

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

CECIL FRENCH on behalf of himself
and all others similarly situated current
and former employees of First Transit,
Inc.

Plaintiff,

v.

FIRST TRANSIT, INC.
and DOES 1-10 inclusive,

Defendants.

Case No.: 3:18-cv-01648-CAB-MSB
Judge Cathy Ann Bencivengo

CLASS ACTION SETTLEMENT AGREEMENT

This Class Action Settlement Agreement is made and entered into by and between Named Plaintiffs Cecil French and Kathleen Breisacher, members of the Class as defined herein, and Defendant First Transit, Inc.

TABLE OF CONTENTS

1. RECITALS3

2. DEFINITIONS6

3. PAYMENTS FROM THE MAXIMUM SETTLEMENT FUND22

4. PLAN OF ALLOCATION29

5. COURT APPROVAL.....30

6. CLASS NOTICE31

7. OBJECTIONS, REQUESTS FOR EXCLUSION,
ADMINISTRATION AND OTHER DUTIES OF THE
SETTLEMENT ADMINISTRATOR33

8. RELEASES.....38

9. NOTICES39

10. GENERAL TERMS40

1. RECITALS

These Recitals are an integral part of this Settlement Agreement.

1.1 First Transit, Inc., the defendant herein, provides para-transit bus services in the County of San Diego, California.

1.2 On May 2, 2018, Named Plaintiff French filed a putative class action complaint in the Superior Court of California for the County of San Diego entitled *Cecil French, on behalf of himself and all others similarly situated current and former employees of First Transit, Inc. v. First Transit, Inc., a Delaware corporation and DOES 1-10, inclusive*. On July 19, 2018, First Transit removed the Class Action to the United States District Court for the Southern District of California pursuant to the Class Action Fairness Act, 28 U.S.C. § 1332. On April 17, 2019, French filed a first amended complaint (“FAC”) to add Breisacher as an additional Named Plaintiff.

1.3 The Named Plaintiffs alleged in the FAC that First Transit failed to provide timely rest breaks and/or pay rest break premiums in violation of various provisions of the California Labor Code including sections 201, 202, 203, 226(a), 226.7, and 558, Industrial Welfare Commission Wage Order 9-2001, California common law, and California Business and Professions Code section 17200, *et seq.* The Named Plaintiffs sought recovery of damages, interest, statutory penalties, and attorneys’ fees and costs on behalf of themselves and a putative class of certain First Transit employees in California. In addition, the Named Plaintiffs sought compensation for themselves and the putative class on a derivative basis based on First Transit’s alleged failure to provide complete and accurate itemized wage statements which accounted for alleged rest break premiums owed pursuant to California Labor Code section 226(a), and waiting time penalties pursuant to California Labor Code section 203.

1.4 On August 30, 2018, Named Plaintiff French filed a second action in the Superior Court of California for the County of San Diego entitled *Cecil French, on behalf of himself and other aggrieved employees of First Transit, Inc. v. First Transit, Inc., a Delaware corporation and DOES 1-10, inclusive*. In the PAGA Action, Named Plaintiff French sought to recover civil penalties pursuant to the PAGA based on the same violations of California law alleged in the Class Action.

1.5 On September 10, 2019, Named Plaintiffs filed a Second Amended Complaint (“SAC”) in the Class Action to allege claims for civil penalties pursuant to the PAGA. The SAC is the operative complaint for purposes of this Settlement Agreement.

1.6 On September 24, 2019, the Parties, with court approval, caused the state court PAGA Action to be dismissed without prejudice so that the Court would possess jurisdiction over the claims asserted in the PAGA Action for settlement purposes only and so that the Court may handle the entire settlement approval process and disposition of all claims alleged in both Actions.

1.7 The Parties engaged in significant written discovery; demanded and received a large amount of relevant documents and data, including the employment history of putative class members; informally investigated the facts surrounding the Claims settled by this Settlement Agreement; and engaged in law and motion practice in the PAGA Action.

1.8 After completing substantial investigation, extensive formal and informal discovery, and pre-settlement discussions, the Parties participated in a mediation before Joel Grossman, Esq., a highly-regarded labor law attorney and mediator, on August 21, 2019, at which the Parties agreed to the principal terms of this Settlement.

1.9 The Named Plaintiffs believe that the Claims have merit and that the evidence developed to date supports their Claims. However, the Named Plaintiffs and Class Counsel recognize and acknowledge the expense and length of continued proceedings necessary to prosecute the Claims through trial, appeals and any ancillary proceedings. The Named Plaintiffs and Class Counsel also have accounted for the uncertain outcome and risk of any litigation, as well as the difficulties and delays inherent in such litigation. The Named Plaintiffs and Class Counsel are also mindful of the inherent problems of proof in establishing, and possible defenses to, the Claims asserted in the Actions. The Named Plaintiffs and Class Counsel believe that the Settlement set forth in this Agreement confers substantial benefits upon the Class Members and is a fair, reasonable and adequate resolution of the Claims. Based upon their evaluation, the Named Plaintiffs and Class Counsel have determined that the Settlement set forth in this Agreement is in the best interest of the Class.

1.10 Defendant has denied, and continues to deny, all liability with respect to any and all of the Claims and the facts alleged in support thereof, and has denied, and continues to deny, all charges of wrongdoing or liability against it arising out of or relating to any conduct, acts, or omissions alleged or that could have been alleged in the Actions. Defendant's willingness to agree to this Settlement on the terms and conditions set forth in this Agreement is based on, among other things: (1) the time and expense associated with litigating the Claims through trial and any appeals; (2) the benefits of resolving the Claims, including limiting further expense, inconvenience and distraction, disposing of burdensome and protracted litigation, and permitting Defendant to conduct its business unhampered by the distractions of continued litigation; and (3) the uncertainty and risks inherent in any litigation.

1.11 Based on the foregoing, and the definitions and terms and conditions set forth hereinafter, the Parties, for purposes of this Settlement only, conditionally stipulate and agree that the requisites for establishing class certification are met with respect to the Class and stipulate to certification of the Class that is defined in subsection 2.3 below.

1.12 The Settlement Agreement is a result of adversarial, non-collusive, and arm's-length negotiations. Counsel for the Parties vigorously pursued their positions and the rights of their respective clients through extended legal and factual analysis, discovery, and exchanges of information over the course of the litigation. There are no undisclosed side agreements between the Parties or their counsel. This Settlement Agreement contains the entire agreement between the Parties.

NOW, THEREFORE, subject to the Court's approval, it is hereby agreed by the Parties that, in consideration of the promises and covenants set forth in this Agreement, and upon the entry by the Court of a final order approving the Settlement and directing the implementation of the terms and conditions of the Settlement as set forth in this Agreement, the Class Action and all Claims shall be settled and compromised upon the terms and conditions contained herein.

2. DEFINITIONS

2.1 “**Actions**” means and refers to the Class Action, as defined in Section 2.4, and the PAGA Action, as defined in Section 2.26, collectively.

2.2 “**Affiliates**” of Defendant means and refers to each individual or entity who: (1) during any portion of the Release Period, was First Transit's employee, subsidiary, division, parent company, sister company, predecessor or

successor, including but not limited to FirstGroup America, Inc. and FirstGroup plc; and/or (2) during any portion of the Release Period, was directly or indirectly controlled or owned by First Transit, or was directly or indirectly under common control or ownership with First Transit. For purposes of this definition, “control” means and refers to the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a person (or the Defendant), whether through the ownership of voting securities, by contract, or otherwise, including, without limitation, the power to elect a majority of: the directors of a corporation, managers of a limited liability company, trustees of a trust, general partners of a partnership or members of any other governing body of any other type or entity; and “own” means and refers to being the holder of record or beneficially of 10% or more of the outstanding equity securities, including, without limitation, shares of stock, limited liability company membership interests and partnership interests, of any class or series.

