Attorneys' Fees as specified in the preceding paragraph and Attorneys' Costs as specified in this
10 paragraph shall cover all claimed and unclaimed Attorneys' Fees, Attorneys' Costs, and other
11 amounts payable or awardable against Defendants for Class Counsel's work, effort, or involvement
12 in the Action and in carrying out the Agreement and includes any and all work, effort, or
13 involvement to carry out the terms of the Agreement and as may be potentially or actually necessary
14 or advisable to defend the Agreement and/or Settlement through appeal, or collateral attack or in
15 any other forum or proceeding. These specified Attorneys' Fees and Attorneys' Costs shall be the
16 sole payment for attorneys' fees and costs and, otherwise, the Parties and Class Members and their
17 counsel shall bear their own fees and costs in connection with the Action.

18 c. Settlement Administration Costs. Class Counsel will also apply to
19 the Court for approval of the Settlement Administration Costs, as defined above. Defendants will
20 not oppose such application. Any unawarded amount shall become part of the Net Distribution
21 Fund for allocation to Settlement Class Members. Class Counsel will specify the amount sought
22 for such costs, up to the foregoing maximum, in Named Plaintiff's motion for final approval of the
23 Settlement.

24 d. Named Plaintiff's Service Payment and General Release Payment.
25 Class Counsel will apply to the Court for approval of an enhancement award in an amount not to
26 exceed Five Thousand Dollars and Zero Cents (\$5,000.00) and a General Release Payment of Ten
27 Thousand Dollars and Zero Cents (\$10,000.00) to the Named Plaintiff to be paid from the Total
28 Settlement Amount for assuming the risks associated with this litigation, and in consideration for a

1 General Release of all claims by Named Plaintiff respectively. Defendants will not oppose such
2 applications. Any unawarded amount shall become part of the Net Distribution Fund for allocation
3 to Settlement Class Members. Any reduction by the Court shall not constitute grounds for
4 revocation or cancellation of this Agreement by Named Plaintiff, however if the General Release
5 Payment is awarded, the general release outlined in Paragraph 49 shall be null and void. These
6 payments shall be in addition to the Named Plaintiff's share of the Net Distribution Fund as a
7 settlement class member.

8 e. Employer Payroll Taxes. Defendants agree to pay their respective
9 share of payroll taxes and contributions in connection with the portion of the settlement allocated
10 towards wages (which it will pay in addition to and separate and apart from the Total Settlement
11 Amount).

12 f. PAGA Allocation and Payments. Pursuant to California Labor Code
13 Section 2698, *et seq.*, the Parties designate the PAGA Allocation to resolve the Settled PAGA
14 Claims. Pursuant to the California Labor Code, seventy-five percent (75%) of the PAGA
15 Allocation, which is Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00), will be
16 paid to the LWDA. The remaining Two Thousand Five Hundred Dollars and Zero Cents
17 (\$2,500.00) ("Net PAGA Distribution Amount") shall be paid to PAGA Members on a *pro-rata*
18 basis based on the number of weeks of employment for the PAGA Member during the PAGA
19 Period ("Qualifying PAGA Weeks").

20 g. Settlement Payments to Settlement Class Members. Settlement
21 Payments to the Settlement Class Members will be calculated as follows:

22 i. The Settlement Administrator will determine the number of
23 weeks of employment for each Class Members during the Class Period ("Qualifying Week(s)")
24 based on the Class Members' respective dates of employment minus any periods of leave taken,
25 which will be reflected in the Class List to be provided by Defendants to the Settlement
26 Administrator;

27 ii. Each Class Members is eligible to receive a *pro rata* share of
28 the Net Distribution Fund based on their share of the total number of Qualifying Weeks.

- h. The entire Net Distribution Fund will be disbursed to all Class Members and PAGA Members who do not submit timely and valid Requests for Exclusion. If there are any valid and timely Requests for Exclusion, the Settlement Administrator shall proportionately increase the individual settlement payments according to the number of Qualifying Weeks, so that the amount actually distributed equals 100% of the Net Distribution Fund.
- i. The Parties agree that under no circumstances shall Defendants be obligated to pay any amount under this Agreement to any Class Member other than Settlement Class Members and PAGA Members.
- j. The Parties acknowledge and agree that the formula used to calculate Settlement Payments and PAGA Payments does not imply that all of the elements of damages covered by the release are not being taken into account.

51. No Credit Toward Benefit Plans. The Settlement Payments made to Settlement Class Members and PAGA Payments made to PAGA Members under this Agreement shall not be utilized to calculate any additional benefits under any benefit plans to which any Settlement Class Members or PAGA Members may be eligible, including, but not limited to: profit-sharing plans, bonus plans, 401(k) plans, stock purchase plans, vacation plans, sick leave plans, PTO plans, and any other benefit plan. Rather, it is the Parties' intention that this Agreement will not affect any rights, contributions, or amounts to which any Settlement Class Members and PAGA Members may be entitled under any benefit plans.

52. Taxation of Settlement Proceeds.

a. The Parties agree that the Settlement Payments shall be allocated as follows: twenty-five percent (25%) will be allocated to wages, and subject to all applicable employee state and federal tax withholdings; thirty-three percent (25%) will be considered penalties; and thirty-three percent (50%) shall be allocated to interest and any other non-wage related amount. The payment for wages shall be reported on an IRS Form W-2. The payments for penalties, interest and other non-wage related amounts will be reported on an IRS Form 1099.

b. The PAGA Payments to PAGA Members will be designated entirely as payments for alleged penalties.

c. The Settlement Administrator shall calculate, withhold from the Individual Settlement Payments, and remit to applicable governmental agencies sufficient amounts, if any, as may be owed by Settlement Class Members for applicable employee taxes. The Settlement Administrator will issue appropriate tax forms, as required, to each such Settlement Class Member and PAGA Member consistent with the above allocations.

d. All Parties represent that they have not received, and shall not rely on, advice or representations from other Parties or their agents regarding the tax treatment of payments under federal, state, or local law. In this regard, Defendants make no representations regarding the taxability of the Settlement Payments, PAGA Payments, or any other payments made under this Agreement.

e. Each Class Counsel will be issued an IRS Form 1099 for the Attorneys' Fees and Attorneys' Costs awarded by the Court.

f. Named Plaintiff will be issued IRS Form 1099s for any Service Payment approved by the Court. The Service Payment payable to Named Plaintiff shall be in addition to the Settlement Payments and PAGA Payments that he receives.

