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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF ORANGE**

10 ANTHONY BERNARDO, as an individual on
behalf of himself and all other similarly situated
11 employees of Defendants,

12 Plaintiff,

13 v.

14 FIRSTELEMENT FUEL, INC., a California
corporation; and DOES 1 through 50, inclusive,
15

16 Defendants.
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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE

JAN 17 2025

DAVID H. YAMASAKI, Clerk of the Court

BY: _____, DEPUTY

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

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

CLASS AND REPRESENTATIVE ACTION

**[PROPOSED] ORDER GRANTING
PLAINTIFF'S MOTION FOR FINAL
APPROVAL OF CLASS ACTION AND PAGA
SETTLEMENT AND REQUEST FOR AWARD
OF ATTORNEYS' FEES, COSTS, AND
CLASS REPRESENTATIVE PAYMENT, AND
JUDGMENT**

[Filed concurrently with Notice of Motion,
Memorandum of Points and Authorities,
Declarations of Hali M. Anderson, Anthony
Bernardo, and Yami Burns]

Date: January 17, 2025
Time: 9:00 a.m.
Dept: CX-101
Judge: Hon. William Claster

Complaint Filed: July 13, 2022
Trial Date: None Set

1 This matter came before the Honorable William Claster in Department CX-101 of the Superior
2 Court in the State of California, in and for the County of Orange, on January 17, 2025 at 9:00 a.m., on
3 Plaintiff Anthony Bernardo's ("Plaintiff") Motion for Final Approval of Class Action and PAGA
4 Settlement and Request for Award of Attorneys' Fees, Costs, and Class Representative Payment
5 ("Plaintiff's Motion for Final Approval") pursuant to California Rules of Court, rule 3.769, and Labor
6 Code section 2698 et seq.

7 On June 24, 2024, the Court granted Plaintiff's Motion for Preliminary Approval of Class Action
8 and PAGA Settlement and entered an Order in accordance herewith.

9 Due and adequate notice having been given to the Class, and having duly considered all papers,
10 evidence, and oral arguments in this matter to date, including the Class Action and PAGA Settlement
11 Agreement and Plaintiff's Motion for Final Approval, and good cause appearing, the Court ORDERS as
12 follows:

13 1. This Order shall incorporate the parties' Class Action and PAGA Settlement Agreement
14 ("Settlement Agreement" or "Settlement"), and to the extent that the terms are defined in the Settlement
15 Agreement, all defined terms contained herein shall have the same meaning as set forth in the Settlement
16 Agreement.

17 2. This Court has jurisdiction over the claims asserted in this Action and personal jurisdiction
18 over Plaintiff, Defendant FirstElement Fuel, Inc. ("Defendant"), the Class Members, and the PAGA
19 Employees, as defined in the Settlement Agreement. The Class Members and the PAGA Employees, as
20 defined in the Settlement Agreement, are collectively referred to herein as "Settlement Class Members."

21 3. This Court finds that the applicable requirements of the California Code of Civil Procedure
22 section 382 and California Rules of Court, rule 3.769, have been satisfied with respect to the Settlement
23 Class Members and the Settlement. The Court makes final its earlier provisional certification of the
24 following Settlement Class for the purposes of settlement only:

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

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

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

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

6 4. The Court also confirms the following appointments: Plaintiff Anthony Bernardo as the
7 Class Representative; GrahamHollis APC as Class Counsel; and Phoenix Settlement Administrators as
8 the Administrator.

9 5. The Court finds that the Notice of Class Action and PAGA Settlement that was approved
10 on June 24, 2024 and transmitted to the Settlement Class Members fully and accurately informed the
11 Settlement Class Members of all material elements of the Settlement, including their opportunity to
12 request exclusion from the Settlement or object to the Settlement (notwithstanding the PAGA portion of
13 the Settlement), was the best notice practicable under the circumstances; was valid, due, and sufficient
14 notice to all Settlement Class Members; and complied fully with the laws of the state of California, and
15 United States Constitution, due process, rule 3.766 of the California Rules of Court, and all other
16 applicable laws.

17 6. Based on the Declaration of Yami Burns Regarding Notice and Settlement Administration,
18 the Court finds that no Settlement Class Members have objected to the Settlement and only one has
19 submitted a valid request for exclusion. The Settlement Class Member who timely opted out and will be
20 excluded from the settlement is Martin Diaz.

