

CLASS ACTION AND PAGA SETTLEMENT AGREEMENT

Anthony Bernardo v. FirstElement Fuel, Inc.

Orange County Superior Court, Case No. 30-2022-01269664-CU-OE-CXC

This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and between Plaintiff Anthony Bernardo (“Plaintiff”) and Defendant FirstElement Fuel, Inc. (“Defendant” or “FirstElement”). The Agreement refers to Plaintiff and Defendant collectively as “Parties,” or individually as “Party.” This Agreement is made subject to approval of the Superior Court of the State of California for the County of Orange (“Court”) and the terms and conditions set forth herein.

1. **DEFINITIONS.**

- 1.1. “Action” means Plaintiff’s lawsuit alleging wage and hour violations against Defendant captioned *Anthony Bernardo v. FirstElement Fuel, Inc.*, Case No. 30-2022-01269664-CU-OE-CXC, initiated on July 13, 2022, and pending in Superior Court of the State of California, County of Orange.
- 1.2. “Administrator” means Phoenix Settlement Administrators, the neutral entity the Parties have agreed to appoint to administer the Settlement.
- 1.3. “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with Preliminary Approval of the Settlement.
- 1.4. “Alternative Workweek Subclass” is as defined in Plaintiff’s Second Amended Complaint and means all Class Members who worked pursuant to an alternative workweek schedule at any time during the Class Period.
- 1.5. “Class” means the Class as alleged in Plaintiff’s Second Amended Complaint, which comprises of all current and former non-exempt employees of Defendant who were employed by Defendant in the state of California at any time during the Class Period.
- 1.6. “Class Counsel” means Hali M. Anderson, Dawn M. Berry and Allison E. Schubert of GRAHAMHOLLIS APC.
- 1.7. “Class Counsel Fees Payment” and “Class Counsel Expenses Payment” mean the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees and expenses, respectively, incurred in prosecuting the Action.
- 1.8. “Class Data” means Class Member identifying information in Defendant’s possession, including the Class Member’s name, last-known mailing address, Social Security number, and number of Class Period Workweeks and PAGA Pay Periods.
- 1.9. “Class Member” or “Settlement Class Member” means a member of the Class, as either a Participating Class Member or Non-Participating Class Member (including a Non-Participating Class Member who qualifies as an PAGA Employee).

- 1.10. “Class Member Address Search” means the Administrator’s investigation and search for current Class Member mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Class Members.
- 1.11. “Class Notice” means the Court approved NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed to Class Members in the form, without material variation, attached as Exhibit A and incorporated by reference into this Agreement.
- 1.12. “Class Period” means the period from July 13, 2018 and the date of Preliminary Approval, or June 1, 2024, whichever occurs first.
- 1.13. “Class Representative” means Anthony Bernardo, the named Plaintiff in the operative complaint in the Action seeking Court approval to serve as a Class Representative.
- 1.14. “Class Representative Payment” means the payment to the Class Representative for initiating the Action and providing services in support of the Action.
- 1.15. “Court” means the Superior Court of California, County of Orange.
- 1.16. “Defendant” means FirstElement Fuel, Inc., the named defendant in the Action.
- 1.17. “Defense Counsel” means Ekwan E. Rhew, Kate S. Shin and Aparna S. Mathur of Bird, Marella, Boxer, Wolpert, Nessim, Drooks, Lincenberg & Rhew, P.C..
- 1.18. “Effective Date” means the date by when both of the following have occurred: (a) the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) if no Participating Class Member objects to the Settlement, the day the Court enters Judgment; (b) if one or more Participating Class Members objects to the Settlement, the day after the deadline for filing a notice of appeal from the Judgment; or if a timely appeal from the Judgment is filed, the day after the appellate court affirms the Judgment and issues a remittitur.
- 1.19. “Final Approval” means the Court’s order granting final approval of the Settlement.
- 1.20. “Final Approval Hearing” means the Court’s hearing on the Motion for Final Approval of the Settlement.
- 1.21. “Final Judgment” means the Judgment Entered by the Court upon Granting Final Approval of the Settlement.
- 1.22. “Gross Settlement Amount” means \$751,000, which is the maximum amount Defendant agrees to pay under the Settlement except as provided in Paragraph 8 below. The Gross Settlement Amount will be used to pay any and all payments required under this Settlement, which includes the Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees Payment, Class Counsel Expenses

Payment, Class Representative Payment and the Administration Expenses Payment.

- 1.23. “Individual Class Payment” means the Participating Class Member’s pro rata share of the Net Settlement Amount calculated according to the number of Workweeks worked during the Class Period.
- 1.24. “Individual PAGA Payment” means the PAGA Employee’s pro rata share of 25% of the PAGA Penalties calculated according to the number of Workweeks worked during the PAGA Period.
- 1.25. “Judgment” means the judgment entered by the Court based upon the Final Approval.
- 1.26. “LWDA” means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code § 2699, subd. (i).
- 1.27. “LWDA PAGA Payment” means the 75% of the PAGA Penalties paid to the LWDA under Labor Code § 2699, subd. (i).
- 1.28. “Net Settlement Amount” means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Payment, Class Counsel Fees Payment, Class Counsel Expenses Payment, and the Administration Expenses Payment. The remainder is to be paid to Participating Class Members as Individual Class Payments.
- 1.29. “Non-Participating Class Member” means any Class Member who opts out of the Settlement by sending the Administrator a valid and timely Request for Exclusion.
- 1.30. “PAGA Employee” means an “aggrieved employee” as the term is used in Plaintiff’s Second Amended Complaint, which is a current or former non-exempt employee of Defendant who was employed by Defendant in the state of California at any time during the PAGA Period.
- 1.31. “PAGA Pay Period” means any pay period during which an PAGA Employee worked for Defendant for at least one day during the PAGA Period.
- 1.32. “PAGA Period” means the period between July 13, 2021 and the date of Preliminary Approval, or June 1, 2024, whichever occurs first.
- 1.33. “PAGA” means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).
- 1.34. “PAGA Notice” means Plaintiff’s July 13, 2022 and December 1, 2023 letters to Defendant and the LWDA providing notice pursuant to Labor Code § 2699.3, subd.(a).
- 1.35. “PAGA Penalties” means \$30,000, the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount, allocated 25% to the PAGA Employees (\$7,500) and 75% to the LWDA (\$22,500) in settlement of PAGA claims.
- 1.36. “Participating Class Member” means a Class Member who does not submit a valid and

timely Request for Exclusion from the Settlement.

- 1.37. “Plaintiff” means Anthony Bernardo, the named plaintiff in the Action.
- 1.38. “Preliminary Approval” means the Court’s Order Granting Preliminary Approval of the Settlement.
- 1.39. “Preliminary Approval Order” means the proposed Order Granting Preliminary Approval and Approval of PAGA Settlement.
- 1.40. “Released Class Claims” means the claims being released as described in Paragraph 5.1 below.
- 1.41. “Released PAGA Claims” means the claims being released as described in Paragraph 5.2 below.
- 1.42. “Released Parties” means: Defendant FirstElement Fuel, Inc., each of its past, present, and future officers, directors, managers, members employees, agents, representatives, attorneys, insurers, investors, shareholders, consultants, parent companies, direct and indirect subsidiaries, affiliates, divisions, predecessors, successors, assigns, and joint ventures, and where applicable, its or their respective predecessors, successors, heirs, executors, assignees, administrators, and representatives.
- 1.43. “Request for Exclusion” means a Class Member’s submission of a written request to be excluded from the Class Settlement signed by the Class Member.
- 1.44. “Response Deadline” means 60 days after the Administrator mails Notice to Class Members and PAGA Employees and shall be the last date on which Class Members may: (a) fax or mail Requests for Exclusion from the Settlement, or (b) fax or mail his or her Objection to the Settlement. Class Members to whom Notice Packets are resent after having been returned undeliverable to the Administrator shall have an additional 14 calendar days beyond the Response Deadline has expired.
- 1.45. “Settlement” means the disposition of the Action effected by this Agreement and the Judgment.
- 1.46. “Waiting Time Penalties Subclass” is as defined in Plaintiff’s Second Amended Complaint and means all Class Members whose employment with Defendant ended at any time between July 13, 2019 and the date of Preliminary Approval, or June 1, 2024, whichever occurs first.
- 1.47. “Workweek” means any week during which a Class Member worked for Defendant for at least one day, during the Class Period.

