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8 Attorneys for Plaintiff
9 HAROLD CASALE

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 FOR THE COUNTY OF LOS ANGELES

12
13 HAROLD CASALE, an individual,

14 Plaintiff,

15 vs.

16 MERCHANT OF TENNIS, INC., a
17 California corporation; GREENLINE
TRANSPORTATION, a California
18 corporation and DOES 1 through 50,
inclusive,

19 Defendants.
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Case No.: 21STCV33661

[Assigned for all purposes to the Hon. Kenneth
Freeman, Dept. 14]

**SUPPLEMENTAL MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Date: July 30, 2024

Time: 2:00 p.m.

Place: Department 6

1 **SUPPLEMENTAL MOTION FOR PRELIMINARY APPROVAL**

2 **I. INTRODUCTION**

3 On January 3, 3024, the Court issued an Order on Plaintiff Harold Casale’s (“Plaintiff”)
4 Motion for Preliminary Approval of the Joint Stipulation of Class Action Settlement and
5 Release. The Court asked the Parties to address the following concerns regarding the
6 preliminary approval documents submitted:

- 7 (1) Address Plaintiff’s individual claim and any settlement he received in connection
8 with his individual claims.
- 9 (2) Explain how any related class action is affected by the settlement.
- 10 (3) Explain why paragraph 46 was omitted from the settlement agreement.
- 11 (4) Provide an explanation as to why the rest break claim was not included in the
12 exposure analysis
- 13 (5) Provide a declaration from Mr. Casale addressing his adequacy as class
14 representative
- 15 (6) Provide information as to the any fee split agreement
- 16 (7) Address how “Participating Class Members who are also Aggrieved Employees”
17 are treated in the Settlement Agreement
- 18 (8) Change the distribution of uncashed checks from the *cy pres* to the California
19 Controller’s office.
- 20 (9) Provide proof to submission of the proposed settlement to the LWDA.

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

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27 ¹ Hereinafter “Revised Settlement Agreement,” attached as Exhibit 1 to the Declaration of
28 Arnab Banerjee ISO Supplemental Motion for Preliminary Approval of Class Action
Settlement. The Notice to Class Members attached to the Revised Settlement Agreement as
Exhibit A.

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 forty-four (“44”) current and former employees of Defendants Merchant of Tennis, Inc. and Greenline Transportation, Inc. As a reminder and for ease of reference, the principal terms of the settlement provide for the following:

- (1) Conditional certification of a Settlement Class defined as: All non-exempt or hourly paid truck-drivers of Defendants who worked in California from September 13, 2017, through the date that the Court preliminarily approves the Settlement (“Class Members”).
- (2) A **non-reversionary** Gross Settlement Amount of \$142,500. The Gross Settlement Amount includes:
 - (a) A Net Settlement Fund of \$65,000 (the Gross Settlement Amount minus the requested Attorneys’ Fees and Costs, Settlement Administration Costs, the LWDA payment, and the Class Representative Enhancement Payment), which will be allocated to all Class Members on a pro-rata basis according to the total workweeks worked by each Class Member during the Class Period.
 - (b) Attorneys’ fees in the amount of one-third of the Gross Settlement Amount (or \$47,500), and litigation costs and expenses not to exceed \$15,000, to Banner Law Group, P.C. and Leslie Glycer Law (“Plaintiff’s Counsel”).
 - (c) Settlement administration costs of approximately \$5,000, to be paid to the jointly selected Settlement Administrator, Phoenix Class Action Administration Solutions (“Phoenix”).
 - (d) A \$10,000 PAGA settlement, of which 75% (\$7,500) will be paid to the Labor & Workforce Development Agency (“LWDA”), and the remaining 25% (\$2,500) (“PAGA Fund”), will be payable to PAGA Members,

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.

(e) A Class Representative Enhancement Payment of \$2,500 to Harold Casale for his service on behalf of the Settlement Class and the risks he took in bringing the action on behalf of the class.

