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Attorneys for Plaintiff JUAN MANUEL CASTRO as an individual and on behalf of all employees similarly situated,

SUPERIOR COURT OF THE STATE OF CALIFORNIA

THE COUNTY OF LOS ANGELES

JUAN MANUEL CASTRO as an individual
and on behalf of all employees similarly
situated,

Plaintiff,

v.

FIRST TRANSIT, INC., and DOES 1 through
50, inclusive,

Defendants.

Case No.: **24STCV08778**

**REPRESENTATIVE ACTION
COMPLAINT FOR CIVIL FINES**

**1. Civil Penalties Under the Private
Attorneys' General Act ("PAGA")**

DEMAND FOR JURY TRIAL

1 Plaintiff JUAN MANUEL CASTRO (“Plaintiff”) on behalf of himself and all others
2 similarly situated, complains and alleges on the information and belief the following:

3 **INTRODUCTION**

4 1. Plaintiff brings this action against Defendant FIRST TRANSIT, INC, (“Defendant”
5 or “Defendant AAG”) to recover penalties. Defendant’s policies resulted in the failure to pay all
6 minimum and overtime wages due; to reimburse for necessary job related expenditures, to provide
7 lawful meal and rest periods; pay all wages due at termination; and issue accurate itemized wage
8 statements.

9 **JURISDICTION AND VENUE**

10 2. Venue is proper in this Judicial district and the County of Los Angeles, pursuant to
11 Code of Civil Procedure, section 395, because the Defendant maintains its locations and transacts
12 business in this county, the obligations and liability arise in this county, and work was performed
13 by Plaintiff and members of the hourly non-exempt employees made the subject of this action in
14 the County of Los Angeles, California.

15 3. The California Superior Court has jurisdiction in the matter because the individual
16 claims are under the seventy-five thousand dollar (\$75,000.00) individual jurisdictional threshold
17 and the five million dollar (\$5,000,000) aggregate jurisdictional threshold for Federal Court and,
18 upon information and belief, Plaintiff and Defendant are residents of and/or domiciled in the State
19 of California. Further, there is no federal question at issue as the issues herein is based solely on
20 California Statutes and law including the California Labor Code, Industrial Welfare Commission
21 Wage Orders, Code of Civil Procedure, Rule of Court, and Business and Professions Code. Thus,
22 the above-entitled court maintains appropriate jurisdiction to hear this matter.

23 **THE PARTIES**

24 **Plaintiff**

25 4. Plaintiff was employed by the Defendant as a non-exempt employee in the position
26 of Driver at its principal place of business located in Norwalk, California, beginning on or about
27 September 2022 through, on or about, February 8, 2023.

28 5. By this Complaint, Plaintiff, brings this case as a representative action seeking

1 penalties for the State of California in a representative capacity, as provided by the Private
2 Attorneys' General Act ("PAGA") to the extent permitted by law, as an aggrieved non-exempt
3 employee who held the position identified and did not receive all minimum wages due, was
4 underpaid overtime and minimum wages due to Defendant's policy of requiring employees to
5 delay or forgo meal but continue working, not permitting rest breaks, requiring off the clock work,
6 and did not receive all wages due at the termination of employment. Prior to filing this Complaint,
7 on January 30, 2024, Plaintiff gave written notice by certified mail to the Labor and Workforce
8 Development Agency ("LWDA") and to Defendant of the specified provisions alleged to have
9 been violated, including the facts and theories to support the alleged violations as required by
10 Labor Code section 2699.3. Please see a true and correct copy of the letter sent from the LWDA,
11 dated January 30, 2024, attached herein as **Exhibit "A."** As of the filing of this complaint, the
12 LWDA has not provided notice of its intent to investigating the allegations.

13 6. The Period of January 30, 2023 to the present is the "Liability Period" or "Relevant
14 Time Period."

15 **Defendant**

16 7. Plaintiff is informed and believes, and based thereon alleges that Defendant FIRST
17 TRANSIT, INC., is a Delaware corporation with a principal place of business located in Norwalk,
18 California, and is and/or was the employer of the Plaintiff. On information and belief, and based
19 thereon, Plaintiff alleges that Defendant is conducting business in good standing in California.