2. RECITALS.

- 2.1 On July 13, 2022, Plaintiff commenced this Action by filing a Complaint on behalf of allegedly aggrieved employees asserting causes of action against Defendant for: (1) failure

to pay minimum and regular wages in violation of Labor Code §§ 1194, 1194.2, 1197, 1197.1, and 1198; (2) failure to pay overtime wages in violation of Labor Code §§ 510, 558, 1194, and 1198; (3) failure to provide meal periods in violation of Labor Code §§ 226.7, 512, and 1198; (4) failure to provide rest breaks in violation of Labor Code §§ 226.7 and 1198; (5) unlawful deduction of wages in violation of Labor Code §§ 221, 224, and 225.5; (6) failure to timely pay wages during employment in violation of Labor Code §§ 204 and 210; (7) failure to provide accurate itemized wage statements in violation of Labor Code §§ 226 and 226.3; (8) failure to maintain accurate records in violation of Labor Code § 1174 and 1174.5; (9) breach of contract; (10) failure to timely pay all wages due upon separation of employment in violation of Labor Code §§ 201, 202, and 203; and (11) violation of Business and Professions Code § 17200. On September 16, 2022, Plaintiff filed a First Amended Complaint asserting an additional claim against Defendant for civil penalties pursuant to PAGA.

- 2.2 On December 1, 2023, Plaintiff submitted an additional PAGA Notice to the LWDA, alleging violations of Labor Code § 511. Following the 65-day notice period required under Labor Code § 2699.3, Plaintiff filed a Second Amended Complaint to include allegations related to his Labor Code § 511 claim and to define a subclass based on alternative workweek violations. The Second Amended Complaint is the operative complaint in the Action (the “Operative Complaint”).
- 2.3 Defendant denies all allegations in the Operative Complaint, denies any failure to comply with the laws identified in the Operative Complaint, and denies any and all liability for the causes of action alleged.
- 2.4 Pursuant to Labor Code § 2699.3, subd.(a), Plaintiff gave timely written notice to Defendant and the LWDA by sending the PAGA Notice.
- 2.5 The Parties have engaged in discovery, including production by Defendants of payroll and time entry data, as well as relevant employment policies. Plaintiff obtained, through formal discovery and informal discovery under the settlement privilege, the identity of and contact information for the putative class and subclasses, Defendant’s policies and procedures related to the claims asserted, and timekeeping and payroll records for a random 30% sample of all Class and Subclass Members. Plaintiff’s investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 (“*Dunk/Kullar*”).
- 2.6 On July 19, 2023, the Parties participated in an all-day private mediation presided over by Hon. Carl J. West (Ret.). Although the Parties were unable to reach an agreement at mediation, with the continued assistance of the mediator, the Parties eventually agreed to settle the claims asserted for the Gross Settlement Amount of \$751,000. The settlement is the product of arm’s length negotiations by highly skilled and well-informed counsel.

3. **MONETARY TERMS.**

- 3.1 Gross Settlement Amount. Except as otherwise provided by Paragraph 8 below, Defendant agrees to pay \$751,000 as the Gross Settlement Amount, and to separately pay any and all

employer payroll taxes owed on the wage portions of the Individual Class Payments. Defendant has no obligation to pay the Gross Settlement Amount or any payroll taxes prior to the deadline stated in Paragraph 4.2 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or PAGA Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendant.

3.2 Payments from the Gross Settlement Amount. The Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts specified by the Court in the Final Approval:

3.2.1 To Plaintiff: Class Representative Payment to the Class Representative of not more than \$7,500 (in addition to any Individual Class Payment and any Individual PAGA Payment he is entitled to receive as a Participating Class Member) as a service award to Plaintiff for his participation in this Action and in exchange for His execution of general release of all claims against Defendant in her individual capacity and Civil Code § 1542, as outlined in Paragraph 5.3 of this Agreement.. Defendant will not oppose Plaintiff's request for a Class Representative Payment that does not exceed this amount. If the Court approves a Class Representative Payment less than the amount requested, the Administrator will retain the remainder in the Net Settlement Amount. The Administrator will pay the Class Representative Payment using IRS Form 1099. Plaintiff assumes full responsibility and liability for employee taxes owed on the Class Representative Payment.

3.2.2 To Class Counsel: A Class Counsel Fees Payment of not more than one-third of the Gross Settlement Amount, which is currently estimated to be \$250,333.33, and a Class Counsel Expenses Payment of not more than \$14,000. Defendant will not oppose requests for these payments provided that they do not exceed these amounts. Plaintiff will file a motion for Class Counsel Fees Payment and Class Expenses Payment no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or a Class Counsel Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to Class Counsel or any other Plaintiff's Counsel arising from any claim to any portion any Class Counsel Fee Payment and/or Class Counsel Expenses Payment. The Administrator will pay the Class Counsel Fees Payment and Class Counsel Expenses Payment using one or more IRS 1099 Forms. Class Counsel assumes full responsibility and liability for taxes owed on the Class Counsel Fees Payment and the Class Counsel Expenses Payment.

3.2.3 To the Administrator: An Administrator Expenses Payment not to exceed \$6,995 except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less or the Court approves payment less than \$6,995, the Administrator will retain the remainder in the Net Settlement Amount.

3.2.4 To the LWDA and PAGA Employees: PAGA Penalties in the amount of \$30,000 to be paid from the Gross Settlement Amount, with 75% (\$22,500) allocated to the LWDA PAGA Payment and 25% (\$7,500) allocated to the Individual PAGA

Payments.

3.2.4.1 The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the PAGA Employees' 25% share of PAGA Penalties (\$7,500) by the total number of PAGA Period Pay Periods worked by all PAGA Employees during the PAGA Period and (b) multiplying the result by each PAGA Employee's PAGA Period Pay Periods. PAGA Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

3.2.4.2 If the Court approves PAGA Penalties of less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

3.2.5 To Each Participating Class Member: The Parties agree that the Net Settlement Amount will be allocated to the Settlement Class with 80% allocated to all Participating Class Members. Individual Class Payments will be allocated on a pro rata basis according to the number of workweeks each Participating Class Member worked during the Class Period. The Administrator shall use the following formula when calculating Individual Class Payments: Individual Class Payment = $[80\% \text{ Net Settlement Amount} \times (\text{Participating Class Member's Individual Number of Workweeks} / \text{Total Number of Workweeks for all Participating Class Members})]$. The remaining 20% of the Net Settlement Amount will be allocated to Participating Class Members who are also members of the Alternative Workweek Subclass. This amount shall be in addition to the amount each Participating Class Member will receive under the formula above. The payments will also be allocated on a pro rata basis according to the number of workweeks each Alternative Workweek Subclass Member worked during the Class Period. The Administrator shall use the following formula when calculating Individual Class Payments: Individual Class Payment = $[20\% \text{ Net Settlement Amount} \times (\text{Participating Alternative Workweek Subclass Member's Individual Number of Workweeks} / \text{Total Number of Workweeks For All Participating Members of the Alternative Workweek Subclass})]$. Members of the Waiting Time Penalties Subclass will be credited with an additional six workweeks towards the calculation of their total Workweeks worked. Such workweeks shall be treated as penalties for tax purposes and shall not be counted as additional workweeks for purposes of the Pro Rata Increase clause in Paragraph 8.

3.2.5.1 Tax Allocation of Individual Class Payments. The Parties agree that 20% of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. The remaining 80% of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for interest and penalties (the "Non-Wage Portion"). The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment.

3.2.5.2 Effect of Non-Participating Class Members on Calculation of Individual Class Payments. Non-Participating Class Members will not receive any Individual Class Payments. The Administrator will retain amounts equal to their Individual Class Payments in the Net Settlement Amount for distribution to Participating Class Members on a pro rata basis.

