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**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF KERN**

DIEGO AYALA and JUAN GONZALEZ,  
individually, and on behalf of other members  
of the general public similarly situated and  
aggrieved employees pursuant to the Private  
Attorneys General Act ("PAGA");

Plaintiffs,

v.

J. C. FORD COMPANY, a California  
corporation; and DOES 1 through 100,  
inclusive;

Defendants.

Case No.: BCV-20-102948-DRL

Honorable David R. Lampe  
Department 11

**CLASS ACTION**

**PLAINTIFFS' NOTICE OF MOTION AND  
MOTION FOR PRELIMINARY  
APPROVAL OF CLASS ACTION  
SETTLEMENT; MEMORANDUM OF  
POINTS AND AUTHORITIES IN  
SUPPORT THEREOF**

[Declaration of Proposed Class Counsel  
(Douglas Han); Declaration of Proposed  
Class Representatives (Diego Ayala and  
Juan Gonzalez); and [Proposed] Order  
filed concurrently herewith]

Hearing Date: May 3, 2021  
Hearing Time: 8:30 a.m.  
Hearing Place: Department 11

Complaint Filed: December 17, 2020  
Jury Trial: None Set

1 **PLEASE TAKE NOTICE** that on May 3, 2021 at 8:30 a.m., or as soon as the matter may be  
2 heard before the Honorable David R. Lampe in Department 11 of the Kern County Superior  
3 Court, located at 1415 Truxtun Avenue, Bakersfield, California 93301, Plaintiff Diego Ayala  
4 (“Plaintiff Ayala”) and Plaintiff Juan Gonzalez (“Plaintiff Gonzalez”) (collectively, “Plaintiffs”)  
5 will and hereby do move for an order:

- 6 • Granting preliminary approval of the proposed class action settlement described  
7 herein and as set forth in the Parties’ Joint Stipulation of Class Action Settlement  
8 and Release (“Agreement” or “Stipulation of Settlement”), attached as  
9 “**EXHIBIT 1**” to the Declaration of Douglas Han, including, and not limited to,  
10 the means of allocation and distribution of funds, and the allocations for penalties  
11 under the California Labor Code Private Attorneys General Act of 2004  
12 (“PAGA”), Attorneys’ Fees and Costs, Class Representative Enhancement  
13 Payments, and the Claims Administration Costs;
- 14 • Conditionally certifying the proposed Class for settlement purposes only;
- 15 • Appointing Plaintiff Ayala and Plaintiff Gonzalez as Class Representatives;
- 16 • Appointing Justice Law Corporation as Class Counsel;
- 17 • Approving the proposed Claim Form attached as “**Exhibit A**” to the Settlement  
18 Agreement;
- 19 • Approving the proposed direct-mail of the Notice of Class Action Settlement  
20 attached as “**Exhibit B**” to the Settlement Agreement;
- 21 • Directing the mailing of the proposed Claim Form and Notice of Class Action  
22 Settlement (collectively, known as the “Notice Packet”), together with a postage-  
23 paid return envelope to the proposed Class;
- 24 • Approving the proposed deadlines for the notice and claims administration  
25 process;

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- Approving Simpluris, Inc. (“Simpluris”), as the Claims Administrator; and
- Scheduling a hearing to consider whether to grant final approval of the Agreement, at which time the Court will also consider whether to grant final approval of the requests for Attorneys’ Fees and Costs, the Class Representative Enhancement Payments, the PAGA Payment to the California Labor and Workforce Development Agency (“LWDA”), and the Claims Administration Costs.

This motion is based upon the following memorandum of points and authorities; the Declaration of Proposed Class Counsel (Douglas Han), Declaration of Proposed Class Representative (Plaintiff Ayala), and Declaration of Proposed Class Representative (Plaintiff Gonzalez) in support thereof; the [Proposed] Order lodged together with this motion; as well as the pleadings and other records on file with the Court in this matter and such documentary evidence and oral argument as may be presented at the hearing on this motion.

Dated: April 9, 2021

**JUSTICE LAW CORPORATION**

By:   
\_\_\_\_\_  
Douglas Han  
*Attorneys for Plaintiffs*

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. SUMMARY OF MOTION**

3 Plaintiffs seek preliminary approval of the Agreement entered into by and between  
4 Plaintiffs, individually and on behalf of the proposed Class, and Defendant J.C. Ford Company  
5 (“Defendant”). Subject to Court approval, Plaintiffs and Defendant have agreed to settle this  
6 lawsuit for a Maximum Settlement Amount of up to \$410,000.<sup>1</sup> The Maximum Settlement  
7 Amount includes the following: (1) all Individual Settlement Payments to all Class Members  
8 who submit timely and valid Claim Forms (“Claimants”); (2) Attorneys’ Fees and Costs to  
9 Justice Law Corporation (“Class Counsel”); (3) Claims Administration Costs to the Claims  
10 Administrator; (4) Class Representative Enhancement Payments; and (5) the PAGA Payment  
11 for penalties pursuant to the Private Attorneys’ General Act, California Labor Code sections  
12 2698, *et seq.* (“PAGA”), seventy-five percent (75%) or \$15,000 of which will be paid to the  
13 LWDA (“LWDA Payment”) and the remaining twenty-five percent (25%) or \$5,000 of which  
14 will remain part of the Net Settlement Amount.<sup>2</sup>