20 8. Plaintiff is unaware of the true names, capacities, relationships, and extent of
21 participation in the conduct alleged herein, of the Defendants sued as DOES 1 through 50, but is
22 informed and believes and thereon alleges that said Defendants are legally responsible for the
23 wrongful conduct alleged herein and therefore sues these Defendants by such fictitious names.
24 Plaintiff will amend this complaint when their true names and capacities are ascertained.

25 **GENERAL ALLEGATIONS**

26 9. During all, or a portion, of the one-year period before Plaintiff filed Notice of his
27 claims with the LWDA, Plaintiff and each of the aggrieved employees Plaintiff seeks to represent,
28 were employed by Defendants and each of them, in the State of California.

1 10. Labor Code sections 1194, 1197 and 1197.1 provide that the minimum wage for
2 employees fixed by the IWC is the minimum wage to be paid to employees, and the payment of a
3 lesser wage than the minimum so fixed is unlawful. Section 4(B) of the applicable IWC Wage
4 Order requires an employer to pay each employee, on the established payday for the period
5 involved, not less than the applicable minimum wage for all hours worked in the payroll period,
6 whether the remuneration is measured by time, piece, commission, or otherwise.

7 11. California Labor Code section 204 provides that all wages earned are due and
8 payable at least twice each month and section 1194 provides that notwithstanding any agreement
9 to work for a lesser wage, an employee receiving less than the legal overtime compensation is
10 entitled to recover in a civil action the unpaid balance of their overtime compensation, including
11 interest thereon, reasonable attorneys' fees, and costs of suit.

12 12. Plaintiff and each aggrieved employee were non-exempt employees covered under
13 one or more Industrial Welfare Commission (IWC) Wage Orders, including 5-2001 ("Wage
14 Orders"), and Labor Code section 510, and/or other applicable wage orders, regulations and
15 statutes, and were not subject to an exemption for executive, administrative, professional
16 employees, or any other exemption, which imposed an obligation on the part of the Defendants to
17 pay Plaintiff and each aggrieved employee lawful compensation, including minimum wages and
18 overtime compensation.

19 13. Defendants were obligated to pay Plaintiff and the aggrieved employees
20 compensation for all hours worked, including minimum wages for all hours worked and overtime
21 compensation at the appropriate rate for all hours worked over eight (8) hours in one day or forty
22 (40) in one week.

23 14. During the relevant time period, Defendant was obligated to pay Plaintiff and
24 hourly non-exempt employees for all hours worked.

25 15. During the relevant time period, Defendant was obligated to pay Plaintiff and
26 hourly non-exempt employees overtime compensation for all hours worked over eight (8) hours
27 of work in one (1) day or forty (40) hours in one (1) week, and double-time for hours worked in
28 excess of twelve (12) in one day.

1 16. During the Liability Period Defendant was obligated to pay sick wages under Labor
2 Code section 246. Labor Code section 246 states an employee shall earn 24 hours of accrued sick
3 wages per year. Defendant failed and otherwise refused to compensate Mr. Castro and similarly
4 aggrieved employees with their earned sick time wages when they were sick and required time off
5 work. Defendant's conduct was deliberate and in violation of Labor Code section 246 and its
6 amendments.

7 17. During the relevant time period, Plaintiff and hourly non-exempt employees were
8 not provided work-free meal and rest periods, nor were they compensated in lieu thereof. Plaintiff
9 and hourly non-exempt employees were forced to delay or forgo their meal periods,

10 18. Plaintiff and each aggrieved employee worked in excess of the hours set by the
11 IWC in the above Wage Orders, regulations or statutes, and this entitled Plaintiff and the aggrieved
12 employees to appropriate overtime compensation at time and a half (1.5 time) rate of their regular
13 pay, and when applicable, double time rates as set forth by the above Wage Orders, regulations
14 and/or statutes.

15 19. Defendant required the Plaintiff and aggrieved employees to work overtime but did
16 not pay lawful overtime compensation, in violation of the various above applicable Wage Orders,
17 regulations and statutes.

18 20. By failing to pay employees all regular and minimum wages to which they are
19 entitled due to Defendant's scheduling system requiring employees to waive meal periods and
20 continue working; Defendants have failed to pay the proper overtime wages.