4. SETTLEMENT FUNDING AND PAYMENTS.

4.1 Class Data. Not later than 14 calendar days after the Court grants Preliminary Approval of the Settlement, Defendant will simultaneously deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator employees who need access to the Class Data to effect and perform under this Agreement. Defendant has a continuing duty to immediately notify Class Counsel if it discovers that the Class Data omitted class member identifying information and to provide corrected or updated Class Data as soon as reasonably feasible. Without any extension of the deadline by which Defendant must send the Class Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Class Data.

4.2 Funding of Gross Settlement Amount. Defendant shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay Defendant's share of payroll taxes by transmitting the funds to the Administrator no later than 14 calendar days after the Effective Date.

4.3 Payments from the Gross Settlement Amount. Within 21 calendar days after Defendant funds the Gross Settlement Amount, the Administrator will mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Expenses Payment, and the Class Representative Payment.

4.3.1 The Administrator will issue checks for the Individual Class Payments and/or Individual PAGA Payments and send them to the Class Members via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than 180 calendar days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. The Administrator will send checks for Individual Settlement Payments to all Participating Class Members. The Administrator will send checks for Individual PAGA Payments to all PAGA Employees including Non-Participating Class Members who qualify as PAGA Employees. The Administrator may send Participating Class Members a single check combining the Individual Class Payment and the Individual PAGA Payment. Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database.

4.3.2 The Administrator must conduct a Class Member Address Search for all other

Class Members whose checks are returned undelivered without USPS forwarding address. Within 7 calendar days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Class Member Address Search. The Administrator need not take further steps to deliver checks to Class Members whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Class Member whose original check was lost or misplaced, requested by the Class Member prior to the void date.

- 4.3.3 For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to the requirements of Code of Civil Procedure § 384, subd. (b).
- 4.3.4 The payment of Individual Class Payments and Individual PAGA Payments shall not obligate Defendant to confer any additional benefits or make any additional payments to Class Members (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.

5. **RELEASES OF CLAIMS.**

- 5.1 **Released Class Claims.** Upon the Effective Date, and except as to the right to enforce the terms and conditions of this Agreement, each Participating Class Member will release the Released Parties of all claims, actions, demands, causes of action, suits, debts, obligations, demands, rights, liabilities, or legal theories of relief, that were or could have been pleaded under local, state or federal law arising out of any facts, transactions, events, policies, occurrences, acts, disclosures, statements, omissions, or failures to act pleaded in the Operative Complaint, including but not limited to claims for (1) failure to pay all minimum and regular wages; (2) failure to pay all overtime wages; (3) failure to provide meal periods; (4) failure to provide rest periods; (5) unlawful deduction of wages during employment; (6) failure to timely pay all wages earned and due during employment; (7) failure to furnish accurate itemized wage statements; (8) failure to maintain accurate records; (9) failure to timely pay all wages due and owing upon separation of employment; and (10) violations of Business & Professions Code §§ 17200 et seq.
- 5.2 **Released PAGA Claims:** Each PAGA Employee will release the Released Parties of all claims pursuant to the Private Attorneys General Act (codified in Labor Code § 2698 et seq.) arising out of any facts, transactions, events, policies, occurrences, acts, disclosures, statements, omissions, or failures to act pleaded in the Operative Complaint and/or the LWDA Notice dated July 13, 2022 (Case No. LWDA-CM-895158-22), and amended on December 1, 2023, including PAGA claims for (1) failure to pay minimum and regular wages in violation of Labor Code §§ 1194, 1194.2, 1197, 1197.1, and 1198; (2) failure to pay overtime wages in violation of Labor Code §§ 510, 511, 558, 1194, and 1198; (3) failure to provide meal periods in violation of Labor Code §§ 226.7, 512, 558 and 1198; (4) failure to provide rest breaks in violation of Labor Code §§ 226.7 and 1198; (5) unlawful deduction of wages in violation of Labor Code §§ 221, 224, and 225.5; (6) failure

to timely pay wages during employment in violation of Labor Code §§ 204 and 210; (7) failure to provide accurate itemized wage statements in violation of Labor Code §§ 226 and 226.3; (8) failure to maintain accurate records in violation of Labor Code § 1174 and 1174.5; and (9) failure to timely pay all wages due upon separation of employment in violation of Labor Code §§ 201, 202, and 203.

- 5.3 General Release by Plaintiff. This Agreement is conditioned upon a full release by Plaintiff. In exchange for the Class Representative Payment, upon the Effective Date, and except as to the right to enforce the terms and conditions of this Agreement, Plaintiff releases the Released Parties from any and all charges, complaints, claims, causes of action, demands, disputes, damages, business expenses, attorneys' fees, costs, losses, and liabilities of any kind or nature whatsoever, known or unknown, suspected or unsuspected, asserted or unasserted, which Plaintiff, at any time, had, claimed to have, or Plaintiff may have, including but not limited to any and all claims arising out of, relating to, or resulting from her employment with and separation of employment with Released Parties, including any claims arising under any federal, state, or local law relating to employment, including, but in no way limited to, any claim under Title VII of the Civil Rights Act of 1964, as amended ("Title VII"), 42 U.S.C. § 1981; the Americans with Disabilities Act ("ADA"); the Family and Medical Leave Act ("FMLA"); the Employee Retirement Income Security Act ("ERISA"); the California Family Rights Act ("CFRA"); the California Fair Employment and Housing Act ("FEHA"); all claims for wages or penalties under the Fair Labor Standards Act ("FLSA"); all claims for wages or penalties under the California Labor Code included but not limited to §§ 201, 202, 203, 204, 210, 221, 224, 225.5 226, 226.3, 226.7, 510, 515, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 1770, 1771, 1773, 1773.1, 1742; Business and Professions Code §§ 17200 et seq.; all laws relating to violation of public policy, retaliation, or interference with legal rights; any and all other employment or discrimination laws; whistleblower claims; any tort, fraud, or constitutional claims; and any breach of contract claims or claims of promissory estoppel. It is agreed that this is a general release and is to be broadly construed as a release of all claims; provided that, notwithstanding the foregoing, this paragraph expressly does not include a release of any claims that cannot be released hereunder by law. Plaintiff understands and expressly agrees that this Agreement extends to claims that he has against Released Parties, of whatever nature and kind, known or unknown, suspected or unsuspected, vested or contingent, past, present, or future, arising from or attributable to an incident or event, occurring in whole or in part, on or before the Effective Date of this Agreement. Any and all rights granted under any state or federal law or regulation limiting the effect of this Settlement Agreement, including the provisions of section 1542 of the California Civil Code, are hereby expressly waived. Section 1542 of the California Civil Code reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

6. MOTION FOR PRELIMINARY APPROVAL.

6.1 Plaintiff's Responsibilities. Plaintiff will prepare and deliver to Defense Counsel all documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice, and memorandum in support, of the Motion for Preliminary Approval that includes an analysis of the Settlement under *Dunk/Kullar* and a request for approval of the PAGA Settlement under Labor Code § 2699, subd. (f)(2); (ii) a draft proposed Order Granting Preliminary Approval and Approval of PAGA Settlement; and (iii) a signed declaration from Class Counsel attesting to its competency to represent the Class Members and its timely transmission to the LWDA of all necessary PAGA documents. Class Counsel will provide the drafts in (i) and (ii) to Defense Counsel at least seven calendar days before filing for review and comment.

6.1.1 Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion for Preliminary Approval, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting by telephone, and in good faith, to resolve the disagreement. If the Court does not grant Preliminary Approval or conditions Preliminary Approval on any material change to this Agreement, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting by telephone, and in good faith, to modify the Agreement and otherwise satisfy the Court's concerns.

7. SETTLEMENT ADMINISTRATION.

7.1 Selection of Administrator. The Parties have jointly selected Phoenix Settlement Administrators to serve as the Administrator and verified that, as a condition of appointment, Phoenix Settlement Administrators agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of Administration Expenses. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.

