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10 Attorneys for: Plaintiff FRANK CUELLAR, individually and on behalf of other  
11 persons similarly situated

12 **UNITED STATES DISTRICT COURT**  
13 **CENTRAL DISTRICT OF CALIFORNIA – SOUTHERN DIVISION**

14 FRANK CUELLAR, individually  
15 and on behalf of other persons  
16 similarly situated,

17 Plaintiffs,

18 v.

19 FIRST TRANSIT, INC., an active  
20 Ohio Corporation, and DOES 1  
21 through 10,

22 Defendants.

Case No.: 8:20-cv-01075-JWH-(JDEx)

CLASS AND REPRESENTATIVE  
ACTION

*[Assigned to Hon. John W. Holcomb]*

**DECLARATION OF ZORIK  
MOORADIAN IN SUPPORT OF  
PLAINTIFF’S MOTION FOR  
PRELIMINARY APPROVAL OF  
CLASS ACTION SETTLEMENT**

[Filed concurrently with Notice of Motion,  
Memorandum of Points and Authorities,  
Declaration of Haik Hacopian,  
Declaration of Brian Kriegler, Ph.D, and  
[Proposed] Order]

Hearing Date: October 28, 2022

Hearing Time: 9:00 a.m.

Courtroom: 9D

Action Filed: January 17, 2020

Action Removed: June 17, 2020

Trial Date: none

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**DECLARATION OF ZORIK MOORADIAN**

I, Zorik Mooradian, declare as follows:

1. I am an attorney at law duly licensed to practice law in the state of California. I am the principal of Mooradian Law, APC and, along with Haik Hacopian, am counsel for Plaintiff Frank Cuellar and am seeking appointment as Class Counsel in the class action lawsuit entitled *Frank Cuellar v. First Transit, Inc.*, and bearing Case No. 8:20-cv-01075-JWN-(JDEx) of the United States District Court, Central District of California. This Declaration, based on my personal knowledge, is submitted in support of Plaintiff’s Motion for Preliminary Approval of Class Action Settlement. If called as a witness I could and would competently testify to the following facts stated herein.

2. I have attended Texas A & M University (Kingsville) and California State University Los Angeles (Los Angeles), and have received a Bachelor of Science degree in Civil Engineering in 1979. I have also attended University of La Verne College of Law, graduated and was admitted to the State Bar of California in 1988, and have been in good standing since. For the past 33 years, I have litigated hundreds of cases with numerous bench and jury trials. My most recent jury verdict was in October 2019, in a Fair Employment and Housing retaliation matter. I have also been and continue to be plaintiff’s counsel in many wage and hour and consumer class actions, complex and multi-party matters.

3. The following is a short title index of class actions and individual employment/wage-and-hour cases (recent past and pending), in which I have represented and/or continue to represent the plaintiffs or defendants in the capacity of co-counsel or lead counsel:

- 4. Granados v. Bimbo Bakeries/CV 09-07329 DMG; Garcia v. Pharmavite /BC435699; Barsamian/Park v. Staples /BC450208 and BC449815; Bosch v. Bakery Holdings/BC484494; Uribe v. American

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1 Guard Services/ BC492881; Gamez-Flores v. Haynes Building  
2 Services/BC493709; Rodriguez v. KBS/ BC537386; Tovar v. Baron  
3 HR, LLC/ BC517984; Perez v. Valleycrest/ BC 538257; Uscanga v.  
4 Automotive Creations/BC509401; Gonzales v. Nefab Packing/2;13-  
5 cv-04499 JAK-ss; Mendoza v. Accentcare/30-2013-00661891-CU-  
6 OE-CXC; Nuno v. Universal Building Maintenance/BC541570;  
7 Cabrera v. Complete Facilities Maintenance/BC538248; Valencia v.  
8 Rubbercraft/BC 535816; Fuentes v. Kamran Staffing/BC604535;  
9 Perez v. El Pollo Loco/BC624001; Perez v. Quest  
10 Nutrition/BC630914; Escalante v. Friendly Hills Country  
11 Club/BC640583; Serrano v. Noise Group/30-2017-00949440-CU-  
12 OE-CXC; Bitton v. Sterling Jewelry, Inc./CIVDS1612665; Blandin v.  
13 Malibu Mgt. Svcs., Inc./BC618629; Barrera v. Coast Composites,  
14 Inc./30-2017-00909572 CU-OE-CJC; Aguilar v. Sweet Earth  
15 Café/19STCV13373; Balaguer v. Eminent, Inc./19STCV16803;  
16 Avina v. Marriott/30-2017-00945551; Azepita v. Eden Social  
17 Restaurants, Inc./30-2019-01077185; Balaguer v. Eminent,  
18 Inc./19STCV16803; Barragan v. Golden Hotels Limited  
19 Partnership/30-2018-01007420; Boch v. Merchants Building  
20 Maintenance/BC681320; Bueno v. Proto Homes/19STCV20011;  
21 Cardenas v. Intercon Security/19STCV11259; Castillo v. Robert's  
22 Waste/30-2018-01027486; Castro v. Bee Gee  
23 Laboratories/BC712857; Contreras Teo v. Golden State  
24 Foods/BC708535; Contreras Teo v. Golden State Foods/BC722540;  
25 Corona v. Del Amo Hospital/19STCV24741; Cruz Ventura v.  
26 WSON-55/19STCV22958; Cruel v. Andreas  
27 Elsenhans/19STCV35496; Espinoza v. Don Chava  
28 Mgt./19STCV27068; Galvan v. Property Mgt. Associates/BC722781;

1 Godoy v. UCLA/19STCV04634; Gonzalez v. Toyon Catering,  
2 Inc./19STCV11369; Gonzalez v. FMS Mgt./30-2019-01065563;  
3 Gutierrez v. Anaheim Denn/30-2019-01092546; Guzman v.  
4 Millennium Shoes/19STCV33166; Hernandez v. Township Retail  
5 Services/18STCV06709; Hernandez v. Resource Employment  
6 Solutions/30-2019-01084740; Herrera v. Color Spot Nurseries/30-  
7 2017-00933249; Leon v. Island Hospitality Mgt./30-2019-01060719;  
8 Martinez v. Snakerz/19STCV02674; Mendoza v. Savage Service  
9 Corp./18STCV04798; Martinez v. Riviera Beverages/ 30-2019-  
10 01056796; Mendoza v. United Production Framing/30-2019-  
11 01104255; Morales Cano v. Coordinated Staffing/19STCV29817;  
12 Moreno v. DCX-CHOL Enterprises/19STCV19105; Moreno v. DCX-  
13 CHOL Enterprises/19STCV26247; Contoran Najera v. TOPH I,  
14 LLC/30-2018-00999474; Nunez v. Wonderland Montessori,  
15 LLC/18STCV06042; Alvarez v. Greenfield Care Center of  
16 Fullerton/30-2017-00958478; Pallares - Mercado v. MB Santa Ana  
17 Restaurants/30-2019-01047135; Perez v. First Rate  
18 Staffing/18STCV02057; Popoca v. Denim  
19 Technologies/19STCV11434; Reidy v. City of  
20 Inglewood/18STCV09373; Rosales v. DBR  
21 Premium/19STCV32726; Salceda v. GBG USA, Inc./ 18STCV10004;  
22 Salceda v. GBG USA, Inc./ 18STCV04778; Torres v. Metro  
23 Security/19STCV21114; Torres v. Metro Security/19STCV15680;  
24 Trujillo v. Securitas Security Services/19STCV01207; Villacana v.  
25 Crothall Laundry Services, Inc./19STCV16330; and Villareal v.  
26 Golden Touch Cleaning/30-2019-01108777.

27 5. I am familiar with California and FLSA wage and hour law and the  
28 laws governing the alleged violations in this matter, including but not limited to

1 California Labor Code Sections 201 – 203, 226, 226.7, 510, 512, 1194, 1194.2,  
2 2698 and 2802, California Business and Profession Codes 17200 *et. seq.*, the  
3 Orders of the Industrial Welfare Commission, and the Private Attorneys General  
4 Act.

5 6. I know of no conflicts as to why I, or Mr. Hacopian, could not serve  
6 as Class Counsel in this matter and I am fully aware of the responsibilities I  
7 would owe as Class Counsel to the proposed class in this action. I also know of  
8 no conflicts that would preclude Mr. Cuellar from serving as a Class  
9 Representative in this matter.

10 7. As a result of my prior experience, including as class counsel in  
11 other wage and hour class actions, I am fully aware of the responsibilities I owe  
12 as Class Counsel to the proposed class in this action. Based on my experience,  
13 I believe that the proposed settlement is fair to the class, reasonable and more  
14 than adequate in view of: (i) the strength of Plaintiff’s claims and Defendant’s  
15 defenses, (ii) the risk, expense, complexity and likely duration of further  
16 litigation, (iii) the risk and difficulty of obtaining class certification and  
17 maintaining class action status through trial, (iv) the total settlement amount of  
18 \$4,393,000 offered in settlement allowing for significant individual recoveries  
19 by employees, (vii) the discovery conducted by the Parties in this case, (vi) my  
20 experience with similar settlements in wage and hour class actions that have  
21 received court approval, (viii) the fact that the settlement was the result of arms’  
22 length negotiations between experienced counsel facilitated by Mr. Scott  
23 Markus, a respected neutral mediator; and (ix) the review and analysis  
24 undertaken by EconOne and Mr. Brian Kriegler of substantial time and payroll  
25 records produced by Defendant.

26 8. First Transit employed Plaintiff Cuellar and Class Members. First  
27 Transit bills itself as the nation’s leading provider of public transportation  
28 contracting and management services and is headquartered in Cincinnati, Ohio.

1 In California, First Transit operates various depots from which fixed route and  
2 paratransit transportation services are provided. First Transit primarily contracts  
3 with local municipalities to provide public transportation services including in  
4 Orange County, San Diego County, and the San Francisco Bay Area. Plaintiff  
5 Cuellar was employed at First Transit’s Anaheim depot from July of 2016 until  
6 around December of 2016 and again from around October of 2018 until January  
7 2019.

8 9. The Class Members consist of all non-exempt employees who  
9 worked for First Transit in California during the Class Period from January 17,  
10 2016 to June 21, 2022. Based on the payroll data, the class consists of at least  
11 10,418 individuals and 359,980 employee pay periods. As pay periods had a bi-  
12 weekly frequency, that would result in coverage of at least 719,960 workweeks.

13 10. Plaintiff conducted formal discovery prior to mediation which  
14 resulted in the production of substantial electronic time and payroll records,  
15 copies of Collective Bargaining Agreements (CBA), a class list with class  
16 contact information, relevant policies and procedures, and training modules.  
17 Post mediation, this initial production was supplemented. Plaintiff ultimately  
18 had the benefit of expert analysis of payroll data across 359,980 employee pay  
19 periods and a timekeeping production covering 1,033,166 employee shifts. This  
20 information has been reviewed and analyzed by Plaintiff’s expert from which  
21 all relevant class data metrics were gleaned to assess potential exposure on  
22 asserted claims. The Parties have conducted investigation of the operative facts  
23 and applicable law during the litigation. The Parties have also investigated the  
24 applicable law as applied to the facts, potential defenses thereto, and damages  
25 claimed by Plaintiff on behalf of himself and the class he seeks to represent. My  
26 office had also interviewed at least sixty (60) class members prior to the  
27 mediation.

1           11. On March 23, 2022, the Parties participated in a full-day mediation  
2 before Mr. Scott Markus, a well-respected mediator with significant class action  
3 and wage and hour experience. At all times, the mediation was contested and  
4 adversarial. Prior to the mediation, Plaintiff had the benefit of expert review and  
5 analysis to allow for a fully informed negotiation. The Parties were able to agree  
6 to a resolution at the mediation and continued negotiation of settlement terms  
7 over the following months. Ultimately, the Parties agreed to their operative Joint  
8 Stipulation of Class and PAGA Representative Action Settlement and Release  
9 (“Settlement Agreement”), a true and correct copy of which is attached hereto  
10 as **Exhibit “1”**.

11           12. The estimated per capita average settlement payment, assuming  
12 maximum awards and participation by 10,500 Class Members calculates to  
13 \$254.68. This is based on a Net Settlement Amount of \$2,674,100 as calculated  
14 by deducting the following amounts from the Gross Settlement Amount  
15 (“GSA”) of \$4,363,000: \$1,308,900 for Attorneys’ Fees (30% of GSA),  
16 \$50,000 for Attorney’ costs, \$10,000 for the Class Representative’s Service  
17 Award, \$70,000 for Settlement Administration costs, a \$187,500 payment to the  
18 California Labor and Workforce Development Agency (“LWDA”) for its share  
19 of PAGA penalties, and \$62,500 payable to employees employed during the  
20 PAGA Period from January 17, 2019 to June 21, 2022. Notably, Plaintiff  
21 presently has obtained a \$50,000 administration quote from Phoenix Settlement  
22 Administrators.

23           13. Class Members who do not opt-out will be paid based on the  
24 number of workweeks that they were employed plus an workweek enhancement  
25 to former employees to compensate them for waiting time penalty claims. This  
26 method of allocation is fair and reasonable because it correlates to the extent of  
27 potential harm suffered by each Class Member for the duration of their  
28 employment during the Class Period.

1 14. First Transit maintained compliant timekeeping policies that  
2 required payment for all hours worked including unauthorized work. Employees  
3 are instructed to accurately report and record all hours worked including to  
4 record meal periods. There are prohibitions on working “off the clock” and  
5 instructing or encouraging other employees to do so. Time records may be  
6 edited to correct errors and employees are instructed to immediately report any  
7 errors to a manager and a compliance phone number and email address was  
8 maintained. Pre and post-shift duties, such as attending meetings and training  
9 sessions, donning uniforms, and performing inspections are all expressly  
10 identified in training modules as being compensable. Written and electronic  
11 timesheets were maintained and were processed into payroll.

