

Memorandum of Understanding

Subject to approval by the Court before which this action is pending, and with the provision that this Memorandum of Understanding ("MOU") will be further memorialized in a Joint Stipulation of Settlement, the parties hereby agree to the following terms of settlement of the Private Attorneys General Attorney ("PAGA") action designated as Miguel Angel Rubalcaba v. First to Serve, Inc., Case Number 21STCV39015 (hereinafter the "Action"), currently pending in Los Angeles County Superior Court.

The parties agree that this MOU is not evidence that the Complaints filed by Plaintiffs have any merit, nor does it constitute an admission of any wrongdoing by Defendant First to Serve, Inc. ("FTS" or "Defendant"). Defendant does not admit to individual or joint liability or to the suitability of this case for a PAGA judgment other than for purposes of settlement. This MOU will not be deemed admissible in any other proceeding or in this proceeding other than to effectuate this settlement.

1. The PAGA Members are defined as follows:

All current and former non-exempt employees of Defendant from October 21, 2020 through February 20, 2024;

2. A settlement fund will be established and the maximum extent of liability will be (the "Maximum Payment) of Three Hundred Seventy-Five Thousand dollars (\$375,000).

- (a) The Maximum Payment is inclusive of attorneys' fees, costs and expenses directly or indirectly related to the Action (which includes all such fees, costs and expenses incurred to date, as well as all such fees, costs and expenses incurred in documenting the settlement, securing approval of the settlement, administering and obtaining a judgment and dismissal of the Action before the Court), claims administration costs, the service payment to the PAGA representative, civil penalties paid to the State of California. If there is any reduction in attorneys' fees, costs, enhancement, etc. by the Court then the funds will revert back to the Net Settlement Amount. The Court of jurisdiction and Claims Administrator shall have no power to increase the Maximum Payment or to depart from the express terms of the MOU herein.
- (b) The Maximum Payment shall comprise and include a Net Settlement Amount ("Net Settlement Amount"). The Net Settlement Amount shall be the Maximum Payment, minus the following: (1) the maximum potential award of attorneys' fees and costs to counsel; (2) the maximum potential enhancement payment to the named plaintiff (hereinafter the "PAGA Representative"); (3) allotted funds to the Claims Administrator; and (4) any and all remaining costs or fees to Plaintiff's counsel. Defendant shall not be required to make any payment in excess of the Maximum Payment, for any cause or reason unless the escalator is triggered as provided in paragraph (d).
- (c) The parties will negotiate and select a Claims Administrator, who shall follow the Parties' instructions not in express contravention of this MOU.

- (d) Defendant represents that there are approximately 613 PAGA members and the total pay periods equal approximately 17,859 as of February 20, 2024. If the actual number of pay periods at the end of the PAGA Period is ten percent (10%) or greater than the 17,859 payroll periods represented by Defendant, the Maximum Payment will be increased on a pro-rata basis equal to the increase in number of payroll periods (e.g. if the actual payroll periods are 15% greater than 17,859, then the Maximum Payment will increase by 15%).

The language of a comprehensive release shall be negotiated by the parties. Defendant reserves the right to draft a release in final form and content before execution of a Motion for Approval. The release will contemplate an effective date as of the approval hearing. The identity(ies) of the releasees will be fully negotiated and at a minimum will expressly discharge on behalf of all PAGA Members all claims, rights, demands, liabilities and causes of action for PAGA penalties as asserted in the Complaint.

- 3. The Notice shall at a minimum expressly contain a release of PAGA penalties for meal period claims, PAGA penalties for rest period claims, PAGA penalties for overtime claims, PAGA penalties for minimum wage claims, PAGA penalties for underpayment or nonpayment of wages claims, PAGA penalties for inaccurate paycheck claims, PAGA penalties for waiting time claims, and other claims for PAGA penalties arising from the same facts alleged in the Operative Complaint. The Notice shall include, but shall not be limited to: information regarding the nature of the Action; a summary of the substance of the settlement; the PAGA member definition; and the formula used for the Individual Settlement Payments. The Notice will be mailed to all PAGA members.
- 4. Plaintiff's counsel will request, and Defendant and its counsel will not oppose, an award of up to one-third of the Maximum Payment as an award of attorneys' fees. This amount shall be included in the maximum extent of liability. This settlement is expressly conditioned on the settlement satisfying all claims for attorneys' fees and costs of each and every of the law firms representing plaintiffs, including AEGIS LAW FIRM PC.
- 5. Plaintiff's counsel will request, and Defendant and its counsel will not oppose, costs of up to a maximum of Twenty-Five Thousand dollars (\$25,000). This amount shall be included in the maximum extent of liability.
- 6. The parties agree that there will be a separate settlement for Plaintiff including a general release and waiver of Civil Code §1542 for consideration of \$15,000.
- 7. The Motion for Approval shall ask for up to Six Thousand Dollars (\$6,000) for claims administration and handling.
- 8. The Motion for Approval shall ask for up to Five Thousand dollars (\$5,000) for a PAGA representative enhancement.