53. Provisional Approval of Settlement. Named Plaintiff shall file a motion in the Action and take all other necessary steps to request that the Court enter the Preliminary Approval Order based on an agreed-upon Settlement schedule, subject to Court approval, including:

a. Seeking class certification on the terms set forth in this Agreement solely for purposes of Settlement;

b. Preliminarily approving the proposed Settlement and this Agreement, including the payments to the Settlement Class Members, Class Counsel, Named Plaintiff, PAGA Members, the Settlement Administrator, and the LWDA;

c. Preliminarily approving the appointment of Named Plaintiff as a representative of the Class for settlement purposes;

d. Preliminarily approving the appointment of counsel for Named Plaintiff as Class Counsel;

e. Appointing and approving the Settlement Administrator, to comply with the duties and obligations as required by this Agreement;

f. Approving the form of the Class Notice mutually agreed by the Parties;

g. Scheduling the Final Approval Hearing for consideration of Final Approval of this Agreement; and

h. Approving the procedure to submit an Opt Out Request, Objection, or Dispute;

Defendants shall not oppose Class Counsel's motion for Preliminary Approval and Final Approval of the Settlement so long as the motions and supporting papers are consistent with the terms of this Agreement.

54. Notice Procedure.

a. *Class and PAGA Member Data.* Within fifteen (15) days after entry of the Preliminary Approval Order, Defendants shall provide to the Settlement Administrator and Class Counsel a data file that identifies for each individual, his/her/their full name, last-known address, Social Security number, and the data necessary to determine Qualifying Weeks and, if applicable, Qualifying PAGA Weeks for each Class Member (collectively referred to as the "Class List," Social Security numbers may be redacted from the list provided to Class Counsel). The Settlement Administrator will keep the Class List confidential and shall not provide to anyone, absent express written approval from Defendants, and shall use it only for the purposes described herein, take adequate safeguards to protect confidential or private information, and return or certify the destruction of the information upon completion of the Settlement Administration process.

b. *Settlement Administrator Duties.* Prior to mailing the Class Notice, the Settlement Administrator will update the addresses for the Class Members and PAGA Members using the National Change of Address database and other available resources deemed suitable by the Settlement Administrator. To the extent this process yields a different address from the one

1 supplied by Defendants (“Updated Address”), that Updated Address shall replace the address
2 supplied by Defendants (i.e., Last Known Address) and be treated as the new Last Known Address
3 for purposes of this Agreement and for subsequent mailings in particular.

4 c. *Notice Process.* Within fourteen (14) days following receipt of the
5 Class List, the Settlement Administrator shall prepare and mail the approved Class Notice. The
6 Settlement Administrator shall deliver the Class Notice by First-Class U.S. Mail to each Class
7 Member and PAGA Member’s Last Known Address or Updated Address (if applicable).

8 d. *Opt Out Request.* Any Class Member may exclude himself or herself
9 from the Settlement. Any such Opt Out Request must be submitted to the Settlement Administrator
10 in writing on or before the Response Deadline. Opt Out Requests do not apply to the Settled PAGA
11 Claims and will not exclude PAGA Members from the release of Settled PAGA Claims.

12 e. *Objections.* Any Settlement Class Member may object to the
13 Settlement by submitting an Objection to the Settlement Administrator on or before the Response
14 Deadline. The Parties shall be permitted to file responses to any Objections no later than five (5)
15 court days prior to the Final Approval Hearing. At no time shall any of the Parties or their counsel
16 seek to solicit or otherwise encourage Settlement Class Members to submit any Objections to the
17 Settlement or appeal from the Final Approval Order and/or Final Judgment. Class Counsel shall
18 not represent any Settlement Class Members with respect to any such Objections. The Settlement
19 Administrator shall provide all Objections to the Parties within five days of receipt.

20 f. *Disputes.* Class Members will have the right to challenge the number
21 of Qualifying Weeks and/or Qualifying PAGA Weeks allocated to them. Class Members shall
22 have until the Response Deadline to submit to the Settlement Administrator their dispute *in writing*
23 (“Dispute”) at the address indicated on the Class Notice. Each Dispute must (1) contain the name,
24 address, and telephone number of the Class Member and the case name and number of the Action;
25 (2) be signed by the Class Member; (3) be postmarked or fax stamped on or before the Response
26 Deadline and returned to the Settlement Administrator at the specified address or fax number; (4)
27 clearly state the number of Qualified Weeks and/or Qualified PAGA Weeks they believe is correct;
28 and (5) attach any documentary evidence the Class Member has to prove the number of contented

1 Qualified Weeks and/or Qualified PAGA Weeks. Defendants shall have the right to respond to any
2 Dispute submitted by any Class Members. The Settlement Administrator will inform Class Counsel
3 and Defendants' Counsel in writing of any timely-submitted Disputes and will determine all such
4 Disputes. Subject to Court approval, Disputes will be resolved without hearing by the Settlement
5 Administrator, who will make a decision based on Defendants' records and any documents or other
6 information presented by the Class Member making the Dispute, Class Counsel, or Defendants.