2.3 “Class” and “Class Members” mean and refer to Defendant’s non-exempt employees who drove a Para-transit bus route out of Defendant’s San Diego, California location during their employment with Defendant during the Class Period.

2.4 “Class Action” means and refers to this lawsuit against First Transit entitled *French, et al. v. First Transit, Inc.*, pending in the United States District

Court for the Southern District of California, Case No. 3:18-CV-01648-CAB-MSB.

2.5 “Class Counsel” means and refers to Sheldon A. Ostroff of the Law Office of Sheldon A. Ostroff, and Daniel R. Shinoff of Artiano Shinoff.

2.6 “Class Counsel Costs Award” means such litigation costs as the Court may award to Class Counsel for the costs they have incurred and will incur in the investigation, litigation, and resolution of the Actions, and in administration of the Settlement, and which shall not exceed Fifty Thousand Dollars and Zero Cents (\$50,000.00).

2.7 “Class Counsel Fees Award” means such attorneys’ fees as the Court may award to Class Counsel for the services they have rendered and will render to the Class in the Actions, and which shall not exceed Six-Hundred Twenty-Five Thousand Dollars and Zero Cents (\$625,000.00).

2.8 “Class List” means and refers to the complete list of all Class Members that First Transit will diligently and in good faith compile from its records. The Class List shall be formatted in Microsoft Excel and include each Class Member’s full name, most recent mailing address, most recent telephone number, employee identification number, Social Security number, and number of Compensable Workweeks.

2.9 “Class Notice” means and refers to the “Notice of Class Action Settlement”, substantially in the form attached hereto as Exhibit “2”, that will be mailed to all Class Members at their last known address by U.S. Mail, first class postage prepaid. Each Class Notice will provide: (1) information regarding the nature of the Class Action; (2) a summary of the Settlement Agreement’s principal terms; (3) the definition of the Class and Class Period; (4) each Class Member’s estimated gross Individual Settlement Payment; (5) instructions on how to submit Requests for Exclusion and Notices of Objection; (6) the deadlines by which the Class Member must postmark Requests for Exclusion, or file Notices of Objection to the Settlement; and (7) the Claims to be released.

2.10 “Class Period” means and refers to May 2, 2014 through the date of entry of the Preliminary Approval Order.

2.11 “Compensable Workweeks” means and refers to every week, and any part thereof, during the Class Period in which a Class Member drove a Para-transit bus route out of Defendant’s San Diego, California location. Compensable Workweeks will be determined by examining Defendant’s employment records and Para-transit route records. Defendant estimates the number of Compensable Workweeks from the beginning of the Class Period through October 7, 2019 to be approximately 51,424.

2.12 “Court” means and refers to the United States District Court for the Southern District of California.

2.13 “Defendant” and **“First Transit”** mean and refer to First Transit, Inc.

2.14 “Defendant’s Counsel” means and refers to the attorneys who have appeared in the Actions on behalf of Defendant, including David J. Dow and Matthew B. Riley of Littler Mendelson, P.C.

2.15 “Effective Date” means and refers to the date by which this Settlement is finally approved as provided herein and the Court’s Final Approval Order becomes binding. For purposes of this Settlement Agreement, the Final Approval Order becomes binding upon the later of: (a) the day after the last day by which a notice of appeal to the Ninth Circuit Court of Appeal of the Final Approval Order and/or of an order rejecting any motion to intervene may be timely filed, and none is filed; (b) if such an appeal is filed, and the appeal is finally disposed of by ruling, dismissal, denial, or otherwise, the day after the last date for filing a request for further review of the Ninth Circuit’s decision passes and no further review is requested; (c) if an appeal is filed and there is a final disposition by ruling, dismissal, denial, or otherwise by the Ninth Circuit and further review of the Ninth Circuit’s decision is requested, the day after the request for review is denied with prejudice and/or no further review of the decision can be requested; or

(d) if review is accepted, the day after the United States Supreme Court affirms the Settlement. The Effective Date cannot occur, and Defendant will not be obligated to fund this Settlement, until and unless this Settlement Agreement is final and binding as prescribed herein.

2.16 “Excluded Class Member” means and refers to any Class Member who timely returns a valid Request for Exclusion.

2.17 “Final Approval Hearing” means and refers to the hearing at which the Named Plaintiffs will request that the Court: (1) finally approve the fairness, reasonableness, and adequacy of the terms and conditions of this Settlement Agreement; (2) enter the Final Approval Order; (3) approve the Class Counsel Costs Award and Class Counsel Fees Award; (4) award the Named Plaintiffs the requested Service Awards; (5) authorize the payment of Individual Settlement Payments to Participating Class Members; (6) authorize the payment of Settlement Administration Costs; (7) approve the PAGA Award to the LWDA; (8) enter an order permanently enjoining all Participating Class Members from pursuing, or seeking to reopen, any of the Claims; and (9) take other appropriate or necessary action as described herein.

2.18 “Final Approval Order” means and refers to the order and judgment entered by the Court at or contemporaneously with the Final Approval Hearing. The Parties shall submit a proposed Final Approval Order in the form attached

hereto as Exhibit “3” setting forth, among other things, the terms of this Settlement Agreement, by incorporation or otherwise, for execution and entry by the Court. Upon entry of the Final Approval Order, the Parties agree to waive all rights to appeal, except that the Named Plaintiffs may appeal the award of Class Counsel’s fees and/or costs if the sum awarded by the Court is less than the requested amount.

2.19 “Individual Settlement Payments” means and refers to that portion of the Net Distribution Fund paid to Participating Class Members pursuant to the terms of this Settlement Agreement. Individual Settlement Payments shall be calculated pursuant to Section 4 below. The Individual Settlement Payment amount will reflect a gross amount before deductions for the Participating Class Members’ income, payroll, or other taxes, and any employer-side payroll taxes, required to be withheld and paid from the wage component of the Individual Settlement Payments. The amount that remains after subtracting the employee’s and employer’s share of applicable state and federal tax withholdings, applicable payroll deductions, and other deductions required by state and local law and social security withholdings will be paid to Participating Class Members.

2.20 “LWDA” means and refers to the California Labor and Workforce Development Agency.

2.21 “Maximum Settlement Amount” means and refers to the maximum amount of money First Transit will be required to pay pursuant to this Settlement Agreement. The Maximum Settlement Amount is Two Million Five Hundred Thousand Dollars and Zero Cents (\$2,500,000.00). The Maximum Settlement Amount shall include: (1) all Individual Settlement Payments to Participating Class Members and all related employer- and employee-side tax obligations; (2) the Class Counsel Costs Award; (3) the Class Counsel Fees Award; (4) all Service Awards to the Named Plaintiffs; (5) the PAGA Award to the LWDA; and (6) all Settlement Administration Costs.

2.22 “Named Plaintiffs” means and refers to Cecil French and Kathleen Breisacher.

2.23 “Net Distribution Fund” means and refers to the portion of the Maximum Settlement Amount remaining after deducting the Court-approved amounts for: (1) the Class Counsel Costs Award; (2) the Class Counsel Fees Award; (3) all Settlement Administration Costs; (4) the Named Plaintiffs’ Service Awards; and (5) the portion of the PAGA Award allocated to the LWDA. The Net Distribution Fund, less all employer- and employee-side tax withholdings, will be distributed to Participating Class Members. The amount to be deducted from the Maximum Settlement Amount currently approximates Seven Hundred Eighty Thousand Dollars and Zero Cents (\$780,000.00) and is comprised of the Class

Counsel Fees Award (\$625,000), the Class Counsel Costs Award (\$50,000), Settlement Administration Costs (\$20,000), Service Awards (\$10,000), and the LWDA's portion of the PAGA Award (\$75,000). The Net Distribution Fund currently approximates One Million Seven Hundred Twenty Thousand Dollars and Zero Cents (\$1,720,000.00).

2.24 “Opt-Out Period” means and refers to the period of time between the date the Settlement Administrator mails the Class Notice to Class Members and the Response Deadline.