7.2 Notice to Class Members.

7.2.1 Using best efforts to perform as soon as possible, and in no event later than 21 calendar days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class United States Postal Service ("USPS") mail, the Class Notice substantially in the form attached to this Agreement as Exhibit A. The first page of the Class Notice shall prominently estimate the dollar amounts of any Individual Class Payment and Individual PAGA Payment payable to the Class Member, and the number of Workweeks and PAGA Pay Periods used to calculate these amounts. Before mailing Class Notices, the Administrator shall update Class Member addresses using the National Change of Address database.

7.2.2 Not later than three business days after the Administrator's receipt of any Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS. If the USPS

does not provide a forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the most current address obtained. The Administrator has no obligation to make further attempts to locate or send Class Notice to Class Members whose Class Notice is returned by the USPS a second time.

- 7.2.3 The deadlines for Class Members' written objections, Challenges to Workweeks and/or Pay Periods, and Requests for Exclusion will be extended an additional 10 calendar days beyond the 60 days otherwise provided in the Class Notice for all Class Members whose notice is re-mailed. The Administrator will inform the Class Member of the extended deadline with the re-mailed Class Notice.
- 7.2.4 If the Administrator, Defendant or Class Counsel is contacted by or otherwise discovers any persons who believe they should have been included in the Class Data and should have received Class Notice, the Parties will expeditiously meet and confer in good faith, in an effort to agree on whether to include them as Class Members. If the Parties agree, such persons will be Class Members entitled to the same rights as other Class Members, and the Administrator will send a Class Notice requiring them to exercise options under this Agreement not later than 10 calendar days after receipt of Class Notice, or the deadline dates in the Class Notice, whichever is later.

7.3 Requests for Exclusion.

- 7.3.1 Class Members who wish to exclude themselves from the Class Settlement must send the Administrator, by fax or mail, a signed written Request for Exclusion not later than 60 calendar days after the Administrator mails the Class Notice (plus an additional 10 calendar days for Class Members whose Class Notice is re-mailed). A Request for Exclusion is a letter from a Class Member or his/her representative that reasonably communicates the Class Member's election to be excluded from the Settlement and includes the Class Member's name and address. To be valid, a Request for Exclusion must be timely faxed or postmarked by the Response Deadline.
- 7.3.2 The Administrator shall accept any Request for Exclusion as valid if the Administrator can clearly ascertain the identity of the person as a Class Member and the Class Member's desire to be excluded. The Administrator's determination shall be final and not appealable or otherwise susceptible to challenge. If the Administrator has reason to question the authenticity of a Request for Exclusion, the Administrator may demand additional proof of the Class Member's identity. The Administrator's determination of authenticity shall be final and not appealable or otherwise susceptible to challenge.
- 7.3.3 Every Class Member who does not submit a timely and valid Request for Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all benefits and bound by all terms and conditions of the Settlement, including the Participating Class Members' Releases under Paragraphs 5.1 of this Agreement, regardless of whether the Participating Class Member actually receives the Class

Notice or objects to the Settlement.

7.3.4 Every Class Member who submits a valid and timely Request for Exclusion is a Non-Participating Class Member and shall not receive an Individual Class Payment or have the right to object to the class action components of the Settlement. Non-Participating Class Members who are PAGA Employees are deemed to release the claims identified in Paragraph 5.2 of this Agreement and are eligible for an Individual PAGA Payment.

7.4 Challenges to Calculation of Workweeks. Each Class Member shall have 60 calendar days after the Administrator mails the Class Notice (plus an additional 10 calendar days for Class Members whose Class Notice is re-mailed) to challenge the number of Class Workweeks and/or PAGA Pay Periods allocated to the Class Member in the Class Notice. The Class Member may challenge the allocation by communicating with the administrator via fax or mail. The Administrator must encourage the challenging Class Member to submit supporting documentation. In the absence of any contrary documentation, the Administrator is entitled to presume that the Workweeks contained in the Class Notice are correct so long as they are consistent with the Class Data. The Administrator's determination of each Class Member's allocation of Workweeks and/or Pay Periods shall be final and not appealable or otherwise susceptible to challenge. The Administrator shall promptly provide copies of all challenges to the calculation of Workweeks and/or Pay Periods to Defense Counsel and Class Counsel and the Administrator's determination of the challenges.

7.5 Objections to Settlement.

7.5.1 Only Participating Class Members may object to the class action components of the Settlement, including contesting the fairness of the Settlement, and/or the amounts requested for the Class Counsel Fees Payment, the Class Counsel Expenses Payment and/or the Class Representative Payment.

7.5.2 Participating Class Members may send written objections to the Administrator, by fax or mail. In the alternative, Participating Class Members may appear in Court (or retain an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A Participating Class Member who elects to send a written objection to the Administrator must do so not later than 60 calendar days after the Administrator's mailing of the Class Notice (plus an additional 10 calendar days for Class Members whose Class Notice was re-mailed).

7.5.3 Non-Participating Class Members have no right to object to any of the class action components of the Settlement.

7.6 Administrator Duties. The Administrator has a duty to perform or observe all tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.

7.6.1 Website, Email Address and Toll-Free Number. The Administrator will establish and maintain and use an internet website to post information of interest to Class Members including the date, time and location for the Final Approval Hearing and

copies of the Settlement Agreement, Motion for Preliminary Approval, the Preliminary Approval Order, the Class Notice, the Motion for Final Approval, the Motion for Class Counsel Fees Payment, Class Counsel Expenses Payment and Class Representative Payment, and the Final Approval Order and Judgment. The Administrator will also maintain and monitor a toll-free telephone number to receive Class Member calls and faxes.

- 7.6.2 Requests for Exclusion and Exclusion List. The Administrator will promptly review on a rolling basis Requests for Exclusion to ascertain their validity. Not later than five days after the expiration of the deadline for submitting Requests for Exclusion, the Administrator shall email a list to Class Counsel and Defense Counsel containing: (a) the names and other identifying information of Class Members who have timely submitted valid Requests for Exclusion (“Exclusion List”); (b) the names and other identifying information of Class Members who have submitted invalid Requests for Exclusion; and (c) copies of all Requests for Exclusion from Settlement submitted (whether valid or invalid).
- 7.6.3 Weekly Reports. The Administrator must, on a weekly basis, provide written reports to Class Counsel and Defense Counsel that, among other things, tally the number of Class Notices mailed or re-mailed, Class Notices returned undelivered, Requests for Exclusion received, objections received, and challenges to Workweeks and/or Pay Periods received (“Weekly Report”).
- 7.6.4 Workweek and/or Pay Period Challenges. The Administrator has the authority to address and make final, decisions consistent with the terms of this Agreement on all Class Member challenges over the calculation of Workweeks and/or Pay Periods. The Administrator’s decision shall be final and not appealable or otherwise susceptible to challenge.
- 7.6.5 Administrator’s Declaration. Not later than 10 calendar days before the date by which Plaintiff is required to file the Motion for Final Approval of the Settlement, the Administrator will provide to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its due diligence and compliance with all of its obligations under this Agreement, including, but not limited to, its mailing of Class Notice, the number of Class Notices returned as undelivered, the re-mailing of Class Notices, attempts to locate Class Members, the total number of Requests for Exclusion from Settlement it received (both valid or invalid), the number of written objections, and the Exclusion List. The Administrator will supplement its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible for filing the Administrator’s declaration in Court.
- 7.6.6 Final Report by Administrator. Within 10 calendar days after the Administrator disburses all funds in the Gross Settlement Amount, the Administrator will provide Class Counsel and Defense Counsel with a final report detailing its disbursements by employee identification number only of all payments made under this Agreement. At least 10 calendar days before any deadline set by the Court, the Administrator will prepare, and submit to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of all

payments required under this Agreement. Class Counsel is responsible for filing the Administrator's declaration in Court.