7 g. *Settlement Administrator Follow-up efforts.*

8 i. The Settlement Administrator shall re-mail by First-Class
9 U.S. mail the Class Notice returned by the Post Office with a forwarding address, and shall re-mail
10 by First-Class U.S. mail the Class Notice to any individual who personally provides an updated
11 address to the Settlement Administrator.

12 ii. In the event that the first mailing of the Class Notice to any
13 Class Member and PAGA Member is returned without a forwarding address, the Settlement
14 Administrator will immediately perform a skip trace search using social security numbers provided
15 by Defendants and National Change of Address searches, as needed, to obtain an updated mailing
16 addresses.

17 h. *Documenting Communications.* The Settlement Administrator shall
18 date stamp documents it receives, including Opt Out Requests, Objections, Disputes and any
19 correspondences and documents from Class Members and PAGA Members.

20 i. *Settlement Administrator Declaration.* At least ten (10) days prior to
21 the filing of the motion for final approval, the Settlement Administrator shall prepare, subject to
22 the Parties' input and approval, a declaration setting forth the due diligence and proof of mailing
23 of the Class Notice, the results of the Settlement Administrator's mailings, including tracing and
24 re-mailing efforts, and the Class Members' and PAGA Members' responses to those mailing, and
25 provide additional information deemed necessary to approve the settlement.

26 j. *Settlement Administrator Written Reports.* Each week after initially
27 mailing the Class Notices and prior to the Response Deadline, the Settlement Administrator shall
28 provide the Parties with a report listing the number of Class Members that submitted Opt Out

1 Requests and Objections. Within ten (10) days after the Response Deadline, the Settlement
2 Administrator will provide a final report listing the number of Class Members who submitted Opt
3 Out Requests or Objections.

4 k. *Settlement Administrator Calculations of Settlement Payments.*
5 Within seven (7) days after resolving all timely-submitted Disputes made by Settlement Class
6 Members, and following the Final Approval Order, the Settlement Administrator shall provide to
7 the Parties a report showing its calculation of all Settlement Payments to be made to Settlement
8 Class Members and PAGA Payments to be made to PAGA Members. After receiving the
9 Settlement Administrator's report, Class Counsel and Defendants' counsel shall review the same
10 to determine if the calculation of payments to Settlement Class Members and PAGA Members is
11 consistent with this Agreement, and shall notify the Settlement Administrator if either counsel does
12 not believe the calculation is consistent with the Agreement. After receipt of comments from
13 counsel, the Settlement Administrator shall finalize its calculation of Settlement Payments and
14 PAGA Payments, at least five (5) days prior to the distribution of such payments, and shall provide
15 Class Counsel and Defendants' Counsel with a final report listing the amount of all payments to be
16 made to each Settlement Class Member from the Net Distribution Fund and listing the amount of
17 all payments to be made to each PAGA Member from the Net PAGA Distribution Amount. The
18 Settlement Administrator will also provide information that is requested and approved by both
19 Parties regarding its duties and other aspects of the Settlement and that is necessary to carry out the
20 terms of the Settlement.

21 55. Requirements for Recovery of Settlement Payments.

22 a. *Class Members.* No claim form is necessary to participate in the
23 Settlement. Unless a Class Member submits a valid and timely Opt Out Request, that Class
24 Member will be a Settlement Class Member, bound by the Final Judgment, and will receive a
25 payment from the Net Distribution Fund (i.e., a Settlement Payment). All Class Members except
26 for those who timely and validly opt out of the Settlement (i.e., Settlement Class Members) shall
27 be bound by the release of Settled Claims in this Agreement.
28

1 b. *PAGA Members.* All PAGA Members shall be bound by the release
2 of Settled PAGA Claims in this Agreement.

3 c. *Late Submissions.* The Settlement Administrator shall not accept as
4 valid any Opt Out Request postmarked after the Response Deadline. It shall be presumed that, if
5 an Opt Out Request or Objection is not postmarked by, facsimiled, or otherwise received on or
6 before the Response Deadline, the Class Member did not return the Opt Out Request or Objection
7 in a timely manner.

8 d. *Opt-Out Procedure.* A Class Member will not be entitled to opt out
9 of the Settlement established by this Agreement unless they submit to the Settlement Administrator
10 a timely and valid Opt Out Request.

11 i. The Settlement Administrator shall not have the authority to
12 extend the deadline for Class Members to submit an Opt Out Request absent agreement by both
13 Parties.

14 ii. Class Members shall be permitted to rescind in writing their
15 Opt Out Request by submitting a written rescission statement to the Settlement Administrator no
16 later than the filing date of the motion for Final Approval.

17 iii. If more than fifteen percent (15%) of the Class Members
18 timely opt out of the Settlement, Defendants shall have the sole and absolute discretion to withdraw
19 from this Agreement within seven (7) days after the Response Deadline and written notice from the
20 Settlement Administrator of the final opt out rate. Defendants shall provide written notice of such
21 withdrawal to Class Counsel. In the event that Defendants elect to so withdraw, the withdrawal
22 shall have the same effect as a termination of this Agreement for failure to satisfy a condition of
23 Settlement, and the Agreement shall become null and void and have no further force or effect and
24 Defendants will be responsible for any and all Settlement Administration Costs incurred thus far.

25 56. Final Approval Hearing and Final Judgment.

26 a. *Entry of Final Judgment.* At the Final Approval Hearing, Named
27 Plaintiff will request, and Defendants will concur in said request, that the Court enter a Final
28 Judgment.