2.25 “PAGA” means and refers to the Labor Code Private Attorneys General Act of 2004, California Labor Code section 2698, *et seq.*

2.26 “PAGA Action” means and refers to the lawsuit filed by Named Plaintiff French in the San Diego County Superior Court entitled Cecil French, on behalf of himself and other aggrieved employees of First Transit, Inc. v. First Transit, Inc., a Delaware corporation and DOES 1-10, inclusive, previously pending in the San Diego County Superior Court, Case No. 37-2018-00043996.

2.27 “PAGA Award” means and refers to the amount of the Maximum Settlement Amount allocated to resolve claims for civil penalties under the PAGA for any Labor Code violations alleged in the Actions. The PAGA Award, subject to Court approval, shall be One Hundred Thousand Dollars and Zero Cents (\$100,000.00), of which seventy-five percent (75%) shall be distributed to the

LWDA, and twenty-five percent (25%) shall be distributed to Participating Class Members as part of the Net Distribution Fund.

2.28 “Participating Class Members” means and refers to Class Members who do not submit a valid and timely Request for Exclusion on or before the Response Deadline.

2.29 [Intentionally left blank]

///

2.30 “Parties” means and refers to the Named Plaintiffs, for themselves and on behalf of the Class, and First Transit.

2.31 “Preliminary Approval Date” means and refers to the date on which the Court enters the Preliminary Approval Order.

2.32 “Preliminary Approval Order” means and refers to the Order of the Court, substantially in the form attached hereto as Exhibit “1”, granting preliminary approval of this Settlement Agreement, or as may be modified by subsequent mutual agreement of the Parties in writing and approved by the Court.

2.33 “Release Period” means and refers to the period of May 2, 2014, through the entry of the Preliminary Approval Order.

2.34 “Released Claims” means and refers to each and all of the Claims that are released by this Agreement as described below.

(i) **“Released Class Claims”** means and refers to any and all claims for relief based on wage and hour provisions of state or federal law, including but not limited to statutory, regulatory and common law claims, and all related or derivative claims for penalties, including but not limited to claims for civil penalties under the PAGA, wage statement penalties under California Labor Code section 226 and waiting time penalties under California Labor Code section 203, and claims for relief based on the California Unfair Competition Law, whether suspected or unsuspected, which the Releasing Parties may have had, now have, or may have in the future against the Released Parties, or any of the Released Parties, for any acts occurring during the Class Period that are either or both: (1) alleged in the Complaint and/or any amended complaint filed in the Class Action and/or the PAGA Action; or (2) that could have been alleged in the original Complaint and/or any amended complaint filed in the Class Action and/or the PAGA Action relating in any way to rest periods, correct and complete itemized wage statements, and waiting time penalties.

(ii) **“Complete and General Release”** means and refers to the claims set forth in the preceding subsection “i” above and any other claims, including without limitation claims for wage and hour law violations, attorneys’ fees or injunctive relief, and all other claims, whether sounding in contract or tort, including but not limited to, claims arising from or dependent on Title VII of the

Civil Rights Act of 1964, 42 U.S.C. § 2000e, *et seq.*; the Americans with Disabilities Act, 42 U.S.C. § 12101, *et seq.*; the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001, *et seq.*; the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.*; the Civil Rights Act of 1991; 42 U.S.C. § 1981; Executive Order 11246; Executive Order 11141; the Rehabilitation Act of 1973; the Equal Pay Act; Federal Employee Polygraph Protection Act; the National Labor Relations Act; the Worker Adjustment and Retraining Notification Act; the California Fair Employment and Housing Act, including Government Code sections 12900, *et seq.*; the California Family Rights Act, the California Pregnancy Disability Act; the California Labor Code; any applicable order of the California Industrial Welfare Commission, claims arising from or dependent on federal or local laws or regulations prohibiting discrimination or harassment in employment or otherwise, or enforcing express or implied contracts, requiring employers to deal fairly or in good faith, or restricting an employer's right to terminate employees, wrongful discharge, wrongful termination in violation of public policy, constructive termination, retaliation, defamation, conspiracy, infliction of emotional distress (intentional or negligent), invasion of privacy, assault, battery, physical or personal injury, emotional distress, fraud, negligent misrepresentation, misrepresentation, or any other tort, or any law, such as California Business & Professions Code sections 17200, *et seq.* and California Labor Code sections 2698,

et seq. This Complete and General Release is intended by the Parties to apply to the Named Plaintiffs and to be all encompassing and to act as a full and total release of any employment-related claims, whether specifically enumerated herein or not, that the Named Plaintiffs might have or have had, that exist or ever have existed on or prior to the date the Named Plaintiffs sign this Settlement Agreement, and includes, without limitation, all actions, claims and grievances, whether actual or potential, known or unknown, related to, incidental to, or arising out of any action or omission committed or omitted by the Released Parties, or any of them, and/or arising out of the Named Plaintiffs' employment relationships with Defendant, through the date the Named Plaintiffs sign this Settlement Agreement. This Complete and General Release includes a 1542 Waiver. Notwithstanding the foregoing or any other provision herein to the contrary, nothing in this Settlement Agreement releases any claims that cannot be released as a matter of law, including claims for Workers' Compensation benefits.

(iii) **“1542 Waiver,”** which means an express waiver, to the fullest extent permitted by law, of the provisions, rights, and benefits of California Civil Code section 1542, or any other similar provision under federal or state law, which Section provides:

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.

To the fullest extent permitted by law, Named Plaintiffs waive and relinquish any and all rights or benefits they have or may have under California Labor Code section 1542, or any comparable provision of state or federal law, with regard to the Released Class Claims for the time period beginning May 2, 2014 through the date of the entry of the Preliminary Approval Order.

2.35 “Released Parties” means and refers to First Transit, First Transit’s current or former Affiliates, parents, subsidiaries, holding companies, investors, divisions, employee benefit plans, or other related entities, as well as all of its and their past or present officers, directors, shareholders, partners, principals, agents, insurers, employees, attorneys, advisors, accountants, auditors, representatives, vendors, fiduciaries, reinsurers, trusts, trustees, heirs, executors, administrators, predecessors, successors or assigns of any of the foregoing, and each of them, both individually and in their official capacities.

2.36 “Releasing Parties” means and refers to the Named Plaintiffs and Participating Class Members, and any agents, partners, affiliates, predecessors, successors, spouses, heirs, assigns, insurers, and any other persons or entities claiming by or through any of them.

2.37 “Response Deadline” means and refers to the deadline by which Class Members must postmark Requests for Exclusion to the Settlement Administrator or file Notices of Objection with the Court. The Response Deadline will be sixty (60) calendar days after the initial mailing date of the Class Notice by the Settlement Administrator, unless the 60th day falls on a Sunday or Federal holiday, in which case the Response Deadline will be extended to the next day on which the U.S. Postal Service maintains operations. Compliance with the Response Deadline will be determined by the date of the postmark on the Request for Exclusion or Notice of Objection. To be timely and effective, a Class Member must submit a Request for Exclusion to the Settlement Administrator or file a Notice of Objection with the Court on or before the Response Deadline.

2.38 “Request for Exclusion” means and refers to a written request that a Class Member must timely submit to the Settlement Administrator in order to be excluded from this Settlement. The Request for Exclusion must: (1) set forth the name, address, telephone number and last four digits of the Social Security number of the Class Member requesting exclusion; (2) be signed by the Class Member; (3) be returned to the Settlement Administrator; (4) clearly state that the Class Member does not wish to be included in the Settlement; and (5) be postmarked on or before the Response Deadline.

2.39 “Service Award” means and refers to the payments from the Maximum Settlement Amount to the Named Plaintiffs in recognition of their service to the Class and as consideration for executing this Settlement Agreement and providing a Complete and General Release to the Released Parties. Class Counsel shall seek Court approval of the Service Awards for Named Plaintiffs in the amount of Five Thousand Dollars and Zero Cents (\$5,000.00) each.