21 7. In accordance with California law, the Court hereby GRANTS final approval of the
22 Settlement and finds it fair, reasonable, and adequate, and in the best interest of the Settlement Class
23 Members as a whole. Specifically, the Court finds that the Settlement is the result of serious, informed,
24 adversarial, and arm's-length negotiations between the parties and that the terms of the Settlement are, in
25 all respects, fair, adequate, and reasonable. In so finding, the Court has considered all the evidence
26 presented, including evidence regarding the strength of Plaintiff's case; the risks, expense, and complexity
27 of claims presented; the likely duration of further litigation; the amount offered in the Settlement; the
28 extent of investigation and discovery completed; and the experience and views of Class Counsel. The
Court ORDERS and directs that the Settlement be effectuated in accordance with the Settlement

1 Agreement and the following terms and conditions.

2 8. The Court finds that a full opportunity has been afforded to the Settlement Class Members
3 to participate in the hearing on Plaintiff's Motion for Final Approval, and all Settlement Class Members
4 and other persons wishing to be heard, have been heard. The Settlement Class Members have had a full
5 and fair opportunity to exclude themselves from the Settlement. Therefore, the Court ORDERS that,
6 pursuant to the Settlement Agreement, and as of the Effective Date, Plaintiff and all Settlement Class
7 Members will have released Defendant and the other Released Parties (as defined in the Settlement
8 Agreement) ~~of all claims, actions, demands, causes of action, suits, debts, obligations, demands, rights,~~
9 ~~liabilities, or legal theories of relief, that were or could have been pleaded under local, state or federal law~~
10 ~~arising out of any facts, transactions, events, policies, occurrences, acts, disclosures, statements,~~
11 ~~omissions, or failures to act pleaded in the Operative Complaint, including but not limited to claims for~~
12 ~~(1) failure to pay all minimum and regular wages; (2) failure to pay all overtime wages; (3) failure to~~
13 ~~provide meal periods; (4) failure to provide rest periods; (5) unlawful deduction of wages during~~
14 ~~employment; (6) failure to timely pay all wages earned and due during employment; (7) failure to furnish~~
15 ~~accurate itemized wage statements; (8) failure to maintain accurate records; (9) failure to timely pay all~~
16 ~~wages due and owing upon separation of employment; and (10) violations of Business and Professions~~
17 ~~Code §§ 17200 et seq.~~

18 9. The Court further ORDERS that, pursuant to the Settlement Agreement, and as of the
19 Effective Date, Plaintiff and all PAGA Employees will have released Defendant and the other Released
20 Parties (as defined in the Settlement Agreement) of all claims pursuant to or under the Private Attorney's
21 General Act (codified in Labor Code sections 2698 et seq.) ~~arising out of any facts, transactions, events,~~
22 ~~policies, occurrences, acts, disclosures, statements, omissions, or failures to act pleaded in the Operative~~
23 ~~Complaint and/or the LWDA Notice dated July 13, 2022 (Case No. LWDA-CM-895158-22), and~~
24 ~~amended on December 1, 2023, including PAGA claims for (1) failure to pay minimum and regular wages~~
25 ~~in violation of Labor Code §§ 1194, 1194.2, 1197, 1197.1, and 1198; (2) failure to pay overtime wages in~~
26 ~~Violation of Labor Code §§ 510, 511, 558, 1194, and 1198; (3) failure to provide meal periods in violation~~
27 ~~of Labor Code §§ 226.7, 512, 558 and 1198; (4) failure to provide rest breaks in violation of Labor Code~~
28 ~~§§ 226.7, 512, 558 and 1198; (5) unlawful deduction of wages in violation of Labor Code §§ 221, 224,~~

1 and 225.5; (6) failure to timely pay wages during employment in violation of Labor Code §§ 204 and 210;
2 (7) failure to provide accurate itemized wage statements in violation of Labor Code §§ 204 and 210; (8)
3 failure to maintain accurate records in violation of Labor Code § 1174 and 1174.5; and (9) failure to timely
4 pay all wages due upon separation of employment in violation of Labor Code §§ 201, 202, and 203.

