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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF ORANGE

11 ANTHONY BERNARDO, as an individual on
12 behalf of himself and all other similarly situated
13 employees and/or aggrieved employees of
14 Defendants,

14 Plaintiff,

15 v.

16 FIRSTELEMENT FUEL, INC., a California
17 corporation; and DOES 1 through 50, inclusive,

18 Defendants.

Case No.: 30-2022-01269664-CU-OE-CXC

[Assigned for all purposes to the Hon. William
Claster, Dept. CX-101]

**~~PROPOSED~~ ORDER GRANTING
MOTION FOR PRELIMINARY APPROVAL
OF CLASS ACTION AND PAGA
SETTLEMENT**

Date: June 14, 2024
Time: 9:00 a.m.
Dept: CX-101
Judge: Hon. William Claster

RESERVATION NUMBER: 74264539

23 Plaintiff Anthony Bernardo's ("Plaintiff") Motion for Preliminary Approval of Class Action and
24 PAGA Settlement with Defendant FirstElement Fuel, Inc. ("Defendant") (collectively, the "Parties") came
25 before this Court on June 14, 2024. The Court, having considered the Parties' proposed Class Action and
26 PAGA Settlement Agreement ("Settlement Agreement" or "Settlement"), Plaintiff's Motion for
27 Preliminary Approval, and all papers filed in support thereof,

28 **NOW, THEREFORE, IT IS HEREBY ORDERED:**

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE

JUN 24 2024

DAVID H. YAMASAKI, Clerk of the Court

BY: _____, DEPUTY

1 1. This Order Granting Motion for Preliminary Approval of Class Action and PAGA
2 Settlement ("Order") incorporates by reference all defined terms set forth in the revised Settlement
3 Agreement, which is attached as Exhibit 4 to the Supplemental Declaration of Graham S.P. Hollis in
4 Support of Plaintiff's Motion for Preliminary Approval of Class Action and PAGA Settlement, filed on
5 June 4, 2024. To the extent the terms used in this Order are defined in the Settlement Agreement, the
6 defined terms shall have the same meaning as set forth in the Settlement Agreement.

7 2. This Court has jurisdiction over the claims asserted in this Action and has personal
8 jurisdiction over Plaintiff, Defendant, and the Class.

9 3. The Court conditionally finds, for settlement purposes only, that the proposed Class meets
10 the requirements for certification under California Code of Civil Procedure section 382. The Court
11 provisionally certifies, for settlement purposes only, pursuant to California Code of Civil Procedure
12 section 382 and California Rules of Court, rule 3.764, the Class defined as follows:

13 All current and former non-exempt employees of Defendant FirstElement
14 Fuel, Inc. who were employed by Defendant in the state of California at any
15 time between July 13, 2018 and June 1, 2024.

16 The Class is further divided into the following subclasses, which are provisionally certified
17 as follows:

18 Alternative Workweek Subclass: All Class Members who worked pursuant
19 to an alternative workweek schedule at any time between July 13, 2018 and
20 June 1, 2024; and

21 Waiting Time Penalties Subclass: all Class Members whose employment
22 with Defendant ended at any time between July 13, 2019 and June 1, 2024.

23 4. Should for any reason the Settlement not become final, the fact that the Parties were willing
24 to stipulate to class certification as part of the Settlement shall have no bearing on, nor be admissible in
25 connection with, the issue of whether a class should be certified in a non-settlement context.

26 5. Plaintiff Anthony Bernardo is hereby appointed and designated, for settlement purposes
27 only, as the representative of the Class.

28 6. The following attorneys are hereby appointed and designated as counsel for Plaintiff and
the Class: Hali M. Anderson, Dawn M. Berry, and Allison E. Schubert of GrahamHollis APC ("Class
Counsel"). The Court conditionally finds that Class Counsel is qualified to serve as counsel for the Class.

1 Class Counsel is authorized to act on behalf of the Class with respect to all acts or consents required by,
2 or which may be given pursuant to, the Settlement, and such other acts reasonably necessary to
3 consummate the Settlement. Any Class Member may enter an appearance through counsel of such Class
4 Member's own choosing and at such Class Member's own expense. Any Class Member who does not
5 enter an appearance or appear on his or her own will be represented by Class Counsel.

6 7. The Court finds on a preliminary basis that the Settlement appears to be fair, reasonable,
7 and adequate, and one that would ultimately merit final approval by this Court. The Court has reviewed
8 the Settlement and recognizes the value thereof to the Class Members. The Court finds, on a preliminary
9 basis, that the Settlement is fair, adequate, and reasonable as to all Class Members when balanced against
10 the potential outcomes of further litigation relating to liability and damages issues. The Court further finds
11 that the Settlement has been reached as the result of serious and non-collusive, arm's-length negotiations
12 by the Parties.

13 8. A Final Approval Hearing shall be held before this Court, located at 751 West Santa Ana
14 Blvd., Santa Ana, CA 92701, on December 6, 2024 at 9:00 a.m. in Department CX - 101, to determine all
15 necessary matters concerning the Settlement, including: whether the proposed Settlement of the Action
16 should be finally approved by the Court; whether a Judgment, as provided in the Settlement Agreement,
17 should be entered herein; whether the plan of allocation contained in the Settlement Agreement should be
18 finally approved as fair, reasonable, and adequate to the Class Members; and to finally approve the Class
19 Counsel Fees Payment, the Class Counsel Expenses Payment, the Class Representative Payment, the
20 PAGA Payment, and the Administration Expenses Payment.