1 b. *Motion.* Named Plaintiff will draft and file a motion for final
2 approval in conformity with any requirements from the Court and will take other action to request
3 the entry of Final Judgment in accordance with this Agreement. In conjunction with the motion
4 for final approval and requesting an award of Attorneys' Fees, Attorneys' Costs, and Service
5 Payment, Class Counsel shall file a declaration from the Settlement Administrator confirming that
6 the Class Notice was mailed to all Class Members as required by this Agreement, as well as any
7 additional information Class Counsel, with the input and approval of Defendants, deems
8 appropriate to provide to the Court.

9 c. *Order.* The Parties shall take all reasonable efforts to secure entry of
10 the Final Approval Order and Final Judgment. If the Agreement does not become final for any
11 reason, this Agreement shall be void *ab initio*, and Defendants shall have no obligation to make
12 any payments under the Agreement. The Parties jointly agree pay any Settlement Administration
13 Costs incurred up to that point. Named Plaintiff will submit a proposed Final Approval Order, the
14 Final Approval Order shall contain the following provisions, or provisions equivalent to the
15 following:

16 i. Wherein the Court enters Final Judgment, finding that this
17 Agreement and Settlement is fair, just, equitable, reasonable, adequate, and in the best interests of
18 the Class and was reached as a result of intensive, serious, and non-collusive arms-length
19 negotiations and was achieved with the aid of an experienced mediator and in good faith as to each
20 Class Member;

21 ii. That affirms that each side will bear its own costs and fees
22 (including attorneys' fees), except as provided by the Agreement, and that Defendants shall not be
23 required to pay any amounts other than as set forth in the Agreement;

24 iii. That confirms the certification of the Class for purposes of
25 Settlement only;

26 iv. That finds that the Settlement Administration process as
27 carried out afforded adequate protections to Class Members, provided the best notice reasonably
28 practicable, and satisfied the requirements of law and due process;

- 1 v. That rejects any objections (if any) to the Settlement;
- 2 vi. That approves the settlement of Settled PAGA Claims
- 3 consistent with the Settlement;
- 4 vii. That retains Court jurisdiction after entry of judgment to
- 5 oversee administration and enforcement of the terms of the Agreement; and
- 6 viii. That requires the Parties to carry out the provisions of this
- 7 Agreement.

8 57. Notice to the Labor and Workforce Development Agency. Class Counsel is

9 responsible for complying with all requirements of the PAGA governing notice to the LWDA of

10 settlement and/or final judgment. Specifically, Class Counsel will provide a copy of the proposed

11 settlement to the LWDA at the same time that it is submitted to the Court and will further provide

12 a copy of the Court's judgment to the LWDA within ten (10) days after entry of judgment or order

13 as required by Labor Code sections 2699(1)(2)-(3).

14 58. Payment of Settlement. Defendants will deposit the Total Settlement

15 Amount into an account established by the Settlement Administrator within fourteen (14) business

16 days of the Effective Date.

17 a. The Parties agree that the Total Settlement Amount will qualify as a

18 settlement fund pursuant to the requirements of Section 468(B)(g) of the Internal Revenue Code of

19 1986, as amended, and Section 1.468B-1 *et seq.* of the income tax regulations. Furthermore, the

20 Settlement Administrator is hereby designated as the "Administrator" of the qualified Settlement

21 funds for purposes of Section 1.468B-2(k) of the income tax regulations. As such, all employee

22 taxes imposed on the gross income of that settlement fund and any tax-related expenses arising

23 from any income tax returns or other reporting documents that may be required by the Internal

24 Revenue Service or any state or local taxing body will be paid from the Net Distribution Fund by

25 the Settlement Administrator.

26 b. The Settlement Administrator shall be deemed to have timely

27 distributed Settlement Payments and PAGA Payments if it places said payments in the mail (First-

28 Class U.S.). If the Settlement Administrator receives notice from Settlement Class Members or

1 PAGA Members that they have not received their settlement check due to changes of address or
2 other circumstances, the Settlement Administrator shall make reasonable efforts to ensure the initial
3 payment is cancelled and re-mail the Settlement Payment to the Settlement Class Member and/or
4 PAGA Payment to the PAGA Member.

5 c. The distribution of Attorneys' Fees, Attorneys' Costs, and the
6 Service Payment shall occur no later than the Settlement Proceeds Distribution Deadline.

7 59. Settlement Class Members who are sent Settlement Payments and PAGA
8 Members who are sent PAGA Payments shall have ninety (90) days after mailing by the Settlement
9 Administrator to cash their settlement checks.

10 60. If such Settlement Class Members and/or PAGA Members do not cash their
11 checks within the ninety (90) day period, those checks will become void and a stop payment will
12 be placed on the uncashed checks. In the event settlement checks that are not cashed within ninety
13 (90) days of mailing, or are returned to the Settlement Administrator, the Settlement Administrator
14 shall send the uncashed funds to Legal Aid at Work, a jointly-selected non-profit organization in
15 compliance with California Code of Civil Procedure section 384. Settlement Class Members and
16 PAGA Members who fail to deposit or negotiate their check(s) in a timely fashion shall remain
17 subject to the terms of the Agreement and the Final Judgment.

18 61. Upon completion of administration of the Settlement, the Settlement
19 Administrator shall provide written certification of such completion to the Court, Class Counsel,
20 and Defendants' Counsel.

21 62. Binding Effect of Agreement on Settlement Class Members and PAGA
22 Members. Subject to final Court approval, all Settlement Class Members and PAGA Members
23 shall be bound by this Agreement and Final Judgment shall be entered in the Action.

24 63. Waiver of Appeal. Subject to Preliminary and Final Approval of this
25 Settlement, Named Plaintiff and all Class Members, except those Class Members who make timely
26 and valid Objections pursuant to the terms of this Agreement, expressly waive the right to appeal.
27 Plaintiff or Class Counsel may appeal any reduction to the Attorneys' Fees and Costs below the
28 amount requested from the Court.