12 **MEAL BREAK CLAIMS**

13 15. First Transit maintains a written meal period policy for its non-  
14 exempt employees which complies with all requirements of the Cal. Lab. Code  
15 and Wage Order 9 for the transportation industry, consistent with *Brinker* and  
16 its progeny. As well, First Transit implemented the best possible practices to  
17 ensure the provision of meal breaks and remedy their non-provision. The policy  
18 allowed for “one duty free and unpaid meal period of at least 30 minutes each  
19 workday” for employees working “more than five hours but less than ten hours”  
20 to be taken “prior to the beginning of the fifth hour of work.” The policy also  
21 provided for a second meal break for employees “who work more than ten  
22 hours” to commence “prior to the beginning of the tenth hour of work.”

23 16. First Transit’s written policy also allowed an employee the choice  
24 of waiving a meal period “if an employee’s workday is more than five hours but  
25 not more than six” and the choice of waiving a second meal period waiver if an  
26 “employee does not work more than twelve hours during the workday.” On-  
27 duty meal periods were “permitted if the requirements of the employee’s job  
28 prevent an off-duty meal period and the employee has previously signed an on-



1 duty meal period agreement.” As provided further, that an “employee must also  
2 have the opportunity to eat during the course of the workday.” Waiver  
3 agreements were consistent with the policy and separated the waiver of first and  
4 second meal breaks. The waivers allowed an employee to revoke the waivers  
5 “by providing written notice” and that “the revocation will be effective on the  
6 next business day” after submission.

7 17. To the extent an employee was unable “to take a timely meal period  
8 due to operational requirements, the employee is required to notify dispatch or  
9 the employee’s immediate supervisor as soon as possible” and that an  
10 “employee will receive the one hour’s pay due to the inability of the Company  
11 to provide the employee with the opportunity for all timely meal period.”

12 18. The written meal period policy was acknowledged by employees  
13 and it existed in tandem with CBAs.

14 19. Meal breaks were also addressed in employee and manager  
15 training modules including the proper use of time sheets to track meal breaks  
16 and how to report missed meal breaks. Supervisors, dispatchers, and payroll  
17 personnel were “required to check timesheets for missed breaks” and respond  
18 immediately if necessary. Claim forms were maintained to document any  
19 missed breaks and reasons therefor. Significantly, FT’s payroll system was  
20 setup to “auto-calculate” the break penalty based on a submitted time record and  
21 supervisors or managers could not modify timesheets.

22 20. In light of the substantial compliance noted above, the only  
23 possible means of recovering on a substantive meal break claim would be for  
24 Plaintiff to certify some theoretical issue – whereby meal breaks, despite being  
25 properly documented, were not in fact provided to some subgroup of employees  
26 and/or under certain limited circumstances. Further, any potential certification  
27 theory can readily be defeated on the need to individually inquire into issues of  
28 meal break availability and provision as this certification attempt will certainly

1 not emanate from the policies and practices outlined above. As such, a 70%  
2 discount can be applied on the stated maximum exposure of \$2,699,869, as  
3 determined by Plaintiff’s expert, to arrive at a \$809,960 value for the meal break  
4 claim, which reflects a 30% chance at certifying and prevailing on the merits.

5 **REST PERIOD CLAIMS**

6 21. As with meal breaks, First Transit maintained a written rest period  
7 policy for its non-exempt employees which legally complied with all  
8 requirements of the California Labor Code, and the implementation of best  
9 possible practices to ensure their provision and remedy any non-provision. The  
10 policy allowed for “a rest period of ten consecutive minutes for each four hours,  
11 or major fraction thereof, worked during the course of a workday.” The policy  
12 required no rest break if “total working time during the workday is less than  
13 three and one-half hours.” That to the extent possible, “rest periods should be  
14 taken in the middle of work periods” and that they are paid time. The policy  
15 generally disallowed taking of rest breaks “at the beginning or end of shifts” or  
16 with meal periods. Further, the CBA notes that “it is the responsibility of  
17 employees to take rest periods even if it means he or she may be late on route  
18 or for the next pickup.” Significantly, unlike meal breaks, there is no  
19 requirement that rest breaks be tracked.

20 22. In light of the substantial compliance noted above, the only  
21 possible means of recovering on a substantive rest break claim would be for  
22 Plaintiff to certify some theoretical issue – whereby rest breaks were not in fact  
23 provided to some subgroup of employees and/or under certain limited  
24 circumstances. Further, any potential certification theory can readily be defeated  
25 on the need for individual inquiry in the same vein as for meal breaks. Moreover,  
26 as rest breaks are not required to be documented, certification will potentially  
27 rely more heavily on class member declarations, which First Transit is likely to  
28 counter, further compounding individualized issues. As such, an 80% discount

1 can be applied to the stated maximum exposure of \$4,885,060, as determined  
2 by Plaintiff's expert, to arrive at a \$977,012 value for the rest break claim, which  
3 reflects a 20% chance at certifying and prevailing on the merits.

4 **BREAK PREMIUM PAY MISCALCULATION**

5 23. First Transit implemented the practice of paying meal and rest  
6 break premiums at employees' base hourly rate and not their regular rate. First  
7 Transit's employee handbook and other training documents routinely refer to  
8 premium wages as "one hour's pay" with no reference to "regular rate."

9 24. This claim will readily lend itself to certification as it is a  
10 straightforward miscalculation issue for which there will be no need to assess  
11 the underlying factual predicates of break provision. The amounts potentially  
12 owed will be the differential between the premiums paid and the recalculated  
13 premiums that would factor in any non-discretionary payments earned over the  
14 pay period during which the meal and/or rest premiums were earned. First  
15 Transit paid employees various non-discretionary payments including  
16 attendance bonuses, referral bonuses, length of employment bonuses, safety  
17 bonuses, shift differentials, and premiums for employees leading training  
18 sessions and for performing other job duties. This claim may valued at the  
19 maximum calculated exposure, or \$67,259.

20 **OVERTIME REGULAR RATE MISCALCULATION**

21 25. First Transit's policies related to overtime reference "regular rate  
22 of pay," unlike policies related to break premiums. A review of the payroll  
23 records, however, did not reveal regular rate differentials. As well, in practice,  
24 it appears that First Transit calculated overtime at 1.5 times an employee's base  
25 rate of compensation and double time at twice the base rate. As this this claim  
26 is also readily certifiable miscalculation issue, this claim can be valued at the  
27 full calculated exposure of \$777,248.

28 **WAITING TIME PENALTIES**

1           26.     First Transit maintained a compliant final wage payment policy  
2 that mandated delivery of a terminated employee's final paycheck (reflecting  
3 all earned and unpaid wages including accrued vacation) on the last day worked  
4 at the location where the employee is terminated. Further, that if a resigning  
5 employee gives at least 72 hours notice, they receive their final pay on the last  
6 day, or within 72 hours of notice. The policy provides that even to the extent an  
7 employee was paid their prior wages by direct deposit, they receive their final  
8 pay by check to ensure timely delivery. The training modules include  
9 instructions on how to request off-cycle paychecks. The policy further provides  
10 that if an employee consents in writing and provides a mailing address, the final  
11 payment may be mailed to the separating employee. In light of this compliant  
12 policy, any potential delay in relation to delivery of a specific final paycheck  
13 will boil down to the individual circumstances which will bar certification on  
14 any substantive waiting time claim.

15           27.     The potential for recovery of waiting time penalties will likely be  
16 limited to waiting time claims deriving from the underpaid break premiums and  
17 underpaid overtime. As this claim is subject to a potential uncertainty in law and  
18 good faith dispute defense and is reliant on underlying claims, a 30% discount  
19 can be applied to Plaintiff's expert's calculated of \$5,707,986 to value this claim  
20 at \$3,995,590.

21                           **WAGE STATEMENT CLAIMS**

22           28.     The wage statements issued by First Transit substantively  
23 complied with the requirements of Cal. Lab. Code §226. As such, similar to  
24 §203 waiting time penalties, potential recovery of wage statement penalties will  
25 be on a derivative basis for underpaid break premiums and underpaid overtime.  
26 Notably, employees were advised to immediately report any pay stub error to  
27 management or a compliance hotline. Also, an uncertainty in law defense may  
28 be raised for the period before the *Naranjo* decision was issued. Based on the

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1 foregoing, a 30% discount may be applied to Plaintiff's expert's \$1,620,100  
2 exposure to value this claim at \$1,134,070.

3 **EXPENSE REIMBURSEMENT AND FAILURE TO MAINTAIN**  
4 **RECORDS**

5 29. First Transit generally maintained policies that allowed for the  
6 reimbursement of documented employee business expenses, including  
7 specifically for travel, tools, and safety boots. First Transit provided employees  
8 with required protective equipment including reflective safety vests and high  
9 visibility uniform shirts. Company cell phones were provided to employees. The  
10 payroll data also reflected a uniform allowance. The time and payroll records  
11 do not reflect denial of any reimbursement request. In light of compliant  
12 policies, the need to prove that an expense was necessary, that it was incurred,  
13 and that reimbursement was denied, a morass of factual issues will predominate  
14 any effort to certify this claim. Further, First Transit maintained a written policy  
15 that allowed employees to review their personnel file by submitting a written  
16 request, in compliance with a CBA or State or local law. In light of the  
17 availability of extensive electronic time and payroll data, as produced to  
18 Plaintiff during the course of this litigation, Plaintiff is unlikely to prevail on  
19 such a failure to maintain records claims. As such, Plaintiff does not assign any  
20 value to both the expense reimbursement and failure to maintain records claims.

21 **PAGA PENALTIES**

22 30. Recovery of PAGA penalties is likely around Plaintiff's strongest  
23 liability claims for underpaid break premiums and overtime premiums.  
24 Significant discretionary reductions are almost certain and a valuation method  
25 that assess maximum penalties on the lower range likely. Applying an 80%  
26 reduction to Mr. Kriegler's calculated exposure range of \$4,414,260 to  
27 \$4,819,600, as consistent with reported cases, results in a potential exposure  
28 range of \$882,852 to \$963,920. In light of the intention of PAGA penalties to

1 not serve a compensatory or punitive purpose but to sufficiently act as a  
2 deterrent to further Labor Code violations, a Court may readily conclude that a  
3 lower penalty assessment will more than suffice to deter violations by this  
4 employer. There is also the risk that all of part of the PAGA claim may be  
5 rejected on trial manageability grounds. Based on the foregoing, the Parties'  
6 \$250,000 allocation for release of the PAGA claims reflects a very fair  
7 compromise.

8 31. The cumulative value of the viable class claims tallies to  
9 \$7,761,139. The \$4,363,000 gross settlement captures a significant chunk of the  
10 stated value and represents an excellent settlement.

11 32. I submit that the requested fee of \$1,308,900, or 30% of the Gross  
12 Settlement Amount, is fair compensation for undertaking complex, risky,  
13 expensive, and time-consuming litigation involving this case on a purely  
14 contingent fee basis. Here, my office has incurred substantial attorneys' fees  
15 independently conducting pre-filing investigations, analyzing the claims,  
16 litigating this case in State and Federal Court, propounding discovery,  
17 conducting legal research and analysis, reviewing and analyzing significant  
18 documentary and electronic records produced by Defendant, preparing for and  
19 attending a full-day mediation, negotiating the settlement, reviewing and  
20 amending the long-form Settlement Agreement, Class Notice, Second Amended  
21 Complaint, review and analysis of voluminous payroll data, extensive  
22 communications with consultants, and preparing approval motions, and  
23 otherwise aggressively pursuing the interests of the putative class. A lodestar  
24 cross-check is expected to amply support the request.

25 33. The Settlement allows for Plaintiff Cuellar to apply for a service  
26 award in the amount of \$10,000. He is also agreeing to a general release of  
27 claims. The request for Plaintiff's award is set forth in the proposed Notice.  
28 Plaintiff has stuck with the case for all these years, he has assisted in all regards

1 as needed throughout, served as fiduciary for the class, and subjected his good  
2 name to the negative impacts of the internet, such that all future prospective  
3 employer will easily be able to determine that they have been a class  
4 representative in a suit against one of his employers.

5 I declare under penalty of perjury under the laws of the United States of  
6 America and the State of California that the foregoing is true and correct.

7 Executed this 30th day of September 2022, in Calabasas, California.

8  
9 /s/Zorik Mooradian  
10 Zorik Mooradian  
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**EXHIBIT “1” – SETTLEMENT AGREEMENT**



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7 Attorneys for Defendant  
8 FIRST TRANSIT, INC.

9 UNITED STATES DISTRICT COURT  
10 CENTRAL DISTRICT OF CALIFORNIA

11 FRANK CUELLAR, individually and  
12 on behalf of other persons similarly  
situated,

13 Plaintiff,

14 v.

15 FIRST TRANSIT, INC., an active  
16 Ohio Corporation; and DOES 1-10,  
inclusive,

17 Defendant.  
18

Case No. 8:20-cv-01075-JWH-(JDEx)

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

Complaint filed: January 17, 2020

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

2 This Joint Stipulation of Class and PAGA Representative Action  
3 Settlement and Release states the proposed terms of the class action settlement of the  
4 above-entitled action. The terms stated below are agreed to and binding on Plaintiff  
5 Frank Cuellar (“Plaintiff”) and Defendant First Transit, Inc. (“Defendant”). Once  
6 approved by the Court, the Settlement shall be binding under the terms stated herein on  
7 Plaintiff, Defendant, and the Class Members (as defined below).