8. **PRO RATA INCREASE**. The Gross Settlement Amount was calculated with, and is premised on, the Parties' understanding that there are approximately 119 Class Members who worked approximately 3,176 pay periods between July 13, 2018 and the date of mediation (July 19, 2023). The Parties agree that if the actual number of pay periods exceeds 15% of the estimated number as of the date of the mediation, then the Gross Settlement Amount will be increased by the same proportion above 15%.
9. **DEFENDANT'S RIGHT TO WITHDRAW**. If the number of valid Requests for Exclusion identified in the Exclusion List exceeds 5% of the total of all Class Members, Defendant may, but is not obligated to, elect to withdraw from the Settlement. The Parties agree that, if Defendant withdraws, the Settlement shall be void ab initio, have no force or effect whatsoever, and that neither Party will have any further obligation to perform under this Agreement; provided, however, Defendant will remain responsible for paying all Settlement Administration Expenses incurred to that point. Defendant must notify Class Counsel and the Court of its election to withdraw not later than seven calendar days after the Administrator sends the final Exclusion List to Defense Counsel.
10. **MOTION FOR FINAL APPROVAL**. Not later than 16 court days before the calendared Final Approval Hearing, Plaintiff will file in Court, a motion for final approval of the Settlement that includes a request for approval of the PAGA settlement under Labor Code § 2699, subd. (l), a Proposed Final Approval Order and a proposed Judgment (collectively "Motion for Final Approval"). Plaintiff shall provide drafts of these documents to Defense Counsel not later than seven calendar days prior to filing the Motion for Final Approval. Class Counsel and Defense Counsel will expeditiously meet and confer in person or by telephone, and in good faith, to resolve any disagreements concerning the Motion for Final Approval.
 - 10.1 **Response to Objections**. Each Party retains the right to respond to any objection raised by a Participating Class Member, including the right to file responsive documents in Court no later than five court days prior to the Final Approval Hearing, or as otherwise ordered or accepted by the Court.
 - 10.2 **Duty to Cooperate**. If the Court does not grant Final Approval or conditions Final Approval on any material change to the Settlement (including, but not limited to, the scope of release to be granted by Class Members), the Parties will expeditiously work together in good faith to address the Court's concerns by revising the Agreement as necessary to obtain Final Approval. The Court's decision to award less than the amounts requested for the Class Representative Payment, Class Counsel Fees Payment, Class Counsel Expenses Payment and/or Administrator Expenses Payment shall not constitute a material modification to the Agreement within the meaning of this paragraph.
 - 10.3 **Continuing Jurisdiction of the Court**. The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.

10.4 Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the Class Counsel Fees Payment and Class Counsel Expenses Payment reflected set forth in this Settlement, the Parties, their respective counsel, and all Participating Class Members who did not object to the Settlement as provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or appeals. If an objector appeals the Judgment, the Parties' obligations to perform under this Agreement will be suspended until such time as the appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect the amount of the Net Settlement Amount.

10.5 Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If the reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a material modification of this Agreement (including, but not limited to, the scope of release to be granted by Class Members), this Agreement shall be null and void. The Parties shall nevertheless expeditiously work together in good faith to address the appellate court's concerns and to obtain Final Approval and entry of Judgment, sharing, on a 50-50 basis, any additional Administration Expenses reasonably incurred after remittitur. An appellate decision to vacate, reverse, or modify the Court's award of the Class Representative Payment or any payments to Class Counsel shall not constitute a material modification of the Judgment within the meaning of this paragraph, as long as the Gross Settlement Amount remains unchanged.

11. AMENDED JUDGMENT. If any amended judgment is required under Code of Civil Procedure § 384, the Parties will work together in good faith to jointly submit and a proposed amended judgment.

12. ADDITIONAL PROVISIONS.

12.1 No Admission of Liability, Class Certification or Representative Manageability for Other Purposes. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended to or should be construed as an admission by Defendant that any of the allegations in the Operative Complaint have merit or that Defendant has any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that Defendant's defenses in the Action have merit. The Parties agree that class certification and representative treatment is for purposes of this Settlement only. If, for any reason the Court does grant Preliminary Approval, Final Approval or enter Judgment, Defendant reserves the right to contest certification of any class for any reasons, and Defendant reserves all available defenses to the claims in the Action, and Plaintiff reserves the right to move for class certification on any grounds available and to contest Defendant's defenses. The Settlement, this Agreement and Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).

- 12.2 Confidentiality Prior to Preliminary Approval. Plaintiff, Class Counsel, Defendant and Defense Counsel separately agree that, until the Motion for Preliminary Approval of Settlement is filed, they and each of them will not disclose, disseminate and/or publicize, or cause or permit another person to disclose, disseminate or publicize, any of the terms of the Agreement directly or indirectly, specifically or generally, to any person, corporation, association, government agency, or other entity except: (1) to the Parties' attorneys, accountants, or spouses, all of whom will be instructed to keep this Agreement confidential; (2) to the extent necessary to report income to appropriate taxing authorities; (3) in response to a court order or subpoena; or (4) in response to an inquiry or subpoena issued by a state or federal government agency. Each Party agrees to immediately notify each other Party of any judicial or agency order, inquiry, or subpoena seeking such information. Plaintiff, Class Counsel, Defendant and Defense Counsel separately agree not to, directly or indirectly, initiate any conversation or other communication, before the filing of the Motion for Preliminary Approval, with any third-party regarding this Agreement or the matters giving rise to this Agreement except to respond only that "the matter was resolved," or words to that effect. This paragraph does not restrict Class Counsel's communications with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.
- 12.3 No Solicitation. The Parties separately agree that they and their respective counsel and employees will not solicit any Class Member to opt out of or object to the Settlement, or appeal from the Judgment. Nothing in this paragraph shall be construed to restrict Class Counsel's ability to communicate with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.
- 12.4 Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement together with its attached exhibits shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants, or inducements made to or by any Party.
- 12.5 Attorney Authorization. Class Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiff and Defendant, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.
- 12.6 Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Settlement Agreement, submitting supplemental evidence and supplementing points and authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of a mediator and/or the Court for resolution.
- 12.7 No Prior Assignments. The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in this Settlement.

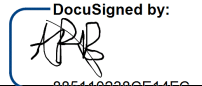
- 12.8 No Tax Advice. Neither Plaintiff, Class Counsel, Defendant nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 C.F.R. Part 10, as amended) or otherwise.
- 12.9 Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives, and approved by the Court.
- 12.10 Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
- 12.11 Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the internal laws of the state of California, without regard to conflict of law principles.
- 12.12 Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
- 12.13 Confidentiality. To the extent permitted by law, all agreements made, and orders entered during Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.
- 12.14 Headings. The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.
- 12.15 Calendar Days. Unless otherwise noted, all reference to “days” in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.
- 12.16 Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.
- 12.17 Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to Code of Civil Procedure § 583.330 to extend the date to bring a case to trial under Code of Civil Procedure § 583.310 for the entire period of this settlement process.

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ACCEPTED AND AGREED:

PLAINTIFF

Dated: 4/4/2024

By: 
Anthony Bernardo

DEFENDANT
FIRSTELEMENT FUEL, INC.

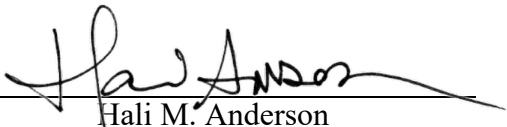
Dated:

By: _____

Its: _____

APPROVED AS TO FORM AND CONTENT BY COUNSEL:

GRAHAMHOLLIS APC

By: 
Hali M. Anderson
Dawn M. Berry
Allison E. Schubert
Attorneys for Plaintiff Anthony Bernardo

Dated: April 4, 2024

BIRD, MARELLA, BOXER, WOLPERT, NESSIM,
DROOKS, LINCENBERG & RHOW, P.C.

Dated:

Ekwan E. Rhow
Kate S. Shin
Aparna S. Mathur
Attorneys for Defendant FirstElement Fuel, Inc.

ACCEPTED AND AGREED:

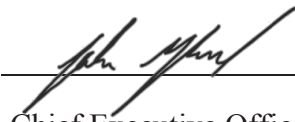
PLAINTIFF

Dated:

By: _____
Anthony Bernardo

DEFENDANT
FIRSTELEMENT FUEL, INC.