65. Confidentiality

b. Prior to the motion for preliminary approval and submission of this Court, Class Counsel shall not discuss the terms of the Agreement or the to Agreement with any person other than Named Plaintiff and Defendants'

d. Named Plaintiff and Class Counsel agree to maintain the documents produced, formally or informally, during the course of the Action.

1 e. Nothing in this provision will prohibit Class Counsel or Named
2 Plaintiff from seeking Preliminary Approval or Final Approval of the Settlement, or from making
3 any disclosures as required by law.

4 66. Pro Rata Adjustment to Total Settlement Amount Based on Class Members.
5 Defendants have in good faith estimated that the size of the Class through Preliminary Approval
6 will not exceed 50 individuals. If the actual Class Members exceeds 50, then the parties agree that
7 the Total Settlement Amount shall be increased proportional to the number of additional Class
8 Members over 50, or all at Defendant's election Class Members hired after the 50th employee will
9 be excluded from the class.

10 67. No Retaliation. Defendants shall not take any adverse action against any
11 Class Member, including the Named Plaintiff, because of the Action or because of the existence
12 of, and/or participation in, the Settlement, or because they choose to benefit from the Settlement or
13 to object to the Settlement. Defendant shall not take action to discourage Class Members from
14 participating in the Settlement. Notice to the Class Members will include a statement that
15 Defendant will not retaliate against Class Members for participating in the Settlement.

16 68. Modification in Writing. This Agreement may be altered, amended,
17 modified or waived, in whole or in part, only in a writing signed by counsel for the Parties and, if
18 a material change, approved by the Court. Any waiver of any provision of this Agreement shall
19 not constitute a waiver of any other provision of this Agreement unless expressly so indicated.

20 69. Ongoing Cooperation. Named Plaintiff and Defendants, and each of their
21 respective counsel, shall cooperate in good faith to execute all documents and perform all acts
22 necessary and proper to effectuate and implement the terms of this Agreement, including but not
23 limited to drafting and submitting the Motions for Preliminary and Final Approval, and defending
24 the Agreement and Final Judgment against objections and appeals. The Parties to this Agreement
25 shall use their best efforts, including all efforts contemplated by this Agreement and any other
26 efforts that may become necessary by order of the Court or otherwise, to effectuate this Agreement
27 and the terms set forth herein.

1 70. Parties' Authority. The signatories hereby represent that they are fully
2 authorized to enter into this Agreement and bind the Parties hereto to the terms and conditions
3 hereof.

4 71. No Prior Assignments. The Parties hereto represent, covenant, and warrant
5 that they have not directly or indirectly, assigned, transferred, encumbered, or purported to assign,
6 transfer, or encumber to any person or entity any portion of any liability, claim, demand, action,
7 cause of action, or rights herein released and discharged except as set forth herein.

8 72. Binding on Successors. This Agreement shall be binding and shall inure to
9 the benefit of the Parties and their respective successors, assigns, executors, administrators, heirs
10 and legal representatives, including the Released Parties.

11 73. Integration/Entire Agreement. The Parties warrant that no promise or
12 inducement has been offered or made to any of the Parties except as set forth herein. This
13 Agreement constitutes the full, complete and entire understanding, agreement and arrangement
14 between Named Plaintiff and the Class Members and PAGA Members on the one hand, and
15 Defendants and the Released Parties on the other hand, with respect to the Settlement of the Action
16 and the Settled Claims and Settled PAGA Claims against Defendants and the Released Parties.
17 This Agreement supersedes any and all prior oral or written understandings, agreements and
18 arrangements, written or oral, express or implied, between the Parties with respect to the Settlement
19 of the Action and the Settled Claims and Settled PAGA Claims against Defendants and the
20 Released Parties. The Parties explicitly recognize California Civil Code Section 1625 and
21 California Code of Civil Procedure Section 1856(a), which provide that a written agreement is to
22 be construed according to its terms, and may not be varied or contradicted by extrinsic evidence,
23 and agree that no such extrinsic oral or written representations or terms shall modify, vary, or
24 contradict the terms of this Agreement.

25 74. Execution in Counterparts. This Agreement may be signed in one or more
26 counterparts. A photographic, scanned or facsimile copy of signatures shall be treated as an original
27 signature for all purposes. All executed copies of this Agreement, and photocopies thereof
28

(including electronic signatures, facsimile or email copies of the signature pages), shall have the same force and effect and shall be as legally binding and enforceable as the original.

75. Captions. The captions and section numbers in this Agreement are inserted for the reader's convenience, and in no way define, limit, construe, or describe the scope or intent of the provisions of this Agreement.

76. Governing Law. This Agreement shall be interpreted, construed, enforced, and administered in accordance with the laws of the State of California, without regard to otherwise applicable principles of conflicts of laws.

77. Mutual Preparation. The Parties have had a full opportunity to negotiate the terms and conditions of this Agreement. Accordingly, this Agreement shall not be construed more strictly against one Party than another merely by virtue of the fact that it may have been prepared by counsel for one of the Parties, it being recognized that, because of the arms-length negotiations between the Parties, all Parties have contributed to the preparation of this Agreement.

78. Resolution of Disputes. The Parties agree to refer any disputes related to the drafting of the Agreement and attached documents to a mutually agreeable mediator.

79. Enforcement Actions. In the event that one or more of the Parties to this Settlement institutes any legal action or other proceeding against any other party or parties to enforce the provisions of this Agreement or to declare rights and/or obligations in dispute under this Agreement, the prevailing party or parties shall be entitled to recover from the non-prevailing party or parties their reasonable attorney's fees and costs, including expert witness fees incurred in connection with any enforcement actions.

80. Representation by Counsel. The Parties acknowledge that they have been represented by counsel throughout all negotiations that preceded the execution of this Agreement, and that this Agreement has been executed with the consent and advice of counsel.