III. REVISIONS AND SUPPLEMENTAL INFORMATION

A. Mr. Casale Previously Raised Claims of Retaliation That He Settled Separately

Here, there is no question that Mr. Casale was typical of the class and suffered the same wage and hour violations that were alleged on behalf of all drivers during the class period. (Declaration of Harold Casale ISO Motion for Preliminary Approval of Class Action Settlement (“Casale Decl.”) ¶¶ 2-3.) In addition, Mr. Casale has served as an adequate class representative in this lawsuit for over 2.5 years during which he responded to discovery, participated remotely in a full day mediation, reviewed and approved of the settlement, and in total spent approximately 75 hours trying to vindicate the rights of his fellow employees. *Id.* at ¶¶ 4-7, 12.

In addition to the Class Claims addressed here, Mr. Casale also raised allegations of retaliation and harassment under the California Labor Code and the Fair Employment & Housing Act, respectively. *Id.* at ¶5. Specifically, Mr. Casale alleged that after he complained about his pay issues, he was harassed and retaliated against, including but not limited being subjected to hostile treatment from his managers and supervisors, being denied routes and assignments with his hours being severely cut resulting in a significant decrease in his compensation and pay, and receiving unfair reprimand and criticism. *Id.* Then after Mr. Casale was forced to leave his employment, Mr. Casale alleges he lost out on job opportunities because he alleges and believes the Company refused to provide references thereby interfering in his job opportunities and prospects. *Id.*

This all had a noticeable and adverse impact on his income and finances resulting in a toll on his emotional and mental health. *Id.* Mr. Casale raised all these claims and issues

1 separately with the Company. *Id.* at ¶ 8. Ultimately, Mr. Casale settled and provided a separate
2 general release as it related to all known and unknown claims, in exchange for a separate
3 individual settlement of those claims. *Id.*

4 Importantly, Mr. Casale’s individual settlement was not linked to the class settlement
5 and was not raised at the class action mediation with Judge Wagner, nor was it raised over the
6 proceeding months of negotiations after which the parties reached the settlement with the aid of
7 Judge Wagner. *Id.* The individual settlement was only reached after the class action settlement
8 because both Parties wished to resolve all claims. That offer – \$7,500 – is not excessive in light
9 of the nature of Plaintiff’s claims which implicate important employment and civil rights.

10 Mr. Casale’s settlement of these individual claims do not create a conflict with the
11 instant class as they are separate and apart from the claims which were settled here. *Id.* at ¶ 9.
12 Not only has Mr. Casale’s priority always been the class which he has proven with his diligence
13 over the past 2.5 years. In fact, Mr. Casale likely could have easily accepted an individual
14 settlement of even a higher amount had he not felt it important to vindicate the rights of all the
15 drivers he worked with, but caselaw establishes that a class representative can have claims
16 outside of those of the class action. *See La Sala v. American Sav. & Loan Assn.*, 5 Cal. 3d 864,
17 872 (1971); *Armstrong v. Davis*, 275 F.3d 849, 869 (9th Cir. 2001) (“We do not insist that the
18 named plaintiffs’ injuries be identical with those of the other class members, only that the
19 unnamed class members have injuries similar to those of the named plaintiffs and that the
20 injuries result from the same, injurious course of conduct.”) Moreover, the fact that Mr. Casale’s
21 agreement to the class settlement is not dependent on the individual settlement (and vice versa),
22 further establishes that there is no conflict.

23 As several Courts have explained “[i]t is axiomatic that a putative representative cannot
24 adequately protect the class if his interests are antagonistic to or in conflict with the objectives
25 of those he purports to represent. But only a conflict that goes to the very subject matter of the
26 litigation will defeat a party's claim of representative status.” *Richmond v. Dart Indus., Inc.*, 29
27 Cal.3d 462, 470 (1981). Here there is no question, that Mr. Casale’s retaliation and harassment
28 claims, which actually stem from and was the result of his bringing this class action, do not

1 create a conflict that goes to the subject matter of the litigation—namely whether or not
2 Defendants committed wage and hour violations. *See also, In re Beer Distribution Antitrust*
3 *Litigation* (1998) 188 F.R.D. 549, 554” (“[A] class representative must be part of the class and
4 "possess the same interest and suffer the same injury" as the class members.' [Citations.] To
5 assure 'adequate' representation, the class representative's personal claim must not be
6 inconsistent with the claims of other members of the class. [Citation.]")