Dated: March 28, 2024

By:  _____
Its: Chief Executive Officer

APPROVED AS TO FORM AND CONTENT BY COUNSEL:

GRAHAMHOLLIS APC

By: _____
Hali M. Anderson
Dawn M. Berry
Allison E. Schubert
Attorneys for Plaintiff Anthony Bernardo

Dated:

BIRD, MARELLA, BOXER, WOLPERT, NESSIM,
DROOKS, LINCENBERG & RHOW, P.C.

Dated: March 28, 2024

 _____
Ekwan E. Rho
Kate S. Shin
Aparna S. Mathur
Attorneys for Defendant FirstElement Fuel, Inc.

EXHIBIT A

COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT

Anthony Bernardo v. FirstElement Fuel, Inc.

Orange County Superior Court, Case No. 30-2022-01269664-CU-OE-CXC

The Superior Court for the State of California authorized this Notice. Read it carefully!

You may be eligible to receive money from an employee class action lawsuit (“Action”) against FirstElement Fuel, Inc. (“FirstElement”) for alleged wage and hour violations. The Action was filed by a former FirstElement employee, Anthony Bernardo (“Plaintiff”), and seeks payment of (1) allegedly unpaid wages and other relief for a class of hourly, nonexempt employees (“Class Members”) who worked for FirstElement during the Class Period (July 13, 2018 to [DATE]); and (2) penalties under the California Private Attorneys General Act (“PAGA”) for all hourly, nonexempt employees who worked for FirstElement during the PAGA Period (July 13, 2021 to [DATE]) (“PAGA Employees”).

The proposed Settlement has two main components: (1) a Class Settlement requiring FirstElement to fund Individual Class Payments, and (2) a PAGA Settlement requiring FirstElement to fund Individual PAGA Payments and pay penalties to the California Labor and Workforce Development Agency (“LWDA”).

Based on FirstElement’s records, and the Parties’ current assumptions, **your Individual Class Payment is estimated to be \$[AMOUNT] (less withholding) and your Individual PAGA Payment is estimated to be \$[AMOUNT]**. The actual amount you may receive may be different and will depend on a number of factors. If no amount is stated for your Individual PAGA Payment, then according to FirstElement’s records you are not eligible for an Individual PAGA Payment under the Settlement because you didn’t work during the PAGA Period.

The above estimates are based on FirstElement’s records showing that **you worked [NUMBER] workweeks** during the Class Period and **you worked [NUMBER] pay periods** during the PAGA Period. If you believe that you worked more workweeks during either period, you can submit a challenge by the deadline date. See Section 4 of this Notice.

The Court has already preliminarily approved the proposed Settlement and approved this Notice. The Court has not yet decided whether to grant final approval. Your legal rights are affected whether you act or do not act. Read this Notice carefully, as you will be deemed to have read and understood it. At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement and how much of the Settlement will be paid to Plaintiff and Plaintiff’s attorneys (“Class Counsel”). The Court will also decide whether to enter a judgment that requires FirstElement to make payments under the Settlement that requires Class Members and PAGA Employees to give up their rights to assert certain claims against FirstElement.

If you worked for FirstElement during the Class Period and/or the PAGA Period, you have two basic options under the Settlement:

- (1) **Do Nothing.** You don’t have to do anything to participate in the proposed Settlement and be eligible for an Individual Class Payment and/or an Individual PAGA Payment. As a Participating Class Member, though, you will give up your right to assert Class Period wage and labor code claims and PAGA Period penalty claims against FirstElement.
- (2) **Opt-Out of the Class Settlement.** You can exclude yourself from the Class Settlement (opt-out) by submitting a written Request for Exclusion or otherwise notifying the Administrator in writing. If you opt-out of the Settlement, you will not receive an Individual Class Payment. You will, however, preserve your right to personally pursue any wage claims you may have against

FirstElement, and, if you are an PAGA Employee, remain eligible for an Individual PAGA Payment. You cannot opt-out of the PAGA portion of the proposed Settlement.

FirstElement will not retaliate against you for any actions you take or do not take with respect to the proposed Settlement.

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

You Don't Have to Do Anything to Participate in the Settlement	If you do nothing, you will be a Participating Class Member, eligible for an Individual Class Payment and an Individual PAGA Payment (if any). In exchange, you will give up your right to assert the wage claims against FirstElement that are covered by this Settlement ("Released Claims," as defined below).
You Can Opt-out of the Class Settlement but not the PAGA Settlement The Opt-out Deadline is [DATE]	If you don't want to participate in the proposed Settlement, you can opt-out of the Class Settlement by sending the Administrator a written Request for Exclusion. Once excluded, you will be a Non-Participating Class Member and no longer eligible for an Individual Class Payment. Non-Participating Class Members cannot object to any portion of the proposed Settlement. See Section 6 of this Notice. You cannot opt-out of the PAGA portion of the proposed Settlement. FirstElement must pay Individual PAGA Payments to all PAGA Employees and the PAGA Employees must give up their rights to pursue Released Claims.
Participating Class Members Can Object to the Class Settlement but not the PAGA Settlement Written Objections Must be Submitted by [DATE]	All Class Members who do not opt-out ("Participating Class Members") can object to any aspect of the proposed Settlement. The Court's decision whether to finally approve the Settlement will include a determination of how much will be paid to Class Counsel and Plaintiff who pursued the Action on behalf of the Class. You are not personally responsible for any payments to Class Counsel or Plaintiff, but every dollar paid to Class Counsel and Plaintiff reduces the overall amount paid to Participating Class Members. You can object to the amounts requested by Class Counsel or Plaintiff if you think they are unreasonable. See Section 7 of this Notice.
You Can Participate in the [DATE] Final Approval Hearing	The Court's Final Approval Hearing is scheduled to take place on [DATE]. You do not have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone or by using the Court's virtual appearance platform. Participating Class Members can verbally object to the Settlement at the Final Approval Hearing. See Section 8 of this Notice.
You Can Challenge the Calculation of Your Workweeks/Pay Periods Written Challenges Must be Submitted by [DATE]	The amount of your Individual Class Payment and PAGA Payment (if any) depend on how many workweeks you worked at least one day during the Class Period and how many Pay Periods you worked at least one day during the PAGA Period, respectively. The number of Class Period Workweeks and PAGA Period Pay Periods you worked according to FirstElement's records is stated on the first page of this Notice. If you disagree with either of these numbers, you must challenge it by [DATE]. See Section 4 of this Notice.

1. WHAT IS THE ACTION ABOUT?

Plaintiff is a former FirstElement employee. The Action alleges FirstElement violated California labor laws by: (1) failing to pay minimum and regular wages; (2) failing to pay overtime wages; (3) failing to provide meal periods; (4) failing to provide rest breaks; (5) unlawfully deducted wages; (6) failing to timely pay wages during employment; (7) failing to provide accurate itemized wage statements; (8) failing to maintain accurate records; and (9) failure to timely pay all wages due upon separation of employment in violation of Labor Code §§ 201, 202, and 203.; (8) failing to maintain accurate records; (9) failing to timely pay all wages due and owing upon separation of employment; and (10) violating Business & Professions Code §§ 17200 et seq. Based on the same claims, Plaintiff has also asserted a claim for civil penalties under the California Private Attorneys General Act (Labor Code §§ 2698, et seq.). Plaintiff is represented by attorneys in the Action, Hali M. Anderson, Dawn M. Berry and Allison E. Schubert of GrahamHollis APC (“Class Counsel”).

FirstElement strongly denies the allegations in the Action and contends that it complied with all applicable laws.