9. Payment by Defendant shall be due within 120 days of the approval of the settlement unless there are objectors to the approval of the settlement, in which case payment shall be made within 120 days after the time to appeal has run or all appeals have been exhausted, whichever occurs later. Payment shall be deposited with the Settlement Administrator, who shall disburse the funds as provided herein.

9. In consideration of their awarded attorneys' fees and expenses, Counsel waive any and all claims to any further attorneys' fees and expenses in connection with the Action.

Nothing in this release shall affect, impact, preclude, or prevent FTS from pursuing claims against third parties, including, without limitation, claims for express, implied or equitable indemnity or contribution. This includes claims against payroll companies, payroll processors, management companies, attorneys, human resources companies, consultants, and related individuals and entities.

10. Each PAGA Member will be fully advised of the fact of settlement and will be provided with a summary of the provisions of the Stipulation of Settlement.

(a) Within 10 business days of Approval by the Court, Defendant shall provide the Claims Administrator with the name, dates of employment, most current mailing address and telephone number of each PAGA Member. The Claims Administrator shall sign an agreement with Defendant to keep this information confidential, in a password protected database.

(b) The Claims Administrator shall mail the Notice to the PAGA Members via first-class regular U.S. mail. Prior to mailing, the Claims Administrator will perform a search based on the National Change of Address Database information to update and correct for any known or identifiable address changes. For each notice returned as undeliverable, without a forwarding address, the Claims Administrator will perform a "skiptrace" search to obtain an updated address.

(d) Uncashed checks to participating PAGA Members revert to cy pres charity Justice Gap Fund.

(e) .

(f) Defendant's payroll records will be presumptively determinative in any dispute over entitlement to payment.

11. The Parties and their counsel will support each and every provision of this MOU and the Stipulation of Settlement before the Court. Defendant agrees not to actively oppose the award of attorneys fees and costs contemplated in this Agreement.

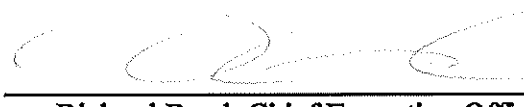
12. Once the memorialized Joint Stipulation of Settlement and other settlement documents are approved by the Court, the payments to each Participating PAGA Member will be in accordance with the provisions set forth above:

13. A Stipulation of Settlement shall be agreed upon and a Approval Hearing shall occur within sixty (60) days of the execution of this MOU or as soon thereafter as the court approves the settlement and there is availability on the calendar of the jurisdictional civil court.
14. The Claims Administrator shall never be empowered to make payments to Participating PAGA Members exceeding the total Net Settlement Amount or deviate from the payment formula agreed upon by the parties.
15. The parties agree that this Memorandum of Understanding is confidential (except for purposes of enforcement) and that neither party will issue any press release or other public or non-public representation regarding the settlement other than as necessary to obtain Court approval and effectuate the terms of the settlement. The parties and their counsel agree that they will not initiate or have any contact with the press, respond to any press inquiry or have any communication with the press about this case. Plaintiff's counsel will not communicate with other wage-hour Plaintiff's counsel nor utilize in their marketing or advertising materials or website the name of SLM or its principals as it relates to this settlement. Notwithstanding the above, Plaintiff's counsel may include publicly-available information about the case in their declarations demonstrating their qualifications as counsel.
16. The parties agree that mediator Gig Kyriacou may, at his discretion, execute a Declaration supporting the settlement, and the Court may, in its discretion, contact Mr. Kyriacou to discuss the settlement and whether or not the settlement is fair and reasonable.
17. The parties agree that the subsequent filing of a Stipulation for Settlement is for settlement purposes only and if, for any reason, the settlement is not approved, the Stipulation for Settlement and this MOU will be of no force or effect in a contested matter.
18. The parties agree that, upon approval of the settlement, the Action will be dismissed with prejudice and judgment entered confirming the Release to be negotiated as discussed herein. This judgment and dismissal will constitute a binding and final resolution of any and all claims by any Participating PAGA Members, as defined by the Release herein.
19. This MOU may be signed in counterparts.
20. The parties intend that this MOU shall be fully enforceable and binding upon all parties, and that it shall be admissible and subject to disclosure in any proceeding to enforce its terms under Code of Civil Procedure section 664.6 and any other applicable statute or law, notwithstanding the mediation confidentiality provisions that otherwise might apply under federal and state law.

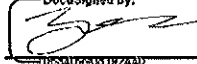
The following counsel have the authority to sign on behalf of the named plaintiffs to commit the named plaintiffs to settlement set forth in this memorandum of understanding and agree to be bound to this MOU and agree to enforcement of this MOU pursuant to Code of Civil Procedure Section 664.6.

FIRST TO SERVE, INC.

DATED: February 20, 2024

By 
Richard Reed, Chief Executive Officer

DATED: February 20, 2024

By 
Miguel Angel Rubalcaba

COUNSEL:

Dated: February 20, 2024

AEGIS LAW FIRM PC

By: 
Kashif Haque
Namrata Kaur
Attorneys for Plaintiff

Dated: February 20, 2024

SKANE MILLS, LLP

By: 
Joel P. Glaser
Attorneys for Defendant