7 Indeed, it would be against the very purpose of the efficiency of class actions to find that
8 by bringing a class action, a plaintiff must not have or give up all other claims he may have. For
9 example, if the situation was reversed, and Mr. Casale was bringing a class action claim for
10 FEHA violations for systematic retaliation against all drivers, one could not claim that such a
11 class action would prohibit him from seeking owed wages for all hours worked or restrict him
12 from filing a complaint against the company for failing to pay overtime. Instead, only conflicts
13 that are inconsistent or create a conflict with the ***very subject matter of the litigation*** are
14 prohibited. Here, Mr. Casale has several individual claims that could be filed separately in
15 another lawsuit. Indeed, if Mr. Casale is not permitted to settle his individual claims at this
16 time, it will simply result in another lawsuit being filed, and subsequently litigated or settled.
17 There is simply no reason to force him to go through these hurdles, when his individual claims
18 were settled separately from the class claims.

19 Moreover, the release provided by Mr. Casale in his individual settlement is
20 considerably broader than the separate, narrower release required of the Class, and courts have
21 frequently recognized that a named plaintiff who is providing a general release in addition to
22 performing the duties as a class representative is entitled to additional compensation. *See*
23 *Billinghausen v. Tractor Supply Co.*, 306 F.R.D. 245, 267-68 (N.D. Cal. 2015) (awarding the
24 plaintiff \$5,000 for the general release along with \$10,000 enhancement payment for services as
25 a class representative); *La Fleur v. Medical Management Intern, Inc.*, No. 13-00398-VAP, 2014
26 WL 2967475, *8 (C.D. Cal. June 25, 2014) (finding that the \$15,000 enhancement payment is
27 warranted in part because “the named plaintiffs have released all claims against [defendant],
28 unlike the remainder of the Class”). Thus, Mr. Casale is not benefiting from this settlement in a

1 way that other class members are not. He is giving up a broad release unlike no other class
2 member, in consideration for this individual settlement.

3 Accordingly, Mr. Casale's individual settlement should be permitted as it does not affect
4 his adequacy and creates no conflict with the class.

5 **B. Related Class Actions**

6 There is only one related class action, which is minimally affected by this settlement.
7 The other class action is *Jessica Garcia, et al v. The Merchant of Tennis*, Case No.
8 CIVDS2005614, pending in San Bernardino County Superior Court. The plaintiffs in the
9 *Garcia* matter have filed a motion for class certification that is now pending and seek
10 certification of classes that do not include the drivers covered by this class action. Specifically,
11 the *Garcia* case seeks certification of the following classes:

- 12 • Meal Period Classes
 - 13 ○ Late First Meal Period Class: All current and former non-exempt employees of
 - 14 MOT who have worked at any of MOT's California locations, and whose
 - 15 timekeeping records reflect a meal period that was taken after the start of the
 - 16 sixth hour of work, during the time period of June 8, 2019 through the present.
 - 17 ○ Short First Meal Period Class: All current and former non-exempt employees of
 - 18 MOT who have worked at any of MOT's California locations and whose
 - 19 timekeeping records reflect a meal period of less than 30 minutes, during the
 - 20 time period of June 8, 2019 through the present.
- 21 • Rest Period Classes
 - 22 ○ Short Rest Period Class: All current and former non-exempt employees of MOT
 - 23 who worked at any of MOT's California locations, and who worked a shift in
 - 24 excess of three and a half hours, during the time period of June 8, 2019 through
 - 25 the present date.
 - 26 ○ On-Premises Rest Period Class: All current and former non-exempt employees of
 - 27 MOT who worked at any of MOT's California locations, and who worked a shift
 - 28 in excess of three and a half hours, during the time period of June 8, 2019
 - through the present date.
- Unpaid Wages Classes
 - Time Rounding Class: All current and former non-exempt employees who
 - worked for MOT at any of its California locations at any time between June 8,
 - 2019 and September 9, 2019.