2.40 “Settlement” and “Settlement Agreement” mean and refer to this Class Action Settlement Agreement and its exhibits.

2.41 “Settlement Account” means and refers to the segregated account established and controlled by the Settlement Administrator, which meets the requirements of a Qualified Settlement Fund under US Treasury Regulations section 468B-1 and in which the amount constituting the Maximum Settlement Amount will be deposited and from which any amounts are paid. No other funds shall be comingled within the Settlement Account.

2.42 “Settlement Administration Costs” means and refers to all costs payable from the Maximum Settlement Amount to the Settlement Administrator for administering this Settlement Agreement, including, but not limited to: printing, distributing, and tracking documents for this Settlement Agreement; tax calculation and reporting; distributing the Maximum Settlement Amount, and providing necessary declarations and reports, as requested by the Parties. The

Settlement Administration Costs shall not exceed Twenty Thousand Dollars and Zero Cents (\$20,000.00).

2.43 “Settlement Administrator” refers to American Legal Claim Services, LLC, the third party selected jointly by the Parties to administer the terms of this Settlement, subject to the Court’s approval.

2.44 “Settlement Orders” means and refers to any orders entered to implement the terms of this Agreement, including, but not limited to, the Preliminary Approval Order and the Final Approval Order in the forms attached hereto as Exhibits “1” and “3”, respectively.

2.45 “Void Date” means and refers to the date by which any checks issued to Participating Class Members shall become void, *i.e.*, on the 181st day after mailing.

3. PAYMENTS FROM THE MAXIMUM SETTLEMENT FUND

3.1 Duties of the Settlement Administrator. The Settlement Administrator’s duties will include preparing, printing, and mailing the Class Notice as required by this Agreement; calculating each Class Member’s estimated Individual Settlement Payment to be included in the Class Notice; setting up website for Class Members to review the Settlement terms; receiving, reviewing for validity and processing completed Requests for Exclusion and requests to be included in the Class; providing the Parties with weekly status reports about the

delivery of Class Notices and receipt of completed; providing the parties with a report on the results of the notice procedure; calculating final Individual Settlement Payments; issuing the checks to effectuate the payments due under the Settlement; issuing the tax reports and payments required under this Settlement; and otherwise administering the Settlement pursuant to this Agreement. The Settlement Administrator will have the final authority to resolve all disputes concerning the calculation of a Class Member's Individual Settlement Payment, subject to the dollar limitations and calculations set forth in this Agreement. The Settlement Administrator's reasonable fees and expenses, including the cost of printing and mailing the Class Notice and Individual Settlement Payments, will be paid out of the Gross Settlement Amount.

3.2 Funding Source. First Transit shall make a one-time deposit in the amount of the Maximum Settlement Amount to the Settlement Administrator on or before the tenth (10th) business day after the Effective Date. The Maximum Settlement Amount shall be deposited into the Settlement Account and shall remain in that segregated account until disbursed, pursuant the terms of this Settlement Agreement.

3.3 Class Counsel Fees Award. Class Counsel shall file a motion for approval of an award of attorneys' fees in an amount not to exceed Six Hundred Twenty-Five Thousand Dollars and Zero Cents (\$625,000.00), which represents

twenty-five percent (25%) of the Maximum Settlement Amount, with the motion for final approval. First Transit agrees not to oppose or impede such request. Subject to Court approval and the occurrence of the Effective Date, the Settlement Administrator shall pay from the Maximum Settlement Amount the sum of Six Hundred Twenty-Five Thousand Dollars and Zero Cents (\$625,000.00), or such lesser amount as may be awarded by the Court, within fourteen (14) calendar days after receipt of the Maximum Settlement Amount from First Transit. The Settlement Administrator shall disburse such amount to Class Counsel by wire transfer. Any attorneys' fees awarded by the Court to Class Counsel shall be remitted to the firms of the Law Office of Sheldon A. Ostroff and Artiano Shinoff (the "Firm" or "Firms") c/o Sheldon A. Ostroff, the Law Office of Sheldon A. Ostroff. The Firms shall distribute such attorneys' fees to Class Counsel in such proportions as the Firms shall in good faith determine represents each such counsel's contribution to the prosecution and resolution of the Actions. The Law Office of Sheldon A. Ostroff agrees to provide the Settlement Administrator with an executed IRS Form W-9 before the Class Counsel Fees Award is issued. The Settlement Administrator shall issue an IRS Form 1099 to The Law Office of Sheldon A. Ostroff for the payments made pursuant to this Section. Class Counsel agree that the amount of attorney's fees awarded by the Court shall constitute all attorneys' fees to which Class Counsel shall be entitled in the Actions, and Class

Counsel shall not make any further application for an award of attorneys' fees. This Settlement is not contingent on the Court awarding Class Counsel any particular amount in attorney's fees.

Notwithstanding the foregoing, the Parties agree that Class Counsel may appeal any Class Counsel Fees Award that is less than \$625,000.00.

3.4 Class Counsel Costs Award. Class Counsel shall also request approval in its motion for attorneys' fees of an award of actual and reasonable costs in an aggregate amount that does not exceed Fifty Thousand Dollars and Zero Cents (\$50,000.00). First Transit agrees not to oppose or impede such request. Subject to Court approval and the occurrence of the Effective Date, the Settlement Administrator shall pay from the Maximum Settlement Amount the sum of Fifty Thousand Dollars and Zero Cents (\$50,000.00), or such lesser amount as may be awarded by the Court, as compensation for Class Counsel's actual and reasonable costs, within fourteen (14) calendar days after receipt of the Maximum Settlement Amount from First Transit. Class Counsel agree that the amount of costs awarded by the Court shall constitute all litigation costs to which Class Counsel shall be entitled in the Actions, and Class Counsel shall not make any further application for an award of costs. This Settlement is not contingent on the Court awarding Class Counsel any particular amount in litigation costs. Any litigation costs awarded by the Court to Class Counsel shall be remitted to the Firms (as defined in

the preceding Section) c/o Sheldon A. Ostroff, the Law Office of Sheldon A. Ostroff. The Firms shall distribute such costs to Class Counsel in such proportions as such costs were incurred by the Firms. The Law Office of Sheldon A. Ostroff agrees to provide the Settlement Administrator with an executed IRS Form W-9 before the Class Counsel Costs Award is issued. The Settlement Administrator shall issue an IRS Form 1099 to The Law Office of The Law Office of Sheldon A. Ostroff for the payment made pursuant to this Section.

Notwithstanding the foregoing, the Parties agree that Class Counsel may appeal any Class Counsel Cost Award that is less than \$50,000.00, or the actual costs sought by Class Counsel in their motion for litigation costs, whichever is less.

3.5 Settlement Administration Costs. The costs of administration are currently estimated to be and shall not exceed Twenty Thousand Dollars and Zero Cents (\$20,000.00). The Settlement Administration Costs approved by the Court will be paid from the Maximum Settlement Amount. The Settlement Administrator shall pay itself from the Maximum Settlement Amount an amount not to exceed Twenty Thousand Dollars and Zero Cents (\$20,000.00), or such lesser amount as may be approved by the Court, within fourteen (14) calendar days after receipt of the Maximum Settlement Amount from First Transit, for settlement administration work performed, and to be performed, by the Settlement Administrator in carrying out its duties to administer the Settlement. Other than the amount described in this

Section, no Party, Class Member, or Counsel shall be responsible for the payment of any additional cost of administration.