8 **SUMMARY OF THE SETTLEMENT**

9 The Parties herein, as stated in more detail in the terms and definitions  
10 below, have agreed to settle on a class basis all claims asserted by Plaintiff for various  
11 alleged violations of the California Labor Code and the Unfair Competition Law. The  
12 class consists of all individuals employed by First Transit, Inc. in the State of California  
13 as non-exempt employees during the class period defined below. The Parties conducted  
14 mediation of this case on March 22, 2022 with Scott Markus, during which the Parties  
15 agreed that all claims alleged herein, as defined below, would be settled on a class basis  
16 for the maximum amount of Four Million Three Hundred Sixty Three Thousand Dollars  
17 (\$4,363,000.00), with no portion of the settlement reverting back to Defendant. Of that  
18 settlement amount, Two Hundred Fifty Thousand Dollars (\$250,000.00) would be  
19 designated as PAGA Penalties under the Private Attorneys General Act, seventy-five  
20 percent (75%) of which will be paid to the California Labor and Workforce  
21 Development Agency and twenty-five percent (25%) of which will be paid to members  
22 of the class in accordance with the terms herein below.

23 **DEFINITIONS**

24 1. The following definitions are applicable to this Settlement, in addition to  
25 other terms defined elsewhere in the Settlement:

26 a. “Action” shall mean the following lawsuit: *Cuellar v. First Transit,*  
27 *Inc.*, Central District of California Case No. 8:20-cv-01075-JLS-JDE, including the  
28 original, the First Amended Complaint and the Second Amended Complaint.

1           b.     “Attorneys’ Costs” means reasonable attorneys’ costs approved by  
2 the Court for Class Counsel’s litigation and resolution of the Actions incurred and to be  
3 incurred by Class Counsel in the Actions up to, but not to exceed, Fifty Thousand  
4 Dollars (\$50,000.00). Attorneys’ Costs shall be paid to Class Counsel. The Attorneys’  
5 Costs shall be paid from the Gross Settlement Amount.

6           c.     “Attorneys’ Fee Award” means the attorneys’ fees agreed upon by  
7 the Parties herein and approved by the Court for Class Counsel’s litigation and  
8 resolution of the Action up to, but not to exceed, thirty percent (30%) of the Gross  
9 Settlement Amount. Attorneys’ Fees shall be paid to Class Counsel from the Gross  
10 Settlement Amount.

11           d.     “Class” and “Class Members” for purposes of this Settlement shall  
12 be defined as: All individuals employed by First Transit, Inc. and/or First Vehicle  
13 Services, Inc. as non-exempt employees in the state of California from January 17, 2016  
14 to June 21, 2022. The persons identified in this paragraph are “Class Members” and  
15 are collectively referred to as “the Class.”

16           e.     “Class Counsel” shall mean Zorik Mooradian and Haik Hacopian of  
17 Mooradian Law, APC.

18           f.     “Class Period” shall mean the time period from January 17, 2016 to  
19 June 21, 2022.

20           g.     “Class Representative Service Award” shall mean an award up to,  
21 but not to exceed, Ten Thousand Dollars (\$10,000.00) to Plaintiff in recognition of  
22 Plaintiff’s efforts and work in prosecuting the Action on behalf of Class Members, risks  
23 undertaken for the payment of costs in the event of loss, and the giving of a general  
24 release of all claims. The Class Representative Service Award shall be paid from the  
25 Gross Settlement Amount.

26           h.     “The Court” shall mean the Central District of California, The  
27 Honorable John W. Holcomb, Case No. 8:20-cv-01075-JWH-JDE, or such other  
28 Central District Judge as may be assigned to hear this matter.

1 i. “Defendant” shall mean Defendant First Transit, Inc.

2 j. “Effective Date” shall be thirty one (31) calendar days from the date  
3 of entry of an Order Granting Final Approval of the Settlement and Entering Judgment  
4 described below. However, if an appeal is filed within thirty (30) days of entry of an  
5 Order Granting Final Approval of the Settlement and Entering Judgment, then the  
6 Effective Date shall be the latest of: (i) the date of final affirmance of the Order Granting  
7 Final Approval; (ii) the date of final dismissal of any appeal from the Order Granting  
8 Final Approval of the Settlement and Entering Judgment or the final dismissal of any  
9 proceeding to review the Order Granting Final Approval that has the effect of  
10 confirming the Order Granting Final Approval with no avenue for additional appeal or  
11 review available.

12 k. “Employer Taxes” means Defendant’s share of employer-sided  
13 payroll taxes to be paid on that portion of the Class Member’s Individual Settlement  
14 Payment characterized as wages, i.e. FICA, FUTA, payroll taxes, and/or any similar tax  
15 or charge. The Employer Taxes will be paid outside of and in addition to the Gross  
16 Settlement Amount.

17 l. “Gross Settlement Amount” (or “GSA”) shall mean the maximum  
18 non-reversionary amount of Four Million Three Hundred Sixty Three Thousand Dollars  
19 (\$4,363,000.00) payable by Defendant as provided for by this Agreement.

20 m. “Individual Settlement Payment” means the amount each Class  
21 Member shall be entitled to receive pursuant to the Settlement. This payment will  
22 include compensation pursuant to the terms of this Agreement for all Workweeks during  
23 the Class Period and the number of Pay Periods worked during the PAGA Period. Class  
24 Members who opt-out of the non-PAGA portion of the Settlement shall only receive  
25 payment based on the number of Pay Periods worked during the PAGA Period.

26 n. “LWDA Payment” means the seventy-five percent (75%) portion of  
27 the PAGA Penalties to be paid to the California Labor and Workforce Development  
28 Agency (“LWDA”) pursuant to the PAGA.

1 o. “Net Settlement Amount” shall mean the Gross Settlement Amount  
2 less (a) the Class Representative Service Award, (b) Settlement Administration Costs,  
3 (c) Attorneys’ Fees Award, (d) Attorneys’ Costs, and the (e) PAGA Penalties.

4 p. “Notice Packet” shall mean the Notice of Proposed Class Action  
5 Settlement substantially in the form attached as **Exhibit A**.

6 q. “Parties” shall mean collectively, Plaintiff and Defendant.

7 r. “Pay Period(s)” means any Pay Period in which a PAGA Member  
8 worked one day in that Pay Period during the PAGA Period, excepting those dates/times  
9 taken for vacations and leaves of absences.

10 s. “Plaintiff” and “Class Representative” shall mean Plaintiff Frank  
11 Cuellar.

12 t. “PAGA” shall mean the Private Attorneys General Act of 2004,  
13 California Labor Code section 2698, *et seq.*

14 u. “PAGA Member(s)” means those Class Members who worked any  
15 time during the PAGA Period.

16 v. “PAGA Members Payment” means the twenty-five percent (25%)  
17 portion of the PAGA Penalties to be paid to PAGA Members pursuant to the PAGA.

18 w. “PAGA Penalties” means civil penalties under the PAGA agreed  
19 upon by the Parties and approved by the Court up to, but not to exceed, Two Hundred  
20 Fifty Thousand Dollars (\$250,000.00), seventy-five percent (75%) of which will be paid  
21 to the California Labor and Workforce Development Agency (“LWDA Payment”), and  
22 the remaining twenty-five percent (25%) (“PAGA Members Payment”) shall be  
23 distributed proportionately to PAGA Members.

24 x. “PAGA Period” means that period of time from January 17, 2019  
25 to June 21, 2022 in which PAGA Members worked.

26 y. “Participating Class Member(s)” means any Class Member who  
27 does not return a valid and timely request to be excluded from the non-PAGA portion  
28 of the Settlement. All Participating Class Members will be mailed their Individual

1 Settlement Payment without the need to return a claim form.

2 z. “Response Deadline” means the deadline by which Class Members  
3 must postmark and return to the Administrator signed, dated, and timely requests for  
4 exclusion from the non-PAGA portion of the Settlement, objections to the Settlement  
5 and/or disputes concerning the number of Workweeks during the Class Period and/or  
6 number Pay Periods worked during the PAGA Period. The Response Deadline will be  
7 sixty (60) calendar days from the initial mailing of the Notice Packets by the Settlement  
8 Administrator, unless the 60th day falls on a Sunday or Federal holiday, in which case  
9 the Response Deadline will be extended to the next day on which the U.S. Postal Service  
10 is open. The Response Deadline will be extended fifteen (15) calendar days for any  
11 Class Member who is re-mailed a Notice Packet by the Settlement Administrator, unless  
12 the 15th day falls on a Sunday or Federal holiday, in which case the Response Deadline  
13 will be extended to the next day on which the U.S. Postal Service is open. The Response  
14 Deadline may also be extended by express agreement between Class Counsel and  
15 Defendant.

16 aa. “Released Claims” means any and all claims, debts, rights,  
17 demands, obligations or liabilities of every nature and description, for damages,  
18 premiums, penalties, liquidated damages, punitive damages, interest, attorneys’ fees,  
19 litigation costs, restitution, or equitable relief arising under state or federal law during  
20 the Class Period and alleged in the operative complaint, or which could have been  
21 alleged based on the facts pled in the operative complaint, including without limitation  
22 claims relating to: (i) the alleged failure to pay for all hours worked, (ii) the alleged  
23 failure to correctly pay overtime wages, (iii) the alleged failure to include bonus and  
24 other payments in the regular rate of pay, (iv) the alleged failure to provide meal and  
25 rest breaks and to pay meal and rest break premiums, including payment of such  
26 premiums at the correct rate of pay, (v) the alleged failure to provide complete and  
27 accurate wage statements, (vi) the alleged failure to provide one day of rest or the  
28 equivalent of one day’s rest in seven during each calendar month; (vii) the alleged

1 failure to timely pay wages, including final wages to employees who quit or are  
2 terminated, (viii) the alleged failure to reimburse for business expenses, (viii) the  
3 alleged failure to maintain accurate time and payroll records, (ix) the alleged failure to  
4 pay minimum wages, (x) the alleged failure to pay for on-call time, and (xi) claims for  
5 interest and any other claims and penalties premised on the aforementioned  
6 allegations. “Released Claims” also includes all types of relief available for the above-  
7 referenced claims, including any claims for damages, restitution, losses, premiums,  
8 penalties, fines, liens, attorneys’ fees, costs, expenses, debts, interest, injunctive relief,  
9 declaratory relief, or liquidated damages, whether under federal law, California law or  
10 any state law or common law, including, without limitation, violations of the California  
11 Labor Code, the Wage Orders, applicable regulations, and any and all claims under the  
12 Fair Labor Standards Act.

13 bb. “Released PAGA Claims” means any and all PAGA claims arising  
14 during the PAGA Period and alleged in the operative complaint and/or Plaintiff’s letters  
15 to the LWDA, or which could have been alleged based on the facts pled in the operative  
16 complaint and/or alleged in Plaintiff’s letters to the LWDA, including without limitation  
17 PAGA claims relating to: (i) the alleged failure to pay for all hours worked, (ii) the  
18 alleged failure to correctly pay overtime wages, (iii) the alleged failure to include bonus  
19 and other payments in the regular rate of pay, (iv) the alleged failure to provide meal  
20 and rest breaks and to pay meal and rest break premiums, including payment of such  
21 premiums at the correct rate of pay, (v) the alleged failure to provide complete and  
22 accurate wage statements, and (vi) the alleged failure to provide one day of rest or the  
23 equivalent of one day’s rest in seven during each calendar month, (vii) the alleged  
24 failure to timely pay wages, including final wages to employees who quit or are  
25 terminated, (viii) the alleged failure to reimburse for business expenses, (ix) the alleged  
26 failure to maintain accurate time and payroll records, (x) the alleged failure to pay  
27 minimum wages, (xi) failure to pay for on-call time, and (xii) any other PAGA claims  
28 premised on the aforementioned allegations.

1 cc. “Released Parties” means First Transit, Inc., FirstGroup America,  
2 Inc., First Vehicle Services, Inc., their past, present, and future parents, subsidiaries,  
3 divisions, and their respective past, present, and future officers, directors, employees,  
4 partners, shareholders, owners, agents, insurers, legal representatives, attorneys and all  
5 of their successors (including persons or entities who may acquire them in the future),  
6 assigns, representatives, heirs, executors, and administrators and all other persons acting  
7 by, through, under or in concert with them that could be liable.

8 dd. “Settlement” or “Agreement” or “Settlement Agreement” shall  
9 mean this Joint Stipulation of Class Action Settlement and Release.

10 ee. “Settlement Administrator” means Phoenix Administration or any  
11 other third-party class action settlement administrator agreed to by the Parties and  
12 approved by the Court for the purposes of administering this Settlement.

13 ff. “Settlement Administration Costs” means the costs allocated from  
14 the Gross Settlement Amount to pay for administration of the settlement, as described  
15 in this Agreement, including required tax calculations and tax reporting to the  
16 appropriate governmental entities in connection with the Individual Settlement  
17 Payments (as defined below), issuing of 1099 and W-2 IRS Forms, address updates  
18 through the National Change of Address database (prior to the mailing of the Notice  
19 Packets), distributing Notice Packets, skip-tracing Notice Packets returned as  
20 undeliverable, calculating and distributing the Individual Settlement Payments, weekly  
21 status reports, resolving disputed claims with the aid of the Parties’ counsel, and  
22 providing all reports and declarations deemed necessary by the Parties in an amount not  
23 to exceed \$70,000.00.

24 gg. “Workweek” means any week in which a Class Member worked one  
25 day in that week during the Class Period, excepting those dates/times taken for  
26 vacations and leaves of absences.

27 **SUMMARY OF THE LITIGATION AND SETTLEMENT**

28 2. On January 17, 2020, Plaintiff Frank Cuellar filed his class action

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1 Complaint on behalf of himself and a putative class. Plaintiff alleged causes of action  
2 against Defendant for: (1) Failure to provide meal periods, (2) Failure to provide rest  
3 periods, (3) Failure to pay wages, (4) Failure to timely pay wages at  
4 termination/separation, (5) Failure to provide accurate wage statements and (6) Unfair  
5 business practices.