- Off-The-Clock Security Check Class: All current and former non-exempt employees who worked for MOT at Buildings 1 and 2 located in Ontario, California and/or Building 3 located in Eastvale, California, and who were required by MOT to undergo post-shift security checks between June 8, 2019 and the present date.
- Off-The-Clock COVID Screening Class: All current and former non-exempt employees of MOT who worked at one of MOT's California locations, and who were required by MOT to undergo a pre-shift COVID screening between April 1, 2020 and September 30, 2022.

These class definitions do not touch upon any of the drivers included in the instant settlement. Further, the *Garcia* action has squarely focused its discovery and efforts on warehouse workers, not truck drivers. Moreover, the named plaintiffs, all individuals who submitted declarations, sampling, etc. all involve warehouse workers. Thus, the *Garcia* matter is not affected by the instant settlement at all.

In addition, *Andrew Tarigan v. The Merchant of Tennis*, Case No. CIVSB2229009, pending in San Bernardino County Superior Court, is a PAGA only action that is currently stayed. Like the *Garcia* matter, the *Tarigan* matter has propounded no discovery or made any effort to litigate on behalf of the class of drivers in the instant settlement. Instead, like *Garcia* the *Tarigan* matter prior to the stay, appeared to focus on warehouse workers.

C. Omission of Paragraph 46

Paragraph 46 was previously omitted for formatting purposes only. This is now stated in the Revised Settlement Agreement.

D. Exposure Analysis or Rest Break Claim

Although Plaintiff originally pled a cause of action for a rest break claim, he did not include a calculation of the claim in the exposure analysis because at mediation and as of the date of this motion, current case law holds that drivers such as those in the class here are likely not entitled to rest breaks under California law.

In *Espinoza*, a short-haul truck driver in California sued his employer on a number of theories, including failure to provide meal and rest breaks. *Espinoza v. Hepta Run, Inc.*, 289 Cal. Rptr. 3d 145, 152 (2022). Defendant's argued California's meal and rest break rules for drivers

1 were preempted by the federal Hours of Service (“HOS”) Rules as applied to commercial
2 drivers that are subject to the federal HOS Rules (“2018 FMCSA Rule”). Pursuant to the HOS
3 regulations property-carrying commercial truck drivers are subject to daily and weekly limits on
4 driving time and on-duty time and are mandated to have 10 consecutive hours off duty between
5 shifts. (49 C.F.R. § 395.3 (2020).) In addition, long haul truck drivers are required to take a 30-
6 minute rest break for every eight hours worked; short haul drivers are exempted from the 30-
7 minute break requirement. (49 C.F.R. § 395.3(a)(ii). The driver argued that short-haul drivers
8 are exempted from FMCSA’s HOS Rules regarding meals and rest breaks since they are already
9 exempt from one of the HOS rules.

10 A California Court of Appeal dismissed the employee’s claims and reiterated that
11 regardless of whether a California commercial truck driver is considered a long haul or short
12 haul driver, California’s meal and rest break regulations are preempted by Federal Hours of
13 Service regulations, so long as the driver in question is a driver of property-carrying commercial
14 motor vehicles and is subject to the FMCSA’s Hours of Service rules. *Espinoza v. Hepta Run,*
15 *Inc.*, 74 Cal App 5th 44, (2022).

16 Thus, although Plaintiff disagrees with the current state of the law with respect to rest
17 breaks for drivers, Plaintiff did not include a valuation of it in his original preliminary approval
18 papers because of the standing case law.

19 **E. Declaration of Plaintiff Regarding Adequacy**

20 Mr. Casale has provided a declaration detailing his adequacy as a class representative.
21 See generally Casale Decl. As Mr. Casale explains in his declaration he has spent significant
22 time over the past 2.5 years helping to litigate this case and represent the class to the best of his
23 abilities. *Id.* ¶ 12.