IT IS SO AGREED:

1 Dated: 04-27-2022, 2022



EDWIN MOLINA

2
3
4
5 Dated: 4/26/2022, 2022

SBR EXPRESS, INC.

DocuSigned by:

By: BHARAT KUMAR JAIN

CF2BFBD987CE466...

By:

Its:

8
9 **APPROVED AS TO FORM:**

10 Dated: April 26, 2022

LEVIAN LAW

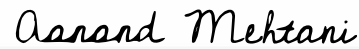


K. Kevin Levian

Attorney for Defendant

14
15
16
17 Dated: April 26, 2022

MEHTANI LAW OFFICES



Aanand Mehtani

18
19
20
21 Dated: April 26, 2022

BANNER LAW GROUP



Arnab Banerjee

Attorneys for Plaintiffs

EXHIBIT A

NOTICE OF CLASS ACTION AND PAGA SETTLEMENT
SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

Molina v. SBR Express, Inc., Case No. 20STCV46159

PLEASE READ THIS NOTICE

A class and representative action under the Private Attorneys General Act, California Labor Code sections 2699, *et seq.* (“PAGA”) against SBR Express, Inc. (collectively, “SBR”) has been preliminarily approved for settlement. In the lawsuit, plaintiff Edwin Molina (“Plaintiff”) alleged that SBR violated section 17200, *et seq.* of California’s Business and Professions Code, failed to properly compensate Class Members all wages owed, failed to pay all wages due at separation, failed to provide accurate wage statements, and failed to reimburse Class Members for all business expenses, and for civil penalties owed under the Private Attorney General Act. SBR denies Plaintiff’s allegations and contends that it complies with applicable law.

Class Member(s) are defined as all individuals who worked for SBR Express, Inc., and/or its subsidiaries, acquired and related entities, as hourly-paid or non-exempt drivers in California from December 3, 2016 to [insert preliminary approval date].

You have been identified by SBR’s records as a member of the Class in the above-entitled action, and as such, you are subject to the terms of the Settlement Agreement preliminarily approved by the Court. Please read this Notice carefully. It may affect your legal rights.

YOUR LEGAL RIGHTS AND OPTIONS WITH RESPECT TO THE SETTLEMENT	
Participate in the Settlement	If you want to remain in the Class, be bound by the Settlement and receive your Individual Settlement Allocation , then you need not do anything.
Exclude Yourself From the Settlement	If you do not want to be bound by the Settlement, you must follow the instructions in Section [redacted] to exclude yourself. If you exclude yourself, you will not receive your Individual Settlement proceeds, and you will not release claims against SBR related to this lawsuit. If this Settlement is approved by the Court, the PAGA Claims will be released even if you exclude yourself.
Object to the Settlement	If you want to object to the Settlement, you must follow the instructions in Section [redacted]. If you object, you will still be bound by the terms of the Settlement, if approved by the Court.

1. WHY DID I GET THIS NOTICE?

You have received this Notice because SBR’s records reflect that you meet the definition of a **Class Member** as defined on the first page of this Notice. This Notice provides you with information about (1) the terms of the Settlement, including the claims that are being released, (2)

the total monetary amount of the Settlement, (3) your estimated individual settlement amount provided that you remain a Class Member, and (4) where to find additional information.

NO ACTION NEEDS TO BE TAKEN TO RECEIVE MONEY UNDER THE SETTLEMENT:

If you do nothing, then you will be automatically included in the Settlement and do not need to take any further action to receive a payment.

Your decision to participate or not in the Settlement will not impact your employment with SBR, and Class Members who participate will not be subject to retaliation by SBR for participating.

2. WHAT IS THIS CASE ABOUT?

A class action complaint was filed on December 3, 2020, in the Superior Court of California, County of Los Angeles, in a lawsuit entitled *Edwin Molina v. SBR Express, Inc., et al.*

The operative Complaint in the Action alleges the following causes of action on a class basis: (1) Unfair Competition (Bus. & Prof. Code § 17200, *et seq.*); (2) Failures to Pay Minimum & Overtime Wages (Lab. Code §§ 1194 & 1194.2); (3) Waiting Time Penalties (Lab. Code § 203); (4) Wage Statement Penalties (Lab. Code § 226); (5) Failure to Reimburse Business Expenses (Lab. Code § 2802); (6) Penalties Under the Labor Code Private Attorney General Act (“PAGA”).

In addition to class claims, Plaintiff also seeks to recover civil penalties under PAGA. The resolution of the PAGA claims (“PAGA Settlement”) includes any Class Member employed in California between December 3, 2016 and [insert date of preliminary approval] (“PAGA Members”).

SBR denies any liability or wrongdoing of any kind. SBR contends, among other things, that it complied at all times with the California Labor Code and the Business and Professions Code, as required by applicable law.

The Court has not ruled on the merits of Plaintiff’s claims. By approving the Settlement and issuing this Notice, the Court is not suggesting which side would win or lose this case on the merits. Rather, the Court has determined only that there is sufficient evidence to determine on a preliminary basis that the proposed Settlement is fair, adequate, and reasonable, and any final determination of those issues will be made at the final hearing. SBR reserves the right, if for any reason the Settlement fails, to contest any factual or legal allegations and to contest whether the Action should proceed as a class or representative action.

3. THE CLASS AND PAGA SETTLEMENT, AND CALCULATION OF PAYMENTS

Without admitting any wrongdoing, and to avoid the business disruptions caused by litigating these claims, SBR has agreed to a Total Settlement Amount of Two-Hundred and Thirty-Eight Thousand Seven Hundred and Fifty Dollars and Zero Cents (\$238,750.00).