21 9. Plaintiff shall file his motion for final approval of the Settlement, including a request for
22 approval for the Class Representative Service Payment, the Class Counsel Fees Payment, the Class
23 Counsel Expenses Payment, the PAGA Payment, and the Administration Expenses Payment no later than
24 16 court days prior to the Final Approval Hearing.

25 10. Within 14 calendar days of this Order, Defendant shall provide the Administrator with the
26 Class Data, consisting of each Class Members' name, last known address, Social Security number, and
27 the number Class Period Workweeks and PAGA Pay Periods.
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1 11. The Court hereby approves, as to form and content, the Notice of Class Action Settlement
2 ("Class Notice"), attached as Exhibit A to the Settlement Agreement. The Court finds that distribution of
3 the Class Notice, substantially in the manner and form set forth in the Settlement Agreement and this
4 Order, meets the requirements of due process, is the best notice practicable under the circumstances, and
5 will constitute due and sufficient notice to all persons entitled thereto.

6 12. Counsel for the Parties are authorized to correct any typographical errors in the Class
7 Notice and make clarifications, to the extent the same are found or needed, so long as such corrections do
8 not materially alter the substance of the documents.

9 13. The Court hereby appoints Phoenix Settlement Administrators as the Administrator. The
10 Administrator shall administer the Settlement in accordance with the Settlement Agreement and this
11 Order.

12 14. The Court orders the Administrator to simultaneously mail or cause to be mailed to Class
13 Members the Class Notice by first class mail at their last known address within 21 calendar days of
14 receiving the Class Data from Defendant. The Administrator shall use the procedures and methods
15 outlined in the Settlement Agreement.

16 15. Any Class Member may dispute the number of Class Workweeks and/or PAGA Pay
17 Periods credited to them in the Class Notice. Class Members shall have 60 calendar days from the date of
18 mailing of the Class Notice in which to submit a Workweek Challenge Form as to the number of Class
19 Workweeks and/or PAGA Pay Periods credited to them.

20 16. Any Class Member may elect to be excluded from the class action portion of the Settlement
21 by timely submitting a completed Opt-Out Form to the Administrator, as provided in the Settlement
22 Agreement and Class Notice. To be valid, all Opt-Out Forms must be post marked on or before the
23 Response Deadline. Class Members who do not submit a timely Opt-Out Form to the Settlement
24 Administrator shall be bound by the Settlement Agreement, all determinations of this Court, and final
25 judgment. PAGA Employees are bound by and cannot request to be excluded from the PAGA Settlement.

26 17. Any Class Member who did not submit an Opt-Out Form from the Settlement may object
27 to the Settlement or express his or her views regarding the Settlement and may present evidence, and file
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1 briefs or other papers that may be proper and relevant to the issues to be heard and determined by the
2 Court, as provided in the Settlement Agreement and Class Notice. All objections must be post marked on
3 or before the end of the Response Deadline. Any Class Member who does not make their objection at or
4 before the final approval hearing shall be deemed to have waived any such objection and shall be
5 foreclosed from objecting to the Settlement at a later date.

6 18. The Settlement is not a concession or admission and shall not be used against Defendant
7 or any of the Released Parties as an admission or indication with respect to any claim of any fault or
8 omission by Defendant or any of the Released Parties. Whether or not the Settlement is finally approved,
9 neither the Settlement, nor any document, statement, proceeding, or conduct related to the Settlement, nor
10 any reports or accounts thereof, shall in any event be:

- 11 a. Construed as, offered or admitted in evidence as, received as or deemed to be
12 evidence for any purpose adverse to Defendant or any of the Released Parties,
13 including, but not limited to, evidence of a presumption, concession, indication, or
14 admission by Defendant or any of the Released Parties of any liability, fault,
15 wrongdoing, omission, concession, or damage; or
16 b. Disclosed, referred to, or offered or received in evidence against Defendant or any
17 of the Released Parties in any further proceeding in the Action, or in any other civil,
18 criminal, or administrative action or proceeding, except for purposes of settling the
19 Action pursuant to the Settlement Agreement.

20 19. As of the date this Order is signed, all dates and deadlines associated with the Action shall
21 be stayed, other than those pertaining to the administration of the Settlement of the Action.

22 20. In the event the Settlement does not become effective in accordance with the terms of the
23 Settlement Agreement, or the Settlement is not finally approved, or is terminated, canceled, or fails to
24 become effective for any reason, this Order shall be rendered null and void and shall be vacated and the
25 Parties shall revert to their respective positions as of before entering into the Settlement Agreement.

26 21. The Court reserves the right to adjourn or continue the date of the Final Approval Hearing
27 and all dates provided for in the Settlement Agreement without further notice to Class Members, and
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1 retains jurisdiction to consider all further applications arising out of or connected with the proposed
2 Settlement.

3 **IT IS SO ORDERED.**

4
5 Dated: 6-24-24



Hon. William Claster
Judge of the Superior Court