21 21. By failing to provide paid ten-minute rest periods for every four (4) hours or major
22 fraction thereof worked per day by non-exempt employees, and by failing to provide compensation
23 for these periods, Defendant willfully violated the provisions of Labor Code section 226.7, IWC
24 Wage Order No. 4-2001, and California Code of Regulations, section 11040(12).

25 22. Defendant, and each of them, failed to provide accurate, itemized wage statements
26 to Plaintiff and members of the aggrieved employees. Defendant failed to list the correct overtime
27 rate of pay on Plaintiff and Similarly Aggrieved Employees' wage statements. Defendant failed
28 to list the correct legal address of the legal entity of the employer on Plaintiff and aggrieved

employees wage statements.

23. Defendant, and each of them, failed to pay all wages owed to terminated or resigned members of the aggrieved employees.

24. During the liability period, Defendant failed to reimburse Plaintiff and similarly aggrieved employees for the purchase of binders, glasses, gloves, used for work related purposes.

25. Business and Professions Code, section 17203 provides that any person who engages in unfair competition may be enjoined in any court of competent jurisdiction. Business and Professions Code, section 17204 provides that any person who has suffered actual injury and has lost money or property as a result of the unfair competition may bring an action in a court of competent jurisdiction.

26. Plaintiff brings this action on behalf of himself and all other aggrieved employees defined as all individuals employed by Defendant in California as non-exempt hourly employees working at any time beginning one year prior to the date Plaintiff sent Notice to the LWDA.

27. Plaintiff reserves the right to amend or modify the definition of aggrieved employees with respect to issues or in any other way.

FIRST CAUSE OF ACTION

(Civil Penalties Under the Private Attorneys General act,

Labor Code § 2699 et seq., For Violations of the Labor Code)

(Plaintiff and Similarly Aggrieved Employees Against All Defendants, and Does 1-50

Inclusive)

28. Plaintiff realleges and incorporates by reference the preceding paragraphs of this Complaint as if fully alleged herein.

29. Plaintiff sent notice to Defendant and the Labor Workforce Development Agency (LWDA) on January 30, 2024, detailing Defendant's alleged Labor Code violations. Over 65 days have passed since the postmark date of the notice and Plaintiff has not been in receipt of any communication from the LWDA indicating an intent to pursue this matter. Therefore, Plaintiff now acts as a private attorney general to collect civil penalties for Defendant's Labor Code violations.

30. California Labor Code §§2698-2699.5, in relevant part provides, “any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency...for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in section 2699.3.”

31. As an aggrieved employee, Plaintiff brings this civil action to recover civil penalties for Defendant's Labor Code violations.

32. Plaintiff, as a personal representative of the general public, will and does seek to recover any and all penalties for each and every violation described herein and shown to exist or to have occurred during the Relevant Time Period, in an amount according to proof, as to those penalties that are otherwise only available to public agency enforcement actions. Funds recovered will be distributed in accordance with the PAGA, with at least 75% of the penalties recovered being reimbursed to the LWDA.

33. Additionally, based on the violations described herein, Plaintiff and Aggrieved Employees are entitled to attorneys' fees and costs pursuant to Labor Code sections 2699(g)(1), 218.5, 1194, 2802.

FIRST VIOLATION

(Failure to Pay All Wages in Violation of Labor Code Sections 246, 510, and 1194)

(Plaintiff and Similarly Aggrieved Employees Against All Defendants, and Does 1-50

Inclusive)

34. Plaintiff realleges and incorporates by reference the preceding paragraphs of this Complaint as if fully alleged herein.

35. Plaintiff and other employees regularly worked over eight (8) hours per day and forty (40) hours per week. Defendant failed to pay Plaintiff, and other employees minimum wage for all hours worked and overtime premium for hours worked in excess of over eight (8) hours per day and forty (40) hours per week for work performed for the Defendant.

36. Defendant failed to compensate Plaintiff and other aggrieved employees for the work performed as a result of Defendant requiring them to work off the clock when they worked

beyond their scheduled 8-hour shift without compensation for their time, and when required to arrive at work prior to their scheduled start time without compensation for time. This conduct resulted in Plaintiff and Similarly Aggrieved Employees to work off the clock without compensation resulting in failure to pay regular and/or overtime wages.