Out of this amount, Plaintiff will ask for a service payment (also known as an “Enhancement Payment”) for his services as a Class Representative in the amount of Five Thousand Dollars and

Zero Cents (\$5,000.00) and a General Release payment of Ten Thousand Dollars (\$10,000.00) in exchange for a general release of all known and unknown claims against Defendant, for a total of Fifteen Thousand Dollars (\$15,000.00). The lawyers for Plaintiff and the Class, called Class Counsel, will ask for up to Seventy-Nine Thousand Five Hundred Eighty-Three Dollars and Thirty-Three Cents (\$79,583.33) for Attorneys' Fees and up to Fifteen Thousand Dollars and Zero Cents (\$15,000.00) for Attorneys' Costs. The parties have also allocated Ten Thousand Dollars (\$10,000) of the Maximum Settlement Amount for the payment of civil penalties under PAGA. Additionally, the parties have agreed that the costs associated with administration of the Settlement, estimated to be Ten Thousand Dollars (\$10,000) will be deducted from the Maximum Settlement Amount.

The amount remaining from the Total Settlement Amount after the above deductions constitutes the Net Distribution Fund, which will be allocated to all Class Members who do not request to be excluded from the Settlement. Individual Settlement Payments will be calculated as follows:

1. Each Settlement Class Members will receive a *pro rata* share of the Net Distribution Fund based on his or her total number of weeks worked between December 3, 2016, to [insert preliminary approval date] ("Qualifying Weeks").
2. The value of a Qualifying Week shall be determined by dividing the Net Distribution Fund by the total number of Qualifying Weeks worked by all Settlement Class Members between December 3, 2016, to [insert preliminary approval date]. Each Settlement Class Member shall receive a gross Individual Settlement Payment equal to the number of Qualifying Weeks they worked multiplied by the value of a Qualifying Week.

Beacon's records indicate that you worked as a Class Member for [redacted] Qualifying Weeks. Based on these Qualifying Weeks, your gross Individual Settlement Allocation, prior to any applicable withholdings, is estimated to be \$ [redacted].

If you dispute the above information, you may provide written documentation to the Settlement Administrator no later than [forty-five (45) days after the date this Notice is mailed] ("Response Deadline"). Each "Dispute" must state: (1) your full name; (2) your address; (3) your telephone number; (4) the case name and number of the Action; (5) be signed by you; (6) be postmarked or fax stamped on or before the Response Deadline and returned to the Settlement Administrator at the following address or fax number: [redacted]; (7) the number of Qualifying Weeks you believe is correct; and (8) attach any documentary evidence you have to prove the number of contented Qualifying Weeks. The Settlement Administrator will then advise Beacon of the dispute, and Beacon will have an opportunity to present written documentation to the Settlement Administrator. The Settlement Administrator shall resolve all disputes and have final decision with respect to any disputed claims.

Twenty-five percent (25%) of a Class Member's Individual Settlement Allocation will be allocated as wages, for which he or she will receive a W-2, and the remaining seventy-five (75%) will be allocated as penalties, liquidated damages, interest, and other non-wage payments, for which he or she will receive a Form 1099. Class Members are responsible for paying taxes on any amounts received. This Notice is not tax advice, and you should consult your tax advisor. Checks will be

valid and negotiable for 90 days; after that, checks will become void, and a stop payment will be placed on the uncashed checks. In the event settlement checks that are not cashed within ninety (90) days of mailing or are returned to the Settlement Administrator, the Settlement Administrator shall send the uncashed funds to the Legal Aid at Work, a jointly-selected non-profit organization. **Class Members will be bound by the Settlement even if they do not cash their settlement checks.**

PAGA Payment: A total of Twenty Thousand Dollars (\$10,000) of the Maximum Settlement Amount has been allocated to the resolution of the PAGA Claims. Of this amount, Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00) will be paid to California's Labor & Workforce Development Agency, and Five Thousand Dollars and Zero Cents (\$2,500.00) will be paid on a pro-rata basis to PAGA Members. This payment will be allocated as penalties for which a Form 1099 will be issued.

In addition to the Maximum Settlement Amount, SBR will pay all employer-payroll taxes and contributions in connection with the portion of the Settlement allocated towards wages.

4. WHAT AM I RELEASING AS A CLASS MEMBER UNDER THE SETTLEMENT?

If you do nothing, you will receive your Individual Settlement Payment if and when the Court grants final approval. You will be releasing all claims you may have related to the allegations in the Action against the Released Parties as described in the Agreement.

The "Settled Claims" that Settlement Class Members will be releasing are defined as follows: all claims, charges, complaints, liens, demands, causes of action, obligations, damages and liabilities, that arise during the Class Period that each Class Member had, now has, or may hereafter claim to have against the Released Parties and that were asserted in the Complaint, or that could have been asserted in the Complaint based on any of the facts and allegations in the Complaint, regardless of whether such claims arise under federal, state and/or local law, statute, ordinance, regulation, common law, or other source of law. The Settled Claims specifically include, but are not limited to, claims for all alleged violations of the Labor Code and Wage Order cited in the Complaint as well as claims for: (1) Unfair Competition (Bus. & Prof. Code § 17200, *et seq.*); (2) Failures to Pay Minimum & Overtime Wages (Lab. Code §§ 1194 & 1194.2); (3) Waiting Time Penalties (Lab. Code § 203); (4) Wage Statement Penalties (Lab. Code § 226); (5) Failure to Reimburse Business Expenses (Lab. Code § 2802); (6) Penalties Under the Labor Code Private Attorney General Act ("PAGA").

"Released Parties" include SBR Express, Inc. and each of their officers, directors, members, partners, owners, shareholders, employees, former employees, agents, servants, attorneys, assigns, affiliates, independent contractors, volunteers, predecessors, successors, parent companies and organizations, insurers, and any and all other persons, firms and corporations in which Defendants may have an interest.