2. WHAT DOES IT MEAN THAT THE ACTION HAS SETTLED?

The Court has made no determination on whether FirstElement or Plaintiff is correct on the merits. Instead, Plaintiff and FirstElement retained a neutral, third-party mediator, Hon. Carl J. West (Ret.), in an effort to resolve the Action by negotiating a mutually agreeable settlement, rather than continuing the expensive and time-consuming process of litigation. The negotiations were successful. By signing a lengthy written settlement agreement (“Agreement”) and agreeing to jointly ask the Court to enter a judgment ending the Action and enforcing the Agreement, Plaintiff and FirstElement have negotiated a proposed Settlement that is subject to the Court’s Final Approval. Both sides agree the proposed Settlement is a compromise of disputed claims. By agreeing to settle, FirstElement does not admit any violations or concede the merit of any claims. Plaintiff and Class Counsel strongly believe the Settlement is a good deal for you because they believe that: (1) FirstElement has agreed to pay a fair, reasonable and adequate amount considering the strength of the claims and the risks and uncertainties of continued litigation; and (2) Settlement is in the best interests of the Class Members and PAGA Employees. The Court preliminarily approved the proposed Settlement as fair, reasonable and adequate, authorized this Notice, and scheduled a hearing to determine Final Approval.

3. WHAT ARE THE IMPORTANT TERMS OF THE PROPOSED SETTLEMENT?

1. FirstElement Will Pay \$751,000 as the Gross Settlement Amount (“Gross Settlement”). FirstElement has agreed to deposit the Gross Settlement into an account controlled by the Administrator of the Settlement. The Administrator will use the Gross Settlement to pay the Individual Class Payments, Individual PAGA Payments, Class Representative Payment, Class Counsel’s attorney’s fees and expenses, the Administrator’s expenses, and penalties to be paid to the California Labor and Workforce Development Agency (“LWDA”). Assuming the Court grants Final Approval, FirstElement will fund the Gross Settlement not more than 14 days after the Judgment entered by the Court become final. The Judgment will be final on the date the Court enters Judgment, or a later date if Participating Class Members object to the proposed Settlement or the Judgment is appealed.
2. Court Approved Deductions from Gross Settlement. At the Final Approval Hearing, Plaintiff and Class Counsel will ask the Court to approve the following deductions from the Gross Settlement, the amounts of which will be decided by the Court at the Final Approval Hearing:
 - A. Up to \$250,333.33 (33.3% of the Gross Settlement) to Class Counsel for attorneys’ fees and up to \$14,000 for their litigation expenses. To date, Class Counsel have worked and incurred expenses on the Action without payment.

- B. Up to \$7,500 as a Class Representative Payment for filing the Action, working with Class Counsel and representing the Class. A Class Representative Payment will be the only monies Plaintiff will receive other than his Individual Class Payment and any Individual PAGA Payment.
- C. Up to \$6,995 to the Administrator for services administering the Settlement.
- D. Up to \$30,000 for PAGA Penalties, allocated 75% to the LWDA PAGA Payment and 25% in Individual PAGA Payments to the PAGA Employees based on their PAGA Period Pay Periods.

Participating Class Members have the right to object to any of these deductions. The Court will consider all objections.

- 3. Net Settlement Distributed to Class Members. After making the above deductions in amounts approved by the Court, the Administrator will distribute the rest of the Gross Settlement (the “Net Settlement”) by making Individual Class Payments to Participating Class Members based on their Class Period Workweeks.
- 4. Taxes Owed on Payments to Class Members. Plaintiff and FirstElement are asking the Court to approve an allocation of 20% of each Individual Class Payment to taxable wages (“Wage Portion”) and 80% to interest and penalties (“Non-Wage Portion.”). The Wage Portion is subject to withholdings and will be reported on IRS W-2 Forms. FirstElement will separately pay employer payroll taxes it owes on the Wage Portion. The Individual PAGA Payments are counted as penalties rather than wages for tax purposes. The Administrator will report the Individual PAGA Payments and the Non-Wage Portions of the Individual Class Payments on IRS 1099 Forms.

Although Plaintiff and FirstElement have agreed to these allocations, neither side is giving you any advice on whether your Payments are taxable or how much you might owe in taxes. You are responsible for paying all taxes (including penalties and interest on back taxes) on any Payments received from the proposed Settlement. You should consult a tax advisor if you have any questions about the tax consequences of the proposed Settlement.

- 5. Need to Promptly Cash Payment Checks. The front of every check issued for Individual Class Payments and Individual PAGA Payments will show the date when the check expires (the void date). If you don’t cash it by the void date, your check will be automatically cancelled, and the monies will be deposited with the California Controller’s Unclaimed Property Fund in your name.
- 6. Requests for Exclusion from the Class Settlement (Opt-Outs). You will be treated as a Participating Class Member, participating fully in the Class Settlement, unless you notify the Administrator in writing, not later than [DATE], that you wish to opt-out. The easiest way to notify the Administrator is to send a written and signed Request for Exclusion by the [DATE] Response Deadline. The Request for Exclusion should be a letter from a Class Member or his/her representative setting forth a Class Member’s name, present address, telephone number, and a simple statement electing to be excluded from the Settlement. Excluded Class Members (i.e., Non-Participating Class Members) will not receive Individual Class Payments, but will preserve their rights to personally pursue wage and hour claims against FirstElement.

You cannot opt-out of the PAGA portion of the Settlement. Class Members who exclude themselves from the Class Settlement (i.e., Non-Participating Class Members) remain eligible for Individual PAGA Payments and are required to give up their right to assert PAGA claims against FirstElement based on the PAGA Period facts alleged in the Action.

7. The Proposed Settlement Will be Void if the Court Denies Final Approval. It is possible the Court will decline to grant Final Approval of the Settlement or decline enter a Judgment. It is also possible the Court will enter a Judgment that is reversed on appeal. Plaintiff and FirstElement have agreed that, in either case, the Settlement will be void: FirstElement will not pay any money and Class Members will not release any claims against FirstElement.
8. Administrator. The Court has appointed a neutral company, Phoenix Settlement Administrators (the “Administrator”) to send this Notice, calculate and make payments, and process Class Members’ Requests for Exclusion. The Administrator will also decide any Class Member challenges over Workweeks, mail and re-mail settlement checks and tax forms, and perform other tasks necessary to administer the Settlement. The Administrator’s contact information is contained in Section 9 of this Notice.
9. Participating Class Members’ Release. After the Judgment is final and FirstElement has fully funded the Gross Settlement and paid all employer payroll taxes, Participating Class Members will be legally barred from asserting any of the claims released under the Settlement. This means that unless you opted out by validly excluding yourself from the Class Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against FirstElement or related entities for wages based on the facts asserted in the Action and resolved by this Settlement.

The Participating Class Members will be bound by the following release:

All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release FirstElement and its related entities of all claims, actions, demands, causes of action, suits, debts, obligations, demands, rights, liabilities, or legal theories of relief, that were or could have been pleaded under local, state or federal law arising out of or reasonably related to any facts, transactions, events, policies, occurrences, acts, disclosures, statements, omissions, or failures to act pleaded in the Operative Complaint, including but not limited to claims for: (1) failure to pay all minimum and regular wages; (2) failure to pay all overtime wages; (3) failure to provide meal periods; (4) failure to provide rest periods; (5) unlawful deduction of wages during employment; (6) failure to timely pay all wages earned and due during employment; (7) failure to furnish accurate itemized wage statements; (8) failure to maintain accurate records; (9) failure to timely pay all wages due and owing upon separation of employment; and (10) violations of Business & Professions Code §§ 17200 et seq.

10. PAGA Employees’ PAGA Release. After the Court’s judgment is final, and FirstElement has paid the Gross Settlement and the employer-side payroll taxes, all PAGA Employees will be barred from asserting PAGA claims against FirstElement, whether or not they exclude themselves from the Settlement. This means that all PAGA Employees, including those who are Participating Class Members and those who opt-out of the Class Settlement, cannot sue, continue to sue, or participate in any other PAGA claim against FirstElement or its related entities based on the facts asserted in the Action and resolved by this Settlement.