37. Defendant willfully violated the Labor Code by failing to pay Plaintiff and other employees all wages including both minimum wage and overtime. Plaintiff and other employees were denied proper overtime wages as a result of Defendant's policies as described herein. Defendant has intentionally excluded remuneration that must be included in all employees' regular rate of pay in order to avoid payment of overtime wages and other benefits in violation of the Labor Code and the order issued by the IWC.

38. Labor Code section 246 states an employee shall earn 24 hours of accrued sick wages per year. Defendant failed and otherwise refused to compensate Plaintiff and similarly aggrieved employees with their earned sick time wages when they were sick and required time off work. Defendant's conduct was deliberate and in violation of Labor Code section 246 and its amendments.

39. Defendant willfully violated the Labor Code by failing to pay Plaintiff and Aggrieved Employees all wages including both minimum wage and overtime as described herein in violation of Labor Code §510 and 1194. Defendant regularly violated the Labor Code with respect to meeting the requirements of paying wages earned, including, overtime, double-time and remuneration when calculating the employees' regular rate of pay, as herein before alleged. Defendant intentionally excluded remuneration that must be included in all employees' regular rate of pay in order to avoid payment of overtime wages and other benefits in violation of the Labor Code and the order issued by the IWC. Thereby, Defendant is able to reduce its overhead and operating expenses and gain an unfair advantage over competing restaurants who comply with state law.

40. Since the LWDA has not indicated that it will be investigating more than 65 days have passed since Plaintiff mailed his letter, and because Defendant took no corrective action to remedy the allegations set forth above, Plaintiff, as a representative of the people of the State of

1 California, will seek any and all penalties otherwise capable of being collected by the Labor
2 Commission, the LWDA and/or the Department of Labor Standards Enforcement (“DLSE”). This
3 includes each of the following, as set forth in Labor Code section 2699.5, which provides that
4 section 2699.3(a) applies to any alleged violation of the following provisions: 510 and 1194.

5 41. Plaintiff is informed and believes that Defendant has violated and continues to
6 violate provisions of the California Labor Code and applicable Wage orders related to the
7 payment of minimum wages including overtime.

8 **SECOND VIOLATION**

9 **(Failure to Provide Meal Periods, in Violation of Labor Code Sections 226.7 and 512)**

10 **(Plaintiff and Similarly Aggrieved Employees Against All Defendants, and Does 1-50**

11 **Inclusive)**

12 42. California Labor Code §226.7(b) in relevant part, provides, “An employer shall
13 not require an employee to work during a meal or rest or recovery period mandated pursuant to
14 an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare
15 Commission.”

16 43. Under IWC Order No. 16-2001, section 10, Defendant was required to provide
17 Plaintiff and each member of the Similarly Aggrieved Employees one meal period for every five-
18 hour. Section 11 of the same Wage Order mandates that employers authorize and permit rest
19 periods for every four hours, or major fraction thereof, worked.

20 44. California Labor Code §512(a) in relevant part, provides, “An employer may not
21 employ an employee for a work period of more than five hours per day without providing the
22 employee with a meal period of not less than 30 minutes.”

23 45. Defendant regularly failed to provide Plaintiff and other employees one thirty (30)-
24 minute uninterrupted meal period for shifts lasting longer than five (5) hours. Defendant required
25 Plaintiff and other employees to work through meal periods during these shifts.

26 46. Defendant required Plaintiff and other employees to work through their off the
27 clock meal periods, such that meal periods were typically forgone or less than thirty minutes in
28 length despite working more than five (5) hours in a shift.

1 that the meal or rest or recovery period is not provided.”

2 55. Defendant failed to pay Plaintiff and similarly aggrieved employees one (1)
3 additional hour of pay at Plaintiff’s regular rate of compensation for each day a rest period was
4 not provided to him. On information and belief, Defendant failed to pay other employees one (1)
5 additional hour of pay at their regular rate of compensation for each day a rest period was not
6 provided to them.

7 **FOURTH VIOLATION**

8 **(Failure to Pay All Wages at Termination in Violation of Labor Code Sections 201-203)**
9 **(Plaintiff and Similarly Aggrieved Employees Against All Defendants, and Does 1-50**
10 **Inclusive)**

11 56. Plaintiff realleges and incorporates by reference the preceding paragraphs of this
12 Complaint as if fully alleged herein.