3.6 Service Awards. Class Counsel shall request Service Awards payable to Named Plaintiffs French and Breisacher, in the amount of Five Thousand Dollars and Zero Cents (\$5,000.00) each. The Service Awards shall compensate the Named Plaintiffs for the efforts that they undertook on behalf of and for the benefit of all Class Members and are in addition to any Individual Settlement Payments they may receive pursuant to this Agreement. First Transit agrees not to impede or oppose such request. The Settlement Administrator shall pay from the Maximum Settlement Amount an amount not to exceed Five Thousand Dollars and Zero Cents (\$5,000.00) each, or such lesser amount as may be awarded by the Court, for payment of the Service Awards to Named Plaintiffs no later than fourteen (14) calendar days after receipt of the Maximum Settlement Amount from First Transit. Service Awards approved by the Court shall be made payable to the Named Plaintiffs and provided to Class Counsel, Attn: Sheldon A. Ostroff, for delivery to the Named Plaintiffs. The Settlement Administrator shall report the Service Awards as non-wage income on IRS Form 1099s. Other than any reporting of this payment as required by this Settlement Agreement or applicable law, the Named Plaintiffs shall be solely responsible for the reporting and payment of any

federal, state and/or local income or other form of tax on any payment made pursuant to this Section.

3.7 Employment Taxes. All Individual Settlement Payments paid to Participating Class Members will be paid in a net amount after deducting that individual's applicable state and federal tax withholdings, applicable payroll deductions, any other deductions required by state and local law, and social security withholdings, and any employer-side payroll taxes owed.

3.8 Tax Allocation. For income and payroll tax purposes, the Parties agree that Individual Settlement Payments shall be allocated as 1/3 wages, 1/3 penalties, and 1/3 interest. Other than withholding and reporting responsibilities to be completed by the Settlement Administrator as to the wage component of the Individual Settlement Payments, Participating Class Members shall be solely responsible for the payment of any federal, state and/or local income or other taxes on their respective Individual Settlement Payments, and Named Plaintiffs shall be solely responsible for the payment of any federal, state and/or local income or other taxes on their respective Service Awards.

3.9 PAGA Award. The LWDA was duly notified of the Labor Code violations alleged in the Actions as required by the PAGA, and the LWDA did not respond within the specified time limits. Subject to review and approval by this Court as required by California Labor Code section 2699(1)(2), the Parties have

agreed that First Transit shall allocate the sum of One Hundred Thousand Dollars and Zero Cents (\$100,000.00) of the Maximum Settlement Amount in satisfaction of any and all claims for civil penalties pursuant to the PAGA, and that seventy-five percent (75%) of this amount, or Seventy-Five Thousand Dollars and Zero Cents (\$75,000.00), shall be paid to the LWDA. The Settlement Administrator shall distribute this payment to the LWDA no later than fourteen (14) calendar days after receipt of the Maximum Settlement Amount from First Transit. The remaining Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00) will be included in the Net Distribution Fund and distributed as part of the Individual Settlement Payments to Participating Class Members.

4. PLAN OF ALLOCATION

4.1 General Requirements. Each Participating Class Member shall receive an Individual Settlement Payment from the Net Distribution Fund which will be calculated based on the number of Compensable Workweeks worked during the Class Period. Participating Class Members are not required to submit a claim, or take any action, to receive an Individual Settlement Payment.

4.2 Plan of Allocation Calculation. Each Participating Class Member shall be allocated a share of the Net Distribution Fund and such amounts shall be known as the Individual Settlement Payments. The Individual Settlement Payments are determined as follows:

- The Parties have estimated the Net Distribution Fund to be \$1,720,000.
- A work week valuation will be computed by dividing the Total Compensable Workweeks worked by Participating Class Members by the Net Distribution Fund.
- The Individual Settlement Payments will be computed for each Participating Class Member by multiplying the number of Compensable Workweeks he/she worked during the Class Period by the work week valuation.

4.3 Final Calculation of Compensable Workweeks. A final calculation for the total Compensable Workweeks by the Participating Class Members during the Class Period shall be calculated pursuant to Section 4.2 above, through the date of the Preliminary Approval Order. The final calculation of the total Compensable Workweeks shall be the denominator for the calculations to be performed pursuant to the Plan of Allocation.

5. COURT APPROVAL

5.1 Preliminary Approval. Named Plaintiffs shall move the Court for an order granting preliminary approval of this Settlement Agreement, including the proposed Class Notice, with the mutually acceptable proposed Preliminary Approval Order substantially in the form attached hereto as Exhibit “1”.

5.2 Objections, Requests for Exclusion and Claims. The Preliminary Approval Order shall specify, among other things, that Class Members shall have sixty (60) calendar days from the date the Class Notice is mailed to Class Members to file a Notice of Objection to the approval of this Settlement Agreement or to submit to the Settlement Administrator a Request for Exclusion.

5.3 Final Approval. If the Agreement has not been terminated in accordance with Section 10.28 below, Named Plaintiffs shall, within thirty (30) calendar days of the Response Deadline, file a motion for final approval with the mutually acceptable proposed Final Approval Order substantially in the form attached hereto as Exhibit “3”.

6. CLASS NOTICE

6.1 Class List. No more than fourteen (14) calendar days after entry of the Preliminary Approval Order, Defendant shall provide the Settlement Administrator with the Class List for purposes of mailing the Class Notice to Class Members. At the same time, Defendant shall provide Class Counsel with the total number of Class Members and the total number of Compensable Workweeks worked by Class Members during the Class Period. Because Class Members’ sensitive personal information is included in the Class List, the Settlement Administrator shall maintain the Class List securely and in confidence. Access to

such Class List shall be limited to employees of the Settlement Administrator with a need to use the Class List for administration of the Settlement.

6.2 Mailed Notice. The Settlement Administrator will verify the most recent mailing address information contained in the Class List by: (i) processing the information contained in the Class List through the United States Postal Service's National Change of Address ("NCOA") database; and (ii) performing address searches using Accurint, or a similar search engine or database. Within fifteen (15) calendar days of its receipt of the Class List from Defendant, the Settlement Administrator shall send by U.S. First Class Mail, postage prepaid, the Class Notice approved by the Court to each Class Member.

6.3 Returned Mail. Any Class Notice returned to the Settlement Administrator as non-deliverable shall be sent to the forwarding address, if any, provided with the returned Class Notice. If there is no forwarding address provided, the Settlement Administrator shall utilize commercially reasonable means to obtain a current address and, if a current address is located, promptly re-mail the Class Notice. Compliance with the notice procedures specified in this Settlement Agreement shall constitute due and sufficient notice to Class Members of this Settlement and shall satisfy the requirements of due process. Nothing else shall be required or, or done by, the Parties, Class Counsel, or Defendant's Counsel to provide notice of the proposed Settlement. If the procedures in this Section are

followed, and the Class Notice is still returned to the Settlement Administrator as undeliverable, the Settlement Administrator shall be deemed to have satisfied its obligation to provide the Class Notice to the Class Member, and the intended recipient shall nevertheless be deemed a Participating Class Member and will be bound by all the terms of the Settlement Agreement and Final Approval Order.

7. OBJECTIONS, REQUESTS FOR EXCLUSION, ADMINISTRATION AND OTHER DUTIES OF THE SETTLEMENT ADMINISTRATOR

7.1 Objections. The Class Notice shall inform Class Members that if they wish to object to the Settlement Agreement, they must provide a written statement to the Court and serve it on Counsel for the Parties on or before the Response Deadline. To object to the Settlement Agreement, a Class Member must file a valid Notice of Objection with the Court and serve it on the Parties on or before the Response Deadline. The Notice of Objection must be signed by the Class Member and must contain all the information listed in Section 2.37 of this Settlement Agreement. The filing date will be deemed the exclusive means for determining whether the Notice of Objection is timely. No Class Member shall be entitled to be heard at the Final Approval Hearing (whether individually or through separate counsel) or to object to the Settlement Agreement, and no written objections or briefs submitted by any Class Member shall be received or considered by the Court at the Final Approval Hearing, unless written notice of the Class Member's intention to appear at the Final Settlement Hearing, and copies of any written objections or briefs, have been filed with the Court on or before the Response Deadline. Class Members who fail to file timely written objections as required by this Settlement Agreement shall be deemed to have waived any

objections and shall be foreclosed from making any objection (whether by appeal or otherwise) to the Settlement Agreement or the Final Approval Order. At no time will any of the Parties or their counsel seek to solicit or otherwise encourage Class Members to submit written objections to the Settlement Agreement or appeal from the Final Approval Order and Judgment.