6 3. On June 15, 2020, Defendant removed the Action to federal court pursuant  
7 to the Class Action Fairness Act of 2005 (“CAFA”).

8 4. On September 2, 2020, Plaintiff filed a First Amended Complaint adding  
9 a cause of action for PAGA penalties.

10 5. The Parties conducted discovery, including the production of putative class  
11 member information and time and payroll records. The Parties recognize the issues in  
12 the Action will likely only be resolved with further extensive and costly proceedings;  
13 recognize that further litigation shall cause inconvenience, distraction, disruption, delay  
14 and expense disproportionate to the potential benefits of litigation; and recognize the  
15 risk and uncertainty of the outcome inherent in any litigation. Based on their own  
16 independent investigation and evaluation, Class Counsel is of the opinion that the  
17 Settlement with Defendant for the consideration and on the terms of this Settlement is  
18 fair, reasonable, and adequate and is in the best interest of the Class in light of all known  
19 facts and circumstances, including the risk of significant delay and defenses asserted by  
20 Defendant. While Defendant specifically denies all liability in the Action, it has agreed  
21 to enter into this Settlement to avoid the cost and business disruption associated with  
22 further defense of the Action.

23 6. The Parties participated in a mediation of this case on March 23, 2022 with  
24 Scott Markus. During the course of the mediation, the Parties agreed to fully, finally,  
25 and forever compromise and settle all claims asserted in the Action for the Gross  
26 Settlement Amount. To achieve a complete release of Defendant, each Class Member  
27 will be informed that in exchange for their Individual Settlement Payment, each  
28 Participating Class Member will release the Released Claims as against the Released

1 Parties and each PAGA Member will release the Released PAGA Claims as against the  
2 Released Parties.

3 **TERMS OF THE CLASS SETTLEMENT**

4 7. Gross Settlement Amount. Defendant shall pay the Gross Settlement  
5 Amount to resolve the Action on a class-wide basis. In addition to the Gross Settlement  
6 Amount, Defendant shall pay the Employer Taxes due on the portion of the Individual  
7 Settlement Payments allocated to wages. Under no circumstances shall Defendant be  
8 obligated to pay any more than the Gross Settlement Amount and the Employer Taxes.

9 8. Allocation of the Gross Settlement Amount. From the Gross Settlement  
10 Amount, and subject to the approval of the Court, the Parties agree to the following  
11 allocations:

12 a. Class Representative Service Award. Plaintiff Frank Cuellar shall  
13 be paid a Class Representative Service Award of up to \$10,000 in recognition of  
14 Plaintiff's effort and work in prosecuting the Action on behalf of Class Members, and  
15 undertaking the burdens and risks for the payment of costs in the event of loss. The  
16 Class Representative Service Award shall be paid in addition to Plaintiff's Individual  
17 Settlement Payments, and Plaintiff shall give a general release of all claims against  
18 Defendant in exchange for the Class Representative Service Award. Plaintiff shall be  
19 solely and legally responsible to pay any and all applicable taxes on his Class  
20 Representative Service Award. Any portion of the Class Representative Service Award  
21 not awarded to Plaintiff shall remain with the Net Settlement Amount.

22 b. Settlement Administration Costs. The Settlement Administrator  
23 shall be paid "Settlement Administration Costs" in an amount not to exceed Seventy  
24 Thousand Dollars (\$70,000.00).

25 c. Attorneys' Fee Award. Class Counsel shall be paid an Attorneys'  
26 Fee Award of up to One Million Three Hundred and Eight Thousand Nine Hundred  
27 Dollars (\$1,308,900.00), thirty percent (30%) of the Gross Settlement Amount;

28 d. Attorneys' Costs. Class Counsel shall be paid an award for

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1 reimbursement of their Attorneys' Costs in an amount of up to Fifty Thousand Dollars  
2 (\$50,000.00);

3 e. PAGA Penalties. PAGA Penalties of \$187,500.00 (75% of  
4 \$250,000.00) shall be paid to the LWDA and \$62,500.00 (25% of \$250,000.00) to Class  
5 Members who have worked during Pay Periods in the PAGA Period. Class Members  
6 shall not have the right to opt out of the PAGA portion of this Settlement.

7 9. Allocation of the Net Settlement Amount and PAGA Members Payment.

8 The Net Settlement Amount, estimated at \$2,674,100, and the PAGA Members  
9 Payment estimated to be \$62,500.00 shall be allocated to Class Members based on the  
10 formulas described below. Any portion of the Class Representative Service Award, the  
11 Settlement Administration Costs, the Attorneys' Fees Award, the Attorneys' Costs  
12 and/or the PAGA Penalties not approved by the Court shall be added to the Net  
13 Settlement Amount. No portion of the Net Settlement Amount shall revert to or be  
14 retained by Defendant under any circumstance. The Net Settlement Amount and PAGA  
15 Members Payment shall be distributed to Participating Class Members and PAGA  
16 Members on a proportionate basis as follows:

17 a. Payment to Participating Class Members. Each Participating Class  
18 Member shall receive a proportionate share of the Net Settlement Amount  
19 that is equal to (i) the number of Workweeks he/she worked during the  
20 Class Period, plus any additional Workweek enhancements described  
21 herein, divided by (ii) the total number of Workweeks worked by all  
22 Participating Class Members, plus the total of Workweek enhancements  
23 described herein, during the Class Period. Those Participating Class  
24 Members whose employment ended during the period from January 17,  
25 2017 through June 21, 2022 will receive an additional one Workweek  
26 credit for each Workweek worked, up to a maximum credit of six (6)  
27 additional Workweeks, to compensate them for their claim for waiting time  
28 penalties under the California Labor Code.

1           b. PAGA Members Payment. Each PAGA Member will receive a  
2           proportionate share of the PAGA Members Payment that is equal to (i) the  
3           number of Pay Periods he/she worked during the PAGA Period divided by  
4           (ii) the total number of Pay Periods worked by all PAGA Members during  
5           the PAGA Period.

6           10. Individual Settlement Payments. Participating Class Members shall  
7           receive an Individual Settlement Payment calculated as set forth in paragraph 9(a)-(b)  
8           above. Class Members who opt out of the non-PAGA portion of the Settlement shall  
9           receive only an Individual Settlement Payment representing payment for the PAGA  
10          Members Payment as set forth in paragraph 9(b). In the event that a Class Member  
11          should dispute the information upon which his or her Individual Settlement Payment is  
12          calculated, and it is determined by the Administrator from the information and/or  
13          documentation provided by that Class or PAGA Member that an amount more than that  
14          initially calculated is payable to any Participating Class Member or PAGA Member  
15          pursuant to the Settlement, that additional amount will be paid from the Gross  
16          Settlement Amount. In no event shall Defendant ever be required to pay any amount  
17          greater than the Gross Settlement Amount plus the Employer Taxes.

18          11. No Credit Toward Benefit Plans. Unless otherwise required by any  
19          applicable benefit plan, the Individual Settlement Payments made to Participating Class  
20          Members and PAGA Members, as well as any other payments made pursuant to this  
21          Settlement, shall not be construed as compensation for nor utilized to calculate any  
22          additional benefits under any benefit plans to which any Class Members may otherwise  
23          be eligible, including, but not limited to profit-sharing plans, bonus plans, 401(k) plans,  
24          stock purchase plans, vacation plans, sick leave plans, PTO plans, and any other benefit  
25          plan of Defendant or pursuant to any Collective Bargaining Agreement. Unless  
26          otherwise required by any applicable benefit plan, this Settlement shall not affect any  
27          rights, contributions, or amounts to which any Class Members may be entitled under  
28          any benefit plans.

**AMENDED PAGA NOTICE AND COMPLAINT**

12. Amended PAGA Notice: Plaintiff’s counsel shall file an amended Notice with the LWDA to include claims of failure to properly calculate the regular rate of pay, failure to properly pay for all hours worked, failure to provide one day’s rest in seven, failure to provide meal and rest breaks, failure to provide complete and accurate wage statements, failure to reimburse for business expenses and failure to maintain payroll-related records. In the event the LWDA timely notifies Plaintiff that it intends to investigate the claims in the Amended PAGA Notice this Settlement Agreement shall be null and void.

13. Second Amended Complaint: Upon expiration of the of the sixty-five (65) day time period for receipt of a response to the Amended PAGA Notice from the LWDA the Parties shall stipulate to the filing of, and Plaintiff shall file, a Second Amended Complaint modifying the class definition consistent with the Class definition set forth above in paragraph 1(d) and adding class and PAGA claims consistent with the factual allegations of the Amended PAGA Notice. The Parties shall agree upon the form of the Second Amended Complaint. In the event this Settlement does not receive final approval by the Court or the Effective Date does not occur, the Parties shall stipulate to the withdrawal of the Second Amended Complaint, and this litigation shall return to the status prior to the execution of this Settlement Agreement.

**PRELIMINARY APPROVAL OF THE SETTLEMENT**

14. Preliminary Approval: Upon filing of the Second Amended Complaint, Plaintiff shall file a Motion for Order Granting Preliminary Approval of the Class Action Settlement which requests the following: (i) preliminary approval of the Settlement, subject only to the objections of Class Members and final review by the Court; (ii) conditional certification of a class for purposes of settlement only; (iii) a schedule for final approval hearing regarding the proposed Settlement, including payment of Attorneys’ Fees and Attorneys’ Costs, and Class Representative Service Award; (iv) approval as to form and content of the proposed Notice Packet; (v) a

1 schedule for the procedures for the Response Deadline; and (vi) a schedule for the  
2 mailing of the Notice Packet by first class mail to the Class Members. Plaintiff Counsel  
3 will provide counsel for Defendant with a draft of the motion for preliminary approval  
4 including the proposed Order Granting Preliminary Approval at least seven (7) calendar  
5 days before it is filed with the Court for Defendant's review and input. Defendant shall  
6 not oppose the Preliminary Approval Motion and may, in its sole option, file a  
7 declaration of non-opposition. Concurrently with the filing of the Preliminary Approval  
8 Motion, counsel for Plaintiff shall submit a copy of this Agreement to the LWDA, and  
9 provide proof of said submission to the Court and counsel for Defendant.

10 15. CAFA Notice: Pursuant to the Class Action Fairness Act of 2005  
11 ("CAFA"), within ten (10) business days after the filing of the Motion for Preliminary  
12 Approval, Defendant will provide notice pursuant to 28 U.S.C. § 1715. Defendant will  
13 file a declaration with the Court confirming compliance with the notice provisions of  
14 28 U.S.C. § 1715. The Parties will request the Court to make a finding that the notice  
15 provisions of 28 U.S.C. § 1715 have been satisfied in the Motion for Final Approval of  
16 the Settlement.

17 16. Class Certification for Settlement Purposes Only. The Parties agree to  
18 stipulate to certification of the Class for purposes of the Settlement only. If, for any  
19 reason, the Settlement is not approved, the stipulation to certification shall be void. The  
20 Parties further agree that certification for purposes of the Settlement is not an admission  
21 that class action certification is proper under the standards applied to contested  
22 certification motions and that this Settlement shall not be admissible in this or any other  
23 proceeding as evidence that either: (i) a class action should be certified or (ii) Defendant  
24 is liable to Plaintiff or any Class Member, other than according to the Settlement's  
25 terms.

### 26 SETTLEMENT ADMINISTRATION

27 17. Settlement Administrator. The Parties each represent that they do not have  
28 any financial interest in the Settlement Administrator or otherwise have a relationship

1 with the Settlement Administrator that could create a conflict of interest.

2 18. Class Data. Within 14 days of the Order Granting Preliminary Approval,  
3 Defendant shall provide to the Settlement Administrator for each identifiable member  
4 of the Class the following information: name, address, social security number,  
5 telephone number, indication of termination of employment from January 17, 2017  
6 through June 21, 2022, and the number of work weeks worked during the Class Period,  
7 with any applicable enhancement, and the number of Pay Periods worked during the  
8 PAGA Period based on its business and payroll records (“Class Data List”). The Class  
9 Data List and information shall remain confidential. The Settlement Administrator shall  
10 only use this information to facilitate notice, administration of the Settlement, and for  
11 distribution of Individual Settlement Payments to Participating Class Members and  
12 PAGA Members. The Parties agree to cooperate in the administration of the Settlement  
13 and to make all reasonable efforts to control and minimize the costs and expenses  
14 incurred in administration of the Settlement.

15 19. Duty to Protect Class Data. The Settlement Administrator shall represent  
16 and warrant that it shall: (i) provide reasonable and appropriate administrative, physical  
17 and technical safeguards for the Class Data List that it receives from Defendant; (ii) not  
18 disclose the Class Data List to Class Counsel, Named Plaintiff, any party or third parties,  
19 including agents or subcontractors, without Defendant’s consent and keep the Class  
20 Data List confidential; (iii) not disclose or otherwise use the Class Data other than to  
21 carry out its duties as set forth herein; and (iv) promptly provide Defendant with notice  
22 if it becomes aware that the Class Data List becomes subject to unauthorized access,  
23 use, or disclosure.

24 20. Confirmation of Contact Information in the Class Data List. Following  
25 receipt of the Class Data List from Defendant, and prior to mailing, the Settlement  
26 Administrator shall perform a search of the National Change of Address Database to  
27 update and correct stale Class Member addresses. If any Notice Packet is returned to  
28 the Settlement Administrator as non-deliverable on or before the Response Deadline,

1 within three days of its receipt, the Settlement Administrator shall send it promptly via  
2 regular First-Class U.S. Mail to the forwarding address affixed thereto, and the  
3 Settlement Administrator shall indicate the date of such re-mailing on the Notice Packet.  
4 If no forwarding address is provided, the Settlement Administrator shall promptly  
5 attempt to determine the correct address by using a skip-trace, or other search using the  
6 name, address and/or social security number of the Class Member involved, and shall,  
7 within three days of learning the correct address, re-mail the Notice Packet. Should a  
8 Notice Packet associated with a currently employed Class Member be returned to the  
9 Administrator, it shall immediately inform Defendant to obtain a more current mailing  
10 address for that Class Member to re-mail the Notice Packet.