13 57. California Labor Code §201(a), in relevant part, provides, “If an employer
14 discharges an employee, the wages earned and unpaid at the time of discharge are due and payable
15 immediately.”

16 58. Under the California Labor Code §202(a), “If an employee not having a written
17 contract for a definite period quits his or her employment, his or her wages shall become due and
18 payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-
19 two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled
20 to his or her wages at the time of quitting.”

21 59. Under California Labor Code §203(a), “If an employer willfully fails to pay,
22 without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and
23 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall
24 continue as a penalty from the due date thereof at the same rate until paid or until an action
25 therefore is commenced; but the wages shall not continue for more than thirty (30) days.”

26 60. Plaintiff was terminated on November 9, 2022, but Defendant failed to compensate
27 him with his earned wages and premium compensation as described herein.

28 61. Defendant failed to pay all wages and premiums to former employees as described

1 herein, in violation of Labor Code sections 246, 510, 1194, 226.7 and 512, and California Code
2 of Regulations, Title 8, section 11160, subd. [3] and (2) therefore causing additional violations
3 under Labor Code § 201-203.

4 **FIFTH VIOLATION**

5 **(Failure to Provide Accurate Wage Statements, in Violation of Labor Code Section 226)**

6 **(Plaintiff and Similarly Aggrieved Employees Against All Defendants, and Does 1-50**

7 **Inclusive)**

8 62. Plaintiff realleges and incorporates by reference the preceding paragraphs of this
9 Complaint as if fully alleged herein.

10 63. Under California Labor Code §226(a), an employer is legally obligated to provide
11 his or her employees, semi-monthly or at the time of payment of wages, “an accurate itemized
12 statement in writing showing,” among other things, total hours worked, gross wages earned, and
13 net wages earned.

14 64. Defendant failed to provide Plaintiff complete and accurate wage statements as
15 required by Labor Code §226(a). The wage statements provided to Plaintiff did not accurately
16 reflect all hours regular and overtime hours worked, as they did not record sick time wages earned
17 and due, off the clock” hours worked as described herein and all premiums earned. Further,
18 Defendant’s legal address listed on their Statement of Information file with the State of California
19 is 720 E. Butterfield Road, Suite 300, Lombard, Illinois 60148. But the wage statements provided
20 to Plaintiff and similarly aggrieved employees, incorrectly lists Defendant’s address as 600 Vine
21 Street, Suite 1200, Cincinnati, Ohio 45202.

22 65. Consequently, the wage statements did not accurately reflect gross and net wages
23 earned, the number of hours worked at each rate of pay, and premiums earned.

24 **SIXTH VIOLATION**

25 **(Failure to Reimburse for Necessary Job Related Expenditures Cal. Labor Code § 2802)**

26 **(Plaintiff and Similarly Aggrieved Employees Against All Defendants, and Does 1-50**

27 **Inclusive)**

28 66. Plaintiff re-alleges and incorporates by reference the allegations in the preceding

1 paragraphs.

2 67. California Labor Code §2802, states "An employer shall indemnify his or her
3 employee for all necessary expenditures or losses incurred by the employee in direct consequence
4 of the discharge of his or her duties...."

5 68. Defendant knowingly, willingly and intentionally attempted to offset the cost of
6 doing business on the Plaintiffs and Similarly Aggrieved Employees.

7 69. Defendant knowingly, willingly and intentionally attempted to offset the cost of
8 doing business on the Plaintiff and Similarly Aggrieved Employees by failing to reimburse them
9 for necessary job related expenditures.

10 70. Plaintiff and Similarly Aggrieved Employees were not reimbursed by Defendant
11 for necessary expenditures as a direct consequence of the discharge of their duties, specifically,
12 Defendant failed to reimburse Plaintiff and Similarly Aggrieved Employees for the purchase of
13 work supplies such as binders, sun glasses required when driving, and gloves.

14 71. Defendant had a corporate practice and policy of requiring Plaintiff and Similarly
15 Aggrieved Employees to shoulder the burden of Defendant's cost of doing business by failing to
16 reimburse Plaintiff and Similarly Aggrieved Employees for necessary business expenditures as
17 stated herein.