7.2 Request for Exclusion (Opt Out). The Class Notice shall inform Class Members that they may exclude themselves from the Settlement Agreement. If a Class Member elects to opt out, the Class Member must submit to the Settlement Administrator a timely, written Request for Exclusion on or before the Response Deadline. The date of the postmark on the return mailing envelope shall be the exclusive means used to determine if a Request for Exclusion is timely. Any Class Member who submits a valid and timely Request for Exclusion will not be entitled to any Individual Settlement Payment, will not be bound by the Settlement Agreement, and will not have any right to object, appeal or comment on the Settlement. Class Members who fail to submit a valid and timely Request for Exclusion on or before the Response Deadline shall be bound by all terms of the Agreement and the Final Approval Order. If a complete and properly executed Request for Exclusion is not timely received by the Settlement Administrator, then that Class Member will have forever waived his or her right to opt out of this Settlement.

7.3 Request for Inclusion in Class. If an individual does not receive the Class Notice but communicates with Class Counsel and/or the Settlement Administrator on or before the Response Deadline to inquire about whether they are a Class Member, or asserts that they are a Class Member, Class Counsel or the Settlement Administrator shall notify Defendant's Counsel about the communication within three (3) business days of the communication. First Transit

shall review its records to determine whether the employee is or is not a Class Member and inform Class Counsel and the Settlement Administrator within five (5) business days of its determination and the reasons for its decision. If the Parties are unable to reach agreement on whether the employee is a Class Member, the Settlement Administrator shall make the final binding determination based on information provided by First Transit, Class Counsel, and the employee.

7.4 Settlement Administration. The Settlement Administrator shall administer this Settlement as follows:

7.4.1 Direct Payment of Settlement Awards to Participating Settlement Class Members. Participating Settlement Class Members are not required to submit a claim, or take any action, to receive a Settlement Award.

7.4.2 Disputed Settlement Payments. Each Class Notice will specify the amount of the Class Member's estimated gross Individual Settlement Payment. If the Class Member disagrees with the estimated amount, he or she will be required to provide documentation to the Settlement Administrator supporting his/her assertion by the Response Deadline. If the Class Member does not submit documentation to support his/her assertion, it shall be conclusively presumed that the estimated Individual Settlement Payment on the Class Notice prepared by the Settlement Administrator is correct. If the Class Member provides documentation to support his/her contention that the estimated Individual Settlement Payment is incorrect, the Settlement Administrator shall examine records maintained by First Transit with regard to the Class Member and decide the dispute. The Settlement Administrator's decision will be final.

7.4.3 Report of Requests for Exclusion. Within fourteen (14) calendar days after the Response Deadline, the Settlement Administrator shall provide:

(1) Defendant's Counsel with a complete list of all Class Members who have submitted timely and valid Requests for Exclusion, including their name and Social Security number; and (2) Class Counsel with a summary report that includes only the number of timely and valid Requests for Exclusion received by the Settlement Administrator.

7.4.4 Settlement Accounting. Within ten (10) calendar days after the Effective Date, the Settlement Administrator will provide the Parties with an accounting of all anticipated payments from the Settlement Account as specified in this Settlement Agreement and approved by the Court, including: (1) Named Plaintiffs' Service Awards; (2) the Class Counsel Fees Award; (3) the Class Counsel Costs Award; (4) the combined total amount of Individual Settlement Payments and all related taxes thereon; and (5) the PAGA Award to the LWDA.

7.4.5 Payment of Individual Settlement Payments. Individual Settlement Payments shall be mailed by the Settlement Administrator to Participating Class Members no later than fourteen (14) calendar days after First Transit deposits the Maximum Settlement Amount in the Settlement Account. The Individual Settlement Payments shall be mailed by First Class U.S. Mail. The Settlement Administrator is not required to mail an Individual Settlement Payment to any Participating Class Member whose Class Notice was returned as undeliverable after complying with Section 6.2 above. If any Individual Settlement Payments are returned as undeliverable, the Settlement Administrator shall comply with the procedure set forth in Section 6.2 above. Any Individual Settlement Payments that remain undeliverable shall be treated the same as a "failure to cash" after the expiration of one hundred eighty (180) calendar days from the date of issuance.

7.4.6 Failure to Cash. A Participating Class Member must present his or her Settlement Award check for payment within one hundred eighty (180) calendar days from the date the Settlement Payment check was issued. The amount of any Settlement Payment checks that are not negotiated within 180 days of being issued shall go by way of *cy pres* to the Labor and Workforce Development Agency and be paid by the Settlement Administrator no later than eighteen (18) calendar days after the expiration of the one hundred and eightieth calendar day after the Settlement Payments were issued. Thereafter, the Settlement Administrator shall terminate the Settlement Fund.

7.4.7 Tax Liability, Withholding, Payment and Reporting. The Settlement Administrator shall calculate the employer's portion of the payroll tax due on the Individual Settlement Payments, and shall also calculate each Participating Class Member's portion of the payroll and other tax withholdings and deductions (Federal income taxes, State income taxes, employee's share of FICA taxes and other State-specific statutory deductions) from the wage component of the Settlement Payments, deduct such amounts from the gross Individual Settlement Payments, and pay such amounts to the appropriate federal, state, and/or local authorities in connection with those Individual Settlement Payments that are cashed by Participating Class Members. The Settlement Administrator shall timely report each Individual Settlement Payment on an IRS Form W-2 and IRS Form 1099 to each Participating Class Member who cashes his or her Individual Settlement Payment. The Settlement Administrator shall also timely report on IRS Form 1099s any non-wage payments, including the Service Award and Class Counsel's attorneys' fees and costs. Other than withholding and reporting responsibilities to be completed by the Settlement Administrator, Participating Class Members shall be solely responsible for the reporting and

payment of their share of any federal, state and/or local income or other taxes on non-wage payments received pursuant to this Settlement.

7.4.8 Final Accounting. No later than sixty (60) calendar days after the Void Date, the Settlement Administrator shall submit to the Parties for filing with the Court a final written accounting under oath of all monies paid from the Maximum Settlement Amount to certify the completion of the administration of the Settlement.

7.4.9 Maintenance of Records. In addition to any other specific requirement in this Agreement, the Settlement Administrator shall maintain complete, accurate, and detailed records regarding the administration of the Maximum Settlement Amount, including, but not limited to, requests for correction or supplementation, dispute resolutions, employee and withholding tax calculations, IRS and state tax forms, including W-2s and 1099s, and any and all receipts by and disbursements from the Maximum Settlement Amount. The Settlement Administrator shall make such records available to Defendant's Counsel or to their designee upon reasonable request and at reasonable times. Upon request, the Settlement Administrator shall provide such records to Defendant's Counsel in electronic form. The Settlement Administrator shall provide counsel for the Parties with weekly reports of the number of valid Requests for Exclusion and Objections to the Settlement. The Settlement Administrator shall maintain all records for a period of not less than four (4) years following the expiration of the Effective Date.