11 21. Notice by First-Class U.S. Mail. Within fourteen (14) business days  
12 following Defendant’s provision of the Class Data List to the Settlement Administrator  
13 as set forth in Paragraph 15, supra, the Administrator shall mail the individualized  
14 Notice Packet by First Class U.S. Mail. The Notice Packet shall be provided in both  
15 English and Spanish. Each individualized Notice of Class Action Settlement (“Notice”  
16 – Exhibit “A”) shall include the Class Member’s number of Workweeks during the  
17 Class Period and number of Pay Periods worked during the PAGA Period and the  
18 estimated Individual Settlement Payment amount. The Notice will also inform Class  
19 Members of their right to opt-out of the non-PAGA portion of the Settlement, that they  
20 will receive payment for the Settlement without having to submit a claim and that they  
21 each will be mailed their Individual Settlement Payment at the address on file with the  
22 Administrator. The Notice will also inform the Class of the manner and deadline to  
23 submit (1) requests for exclusion from the non-PAGA portion of the Settlement, (2)  
24 objections to the Settlement; and (3) disputes concerning the number of Workweeks  
25 during the Class Period and the number of Pay Periods worked during the PAGA Period.  
26 The Notice further informs the Class of the claims to be released, including if they do  
27 not request to be excluded, and the date, time, and place set for the Final Approval  
28 Hearing.



1           22.    Disputed Workweek and/or Pay Period Information. Class Members may  
2 contact the Settlement Administrator with questions regarding the number of  
3 Workweeks they have been assigned during the Class Period or the number of Pay  
4 Periods. Class Members may produce evidence to the Settlement Administrator  
5 showing that such information is inaccurate. There is a rebuttable presumption that  
6 Defendant’s personnel and payroll records are correct, but Class Members may, should  
7 they disagree with Defendant’s records, provide documentation to show contrary  
8 employment dates and/or records of Workweeks or Pay Periods no later than the  
9 Response Deadline. The dispute must: (i) set forth the name, address, telephone number  
10 and last four digits of the social security number of the Class Member submitting the  
11 dispute; (ii) be signed by the Class Member; (iii) be timely returned to the Settlement  
12 Administrator; (iv) clearly state the reason(s) that the Class Member disputes the  
13 information provided contained in the Notice Packet; and (v) be postmarked on or  
14 before the Response Deadline. All disputes shall be decided by the Settlement  
15 Administrator within ten (10) business days of the Response Deadline.

16           23.    Request for Exclusion Procedures. Any Class Member wishing to opt-out  
17 from the non-PAGA portion of the Settlement must sign and postmark a written Request  
18 for Exclusion to the Settlement Administrator, in the manner set forth in the Notice, by  
19 the Response Deadline. The Request for Exclusion must: (i) set forth the name, address,  
20 telephone number and last four digits of the Social Security number of the Class  
21 Member requesting the exclusion; (ii) be signed by the Class Member; (iii) be timely  
22 returned to the Settlement Administrator; (iv) clearly state that the Class Member does  
23 not wish to be included in the non-PAGA portion of the Settlement and does not wish  
24 to receive any payment or other benefits therefrom; and (v) be postmarked on or before  
25 the Response Deadline. The postmark date shall be the exclusive means to determine  
26 whether a Request for Exclusion has been timely submitted. No Request for Exclusion  
27 may be made on behalf of a group of Class Members. Workweeks by Class Members  
28 who have submitted a valid and timely Request for Exclusion shall be deducted from

1 the aggregate number of Workweeks for the non-PAGA portion of the Settlement.  
2 Class Members shall not have the right to opt-out from the PAGA portion of the  
3 Settlement.

4 24. Defective Submissions. If a Class Member's Request for Exclusion is  
5 defective as to any of the requirements listed herein, that Class Member shall be given  
6 an opportunity to cure the defect(s). The Settlement Administrator shall mail the Class  
7 Member a cure letter within three (3) business days of receiving the defective  
8 submission to advise the Class Member that his or her submission is defective and that  
9 the defect must be cured to render the Request for Exclusion valid. The Class Member  
10 shall have until (i) the Response Deadline or (ii) ten (10) calendar days from the date of  
11 the cure letter, whichever date is later, to postmark a revised Request for Exclusion. If  
12 the revised Request for Exclusion is not postmarked within that period, it shall be  
13 deemed untimely. Class Members shall be limited to one cure letter advising them of  
14 the defect. A Class Member who submits an invalid or untimely request to be excluded  
15 will remain a Class Member, will receive their Individual Settlement Payment and be  
16 bound by the releases and judgment entered as set forth herein. Invalid and untimely  
17 Requests for Exclusion shall be deemed null and void.

18 25. Objection Procedures. To object to the non-PAGA portion of the  
19 Settlement, a Class Member must postmark a valid Notice of Objection to the  
20 Settlement Administrator on or before the Response Deadline. Class Members shall  
21 not have a right to object to the PAGA portion of the Settlement. The Notice of  
22 Objection must be signed by the Class Member and contain all information required by  
23 this Settlement and as set forth in the Notice of Class Action Settlement, including:  
24 (i) the objector's full name, signature, address, and telephone number; (ii) a written  
25 statement of all grounds for the objection accompanied by any legal support for such  
26 objection; (iii) copies of any papers, briefs, or other documents upon which the  
27 objection is based; and (iv) a statement whether the objector intends to appear at the  
28 Final Approval Hearing. The postmark date shall be deemed the exclusive means for

1 determining that the Notice of Objection is timely. Only Class Members who have not  
2 opted out of the California state law portion of the Settlement may object. Any Class  
3 Member who does not submit a timely written objection to the Settlement, or who fails  
4 to otherwise comply with the specific and technical requirements of this Paragraph as  
5 provided in the Notice, shall be foreclosed from objecting to the Settlement and seeking  
6 any adjudication or review of the Settlement, by appeal or otherwise. Class Members  
7 who postmark timely Notices of Objection shall have a right to appear at the Final  
8 Approval Hearing in order to have their objections heard by the Court. At no time shall  
9 any of the Parties or their counsel seek to solicit or otherwise encourage Class Members  
10 to submit written objections to the Settlement or appeal from the Final Approval and  
11 Judgment. Class Counsel shall not represent any Class Members with respect to any  
12 such objections to this Settlement. The Parties shall file all Notices of Objection, valid  
13 or invalid, timely or untimely, with the Court in advance of the Final  
14 Approval/Settlement Fairness Hearing. If the Court overrules the Class Member's  
15 objection, or if the Court approves the Settlement despite any objections, the Class  
16 Member will be deemed to be a Participating Class Member and will be bound by the  
17 terms of this Agreement, and will be mailed their Individual Settlement Payment.

18 26. Settlement Administrator Reports Regarding Class Member Participation.

19 The Settlement Administrator shall provide Defendant's counsel and Class Counsel a  
20 biweekly report that certifies the number of Class Members who have submitted valid  
21 Requests for Exclusion and objections to the Settlement, and whether any Class  
22 Member has submitted a challenge to any information contained in their Notices. The  
23 Settlement Administrator shall provide to counsel for both Parties any updated reports  
24 regarding the administration of the Settlement as needed or requested. Not later than  
25 fourteen (14) days after the final Response Deadline, the Settlement Administrator will  
26 provide the Parties with a complete and accurate list of all Participating Class Members,  
27 all Non-Participating Class Members and all Class Members who objected to the  
28 Settlement Agreement.

1           27. Settlement Administrator Declaration. Not later than twenty-eight (28)  
2 court days prior to the Final Approval Hearing, the Settlement Administrator will  
3 provide the Parties with its declaration of due diligence setting forth its compliance with  
4 its obligations under this Agreement to be filed with the Court, and will supplement its  
5 declaration as needed or as requested by the Court.

6           28. Settlement Administrator Final Report. By no later than five (5) calendar  
7 days following the Effective Date, the Settlement Administrator shall provide counsel  
8 for both Parties with the aggregate number of Workweeks by Participating Class  
9 Members during the Class Period and aggregate number of Pay Periods worked by  
10 PAGA Members during the PAGA Period. Upon completion of administration of the  
11 Settlement, the Settlement Administrator shall provide a written declaration under oath  
12 to certify such completion to the Court and counsel for all Parties.

13           29. Defendant's Right to Rescind. Defendant shall have, in its sole discretion,  
14 the right to void and withdraw from the Settlement if, at any time prior to Final  
15 Approval, five percent (5%) or more of Class Members timely and validly Request  
16 Exclusion from the non-PAGA, California state law portion of the Settlement.  
17 Defendant must exercise this right of rescission in writing to Class Counsel within  
18 thirty (30) calendar days after the latest date any Class Member may timely submit his  
19 or her Request for Exclusion. If Defendant exercise its right of rescission pursuant to  
20 this paragraph, Defendant shall be responsible for all costs incurred by the Settlement  
21 Administrator.

22           30. Plaintiff' Right to Rescind. It is estimated that there are approximately  
23 737,000 Workweeks worked during the Class Period. If the Workweek number is  
24 ultimately greater than 105% of that estimate, the parties shall resume negotiations in  
25 good faith regarding adjustment to the Gross Settlement Amount in light of the  
26 additional Workweeks. In the event that the Parties cannot reach final agreement  
27 regarding an adjustment to the Gross Settlement Amount the Settlement shall be null  
28 and void. If the Settlement becomes null and void pursuant to this paragraph, the Parties

1 shall equally share all costs incurred by the Settlement Administrator.

2 **FINAL APPROVAL**

3 31. Final Settlement Approval Hearing and Entry of Judgment. Upon  
4 expiration of the Response Deadline as ordered by the Court at the time of the  
5 Preliminary Approval Hearing, a Final Approval Hearing shall be conducted to  
6 determine the Final Approval of the Settlement along with the amounts properly  
7 payable for: (i) Individual Settlement Payments; (ii) the Class Representative Service  
8 Award; (iii) Attorneys' Fee Award; (iv) Attorneys' Costs; (v) Settlement  
9 Administration Costs; and (vi) PAGA Penalties. The Final Approval Hearing shall not  
10 be held earlier than thirty (30) calendar days after the Response Deadline. Class  
11 Counsel shall be responsible for drafting all documents necessary to obtain final  
12 approval. The Motion for Order Granting Final Approval and Entering Judgment shall  
13 include Class Counsel's application for the Class Counsel's Attorneys' Fees and Costs,  
14 the Class Representative Service Awards, and the Administrator's expenses. A draft of  
15 such motion shall be provided to Counsel for Defendant seven business days prior to its  
16 filing with the Court. Plaintiff agrees not to file his motion and/or application without  
17 Defendant's review and input. The Settlement Administrator shall maintain on its  
18 website a section for this Settlement which includes a copy of the Motion for  
19 Preliminary Approval, along with any accompanying exhibits, and the operative  
20 Complaint. It shall be updated after Judgment is entered with a copy of the final  
21 Judgment.

22 32. Attorneys' Fee Award and Costs. Defendant shall not object to Class  
23 Counsel's request of reasonable Attorneys' Fees of up to \$1,308,900.00 (30% of the  
24 Gross Settlement Amount) and their reasonable Attorneys' Costs not expected to  
25 exceed \$50,000.00. Class Counsel's application for Attorneys' Fees and Costs award  
26 shall be included within the Motion for Order Granting Final Approval of Class Action  
27 Settlement, unless the Court instructs otherwise.

28 33. Judgment and Continued Jurisdiction. Concurrent with the Motion for

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1 Order Granting Final Approval of the Class Action Settlement, the Parties shall present  
2 an Order Granting Final Approval and Entering Judgment to the Court, in a form  
3 mutually agreed to by the Parties, for approval. After entry of the Judgment, the Court  
4 shall have continuing jurisdiction over the Settlement as required by law, including:  
5 (i) the interpretation and enforcement of the terms of the Settlement; (ii) settlement  
6 administration matters; and (iii) such post-Judgment matters as may be appropriate  
7 under court rules or as set forth in this Settlement.

8 34. Funding of the Settlement. Defendant shall transmit the Gross Settlement  
9 Amount to the Administrator together with the amount representing the Employer  
10 Taxes (to be communicated by the Administrator to Defendant at least (5) business days  
11 before transmittal of the Gross Settlement Amount). The Administrator shall deposit  
12 the Gross Settlement Amount into a Qualified Settlement Account, from which the  
13 Settlement Administrator will have the authority to distribute money in accordance with  
14 the terms of this Settlement Agreement. Defendant shall transmit the Gross Settlement  
15 Amount and the Employer Taxes, within fifteen (15) days following the Effective Date  
16 of Settlement.