5 10. It is ORDERED that by this Final Approval Order and Judgment and pursuant to the
6 Settlement Agreement, as of the Effective Date, Plaintiff will have released, relinquished, and discharged
7 Defendant and the other Released Parties (as defined in the Settlement Agreement) of all claims set forth
8 in the "General Release by Plaintiff" in Section 5.3 of the Settlement Agreement.

9 11. It is ORDERED that Settlement Class Members shall be prohibited and permanently
10 enjoined from pursuing in any fashion, the Released Class Claims and Released PAGA Claims against
11 the Released Parties. The terms and provisions of the Settlement Agreement, the release of the Released
12 Class Claims, and this Order and Judgment are binding on all the Settlement Class Members, as well as
13 their heirs, executors and administrators, successors, and assigns, and those terms shall have res judicata
14 and other preclusive effect in all pending and future claims, lawsuits, or other proceedings maintained by
15 or on behalf of any such persons, to the extent those claims, lawsuits, or other proceedings involve matters
16 that were or could have been raised in this matter and are encompassed by the release of the Released
17 Class Claims. All Class Members who have not timely opted out of the Settlement shall be permanently
18 enjoined and forever barred from asserting any of the Released Class Claims against the Released Parties,
19 according to the terms of the Settlement. Additionally, the terms and provisions of the Settlement
20 Agreement, the release of the Released PAGA Claims, and this Order and Judgment are binding on all
21 PAGA Employees, as well as their heirs, executors and administrators, successors and assigns, and those
22 terms shall have res judicata and other preclusive effect in all pending and future claims, lawsuits, or other
23 proceedings maintained by or on behalf of any such persons, to the extent those claims, lawsuits, or other
24 proceedings involve matters that were or could have been raised in this matter and are encompassed by
25 the release of the Released PAGA Claims.

26 12. Defendant is ORDERED to fund the Gross Settlement Amount of \$751,000. Defendant is
27 further ORDERED to deposit the Gross Settlement Amount into a Qualified Settlement Fund with the
28 Administrator within 30 calendar days after the Effective Date. The Gross Settlement Amount is the

1 maximum total amount that Defendant is required to pay for any and all purposes under the Settlement.

2 13. The Settlement Administrator, Phoenix Settlement Administrators, is ORDERED to
3 distribute the Gross Settlement Amount in accordance with the Settlement Agreement.

4 14. In accordance with Labor Code section 2699(1)(2), the Court has reviewed the Settlement
5 Agreement as it relates to the allocation of civil penalties under PAGA. The Court finds that the allocation
6 of \$30,000 in PAGA Penalties for claims under the PAGA is fair, reasonable, and appropriate. The Court
7 GRANTS approval of the allocation of PAGA Penalties in the amount of \$30,000 towards claims under
8 the PAGA, which shall be paid from the Gross Settlement Amount.

9 15. The Court ORDERS that \$22,500 (75% of the \$30,000 in PAGA Penalties) be allocated to
10 the LWDA PAGA Payment, and paid to the California Labor and Workforce Development Agency
11 ("LWDA") from the Gross Settlement Amount, as required by statute.

12 16. The Court ORDERS that \$7,500 (25% of the \$30,000 in PAGA Penalties) be allocated to
13 the Net Settlement Amount for distribution to PAGA Employees who worked during the PAGA Period,
14 as defined by the Settlement Agreement.

15 17. The Court ORDERS that the amount remaining in the Net Settlement Amount, estimated
16 to be \$478,485, will be allocated to ~~the Settlement Class with 80% allocated to all Participating Class~~

17 ~~Members. Individual Class Payments will be allocated on a pro rata basis according to the number of~~
18 ~~workweeks each Participating Class Member worked during the Class Period. The Administrator shall use~~
19 ~~the following formula when calculating Individual Class Payments; Individual Class Payment = [80% Net~~
20 ~~Settlement Amount x (Participating Class Member's Individual Number of Workweeks/Total Number of~~
21 ~~Workweeks for all Participating Class Members)]. The remaining 20% of the Net Settlement Amount will~~
22 ~~be allocated to Participating Class Members who are also members of the Alternative Workweek Subclass.~~
23 ~~This amount shall be in addition to the amount each Participating Class Member will receive under the~~
24 ~~formula above. The payments will also be allocated on a pro rata basis according to the number of~~
25 ~~workweeks each Alternative Workweek Subclass member was subject to an alternative workweek~~
26 ~~schedule during the Class Period. The Administrator shall use the following formula when calculating~~
27 ~~Individual Class Payments; Individual Class Payment = [20% Net Settlement Amount x (Participating~~
28 ~~Alternative Workweek Subclass Member's Individual Number of Workweeks/Total Number of~~