18 **PRAYER FOR RELIEF**

19 **WHEREFORE**, the Plaintiff, on behalf of himself and all other aggrieved employees,
20 prays for relief and judgment against Defendant, as follows:

- 21 1. For compensatory damages according to proof;
- 22 2. For penalties as provided, per each violation, by the PAGA, Labor Code section
23 2699, et seq. for failure to pay all minimum wages due;
- 24 3. For an amount sufficient to recover up to three years of underpaid wages to those
25 employees who were underpaid minimum wages pursuant to Labor Code section
26 558;
- 27 4. For all statutory penalties provided under Labor Code section 558, including \$50
28 for the initial violation and \$100 for each subsequent violation for each pay period

during which an employee was underpaid minimum wages;

5. For penalties as provided, per each violation, by the PAGA, Labor Code section 2699, et seq. for failure to pay all overtime wages due;
6. For an amount sufficient to recover up to three years of underpaid wages to those employees who were underpaid overtime wages pursuant to Labor Code section 558;
7. For all statutory penalties provided under Labor Code section 558, including \$50 for the initial violation and \$100 for each subsequent violation for each pay period during which an employee was underpaid overtime wages;
8. For penalties as provided, per each violation, by the PAGA, Labor Code section 2699, et seq. for failure to provide all rest periods;
9. For an amount sufficient to recover up to three years of underpaid wages to those employees who were underpaid wages due to failure to provide paid rest periods pursuant to Labor Code section 558;
10. For all statutory penalties provided under Labor Code section 558, including \$50 for the initial violation and \$100 for each subsequent violation for each pay period during which an employee was underpaid due to failure to provide paid rest periods;
11. For penalties as provided, per each violation, by the PAGA, Labor Code section 2699, et seq. for failure to provide all meal periods;
12. For an amount sufficient to recover up to three years of underpaid wages to those employees who were underpaid wages due to failure to provide work-free meal periods pursuant to Labor Code section 558;
13. For all statutory penalties provided under Labor Code section 558, including \$50 for the initial violation and \$100 for each subsequent violation for each pay period during which an employee was underpaid due to failure to provide work-free meal periods;
14. For penalties as provided, per each violation, by the PAGA, Labor Code section

2699, et seq. for failure to timely pay wages at separation;

15. For penalties as provided, per each violation, by the PAGA, Labor Code section 2699, et seq. for failure to provide accurate, itemized wage statements; and

16. For reasonable attorney's fees and costs under the PAGA, Labor Code section 2699(g)(1).

Dated: April 5, 2024

MAHONEY LAW GROUP, APC

AP LAW OFFICES, INC.



Kevin Mahoney, Esq.

Alex Perez, Esq.

Attorneys for Plaintiff JUAN MANUEL CASTRO as an individual and on behalf of all employees similarly situated

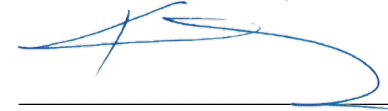
DEMAND FOR JURY TRIAL

Plaintiff JUAN MANUEL CASTRO hereby demands a trial by jury.

Dated: April 5, 2024

MAHONEY LAW GROUP, APC

AP LAW OFFICES, INC.



Kevin Mahoney, Esq.

Alex Perez, Esq.

Attorneys for Plaintiff JUAN MANUEL CASTRO as an individual and on behalf of all employees similarly situated

EXHIBIT A

Alexander Perez, Esq.
213.638.2726 Phone
alex@aplawoffices.net

January 30, 2024

VIA Electronic Mail

LABOR AND WORKFORCE DEVELOPMENT AGENCY
PAGAfilings@dir.ca.gov

VIA CERTIFIED MAIL NO. 9589 0710 5270 0508 0614 25

Return Receipt Requested

First Transit, Inc.,
720 E. Butterfield Road, Suite 300
Lombard, Illinois 60148

Re: Juan Manuel Castro v. First Transit, Inc.

**NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO LABOR CODE SECTION
2698 ET SEQ.**

To: Labor and Workforce Development Agency; First Transit, Inc.

From: Juan Manuel Castro, on behalf of himself and aggrieved employees who were subject to the employer's wage and hour policies set forth below.