17 35. No Effective Date. If there is no Effective Date: (i) the Settlement  
18 Agreement shall have no force and effect and no Party shall be bound by any of its  
19 terms; (ii) Defendant shall have no obligation to make any payments required under this  
20 Agreement; (iii) the Parties shall evenly distribute and pay any Administration Costs  
21 incurred up until the date that the Settlement ceases to exist; and (iv) the Settlement  
22 Agreement and all negotiations, statements, proceedings, and data relating thereto shall  
23 be protected as privileged settlement communications and shall be without prejudice to  
24 the rights of any of the Parties, all of whom shall be restored to their respective positions  
25 in the Action prior to the date of execution of the Settlement Agreement. In such event,  
26 the Parties shall work cooperatively to request a conference with the Court in which to  
27 attempt to resolve any issues that the Court has raised regarding the Agreement so that  
28 it can gain the Court's approval, or alternatively, effectuate their intent to resume the

1 Action.

2 36. Distribution and Timing of Payments. Within ten (10) calendar days  
3 following receipt of the Gross Settlement Amount and the Employer Taxes, the  
4 Settlement Administrator shall issue payments to: (i) Participating Class Members, (ii)  
5 PAGA Members, (iii) Plaintiff, (iv) Class Counsel, and (v) the Labor Workforce and  
6 Development Agency. However, payments shall not be issued to Class Members whose  
7 Notice Packets are returned as undeliverable and for whom no forwarding address can  
8 be located. Individual Settlement Payments for such Class Members shall be held by  
9 the Settlement Administrator unless claimed by the Class Member, and shall be paid to  
10 the *cy pres* beneficiary as set forth below if unclaimed by the end of the one hundred  
11 eighty (180) calendar day period to cash settlement checks as set forth below. The  
12 Settlement Administrator shall also issue a payment to itself for the Court-approved  
13 amount for its services.

14 37. Payments to Participating Class Members. Each individual settlement  
15 payment check to Participating Class Members will contain language in substantially  
16 the following form: “I understand that by cashing, depositing, or otherwise negotiating  
17 this check I will be deemed to have opted into *Cuellar v. First Transit, Inc.*, Central  
18 District of California Case No8:20-cv-01075-JLS-JDE, for purposes of the federal Fair  
19 Labor Standards Act (FLSA) to the extent required to do so under applicable law for  
20 purposes of the court-approved settlement therein and the release of claims.” Each such  
21 settlement check will also bear a legend directing the payer’s bank to only accept the  
22 check for payment if: (a) the settlement check is endorsed by the payee; and (b) the  
23 settlement and release language, or any part of it, has not been altered or deleted. Any  
24 Participating Class Member who signs, deposits, and/or cashes the settlement check  
25 shall be deemed an opt-in party plaintiff under the FLSA for purposes of the Settlement.

26 38. Un-cashed Settlement Checks. Settlement checks shall remain valid for a  
27 period of one hundred eighty (180) calendar days after mailing, at which time the checks  
28 shall become null and void. Thirty (30) days following the mailing of the Individual

1 Settlement Payment Checks, the Administrator shall mail a postcard to each  
2 Participating Class Member and PAGA Member whose check is uncashed to remind  
3 them of the void date. Any funds represented by Individual Settlement Payment checks  
4 remaining un-cashed for more than 180 calendar days after issuance shall be delivered  
5 to Legal Aid at Work, which is a 501(c)(3) non-profit legal services organization that  
6 assists low-income working families. Participating Class Members and PAGA  
7 Members who fail to cash their checks within the 180 day period shall remain bound by  
8 the Settlement as set forth herein. The Parties and their counsel represent and warrant  
9 that they have no financial interest in, or involvement with, the selected cy pres  
10 beneficiary such that there would be a conflict of interest,

11 39. Administration of Taxes by the Settlement Administrator. The Settlement  
12 Administrator shall be responsible for issuing to Plaintiff, Participating Class Members,  
13 PAGA Members and Class Counsel any W-2, 1099, or other tax forms as may be  
14 required by law for all amounts paid pursuant to this Settlement. The Settlement  
15 Administrator shall also be responsible for calculating and processing all payroll taxes  
16 and penalties for payment to the appropriate government authorities.

17 **TAX TREATMENT OF SETTLEMENT AMOUNTS**

18 40. Tax Treatment of Individual Settlement Payments. The Parties have  
19 agreed to allocate the Individual Settlement Payment as follows: for Participating Class  
20 Members – 35% to wages for which an IRS W-2 Form shall be issued and 65% to  
21 interest and penalties (30% to interest and 35% to penalties) for which IRS 1099 Forms  
22 shall be issued. Normal employee-side payroll taxes and withholding shall be deducted  
23 from the wage portion of the payment pursuant to state and federal law. For Class  
24 Members who opt-out of the non-PAGA portion of the Settlement, the entirety of the  
25 Individual Settlement Payments shall be allocated to penalties for which IRS 1099  
26 Forms shall be issued.

27 41. Class Member and Plaintiff Responsibility for Taxes. Participating Class  
28 Members and PAGA Members are responsible to pay appropriate taxes due on the



1 Individual Settlement Payments they receive, and Plaintiff is responsible for paying the  
2 appropriate taxes due on the Class Representative Service Payments. All Individual  
3 Settlement Payments shall be deemed paid to such Class Members solely in the year in  
4 which such payments are issued. Counsel does not purport this communication to  
5 constitute tax or legal advice. If this Settlement, or any of its attachments, is interpreted  
6 to contain or constitute advice regarding any federal or state tax issue, such advice is  
7 not intended or written to be used, and cannot be used, by any person to avoid penalties  
8 under the federal Internal Revenue Code or any state tax code. The Notice of Class  
9 Action Settlement will advise Class Members that they shall be solely responsible for  
10 the payment of any taxes and penalties assessed on their respective Individual  
11 Settlement Payments.

12 42. Class Counsel shall be issued an IRS Form 1099 for any fees and costs  
13 awarded by the Court.

14 **RELEASE BY THE CLASS**

15 43. Release by Class Members. As of the Effective Date, Plaintiff and all  
16 Participating Class Members (on behalf of each of them and each of their heirs,  
17 executors, administrators, and assigns) irrevocably and unconditionally fully release  
18 and forever discharge the Released Parties from any and all Released Claims that  
19 accrued during the Class Period as set forth herein. As of the Effective Date, Plaintiff  
20 and all PAGA Members (on behalf of each of them and each of their heirs, executors,  
21 administrators, and assigns) irrevocably and unconditionally fully release and forever  
22 discharge the Released Parties from any and all PAGA Released Claims that accrued  
23 during the PAGA Period as set forth herein.

24 44. Circular 230 Disclaimer. EACH PARTY TO THIS AGREEMENT (FOR  
25 PURPOSES OF THIS SECTION, THE “ACKNOWLEDGING PARTY” AND EACH  
26 PARTY TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING  
27 PARTY, AN “OTHER PARTY”) ACKNOWLEDGES AND AGREES THAT (1) NO  
28 PROVISION OF THIS AGREEMENT, AND NO WRITTEN COMMUNICATION

1 OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR  
2 ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR  
3 WILL ANY SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE  
4 CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN THE MEANING  
5 OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31 CFR  
6 PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS  
7 RELIED EXCLUSIVELY UPON HIS, HER, OR ITS OWN, INDEPENDENT LEGAL  
8 AND TAX COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN  
9 CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO THIS  
10 AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER  
11 PARTY OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND  
12 (C) IS NOT ENTITLED TO RELY UPON ANY COMMUNICATION OR  
13 DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY OTHER PARTY TO  
14 AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE  
15 ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY  
16 OTHER PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE  
17 CONFIDENTIALITY OF ANY SUCH ATTORNEY'S OR ADVISER'S TAX  
18 STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY  
19 BINDING) UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE  
20 TAX TREATMENT OR TAX STRUCTURE OF ANY TRANSACTION,  
21 INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS AGREEMENT.

22 45. Release by Plaintiff and Class Representative. As of the Effective Date,  
23 Plaintiff Frank Cuellar (on his behalf and on behalf of his heirs, executors,  
24 administrators, and assigns), but not on behalf of other Class Members, knowingly and  
25 voluntarily releases and forever discharges the Released Parties from any and all claims,  
26 known and unknown, asserted and unasserted, that he had or may have had against  
27 Defendant or any of the Released Parties. Such claims include, but are not limited to:  
28 breaches of contract, whether written, oral or implied; violations of any public policy;

1 tort claims, including but not limited to intentional infliction of emotional distress and  
2 negligent infliction of emotional distress, defamation, misrepresentation, and fraud;  
3 retaliation claims; common law claims; any other claims for damages, costs, fees, or  
4 other expenses, including attorneys' fees; and any violations of the following statutes,  
5 laws, and regulations: Fair Labor Standards Act, 29 U.S.C. §§ 200, *et seq.*, Title VII of  
6 the Civil Rights Act of 1964, as amended; The Civil Rights Act of 1991; Sections 1981  
7 through 1988 of Title 42 of the United States Code, as amended; The Americans with  
8 Disabilities Act of 1990, as amended; The Age Discrimination in Employment Act of  
9 1967, as amended; the Older Workers Benefit Protection Act; the Employment  
10 Retirement Income Security Act of 1974, as amended; the Occupational Safety and  
11 Health Act, as amended; the Sarbanes-Oxley Act of 2002; the Family and Medical  
12 Leave Act of 1993, as amended; the Fair Labor Standards Act; the California Fair  
13 Employment and Housing Act – Cal. Gov't Code § 12900 *et seq.*; the California Family  
14 Rights Act – Cal. Gov't Code § 12945.2 *et seq.*; the California Unruh Civil Rights Act  
15 – Civ. Code § 51 *et seq.*; the California Whistleblower Protection Law – Cal. Lab. Code  
16 § 1102.5; the California Occupational Safety and Health Act, as amended – Cal. Lab.  
17 Code § 6300 *et seq.*, and any applicable regulations thereunder; the California Business  
18 and Professions, Civil, Government and Labor Code; the Labor Code Private Attorneys  
19 General Act of 2004 – Cal. Lab. Code § 2698 *et seq.*; and any other federal, state, or  
20 local civil employment law, statute, regulation, or ordinance capable of being released  
21 by Plaintiff, excluding any claims that cannot be released as a matter of law. To the  
22 extent the foregoing release is a release to which California Civil Code section 1542 or  
23 similar provisions of other applicable law may apply, Plaintiff expressly waives any and  
24 all rights and benefits conferred upon him by the provisions of California Civil Code  
25 section 1542 or similar provisions of applicable law which are as follows:

26  
27 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH**  
28 **THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN**

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**HIS OR HER FAVOR AT THE TIME OF EXECUTING THE  
RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE  
MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH  
THE DEBTOR.**

Thus, notwithstanding the provisions of California Civil Code section 1542, and to implement a full and complete release and discharge, Plaintiff expressly acknowledges this Settlement is intended to include in its effect, without limitation, all known and unknown claims, including any claims he does not know or suspect to exist in his favor against the Released Parties at the time of signing this Settlement, and that this Settlement contemplates the extinguishment of any such claim or claims. Plaintiff acknowledges he may later discover facts different from or in addition to those he now knows or believes to be true regarding the matters released or described in this Settlement, and nonetheless agrees that the releases and agreements contained in this Settlement shall remain fully effective in all respects notwithstanding any later discovery of any different or additional facts. Plaintiff assumes any and all risks of any mistake in connection with the true facts involved in the matters, disputes, or controversies described in this Settlement or with regard to any facts now unknown to him relating to such matters.

46. No Prior Assignments. The Parties and their counsel represent, covenant, and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or right herein released and discharged.

**ADDITIONAL TERMS**

47. Exhibits Incorporated by Reference. The terms of this Settlement include the terms set forth in any attached Exhibits, which are incorporated by this reference as though fully set forth herein. Any Exhibits to this Settlement are an integral part of the Settlement.

1           48. No Publicity. Plaintiff and Class Counsel agree not to publicize the  
2 settlement, including in communications with the press; however, nothing in this  
3 Agreement shall prevent Plaintiff and Class Counsel from engaging in direct  
4 communications with Class Members about the settlement, and nothing in this  
5 Agreement shall prevent Class Counsel from identifying the Settlement on their  
6 website, so long as Class Counsel does not mention Defendant by name and instead  
7 refers to it only as a transportation company. Class Counsel is further permitted to  
8 discuss the Settlement, including Defendant's name, the case number, etc. in future  
9 Court declarations and in such communications as are reasonably necessary for  
10 purposes of meeting their responsibilities as class representatives and Class Counsel.

11           49. Entire Agreement. This Settlement and attached Exhibits constitute the  
12 entirety of the Parties' settlement terms. No other prior or contemporaneous written or  
13 oral agreements may be deemed binding on the Parties. The Parties expressly recognize  
14 California Civil Code section 1625 and California Code of Civil Procedure section  
15 1856(a), which provide that a written agreement is to be construed according to its terms  
16 and may not be varied or contradicted by extrinsic evidence, and the Parties agree that  
17 no such extrinsic oral or written representations or terms shall modify, vary or contradict  
18 the terms of this Settlement.

19           50. Amendment or Modification. No amendment, change, or modification to  
20 this Settlement shall be valid unless in writing and signed, either by the Parties or their  
21 counsel.

22           51. Authorization to Enter Into Settlement. Counsel for all Parties warrant and  
23 represent they are expressly authorized by the Parties whom they represent to negotiate  
24 this Settlement and to take all appropriate action required or permitted to be taken by  
25 such Parties pursuant to this Settlement to effectuate its terms and to execute any other  
26 documents required to effectuate the terms of this Settlement. The Parties and their  
27 counsel shall cooperate with each other and use their best efforts to effect the  
28 implementation of the Settlement. If the Parties are unable to reach agreement on the

1 form or content of any document needed to implement the Settlement, or on any  
2 supplemental provisions that may become necessary to effectuate the terms of this  
3 Settlement, the Parties may seek the assistance of the Court to resolve such  
4 disagreement.

5 52. Binding on Successors and Assigns. This Settlement shall be binding  
6 upon, and inure to the benefit of, the successors or assigns of the Parties hereto, as  
7 previously defined.

8 53. California Law Governs. All terms of this Settlement and Exhibits hereto  
9 shall be governed by and interpreted according to the laws of the State of California.

10 54. Execution and Counterparts. This Settlement is subject only to the  
11 execution of all Parties. However, the Settlement may be executed in one or more  
12 counterparts and by DocuSign. All executed counterparts and each of them, including  
13 facsimile and scanned copies of the signature page, shall be deemed to be one and the  
14 same instrument provided that counsel for the Parties shall exchange among themselves  
15 original signed counterparts.

