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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

ANDREW ALKADY,
Plaintiff,
v.
FIRST TRANSIT, INC.,
Defendant.

Case No.: 16-cv2291-L-BGS

**ORDER DENYING WITHOUT
PREJUDICE PLAINTIFF'S MOTION
FOR PRELIMINARY APPROVAL
OF CLASS ACTION SETTLEMENT**

In this putative class action alleging wage and hour violations on behalf of non-exempt fixed-route bus drivers at Defendant's Orange County Transportation Authority locations in Santa Ana and Irvine, Plaintiff filed an unopposed motion for preliminary approval of class action settlement. The motion is denied without prejudice for the following reasons:

1. Although the operative complaint (doc. no. 9) alleges a number of wage and hour violations, Plaintiff sought to certify a class only with respect to the alleged rest break violations and derivative claims for failure to provide accurate wage statements, failure to timely pay wages upon termination, unfair competition and claims for penalties under Labor Code California Private Attorney General Act. (Doc. no. 43 at 7-8, 16-17; doc. no. 61-1 at 10, 14.) The scope of the proposed settlement is the same. (*See* doc. no. 61-1 at 10.) Nevertheless, the class proposed in Plaintiff's motion for class certification

1 and that class members will in fact benefit. *Id.* (discussing and quoting *Six Mexican*
2 *Workers v. Ariz. Citrus Growers*, 904 F.2d 1301, 1309 (9th Cir. 1990)).

3 4. Federal Rule of Civil Procedure 23(e)(5) provides that "[a]ny class member
4 may object" to the proposed settlement and does not require written objections. Although
5 the parties may encourage class members to provide written objections by a date certain,
6 the Court is not inclined to approve a settlement or notice of settlement suggesting that a
7 class member who does not timely file written objections is barred from objecting. (*See*
8 *Settlement* § 4.09(d); doc. no. 61-3 at 47 *et seq.*)

9 5. The Court will not approve any settlement appointing the Settlement
10 Administrator as a "final arbiter" of any class member substantive rights, for example, a
11 dispute over the number of work weeks used to calculate a class member's distribution
12 from the settlement. (*See, e.g., Settlement* § 4.09(b).)

13 6. The proposed settlement notice is confusing and verbose. (*See* doc. no. 61-3
14 at 47 *et seq.*) The notice should be complete, clear, concise and user-friendly, especially
15 in the areas where a class member may be required to make a decision or take action,
16 such as, disputing the proposed claim calculation, or excluding oneself from or objecting
17 to the settlement. For an example of a settlement notice approved by this Court in a
18 similar context, the parties may refer to *Crane v. Jeld-Wen, Inc.*, U.S. Dist. Ct. S. Dist.
19 Cal. case no.3:17-cv-455-L-WVG doc. 39.

20 7. Insufficient information is provided for the Court to determine whether
21 ILYM, Inc. is qualified to serve as the Settlement Administrator.


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8. Plaintiff has not indicated whether any responses have been received to the notices of settlement pursuant to the Labor Code California Private Attorney General Act or the Class Action Fairness Act.

IT IS SO ORDERED.

Dated: December 31, 2019


Hon. M. James Lorenz
United States District Judge