24 **F. Fee Splitting Agreement**

25 Class Counsel Banner Law Group and Leslie Glycer Law have a 50-50 fee splitting
26 agreement. (Arnab Banerjee ISO Supplemental Motion for Preliminary Approval of Class
27 Action Settlement (“(Supp. Banerjee Decl.” ¶ 6.) Plaintiff was informed of this agreement and
28 has agreed to the fee splitting agreement in writing. (*Id.*) No other lawyer is receiving any fees

1 from the settlement. (*Id.*)

2 **G. Participating Class Members Who Are Also Aggrieved Employees**

3 As the Court noted, the treatment of Participating Class Members who are also
4 Aggrieved Employees was mistakenly omitted from the Settlement Agreement. The Revised
5 Settlement Agreement in Paragraph 52(c) addresses the release of Participating Class Members
6 who are also Aggrieved Employees. The release is limited to claims that were brought or could
7 have been brought in the Operative Complaint and now states as follows:

8 **Release by Participating Class Members Who Are Aggrieved Employees:** All
9 Participating Class Members, on behalf of themselves and their respective former
10 and present representatives, agents, attorneys, heirs, administrators, successors, and
11 assigns, release Released Parties from (i) all claims that were alleged, or reasonably
12 could have been alleged, based on the Class Period facts stated in the Operative
13 Complaint and ascertained in the course of the Action, including, e.g., any alleged
14 failure to pay wages, failure to pay minimum wages, overtime wages, or other
15 wages in violation of the California Labor Code or an Industrial Welfare
16 Commission (“IWC”) wage order, because of any alleged off-the-clock work,
17 failure to record all time worked, work during a rest break; failure to provide
18 accurate wage statements; failure to pay waiting time penalties; any alleged failure
19 to provide breaks or authorize and permit breaks as required by the California Labor
20 Code or an IWC wage order, or to pay premium pay with respect to rest periods in
21 accordance with California Labor Code section 226.7 or an IWC wage order; or to
22 reimburse any business expense as required by California Labor Code sections
23 2800 or 2802. These released claims include, without limitation, any such claim
24 based on a theory of alleged violation of unfair competition laws encompassed in
25 California Business and Professions Code section 17200 *et seq.* and which derives
26 from the foregoing statutory or regulatory provisions or obligations, as well as any
27 declaratory or injunctive relief or for restitution that otherwise derives from the
28 foregoing alleged violations or as alleged in the Operative Complaint. All
Aggrieved Employees are deemed to release, on behalf of themselves and their
respective former and present representatives, agents, attorneys, heirs,
administrators, successors, and assigns, the Released Parties from all claims for
PAGA penalties that were alleged, or reasonably could have been alleged, based on
the PAGA Period facts stated in the Operative Complaint and the PAGA Notice.
Except as set forth in Section 51(d) of this Agreement, Participating Class Members
do not release any other claims, including claims for vested benefits, wrongful
termination, violation of the Fair Employment and Housing Act, unemployment
insurance, disability, social security, workers’ compensation, or claims based on
facts occurring outside the Class Period.

See Revised Settlement Agreement, Paragraph 52(c).

1 **H. Uncashed Checks to California Controller’s Office**

2 The Revised Settlement Agreement has been amended to address the fact that uncashed
3 checks will be directed to the California Controller’s office. (See Revised Settlement Agreement,
4 paragraph 51(c)).

5 **I. Notice to the DIR / LWDA**

6 Counsel for Plaintiff previously submitted the Settlement Agreement and Motion for
7 Preliminary Approval to the LWDA on July 12, 2023 as stated in the original Declaration of
8 Arnab Banerjee ISO Motion for Preliminary Approval of Class Action Settlement ¶ 23, Exh. 2.
9 (*See also*, Supp Banerjee Decl. ¶4, Exh. 3).

10 On July 1, 2024, counsel for Plaintiff submitted the Revised Settlement Agreement and
11 will submit this supplemental motion to the LWDA on that same day. (Supp. Banerjee Decl. ¶ 5,
12 Exh. 4.)

13 **IV. CONCLUSION**

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

17
18 Dated: July 1, 2024

Respectfully submitted,

19
20 By: _____

Arnab Banerjee

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

22 Attorney for Plaintiff Harold Casale

23
24 By: _____

Leslie Glyer

25 **LESLIE GLYER LAW, P.C.**

26 Attorney for Plaintiff Harold Casale
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