16 55. Acknowledgement that the Settlement is Fair and Reasonable. The Parties  
17 believe this Settlement is a fair, adequate and reasonable settlement of the Action and  
18 have arrived at this Settlement after arm's-length negotiations and in the context of  
19 adversarial litigation, taking into account all relevant factors, present and potential. The  
20 Parties further acknowledge that they are each represented by competent counsel and  
21 that they have had an opportunity to consult with their counsel regarding the fairness  
22 and reasonableness of this Settlement.

23 56. Acknowledgement of Future Legislation. Each Party recognizes that  
24 legislation, could affect the outcome of the Action. The Parties, nevertheless, enter into  
25 this settlement to avoid risk of loss and to avoid uncertainty with the interpretation,  
26 nature, and applicability of future legislation.

27 57. Invalidity of Any Provision. Before declaring any provision of this  
28 Settlement invalid, the Court shall first attempt to construe the provision as valid to the

1 fullest extent possible consistent with applicable precedents so as to define all  
2 provisions of this Settlement valid and enforceable.

3 58. Waiver of Certain Appeals. The Parties agree to waive appeals and to  
4 stipulate to class certification for purposes of this Settlement only; except, however, that  
5 Plaintiff or Class Counsel may appeal any reduction to the Attorneys' Fees or the  
6 Attorneys' Costs below the amounts they request from the Court, and either party may  
7 appeal any court order that materially alters the Settlement terms.

8 59. Non-Admission of Liability. The Parties enter into this Settlement to  
9 resolve the dispute that has arisen between them and to avoid the burden, expense and  
10 risk of continued litigation. In entering into this Settlement, Defendant and the Released  
11 Parties do not admit, and specifically deny, that Defendant or any Released Parties  
12 violated any federal, state, or local law; violated any regulations or guidelines  
13 promulgated pursuant to any statute or any other applicable laws, regulations or legal  
14 requirements; breached any contract; violated or breached any duty; engaged in any  
15 misrepresentation or deception; or engaged in any other unlawful conduct with respect  
16 to their employees. Neither this Settlement, nor any of its terms or provisions, nor any  
17 of the negotiations connected with it, shall be construed as an admission or concession  
18 by Defendant (or any Released Parties) of any such violations or failures to comply with  
19 any applicable law. Except as necessary in a proceeding to enforce the terms of this  
20 Settlement, this Settlement and its terms and provisions shall not be offered or received  
21 as evidence in any action or proceeding to establish any liability or admission on the  
22 part of Defendant (or any Released Parties) or to establish the existence of any condition  
23 constituting a violation of, or a non-compliance with, federal, state, local or other  
24 applicable law.

25 60. Waiver. No waiver of any condition or covenant contained in this  
26 Settlement or failure to exercise a right or remedy by any of the Parties hereto shall be  
27 considered to imply or constitute a further waiver by such Party of the same or any other  
28 condition, covenant, right or remedy.

1           61. Enforcement Actions. In the event that one or more of the Parties institutes  
2 any legal action or other proceeding against any other Party to enforce the provisions  
3 of this Settlement or to declare rights and/or obligations under this Settlement, the  
4 successful Party Parties shall be entitled to recover from the unsuccessful Party  
5 reasonable attorneys' fees and costs, including reasonable expert witness fees incurred  
6 in connection with any enforcement actions.

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

13           63. Representation By Counsel. The Parties acknowledge that they have been  
14 represented by counsel throughout all negotiations that preceded the execution of this  
15 Settlement, and that this Settlement has been executed with the consent and advice of  
16 counsel. Further, Plaintiff and Class Counsel warrant and represent that there are no  
17 liens on the Settlement. Class Counsel also represents that there are no attorneys who  
18 have or could have any liens with respect to any aspect of this Settlement, or any funds  
19 received by the Named Plaintiff.

20           64. All Terms Subject to Final Court Approval. All amounts and procedures  
21 described in this Settlement herein shall be subject to final Court approval.

22           65. Cooperation and Execution of Necessary Documents. All Parties shall  
23 cooperate in good faith and execute all documents to the extent reasonably necessary to  
24 effectuate the terms of this Settlement.

25           66. Binding Agreement. The Parties warrant that they understand and have  
26 full authority to enter into this Settlement, and further intend that this Settlement shall  
27 be fully enforceable and binding on all parties, and agree that it shall be admissible and  
28 subject to disclosure in any proceeding to enforce its terms, notwithstanding any



1 mediation confidentiality provisions that otherwise might apply under federal or state  
2 law.

3 67. Notices. Unless otherwise specifically provided, all notices, demands or  
4 other communications given shall be in writing and shall be deemed to have been duly  
5 given by the third business day after mailing by United States registered or certified  
6 mail, return receipt requested, addressed as follows:

7 **To Plaintiff and the Class:**

8 Zorik Mooradian  
9 Haik Hacopian  
10 Mooradian Law, APC  
11 24007 Ventura Blvd., Suite 210  
12 Calabasas, CA 91302  
13 Telephone: (818) 487-1998  
14 Facsimile: (888) 783-1030  
15 Emails: [zorik@mooradianlaw.com](mailto:zorik@mooradianlaw.com)  
[haik@mooradianlaw.com](mailto:haik@mooradianlaw.com)

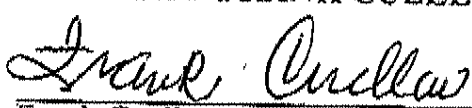
16 **To Defendant:**

17 David J. Dow  
18 Littler Mendelson, P.C.  
19 501 West Broadway, Suite 900  
20 San Diego, CA 92101

21 **AGREED.**

22 **PLAINTIFF FRANK CUELLAR**

23 Dated: 09/16/2022

24   
25 Frank Cuellar

26  
27 **DEFENDANT FIRST TRANSIT, INC.**  
28

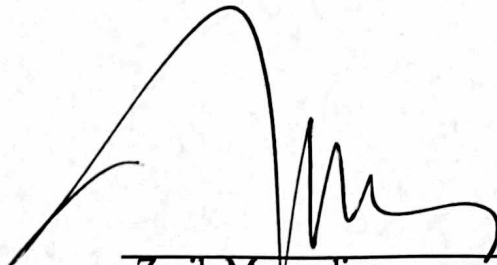
1 Dated: \_\_\_\_\_

By: \_\_\_\_\_

2 NAME:  
3 TITLE:

4  
5 **APPROVED AS TO FORM:**

6  
7  
8 Dated: 9/15/22



9  
10 Zorik Mooradian  
11 Mooradian Law, APC  
12 Attorneys for Plaintiff

13 Dated: \_\_\_\_\_

14 David J. Dow  
15 Littler Mendelson, P.C.  
16 Attorneys for Defendant

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Dated: 9/12/22

By: *Michael Petrucci*  
NAME: *Michael Petrucci*  
TITLE: *Secretary*

**APPROVED AS TO FORM:**

Dated: \_\_\_\_\_

\_\_\_\_\_  
Zorik Mooradian  
Mooradian Law, APC  
Attorneys for Plaintiff

Dated: 9/12/22

*David Dow*  
David J. Dow  
Littler Mendelson, P.C.  
Attorneys for Defendant

**EXHIBIT A**

**NOTICE OF PENDENCY OF CLASS ACTION AND PROPOSED SETTLEMENT**

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA**

*Cuellar v. First Transit, Inc., et al.*, Central District of California  
Case No. 8:20-cv-01075-JLS-JDE

TO: All individuals employed by First Transit, Inc. and/or First Vehicle Services, Inc. as a non-exempt employee in the state of California at any time from January 17, 2016 to June 21, 2022 (hereinafter the “**Class**” or “**Class Member(s)**”).

*THIS NOTICE CONTAINS IMPORTANT LEGAL INFORMATION THAT MAY AFFECT YOU  
YOU ARE NOT BEING SUED*

*The United States District Court for the Central District of California authorized this notice.  
This is not a solicitation from a lawyer.*

- This notice contains important information about your legal rights as part of a class action settlement. Please read it fully and carefully.
- Frank Cuellar (“**Plaintiff**”) has sued First Transit, Inc. (“**Defendant**”). Plaintiff worked for First Transit, Inc. His case is pending in the United States District Court for the Central District of California (Case No. 8:20-cv-01075-JLS-JDE). Plaintiff and Defendant are referred to herein collectively as the “**Parties**.”
- Plaintiff’s allegations are brought on his own behalf and on behalf of individuals employed by First Transit, Inc. in the state of California as hourly non-exempt employees at any time from January 17, 2016 to June 21, 2022 (the “**Class Period**”).
- Plaintiff has asserted a variety of claims, described in more detail below, against Defendant that pertain to payment of wages and hours of work.
- Defendant contends that its policies and practices have complied with the law at all times.
- The Court has not decided whether Defendant did anything wrong.
- Plaintiff and Defendant also disagree as to the amounts of money or other types of relief that should be awarded to the Class in the event that Plaintiff prevails at trial.
- The Parties agree that there are significant risks on both sides of the case.
- The Parties agree that continued litigation would be expensive and would result in significant expenses in terms of attorney fees and costs, without necessarily benefitting the Class.

**QUESTIONS? CALL**

- To avoid the risks of litigation and to provide an immediate benefit to the Settlement Class, the Parties have agreed to settle the case (the “**Settlement**”).
- Under the Settlement, Defendant will pay a total of \$4,363,000.00, to be apportioned and paid among identified members of the Settlement Class, after deductions for Court-approved payment of settlement administration costs, penalties pursuant to the California Labor Code Private Attorneys General Act of 2004 (“PAGA”), payment of a Service Award to the Named Plaintiff, litigation costs, attorneys’ fees, and subject to withholdings for employee taxes, deductions and contributions.

YOUR OPTIONS	
Do Nothing	You will receive a proportionate share of the Settlement if final approval is granted and will give up any right to bring any claims in the future that are part of the Settlement.
Opt Out of the Settlement	If you opt yourself out of the Settlement, you will not receive payment for the non-PAGA portion of the Settlement. You will still receive payment for the PAGA portion of the Settlement. You will retain the right to assert claims that are included in the Settlement, except for PAGA claims. By doing so, you will bear the risk that you may lose those claims. To opt out, you must timely write to the Settlement Administrator and follow the procedures described below.
Object to the Settlement	If you disagree with any aspect of the non-PAGA portion of the Settlement, you may assert your objections by timely writing to the Settlement Administrator and filing with the Court your objection according to the procedures described below. If you opt out, you may not object. If you object, you will still be bound by the Settlement, if approved by the Court.

- These rights and options—and the deadlines to exercise them—are explained in this notice.
- The Court in charge of this case still has to decide whether to grant final approval of the Settlement. Payments will be made only if the Court grants final approval of the Settlement and after appeals (if any) are resolved. Please be patient.

**BASIC INFORMATION**

**QUESTIONS? CALL**

1. Why did I get this notice package and why should I read this Notice?

The records of Defendant indicate that you are a member of the Class. If the Court approves the Settlement and you do not opt out, you will receive a payment and your legal rights may be affected. Thus, you have a right to information about the Settlement and your legal rights. That is the intent of this notice.

2. What is this lawsuit about?

Plaintiff has asserted the following claims against Defendant on behalf of the Class: (1) failure to provide meal periods, (2) failure to provide rest periods, (3) failure to properly pay wages, (4) failure to pay for all hours of work, (5) failure to provide one day's rest in seven, (6) failure to reimburse for business expenses, (7) failure to timely pay wages at termination/separation, (8) failure to provide accurate wage statements, (9) failure to maintain payroll records, (10) unfair business practices, and (11) penalties under the PAGA, based on the foregoing claims. These claims are referred to herein as the "**Claims.**"

Defendant denies that the Claims are valid, denies that the Court should permit Plaintiff to bring the Claims on behalf of the Class, and contends that it complied with the law at all times.

3. What is a class action?

In a class action, one or more people called the Named Plaintiff sue on behalf of people who they allege have similar claims.

4. Why is there a settlement?

The Court did not decide in favor of Plaintiff or Defendant on the Claims being settled. Plaintiff thinks he could win a significant amount of wages, penalties, and interest on behalf of the Class if he was to obtain class certification and win at trial. On the other hand, Defendant denies all liability and believes that Plaintiff would not have won anything in the case. Both sides have agreed to the Settlement for the claims discussed below. That way, the risks and costs of trial, for both sides, are eliminated, and the Class can be provided with an immediate benefit. Plaintiff, Defendant, and their attorneys all believe that this Settlement is best for the Class and the Parties.

The Court has given its preliminary approval to this settlement as fair and reasonable to the Class and has appointed Plaintiff to act as the Class Representative, and for his attorneys to act as attorneys for the Class with regard to the Settlement (the "Class Counsel"). The Court has determined that these are adequate representatives for the Class.

5. How do I know if I am part of the settlement?

Everyone who fits this description is a Class Member:

All individuals employed by First Transit, Inc. and/or First Vehicle Services, Inc. as hourly non-exempt employees in the state of California at any time from January 17, 2016 to June 21, 2022.

6. Are there exceptions to being included?

Yes. If you are a Class Member, you may opt out as stated in Section 13 below. If you do not opt out, you are a Class Member who will receive part of the Settlement if approved.

7. I'm still not sure if I am included.

If you are still not sure whether you are included, you can call the Settlement Administrator at [Number] or write to the Settlement Administrator at [address]. This is the Settlement Administrator's mailing address for all written communications described herein. You also may contact Class Counsel identified below for more information.