8. RELEASES

8.1 Exception. The releases in this Agreement do not apply to the obligations and rights created by this Agreement.

8.2 Participating Class Members. All Class Members who do not file a Request for Exclusion by the Response Deadline release on behalf of themselves and each of their heirs, representatives, successors, assigns, and attorneys, and forever discharge the Released Parties from the Released Class Claims

9. NOTICES

9.1 Designated Recipients. Unless otherwise specified in this Settlement Agreement or agreed to in writing by the Party receiving such communication, all notices, requests, or other required communications hereunder shall be in writing and shall be sent by one of the following methods: (a) first class mail, postage prepaid; (b) by facsimile, with the original by first class mail; or (c) by personal delivery (including by Federal Express or other courier service). All such communications shall be sent to the undersigned persons at their respective addresses as set forth herein below:

Class Counsel

Sheldon A. Ostroff
LAW OFFICE OF SHELDON A. OSTROFF, APC
2488 Historic Decatur Road, Suite 200
San Diego, California 92106
Telephone: (619) 232-3122
Fax: (619) 232-3264

Daniel R. Shinoff
ARTIANO SHINOFF
2488 Historic Decatur Road, Suite 200
San Diego, California 92106
Telephone: (619) 232-3122

Fax: (619) 232-3264

Defendant's Counsel

David J. Dow

LITTLER MENDELSON, P.C.

501 West Broadway, Suite 900

San Diego, California 92101

Telephone: (619) 232-0441

Fax: (619) 232-4302

9.2 Changes in Designated Recipients. Any Party may re-designate the person to receive notices, requests, demands, or other communications required or permitted by this Settlement Agreement by providing written notice to all Parties and the Settlement Administrator.

10. MISCELLANEOUS TERMS

10.1 Admissibility. This Settlement Agreement, any negotiations or proceedings related hereto, the implementation hereof, and any papers submitted in support of the motions for preliminary and/or final approval of this Settlement Agreement, shall not be construed as, nor deemed to be evidence of, any admission or concession by any of the Parties or any other person regarding liability, defenses, or the appropriateness of class treatment, and shall not be offered or received in evidence in any action or proceeding for any purpose whatsoever other than to obtain the Settlement Orders or to implement or enforce this Settlement Agreement, or any of the terms of this Settlement Agreement.

10.2 Assignment. The Named Plaintiffs represent, covenant, and warrant that they have not directly or indirectly assigned, transferred, encumbered or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action, or rights herein released and discharged, except as set forth in this Settlement Agreement.

10.3 Authority. Counsel for the Parties warrant and represent that they are expressly authorized by the Parties whom they represent to negotiate this Settlement Agreement and to take all action required or permitted to be taken by such Parties pursuant to this Settlement Agreement and to execute any other documents to effectuate the terms of this Settlement Agreement. The person signing this Settlement Agreement on behalf of First Transit represents and warrants that he/she is authorized to sign this Settlement Agreement on behalf of First Transit.

10.4 Beneficiaries. This Settlement Agreement shall be binding upon, and inure to the benefit of, the successors or assigns of the Parties hereto.

10.5 CAFA Notice. Pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. section 1715 (“CAFA”), within ten (10) calendar days after the filing of the Preliminary Approval Motion, Defendant will provide notice of this Settlement to the Attorney General of the United States and the appropriate State official(s). The Parties intend to and believe that the notice pursuant to the procedures described in

this Section complies with the requirements of CAFA, and the Parties will request that the Court adjudicate the validity of the notice in the motion for Final Approval of the Settlement.

10.6 LWDA Notice. Pursuant to California Labor Code section 2699(l), Named Plaintiffs will provide a copy of this Settlement Agreement to the LWDA concurrently with their filing of the Preliminary Approval Motion. Class Counsel will also file a declaration in support of the Preliminary Approval Motion confirming that Named Plaintiffs have submitted the Settlement Agreement to the LWDA in compliance with California Labor Code section 2699(l). The Parties intend to and believe that the notice pursuant to the procedures described in this Section complies with the requirements of the PAGA, and the Parties will request that the Court adjudicate the validity of the notice in the motion for Final Approval of the Settlement.

10.7 Captions and Interpretations. Section titles or captions contained in this Agreement are a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Settlement Agreement or any provision.

10.8 Choice of Law. This Settlement Agreement shall be interpreted, enforced and governed by and under the laws of the State of California and any

action that is commenced to interpret or enforce this Settlement Agreement shall be brought before this Court.

10.9 Class Counsel Signatories. The Class Members are so numerous it is impossible or impractical to have each Class Member execute this Settlement Agreement. Instead, the Class Notice will advise all Class Members of the binding nature of this Settlement Agreement and the releases being provided by Participating Class Members as set forth in this Settlement Agreement. Excepting only the Excluded Class Members, the Class Notice shall have the same force and effect as if this Settlement Agreement was executed by each Class Member.

10.10 Confidentiality. Neither Defendant, Defendant's Counsel, the Named Plaintiffs, nor Class Counsel shall issue, authorize, or contribute to the preparation or dissemination of any press release or statement to anyone other than the Court or Class Members concerning the Actions or this Settlement Agreement, or any of its terms, other than as necessary to effectuate the terms of this Settlement Agreement or as required by law, without the prior written approval of counsel for the other Party.

10.11 Construction. Each of the Parties has cooperated in the drafting and preparation of this Settlement Agreement. Hence, any construction of this Settlement Agreement shall not be construed against any of the Parties. Before declaring any provision of this Settlement Agreement invalid, the Court shall first

attempt to construe the provisions as valid to the fullest extent possible, consistent with applicable precedent so as to render all provisions of this Settlement Agreement valid and enforceable.

10.12 Continuing Jurisdiction. The Court shall retain jurisdiction to interpret, implement and enforce the terms of this Settlement Agreement, and all orders and judgments entered in connection therewith.

10.13 Continuing Liability. No Participating Class Member shall have any claim against Defendant or any of the Released Parties, Defendant's Counsel, the Named Plaintiffs, Class Members, or Class Counsel based on distributions or payments made in accordance with this Settlement Agreement.

10.14 Counterparts. This Settlement Agreement may be executed in one or more counterparts without affecting its enforceability. A facsimile or scanned signature shall have the same effect as an original signature and shall not affect the enforceability of this Settlement Agreement. All executed counterparts and each of them shall be deemed to be one and the same instrument provided that Counsel for the Parties to this Settlement Agreement shall exchange among themselves signed counterparts. Electronic signatures (*e.g.*, Docu-signed signatures) shall not be used to execute this Settlement Agreement; rather, actual ink signatures shall be used to execute this Settlement Agreement.

10.15 Data Reasonably Accurate. The computation of claims and Individual Settlement Payments is based on the Data supplied by Defendant. Defendant represents that, to the best of its knowledge and belief, all data supplied is reasonably accurate, and Defendant further understands and acknowledges that this representation is a material term of this Settlement Agreement.

10.16 Effect of Settlement Payments and Service Awards. Neither the terms of this Settlement Agreement, nor any of the Individual Settlement Payments or Service Awards paid to the Named Plaintiffs and/or any Participating Class Members, to the extent permitted by law, shall create any credit or otherwise affect the calculation of or eligibility for any compensation, bonus, deferred compensation or benefit under any compensation, deferred compensation, pension or other benefit plan, nor shall any such Individual Settlement Payment or Service Award be considered as “compensation” under any pension, retirement, profit sharing, incentive or deferred compensation benefit or plan, nor shall any such payment or award require any contribution or award under any such plan, or otherwise modify any benefits, contributions or coverage under any other employment compensation or benefit plan or program.

10.17 Entire Agreement. This Settlement Agreement supersedes and replaces any and all other prior agreements and all negotiations leading up to the execution of this Settlement Agreement, whether oral or in writing, between the

Parties with respect to the Released Claims. The Parties acknowledge that no representations, inducements, promises, or statements, oral or otherwise, have been made or relied upon by any of the Parties, or by anyone acting on behalf of the Parties, which are not embodied or incorporated by reference herein, and further agree that no covenant, representation, inducement, promise or statement not set forth in this Settlement Agreement shall be of any force or effect.

10.18 Exhibits. The terms of this Settlement Agreement include the terms set forth in any of the attached Exhibits “1” through “3”, which are incorporated by this reference as though fully set forth herein. The Exhibits to this Settlement Agreement are an integral part of the Settlement Agreement. In the event of any conflict between the Settlement Agreement and the Exhibits, the terms of the Settlement Agreement shall control.