Settlement Class Members' releases will extend to and discharge all Released Parties from liability for any and all claims by the Plaintiff and all Class Members as to all Settled Claims.

5. WHAT AM I RELEASING AS A PAGA MEMBER UNDER THE SETTLEMENT?

If you are a PAGA Member, you are also releasing all Released Parties from any and all Settled PAGA Claims. “Settled PAGA Claims” means any of the Settled Claims that may serve as a basis for any claim under PAGA for any of the alleged California Labor Code violations.

PAGA MEMBERS CANNOT OPT-OUT OR EXCLUDE THEMSELVES FROM THE PAGA RELEASE AND WILL RECEIVE A PAGA PAYMENT EVEN IF THEY OPT-OUT OF THE CLASS SETTLEMENT.

6. WHAT IF I DON’T WANT TO PARTICIPATE IN THE CLASS SETTLEMENT?

You have the right to request exclusion from the Settlement as a Settlement Class Member, but you are not able to exclude yourself as a PAGA Member. To exclude yourself as a Settlement Class Member, you must submit a written request for exclusion to the Settlement Administrator at the following address or fax number: [REDACTED]. To be valid, the written exclusion must: (1) be signed by you; (2) state your full name; (3) state your address; (4) state your telephone number; (5) state the name and case number of the Action; and (6) contain a statement something substantially similar to:

“I WISH TO BE EXCLUDED FROM THE SETTLEMENT OF CLASS CLAIMS IN THE *EDWIN MOLINA V. SBR EXPRESS, INC.* LAWSUIT. I UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I WILL NOT RECEIVE AN INDIVIDUAL SETTLEMENT PAYMENT FROM THE SETTLEMENT OF THE LAWSUIT. I UNDERSTAND THAT THE PAGA CLAIM WILL STILL BE RELEASED AND SETTLED.”

A Class Member who wishes to exclude himself or herself from the Settlement must submit his or her exclusion to the Settlement Administrator no later than the Response Deadline, as defined above. To be valid, an exclusion must be postmarked or fax stamped on or before the Response Deadline and must be returned to the Settlement Administrator at the address or fax number specified above. It is your responsibility to ensure that the Settlement Administrator timely receives your request to be excluded from the Settlement. Unless you timely request to be excluded from the Settlement, you will be bound by the judgment upon final approval of the Settlement.

Class Members who request to be excluded from the Settlement will NOT receive their Individual Settlement Payment and will not release any of the Settled Claims, and any money that would have been allocated to their Individual Settlement Payment will be reallocated to the Net Distribution Fund to be disbursed to Class Members who did not exclude themselves.

7. WHAT IF I WANT TO OBJECT TO THIS SETTLEMENT?

Any Settlement Class Member may object to the Settlement or to any settlement term. You cannot ask the Court to order a larger settlement; the Court can only grant or deny approval of the Settlement. If the Court denies approval, no settlement payments will be sent out and the lawsuit will continue. If that is what you want to happen, you must object.

If you wish to object, you must submit the written objection to the Settlement Administrator at the following address or fax number: [REDACTED]. To be valid, the written objection must: (1) be signed by you; (2) state your full name; (3) state your address; (4) state your telephone number; (5) state the legal and factual basis for the objection; and (6) state the name and case number of the Action. A Settlement Class Member who wishes to object must submit his or her objection to the Settlement Administrator no later than the Response Deadline, as defined above. To be valid, an objection must be postmarked or fax stamped on or before the Response Deadline and must be returned to the Settlement Administrator at the address or fax number specified above.

Filing an objection will **not** exclude you from the Settlement. If the Court grants final approval of the Settlement, you will still receive an Individual Settlement Payment and will be barred from pursuing the Settled Claims. **Do not file both an objection and request for exclusion.** If you file both a request for exclusion and an objection, you will be excluded from the Settlement and the objection will not be considered.

8. WHEN AND WHERE WILL THE COURT DECIDE WHETHER TO APPROVE THE SETTLEMENT?

The Final Approval Hearing is scheduled to take place on [REDACTED], at [REDACTED] a.m. in Department [REDACTED] of the Superior Court of California, County of Los Angeles, located at the Spring Street Courthouse, 312 North Spring Street, Department 6, Los Angeles, California 90012.

9. WHO ARE THE ATTORNEYS?

Attorneys for Plaintiff and the Class are:

Aanand Mehtani
MEHTANI LAW OFFICES
4405 W. Riverside Dr. Ste. 206
Burbank, CA 91505
Telephone: (213) 291-6900

Arnab Banerjee
BANNER LAW GROUP
11750 Wilshire Blvd., Suite 1250
Los Angeles, CA 90025
Telephone: (323) 426-2991

Attorneys for SBR are:

K. Kevin Levian
LEVIAN LAW
1875 Century Park East #1025
Los Angeles, CA 90067
Telephone: (310) 277-7577

The Court has decided that the Attorneys for Plaintiff and the Class are qualified to represent the Settlement Class Members. Other than the Attorneys' Fees and Attorneys' Costs approved by the Court, which will be paid out of the Total Settlement Amount, you will not be charged for their services.

10. SHOULD I GET MY OWN LAWYER?

You do not need to get your own lawyer. If you want your own lawyer to speak for you or appear in Court, you have the right to hire one, but you will have to pay for that lawyer yourself.

11. FURTHER INFORMATION

The foregoing is only a summary of the Settlement. For the precise terms and conditions of the Settlement, please see the settlement agreement available at www._____.com, by contacting Class Counsel at the address or telephone number provided in Section ____, or by visiting the office of the Clerk of the Court for the Superior Court of California, County of Los Angeles, Spring Street Courthouse, 312 North Spring Street, Department 6, Los Angeles, California 90012.

**PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE TO
INQUIRE ABOUT THIS SETTLEMENT.**