Factual Statement

Please note that this firm, AP Law Offices, represent the interests of Juan Manuel Castro ("Mr. Castro"), who intends to file a complaint alleging various Labor Code violations and seeking civil penalties under the Private Attorneys General Act of 2004, Labor Code sections 2698 et seq. ("PAGA"), on behalf of himself and all other aggrieved employees.

Theories of Labor Code Violations and Remedies

First Transit, Inc., ("Employer") is a Delaware corporation with its principal business office located in Lombard, Illinois. Mr. Castro began working for Employer at their place of business located in Norwalk, California, in or around September 2022 until his termination on or about February 8, 2023.

Mr. Castro alleges that Employer violated various sections of the Labor Code, including sections 201, 203, 204, 221 226, 226.7, 246, 510, 512, 551, 1174, 1194, 1198, and 2802 by:

- a) Failing to pay Mr. Castro and aggrieved employees all wages owed, including minimum, overtime, and double time wages;
- b) Failing to provide Mr. Castro and aggrieved employees with compliant meal periods or premium compensation in lieu thereof;
- c) Failing to provide Mr. Castro and aggrieved employees with compliant rest periods or premium compensation in lieu thereof;
- d) Failing to provide Mr. Castro and aggrieved employees with accurate itemized wage statements and failing to maintain accurate payroll records;
- e) Failing to reimburse Mr. Castro and aggrieved employees for necessary business expenditures; and
- f) Failing to pay all wages earned and owed upon termination or separation of employment.

Mr. Castro and the similarly aggrieved employees are identifiable current and/or former hourly non-exempt employees who worked for Employer in California during the liability period of one year prior to the filing of a complaint alleging a PAGA cause of action. Mr. Castro and similarly aggrieved employees were employed by Employer as non-exempt employees, in the position of Drivers and other related or similar occupations.

A. Employer failed to pay Mr. Castro and aggrieved employees for all hours worked

Pursuant to Labor Code section 1194, subdivision (a), “any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.”

Labor Code section 510, subdivision (a), provides that “[a]ny work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek ... shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee.”

Labor Code section 221(a) states “No employer shall ...make or take any deduction from the earnings of any employee, either directly or indirectly, to cover the whole or any part of the cost of compensation under this division.”

Mr. Castro and aggrieved employees were frequently required to perform work for which they were not paid. Mr. Castro and aggrieved employees were required to work beyond the end of their shift without compensation. Mr. Castro and similarly aggrieved employees were also directed to report to work 15 minutes prior to the start of their shifts to complete paperwork but not

compensated for this time worked. Employer's conduct was deliberate and in violation of Labor Code sections 510 and 1194.

Labor Code section 246 states an employee shall earn 24 hours of accrued sick wages per year. Defendant failed and otherwise refused to compensate Mr. Castro and similarly aggrieved employees with their earned sick time wages when they were sick and required time off work. Defendant's conduct was deliberate and in violation of Labor Code section 246 and its amendments.

Accordingly, Mr. Castro and aggrieved employees were not paid for all hours worked as described herein and specifically the hours in excess of eight (8) in a workday, or in excess of forty hours in a week, Employer failed to compensate them at the applicable minimum wage and overtime wage rate.

Employer's failure to pay Mr. Castro and aggrieved employees for all hours worked, including applicable overtime and double time rates, and sick time wages as detailed above, is actionable under PAGA as a violation of Labor Code sections 510, 1182.12 and 1194.

B. Employer failed to provide Mr. Castro and aggrieved employees with compliant meal periods or premium compensation in lieu thereof

Labor Code sections 226.7 and 512 provide that no employer shall employ a person for a work period of more than five hours without providing an uninterrupted meal period of at least thirty minutes. Nor shall an employer employ a person for a work period of more than ten hours without providing a second uninterrupted meal period of at least thirty minutes. Further, when an employer fails to provide an employee a required meal period, the employer must pay the employee one hour of pay at the employee's regular rate of pay for each workday that a required meal period is not provided.

Mr. Castro and aggrieved employees worked 8 hours or more each workday but frequently did not receive a timely, uninterrupted 30 minutes for meal periods. When Mr. Castro and similarly aggrieved employees worked more than 10 hours in a shift they were not provided with a second 30-minute uninterrupted meal period. When Mr. Castro and aggrieved employees were not provided with lawful requisite meal periods, they were not compensated with one hour of pay at their regular rate of pay as required by law.