8. How much money is the Settlement for and how is it allocated?

Defendant has agreed to pay a total of \$4,363,000.00 to settle all Claims in this lawsuit. Class Members will be paid out of the Net Settlement Amount, which is the \$4,363,000.00 total settlement amount minus the following payments: (1) fees to the Settlement Administrator (estimated at \$70,000) for the costs of administrating the Settlement; (2) the costs of litigation as approved by the Court in an amount not to exceed \$50,000.00; (3) PAGA penalties of \$250,000.00, including a payment to the California Labor and Workforce Development Agency (LWDA) for its share of PAGA penalties; (4) a service award to Plaintiff not to exceed \$10,000 for serving as the Class Representative and assisting in prosecuting the case; and (5) attorneys' fees up to the amount approved by the Court, not to exceed 30% (\$1,308,900.00) of the total settlement amount.

The Net Settlement Amount will be allocated to Class Members based on their number of Workweeks worked during the Class Period, plus an additional credit to those Class Members whose employment ended during the period from January 17, 2017 through June 21, 2022 of one additional Workweek for each Workweek worked, up to a maximum credit of six (6) additional Workweeks, to compensate for their claim for waiting time penalties under the California Labor Code. Any portion of the fees for settlement administration, litigation costs, attorneys' fees, service award and/or PAGA penalties not approved by the Court shall be added to the Net Settlement Amount for distribution to Class Members who do not opt out of the Settlement ("Participating Class Members").

Of the PAGA penalties, \$62,500.00 will be paid to PAGA Members, defined as Class Members who worked any time for Defendant in California between January 17, 2019 and June 21, 2022 (the "PAGA Period"). That amount will be distributed pro rata based on pay periods attributable to each PAGA Member.

9. How much will my payment be and what is the information used to calculate my share?

Based on Defendant's records, your Workweeks worked, including any applicable enhancement, are as follows:

Class Period: [redacted] workweeks

PAGA Period: [redacted] workweeks

Based upon the calculations described above, it is currently estimated that your share of the Net Settlement Amount and PAGA penalties will be:

Non-PAGA Claims: \$ [redacted] PAGA Penalties: \$ [redacted]

Your total Individual Settlement Payment is estimated to be \$ [redacted]. This amount could change, depending on how many Class Members opt-out of the Settlement and/or rulings of the Court.

Of your Individual Settlement Payment 65% will be reported as "1099" miscellaneous income by the Settlement Administrator to federal and state tax authorities. 35% will be reported as "W-2" income subject to withholdings, deductions and contributions in relation to wage payments. The withholding rate for the W-2 income may not be the same as you have used but is a customary one used in class action settlements. For Class Members who opt-out of the non-PAGA portion of the Settlement, the entirety of the Individual Settlement Payments shall be allocated to penalties for which an IRS 1099 Form shall be issued. You are responsible for all employee tax liability in relation to payments to you under the Settlement. This Notice is not tax advice. Do not ask Class Counsel, or Defendant or its counsel for tax advice, as they will not provide it. They are not responsible for the tax advice. You should consult your own tax advisor.

If you disagree with the Workweek calculations above, you must notify the Settlement Administrator by writing to them at the address in paragraph 7. You must sign your notification, and include your full name, address, telephone number, last four digits of your social security number, the reason(s) that you dispute the information, and all supporting documentation. Your notification must be postmarked no later than [60 days from mailing]. The Settlement Administrator will make a final decision.

10. How can I get a payment?

You do not need to do anything to receive a settlement payment from the Net Settlement Amount and for PAGA penalties. However, it is important that you immediately notify the Settlement Administrator if your mailing address is different from the address to which this Notice was sent.

11. When will I receive a payment?

Payments will be distributed pursuant to a schedule established by the Settlement and by the Court. Presently, the expected date of payment is estimated to be [redacted]. This could change

QUESTIONS? CALL [redacted]



depending on factors influencing the Settlement Administrator's tasks, any objections to the Settlement, any appeals, and/or actions by the Court.

12. What am I giving up to get a payment?

As of the Effective Date of the Settlement, each member of the Class (except those who properly opt out) on behalf of each of them and each of their heirs, executors, administrators, and assigns, do hereby and forever release First Transit, Inc., FirstGroup America, Inc., First Vehicle Services, Inc., their past, present, and future parents, subsidiaries, divisions, and their respective past, present, and future officers, directors, employees, partners, shareholders, owners, agents, insurers, legal representatives, attorneys and all of their successors (including persons or entities who may acquire them in the future), assigns, representatives, heirs, executors, and administrators and all other persons acting by, through, under or in concert with them that could be liable (the "Released Parties") from any and all claims, debts, rights, demands, obligations or liabilities of every nature and description, for damages, premiums, penalties, liquidated damages, punitive damages, interest, attorneys' fees, litigation costs, restitution, or equitable relief arising under California law during the Class Period and alleged in the operative complaint, or which could have been alleged based on the facts pled in the operative complaint, including without limitation claims relating to: (i) the alleged failure to pay for all hours worked, (ii) the alleged failure to correctly pay overtime wages, (iii) the alleged failure to include bonus and other payments in the regular rate of pay, (iv) the alleged failure to provide meal and rest breaks and to pay meal and rest break premiums, including payment of such premiums at the correct rate of pay, (v) the alleged failure to provide complete and accurate wage statements, (vi) the alleged failure to provide one day of rest or the equivalent of one day's rest in seven during each calendar month; (vii) the alleged failure to timely pay wages, including final wages to employees who quit or are terminated, (viii) the alleged failure to reimburse for business expenses, (ix) the alleged failure to maintain accurate time and payroll records, (x) the alleged failure to pay minimum wages, (xi) the alleged failure to pay for on-call time, and (xii) claims for interest and any other claims and penalties premised on the aforementioned allegations. This release of claims includes all types of relief available for the above-referenced claims, including any claims for damages, restitution, losses, premiums, penalties, fines, liens, attorneys' fees, costs, expenses, debts, interest, injunctive relief, declaratory relief, or liquidated damages, whether under federal law, California law or any state law or common law, including, without limitation, violations of the California Labor Code, the Wage Orders, applicable regulations, and any and all claims under the Fair Labor Standards Act ("FLSA").

Class Members who sign, deposit and/or cash their settlement checks shall be deemed to have opted-in to the settlement for purposes of the release of FLSA claims.

PAGA Members further release the Released Parties from any and all PAGA claims arising during the PAGA Period and alleged in the operative complaint and/or Plaintiff's letters to the LWDA, or which could have been alleged based on the facts pled in the operative complaint and/or alleged in Plaintiff's letters to the LWDA, including without limitation PAGA claims relating to: (i) the alleged failure to pay for all hours worked, (ii) the alleged failure to correctly pay overtime wages, (iii) the alleged failure to include bonus and other payments in the regular rate of pay, (iv) the alleged failure to provide meal and rest breaks and to pay meal and rest break premiums, including

payment of such premiums at the correct rate of pay, (v) the alleged failure to provide complete and accurate wage statements, and (vi) the alleged failure to provide one day of rest or the equivalent of one day's rest in seven during each calendar month, (vii) the alleged failure to timely pay wages, including final wages to employees who quit or are terminated, (viii) the alleged failure to reimburse for business expenses, (ix) the alleged failure to maintain accurate time and payroll records, (x) the alleged failure to pay minimum wages, (xi) failure to pay for on-call time, and (xii) any other PAGA claims premised on the aforementioned allegations.

13. How do I opt out of the settlement?

To exclude yourself from the Settlement, you must send a signed letter by mail to the Class Administrator stating words to the effect: "I wish to be excluded from the Class." You must also include your name, mailing address, telephone number, and the last four digits of your social security number. Your exclusion request must be postmarked no later than [60 days from mailing] and sent to the Settlement Administrator at the address in paragraph \_\_.

If you exclude yourself, you will not receive any money from the Net Settlement Amount for the non-PAGA portion of the Settlement. You cannot object to the Settlement, and you will not be legally bound by the non-PAGA portion of the Settlement. Class Members do not have the right to opt-out from the PAGA portion of the Settlement. If you ask to be excluded for the Settlement, and you are a PAGA Member, you will continue to receive your PAGA portion of the Settlement and be bound by the released of PAGA claims described above.

14. If I don't exclude myself, can I sue Defendant for the same thing later?

No. Unless you exclude yourself, you give up any right to sue Defendant for the claims that this Settlement resolves. If you have a pending lawsuit or the same non-PAGA state law claims that are being settled against Defendant, speak to your lawyer in that case immediately. You must exclude yourself from *this* Class to continue your own lawsuit if it involves the same non-PAGA claims.

15. If I exclude myself, can I get money from this settlement?

If you exclude yourself, you will not receive any money from the Net Settlement Amount, you cannot object to the Settlement, and you will not be legally bound by the Settlement if approved. Class Members shall not have the right to opt-out from the PAGA portion of the Settlement. If you ask to be excluded for the Settlement, and you are a PAGA Member, you will continue to receive your portion of the PAGA penalties.

16. Who is my lawyer if I am included in the Class?

The Court has appointed as Class Counsel the following attorneys: Zorik Mooradian and Haik Hacopian of Mooradian Law, APC, 24007 Ventura Blvd., Suite 210, Calabasas, CA, 91302, (818)

487-1998, zorik@mooradianlaw.com, haik@mooradianlaw.com. You will not be charged for these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense. If you have questions about this Settlement, you may contact Class Counsel.

17. How do I object to the Settlement going forward?

If you do not like the Settlement, you may file an objection and provide reasons why the Court should not approve the Settlement. You can't ask the Court to order a different settlement because the Court can only approve or reject the Settlement. If the Court denies approval, no settlement payments will be sent out and the lawsuit will continue.

To object to the non-PAGA portion of the Settlement, a Class Member must postmark a valid Notice of Objection to the Settlement Administrator on or before the **Response Deadline**. Any objection to the proposed settlement must be in writing and signed. If you file a timely written objection, you may, but are not required to, appear at the Final Approval Hearing, either in person or through your own attorney. If you appear through your own attorney, you are responsible for hiring and paying that attorney. All written objections and supporting papers should include: (i) the objector's full name, signature, address, and telephone number; (ii) a written statement of all grounds for the objection accompanied by any legal support for such objection; (iii) copies of any papers, briefs, or other documents upon which the objection is based; and (iv) a statement whether the objector intends to appear at the Final Approval Hearing.

The Parties will file all Notices of Objection with the Court in advance of the Final Approval Hearing.

Any Class Member who does not object in the manner described above shall be deemed to have waived any objections, and shall be foreclosed from objecting to the fairness or adequacy of the proposed Settlement, the payment of attorneys' fees and costs, the service payment to the Class Representative, and any and all other aspects of the Settlement. Likewise, even if you file an objection, you will be bound by the terms of the Settlement, including applicable releases as set forth above, unless the Settlement is not finally approved by the Court.

18. What Is the difference between objecting and opting out?

Objecting is simply saying that you do not like something about the non-PAGA portion of the Settlement and do not want it approved. Opting out is saying that you do not want to be part of the Class and do not want to participate in the Settlement. If you opt out, you have no basis to object because the case no longer affects you.

19. When and where will the Court decide whether to approve the settlement

The Court will hold a Final Approval Hearing at \_\_\_\_\_ on \_\_\_\_\_, [insert court information]. At this hearing, the Court will make a final decision as to whether the Settlement is fair, reasonable, and adequate. If you or other Class Members object to the Settlement, the Court

will consider the objections. The Judge will listen to people who have asked to speak at the hearing. At or after the hearing, the Court will decide whether to grant final approval to the Settlement.

The Final Approval Hearing may be continued without further notice to Class Members. You are advised to check the settlement website at **[INSERT LINK TO WEBSITE PROVIDED BY ADMINISTRATOR]** or the Court's Public Access to Court Electronic Records (PACER) website at <https://pacer.uscourts.gov/file-case/court-cmecf-lookup/court/CACDC> site to confirm that the date has not been changed.

20. Do I have to come to the hearing?

No. Class Counsel will answer questions the Judge may have. You are welcome to come at your own expense. If you properly submit an objection, you don't have to come to Court to talk about it. As long as you properly submitted your written objection on time, the Court will consider it. You may also pay your own lawyer to attend, but it is not necessary.

21. May I speak at the hearing?

You may ask the Court for permission to speak at the Fairness Hearing. You cannot appear and speak at the hearing if you opt out.

22. What happens if I do nothing at all?

If you do nothing, or fail to act timely, you will receive your share of the Net Settlement Amount and PAGA penalties, but you will be barred from pursuing the released claims described in paragraph 12.

23. No retaliation from Defendant if you are included in Class or opt out to be excluded from Class

California law makes it unlawful to retaliate against an employee for participating in a lawsuit like this one.

24. Are there more details about the settlement?

This Notice is intended as a summary and does not fully describe this action, the claims, the defenses, or the proposed Settlement, which is subject to the terms and conditions of the Settlement Agreement filed with the Court and as preliminarily approved by the Court. For further information, you may call or contact the Settlement Administrator (see paragraph 7 for contact information) or Class Counsel (see paragraph 15 for contact information).

The Settlement Administrator also maintains a website at which some important documents in this case are available. **The link to the website is [insert].**

**QUESTIONS? CALL**

You may also obtain more information by accessing the Court docket in this case through the Public Access to Court Electronic Records (PACER) website <https://pacer.uscourts.gov/file-case/court-cmecf-lookup/court/CACDC> or by visiting the office of the Clerk of the United States District Court, located on the 1st Floor of the United States District Court, Central District of California, Ronald Reagan Federal Building & U.S. Courthouse located at 411 West 4th Street, Santa Ana, CA 92701 between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays.

**PLEASE DO NOT CONTACT THE CLERK OF THE COURT, THE JUDGE OR DEFENDANT OR THEIR COUNSEL WITH INQUIRIES.**

Date: \_\_\_\_\_

This Notice has been approved by the Judge of the United States District Court for the Central District of California responsible for overseeing and deciding this case.