10.19 Fair, Adequate, and Reasonable Settlement. The Parties agree that, considering all of the facts and procedural and legal issues, the Settlement Agreement is fair, adequate, and reasonable, and the Parties will so represent to the Court.

10.20 Further Acts. The Parties and their respective counsel will cooperate with each other and use their best efforts to affect the implementation of the Settlement Agreement. In the event the Parties are unable to reach agreement on the form or content of any document needed to implement the Settlement

Agreement, or on any supplemental provisions that may become necessary to effectuate the terms of this Settlement Agreement, the Parties may seek the assistance of the Mediator or Court to resolve such disagreement.

10.21 Injunctive Relief. Defendant contends that its Rest Break Policy was lawful at all times during the Class Period. First Transit will not be required to agree to any injunctive relief as part of this Settlement Agreement.

10.22 Nullification of Settlement Agreement. In the event: (a) the Court does not enter the Preliminary Approval Order as provided herein; (b) the Court does not enter a Final Approval Order as provided herein; or (c) the Settlement does not become final for any other reason, this Settlement Agreement shall be null and void and any order entered by the Court in furtherance of this Settlement shall be treated as void from the beginning. In such case, any funds to be awarded under this Settlement shall be returned to their respective statuses as of the date and time immediately prior to the execution of this Settlement Agreement and the Parties shall proceed in all respects as if this Settlement Agreement had not been executed, except that any Settlement Administration Costs already incurred by the Settlement Administrator shall be paid by the Parties in equal shares, except that if Defendant exercises its option to terminate the Settlement pursuant to Section 10.28, any Settlement Administration Costs already incurred by the Settlement Administrator prior to the termination shall be paid by Defendant. In the event an appeal is filed

from the Court's Final Approval Order or from an order rejecting any motion to intervene under Rule 24 of the Federal Rules of Civil Procedure, or any other appellate review is sought, the administration of the Settlement shall be stayed pending final resolution of the appeal and Defendant will not be required to fund this Settlement until and unless the Effective Date is reached.

10.23 Liability. Nothing contained herein, nor the consummation of this Settlement Agreement, is to be construed as, or deemed to be, an admission of liability, culpability, negligence, or wrongdoing on the part of First Transit. Each of the Parties has entered into this Settlement Agreement with the intention to avoid further disputes and litigation with the attendant inconvenience, risk, and expense. This Settlement Agreement is a settlement document and shall be inadmissible as evidence in any proceeding except in an action or proceeding to approve, interpret, or enforce this Settlement Agreement.

10.24 Modifications. This Settlement Agreement may not be changed, altered, or modified, except in writing and signed by the Parties and approved by the Court. This Settlement Agreement may not be discharged except by performance in accordance with its terms or by a writing signed by the Parties and approved by the Court. No rights under this Settlement Agreement may be waived except in writing. However, if the Court refuses to enter orders granting Preliminary or Final Approval of this Settlement Agreement, the Parties will meet

and attempt in good faith to reach an agreement to resolve the issues identified by the Court as the basis for withholding any such approval. If the Parties are unable to reach an agreement that is acceptable to the Court, this Settlement Agreement shall become void and shall be of no further effect, and Defendant shall not be required to fund the Maximum Settlement Amount.

10.25 Named Plaintiffs' Duties. The Named Plaintiffs agree to (1) sign this Settlement Agreement and by signing this Settlement Agreement are bound by its terms, (2) not file a Request for Exclusion, and (3) not object to any of the terms of this Settlement Agreement. Any violation of these duties shall be void and of no force and effect.

10.26 Right of Appeal. Class Members may not appeal from any Settlement Order unless a timely Notice of Objection to this Settlement Agreement is filed. In addition, Defendant and Class Counsel agree to waive the right to appeal from any Settlement Order with the sole exception that Class Counsel may appeal the award of attorneys' fees and costs if such award is less than the amounts set forth in Sections 3.3 and 3.4 above.

10.27 Defendant's Costs. All of Defendant's attorney's fees and costs incurred in the Actions shall be borne by Defendant from Defendant's separate funds and not paid from the Maximum Settlement Amount, by any Class Member, the Named Plaintiffs, or by Class Counsel.

10.28 Settlement Termination. Defendant, at its sole discretion, shall have the right but not the obligation, to revoke this Settlement Agreement if five percent (5%) or more of the Class Members timely submit Requests for Exclusion from the Settlement. If Defendant elects to terminate this Settlement Agreement, it must notify Class Counsel and the Settlement Administrator by 5:00 p.m. Pacific Standard Time on the tenth (10th) business day after it receives the final list of Excluded Class Members from the Settlement Administrator. If Defendant does not provide the written notice required by this Section, Defendant shall be deemed to have conclusively and forever waived the option to terminate this Settlement Agreement.

10.29 Publicity. Named Plaintiffs and Class Counsel agree that they will not issue any press releases, initiate any contact with the press, respond to any inquiry from the press about this case, or otherwise publicize the Actions, the facts of the Actions, or the outcome of the mediation or Settlement. With the exception of a general description of the case and total settlement amount, with no Party identifying information, Named Plaintiffs and Class Counsel also agree not to publish the terms of the Settlement or any related information on their website(s), for advertising purposes, and/or in publication materials generally available to the public. This provision shall not prevent Class Counsel from referring to this

Settlement in court-filed “adequacy of counsel” showings in other class and representative action.

10.30 No Pending Lawsuits By Named Plaintiffs. Other than the Class Action and French’s Workers’ Compensation claim, Named Plaintiffs represent that they do not have any pending lawsuits, administrative complaints, or charges against Defendant or any of the Released Parties in any local, state, or federal court or administrative agency. Named Plaintiffs further acknowledge that all claims raised therein, if any, shall be fully and finally extinguished by virtue of this Settlement Agreement and the Court’s Final Approval Order.

10.31 Stay. The Parties agree to stay all proceedings, except such proceedings as may be necessary to implement and complete the Settlement Agreement, pending the Final Approval Hearing.

10.32 Tax Advice. The Parties warrant, represent and agree that no Party has provided tax advice to another Party regarding responsibility or liability for any tax matters relating to any payments made under this Settlement Agreement including, but not limited to, the withholding of, or reporting of income.

10.33 Judgment and Continued Jurisdiction. Upon final approval of the Settlement by the Court, the Parties will present the Judgment to the Court for its approval. The Judgment will dismiss the Class Action with prejudice. After entry of the Judgment, the Court will have continuing jurisdiction solely for the purposes

of addressing: (i) the interpretation and enforcement of the terms of the Settlement Agreement; (ii) Settlement administration matters; and (iii) such post-Judgment matters as may be appropriate under court rules or as set forth in this Settlement Agreement.

AGREED TO AND ACCEPTED.

Dated: 11/7/19



Cecil French
Named Plaintiff

Dated: 11/7/19



Kathleen Breisacher
Named Plaintiff

Dated: 11.8.19

FIRST TRANSIT INC.

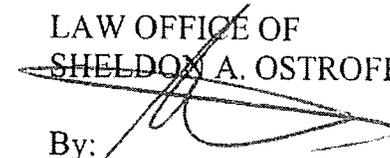
By: 

Its: Secretary

APPROVED AS TO FORM:

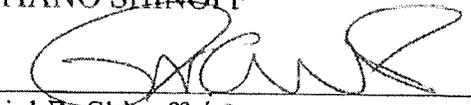
Dated: 11/7/19

LAW OFFICE OF
SHELDON A. OSTROFF

By: 
Sheldon A. Ostroff
Counsel for Named Plaintiffs

Dated: 11/8/19

ARTIANO SHINOFF

By: 
Daniel R. Shinoff / PAUL V. CARELLI IV
Counsel for Named Plaintiffs

Dated: 11/27/19

LITTLER MENDELSON, P.C.

By: 

David J. Dow
Counsel for Defendant

4843-5951-7098.3 070993.1121