Employer's conduct in failing to provide compliant meal periods or premium compensation in lieu thereof is actionable under PAGA as violations of Labor Code sections 226.7 and 512.

C. Employer failed to provide Mr. Castro and aggrieved employees with compliant rest periods or premium compensation in lieu thereof

Labor Code section 226.7 requires that employers permit all employees to take a ten-minute rest period for every four hours, or major fraction thereof worked. Further, when an employer fails to provide an employee with required rest periods, the employer must pay the employee one hour of pay at the employee's regular rate of pay for each workday that a required rest period is not provided.

Mr. Castro and other aggrieved employees were consistently not provided law rest periods and instead were required to attend to their job duties. Employer did not maintain a policy or practice to pay an additional hour of pay for interrupted or forgone rest breaks.

Employer's conduct in failing to provide compliant rest periods or premium compensation in lieu thereof is actionable under PAGA as a violation of Labor Code section 226.7.

D. Employer failed to provide Mr. Castro and aggrieved employees with accurate itemized wage statements

Pursuant to Labor Code section 226, subdivision (a), "[a]n employer, semimonthly or at the time of each payment of wages, shall furnish to his or her employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately if wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except as provided in subdivision (j), (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee."

By failing to pay Mr. Castro and aggrieved employees for all hours worked, including overtime wages, and premium compensation for missed meal and rest periods, Employer provided wage statements that were incomplete and inaccurate. Specifically, Employer provided wage statements with an inaccurate total number of hours worked, accrued sick wages earned, accurate gross and net wages, and an inaccurate corresponding number of hours worked at each hourly rate.

Further, Employer's legal address listed on their Statement of Information file with the State of California is 720 E. Butterfield Road, Suite 300, Lombard, Illinois 60148. But the wage statements provided to Mr. Castro by Employer incorrectly lists Employer's address as 600 Vine Street, Suite 1200, Cincinnati, Ohio 45202.

Employer's conduct is not compliant with Labor Code sections 226 and 1174 and is therefore actionable under PAGA.

E. Employer failed to reimburse Mr. Castro and aggrieved employees for necessary business expenditures

Pursuant to Labor Code section 2802, "[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer."

Employer failed to reimburse Mr. Castro and aggrieved employees for the purchase and maintenance of work supplies such as binders, sun glasses required when driving, and gloves. Employer refused or otherwise failed to provide Mr. Castro and similarly aggrieved employees with reimbursement for the cost of these items.

Employer's failure to reimburse Mr. Castro and aggrieved employees for all necessary business expenditures, as stated herein, is a violation of Labor Code section 2802 and is therefore actionable under PAGA.

F. Employer failed to pay Mr. Castro and aggrieved employees all wages earned and owed at separation of employment.

Pursuant to Labor Code section 201, subdivision (a), "[i]f an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately."

Labor Code section 202, subdivision (a) provides, "[i]f an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting."

At the time that Mr. Castro and aggrieved employees resigned or were terminated, Employer failed to compensate them for all wages, including regular, overtime, and sick wages earned as well as for meal and rest premiums as described herein.

Labor Code section 203, subdivision (a), states that "[i]f an employer willfully fails to pay ... any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days." Accordingly, Mr. Castro and aggrieved employees are entitled to thirty days of waiting time penalties.

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G. Reservation of Rights

The facts and claims contained herein are based on the information available at the time of this writing. Therefore, if through discovery and/or expert review, Mr. Castro becomes aware of additional compensation owed or losses incurred by Mr. Castro or by any other aggrieved employee of Employer, Mr. Castro expressly reserves the right to revise these facts and/or add any new claims by amending the claim letter or by adding applicable causes of action to the complaint which will relate back to the date of this letter.

If the Labor and Workforce Development Agency intends to investigate the allegations set forth herein, please provide notice via certified mail to:

AP Law Offices, Inc.
Alexander Perez, Esq.
223 N. Garfield Ave., Ste. 106
Monterey Park, CA 91754
Tel: (213) 638-2726
Fax: (213) 459-1713
Email: alex@aplawoffices.net

Sincerely,

A handwritten signature in black ink, appearing to be 'AP', with a stylized flourish at the end.

Alexander Perez, Esq.
AP Law Offices, Inc.