The PAGA Employees’ Releases for Participating and Non-Participating Class Members are as follows:

All Participating and Non-Participating Class Members who are PAGA Employees are deemed to release FirstElement and its related entities, all claims pursuant to the Private Attorneys General Act (codified in Labor Code § 2698 et seq.) arising out of or reasonably related to any facts, transactions, events, policies, occurrences, acts, disclosures, statements, omissions, or failures to act pleaded in the operative complaint against FirstElement and/or the LWDA Notice dated July

13, 2022(Case No. LWDA-CM-895158-22), including PAGA claims for (1) failure to pay minimum and regular wages in violation of Labor Code §§ 1194, 1194.2, 1197, 1197.1, and 1198; (2) failure to pay overtime wages in violation of Labor Code §§ 510, 511, 558, 1194, and 1198; (3) failure to provide meal periods in violation of Labor Code §§ 226.7, 512, 558 and 1198; (4) failure to provide rest breaks in violation of Labor Code §§ 226.7 and 1198; (5) unlawful deduction of wages in violation of Labor Code §§ 221, 224, and 225.5; (6) failure to timely pay wages during employment in violation of Labor Code §§ 204 and 210; (7) failure to provide accurate itemized wage statements in violation of Labor Code §§ 226 and 226.3; (8) failure to maintain accurate records in violation of Labor Code § 1174 and 1174.5; and (9) failure to timely pay all wages due upon separation of employment in violation of Labor Code §§ 201, 202, and 203.

4. HOW WILL THE ADMINISTRATOR CALCULATE MY PAYMENT?

1. Individual Class Payments. Under the terms of the settlement, 80% of the Net Settlement Amount will be allocated to all Participating Class Members. The Administrator will calculate Individual Class Payments by (a) dividing 80% of the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members, and (b) multiplying the result by the number of Workweeks worked by each individual Participating Class Member. The remaining 20% of the Net Settlement Amount will be allocated to Participating Class Members who are also members of the Alternative Workweek Subclass. The Administrator will calculate these additional payments by (a) dividing 20% of the Net Settlement Amount by the total number of Workweeks worked by all Participating Alternative Workweek Subclass Members, and (b) multiplying the result by the number of Workweeks worked by each individual member of the Alternative Workweek Subclass.
2. Individual PAGA Payments. The Administrator will calculate Individual PAGA Payments by (a) dividing \$7,500 (25% of the PAGA Penalties) by the total number of PAGA Pay Periods worked by all PAGA Employees and (b) multiplying the result by the number of PAGA Period Pay Periods worked by each individual PAGA Employee.
3. Workweek/Pay Period Challenges. The number of Class Workweeks you worked during the Class Period and the number of PAGA Pay Periods you worked during the PAGA Period, as recorded in FirstElement's records, are stated in the first page of this Notice. You have until [DATE] to challenge the number of Workweeks and/or Pay Periods credited to you. You can submit your challenge by signing and sending a letter to the Administrator via mail or fax. Section 9 of this Notice has the Administrator's contact information.

You need to support your challenge by sending copies of pay stubs or other records. The Administrator will accept FirstElement's calculation of Workweeks and/or Pay Periods based on FirstElement's records as accurate unless you send copies of records containing contrary information. You should send copies rather than originals because the documents will not be returned to you. The Administrator will resolve Workweek and/or Pay Period challenges based on your submission and on input from Class Counsel (who will advocate on behalf of Participating Class Members) and FirstElement's Counsel. The Administrator's decision is final. You cannot appeal or otherwise challenge its final decision.

5. HOW WILL I GET PAID?

1. Participating Class Members. The Administrator will send, by U.S. mail, a single check to every Participating Class Member (i.e., every Class Member who doesn't opt-out) including those who also qualify as PAGA Employees. The single check will combine the Individual Class Payment and the Individual PAGA Payment.

2. Non-Participating Class Members. The Administrator will send, by U.S. mail, a single Individual PAGA Payment check to every PAGA Employee who opts out of the Class Settlement (i.e., every Non-Participating Class Member).

Your check will be sent to the same address as this Notice. If you change your address, be sure to notify the Administrator as soon as possible. Section 9 of this Notice has the Administrator's contact information.

6. HOW DO I OPT-OUT OF THE CLASS SETTLEMENT?

Submit a written and signed letter with your name, present address, telephone number, and a simple statement that you do not want to participate in the Settlement. The Administrator will exclude you based on any writing communicating your request be excluded. Be sure to personally sign your request, identify the Action as *Anthony Bernardo v. FirstElement, Inc.*, and include your identifying information (full name, address, telephone number, and approximate dates of employment for verification purposes). You must make the request yourself. If someone else makes the request for you, it will not be valid. **The Administrator must be sent your request to be excluded by [DATE], or it will be invalid.** Section 9 of the Notice has the Administrator's contact information.

7. HOW DO I OBJECT TO THE SETTLEMENT?

Only Participating Class Members have the right to object to the Settlement. Before deciding whether to object, you may wish to see what Plaintiff and FirstElement are asking the Court to approve. At least 16 court days before the [DATE] Final Approval Hearing, Plaintiff will file in Court (1) a Motion for Final Approval that includes, among other things, the reasons why the proposed Settlement is fair, and (2) a Motion for Attorneys' Fees, Litigation Costs, and Class Representative Payment stating (i) the amount Class Counsel is requesting for attorneys' fees and litigation costs; and (ii) the amount Plaintiff is requesting as a Class Representative Payment. Upon reasonable request, Class Counsel (whose contact information is in Section 9 of this Notice) will send you electronic copies of these documents at no cost to you.

A Participating Class Member who disagrees with any aspect of the Agreement, the Motion for Final Approval and/or Motion for Attorneys' Fees, Litigation Costs, and Class Representative Payment may wish to object, for example, that the proposed Settlement is unfair, or that the amounts requested by Class Counsel or Plaintiff are too high or too low. **The deadline for sending written objections to the Administrator is [DATE].** Be sure to tell the Administrator what you object to, why you object, and any facts that support your objection. Make sure you identify the Action as *Anthony Bernardo v. FirstElement, Inc.*, and include your name, current address, telephone number, and approximate dates of employment with FirstElement, and sign the objection. Section 9 of this Notice has the Administrator's contact information.

Alternatively, a Participating Class Member can object (or personally retain a lawyer to object at your own expense) by attending the Final Approval Hearing. You (or your attorney) should be ready to tell the Court what you object to, why you object, and any facts that support your objection. See Section 8 of this Notice for specifics regarding the Final Approval Hearing.

8. CAN I ATTEND THE FINAL APPROVAL HEARING?

You can, but don't have to, attend the Final Approval Hearing on [DATE] at [TIME] in Department CX-104 of the Orange County Superior Court, located at 751 West Santa Ana Blvd., Santa Ana, CA 92701. At the Hearing, the judge will decide whether to grant Final Approval of the Settlement and how much of the Gross Settlement will be paid to Class Counsel, Plaintiff, and the Administrator. The Court will invite comment from objectors, Class Counsel and Defense Counsel before making a decision. You can attend (or hire a lawyer to attend) either

personally or virtually via Zoom (www.occourts.org/media-relations/civil.html). Check the Court's website for the most current information.

It's possible the Court will reschedule the Final Approval Hearing. You should check the Administrator's website beforehand or contact Class Counsel to verify the date and time of the Final Approval Hearing.

9. HOW CAN I GET MORE INFORMATION?

The Agreement sets forth everything FirstElement and Plaintiff have promised to do under the proposed Settlement. The easiest way to read the Agreement, the Judgment or any other Settlement documents is to go to Phoenix Settlement Administrators' website at **[ADMINISTRATOR'S URL]**. You can also contact Class Counsel using the contact information listed below, or consult the Orange County Superior Court website by going to <https://www.occourts.org/online-services/case-access> and entering the Case Number for the Action, Case No. 30-2022-01269664-CU-OE-CXC. **Do not telephone the court to obtain information about the settlement.**

You may contact Class Counsel at:

Hali M. Anderson
Dawn M. Berry
Allison E. Schubert
GrahamHollis APC
3555 Fifth Avenue, Suite 200
San Diego, California 92103
Telephone: 619-546-4373

10. WHAT IF I LOSE MY SETTLEMENT CHECK?

If you lose or misplace your settlement check before cashing it, the Administrator will replace it as long as you request a replacement before the void date on the face of the original check. If your check is already void you should consult the Unclaimed Property Fund for instructions on how to retrieve the funds

11. WHAT IF I CHANGE MY ADDRESS?

To receive your check, you should immediately notify the Administrator if you move or otherwise change your mailing address.