1 Workweeks For All Participating Members of the Alternative Workweek Subclass)]. Members of the
2 Waiting Time Penalties Subclass will be credited with an additional six workweeks towards the
3 calculation of their total Workweeks worked. Such workweeks shall be treated as penalties for tax
4 purposes and shall not be counted as additional workweeks. Participating Class Members who are
5 members of both the Waiting Time Penalties Subclass and the Alternative Workweek Subclass will only
6 be credited with six additional workweeks in total.

7 18. The Court finds that a Class Representative Payment in the amount of \$5,000 to named
8 Plaintiff Anthony Bernardo is fair and reasonable for the work performed and the risks associated with
9 bringing this Action. The Court awards and thus ORDERS that the Administrator issue a Class
10 Representative Payment to Plaintiff in the amount of \$5,000, which shall be paid from the Gross
11 Settlement Amount. The Class Representative Payment is in addition to any payment Plaintiff is entitled
12 to under the Settlement.

13 19. The Court finds that a Class Counsel Fees Payment in the amount of \$225,300 falls within
14 the range of reasonableness and the result achieved justifies the award sought. The Court awards and
15 therefore ORDERS that the Administrator issue a Class Counsel Fees Payment in the amount of \$225,300
16 to GrahamHollis, APC, which shall be paid from the Gross Settlement Amount.

17 20. The Court finds that Class Counsel's request for actual and documented litigation costs
18 incurred in the amount of \$12,720 falls within the range of reasonableness and the result achieved justifies
19 the award sought. The Court awards and thus ORDERS that the Administrator issue a Class Counsel
20 Expenses Payment for actual and documented litigation costs incurred in the amount of \$12,720 to
21 GrahamHollis APC, which shall be paid from the Gross Settlement Amount.

22 21. The Court finds that the request for Administration Expenses Payment in the amount of
23 \$6,995 is fair, reasonable, and appropriate. The Court awards and thus ORDERS that the Administrator
24 issue payment for Administration Expenses Payment to Phoenix Settlement Administrators in the amount
25 of \$6,995, which shall be paid from the Gross Settlement Amount.

26 22. Plaintiff's Motion for Final Approval is GRANTED.

27 23. A Judgment shall be entered in this action, The Judgment shall bind each Class Member
28 who has not opted out of the Settlement, and all PAGA Employees, and conditioned upon Defendant's

obligation to make timely payment under Section 4 of the Settlement, shall operate as a full release and discharge of the Released Class Claims for Class Members against the Released Parties and of the Released PAGA Claims for PAGA Employees against the Released Parties, as set forth in the Settlement Agreement. All rights to appeal the Judgment have been waived. The Judgment and this Final Approval Order shall have res judicata effect and bar all Class Members who have not timely opted out of the Settlement from bringing or maintaining any action asserting any of the Released Class Claims. The Judgment and this Final Approval Order shall also have res judicata effect and bar all PAGA Employees from bringing or maintaining any action asserting any of the Released PAGA Claims.

24. The Final Approval Order and Judgment shall be binding on Plaintiff, all Participating Class Members, all PAGA Employees, and the State of California, who are hereby barred by the doctrine of res judicata from asserting any and all of the Released Class Claims and Released PAGA Claims, as those terms are defined by the Settlement.

25. Pursuant to rule 3.769, subdivision (h), of the California Rules of Court, this Court retains exclusive and continuing jurisdiction over this action and the parties for the purposes of: (a) supervising the implementation, enforcement, construction, and interpretation of the Settlement Agreement, and the Order of Final Approval and Judgment; and (b) supervising distribution of amounts paid under this Settlement.

26. Pursuant to CCP §384(b), Plaintiff shall submit to the Court a final report on or before August 29, 2025, setting forth the actual amounts paid to Class Members and other amounts disbursed pursuant to the settlement. Upon receiving the report, the Court will determine whether further reports and/or a hearing will be necessary.

IT IS SO ORDERED AND JUDGMENT IS HEREBY ENTERED.

Dated: 1-17-25



Honorable William Claster
Judge of the Superior Court