15 Plaintiffs also seek to certify the following Class for settlement purposes, consisting of  
16 approximately three hundred (300) Class Members<sup>3</sup>:

17 All persons employed in California by Defendant as current or former hourly-  
18 paid or non-exempt employees at any time during the period from January 1,  
19 2017 through the date the Court grants preliminary approval of the Settlement  
or February 23, 2021, whichever date is earlier (the “Class”).<sup>4</sup>

20 Individual Settlement Payments will be calculated and apportioned from the Net  
21 Settlement Amount based on the number of Workweeks a Class Member worked during the  
22 period from January 1, 2017 through the date the Court grants preliminary approval of the  
23 Settlement or February 23, 2021, whichever date is earlier (the “Class Period”).<sup>5</sup> The  
24 Claims Administrator will calculate the total number of Workweeks worked by each  
25

26 <sup>1</sup> A copy of the Joint Stipulation of Class Action Settlement and Release (“Agreement”) is attached as “**EXHIBIT**  
27 **1**” to the Declaration of Douglas Han (“Han Decl.”).

28 <sup>2</sup> Agreement, *supra*, at ¶ 27-28.

<sup>3</sup> Han Decl., *supra*, at ¶ 9.

<sup>4</sup> Agreement, *supra*, at ¶ 18.

<sup>5</sup> *Id.* at ¶¶ 18, 57.

individual Class Member (“Individual Workweeks”) to determine the total number of Workweeks worked by all Class Members (“Class Workweeks”) during the Class Period.<sup>6</sup> The Claims Administrator will calculate the number of Workweeks by calculating the number of days each Class Member was employed during the Class Period, dividing by seven (7), and rounding up to the nearest whole number.<sup>7</sup> To determine each Class Member’s estimated Individual Settlement Payment, the Claims Administrator will use the following formula: Estimated Individual Settlement Payment = (Net Settlement Amount ÷ Class Workweeks) x Individual Workweeks for each individual Class Member.<sup>8</sup> The Net Settlement Amount refers to the portion of the Maximum Settlement Amount remaining after deduction of the approved Class Representative Enhancement Payments, Claims Administration Costs, LWDA Payment, and Attorneys’ Fees and Costs.<sup>9</sup> This proposed Agreement resolves all of Plaintiffs’ and the Class Members’ Released Claims against Defendant.

## **II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND**

Since 1945, Defendant has been manufacturing food products machinery. Specifically, Defendant is the leading provider of automated equipment and service to the growing tortilla and tortilla chip industry. Plaintiff Gonzalez, a former hourly-paid, non-exempt aggrieved employee of Defendant who worked for Defendant from May 2018 to February 2019, provided notice to the LWDA on November 25, 2019 of the various sections of the California Labor Code he contends Defendant violated, supported by facts and theories of liability. On February 7, 2020, Plaintiff Gonzalez filed a representative PAGA action in the Superior Court for the State of California, County of Orange (Case No. 30-2020-01130670-CU-OE-CJC). Plaintiff Gonzalez filed the PAGA action on behalf of himself and other aggrieved hourly-paid or non-exempt employees who worked for Defendant within the State of California during the period from November 25, 2018, to the present. On December 17, 2020, Plaintiffs Diego Ayala and

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<sup>6</sup> Agreement, *supra*, at ¶ 57(a).

<sup>7</sup> *Id.* at ¶ 41.

<sup>8</sup> *Id.* at ¶ 57(b).

<sup>9</sup> *Id.* at ¶ 29.

1 Juan Gonzalez filed a class action lawsuit in Kern County Superior Court which included both  
2 the PAGA allegations in the original Gonzalez matter and statutory class allegations based on  
3 similar theories. Plaintiffs filed the class action on behalf of themselves and all persons  
4 employed in California by Defendant as current or former hourly-paid or non-exempt employees  
5 at any time during the period from January 1, 2017 through the date the Court grants preliminary  
6 approval of the Settlement or February 23, 2021, whichever date is earlier (the “Class” and the  
7 “Class Period”).

8 The Parties have actively litigated this case since the filing of the initial complaint on  
9 February 7, 2020. On November 4, 2020, Plaintiff Gonzalez and Defendant participated in  
10 mediation before Steve Serratore, Esq., a respected mediator of wage-and-hour class actions.  
11 During the mediation, the Parties exchanged information and discussed all aspects of the case,  
12 including the risks and delays of further litigation and the risks to both Parties of proceeding  
13 with a motion for class certification, Plaintiffs’ theory of liability, the evidence produced and  
14 analyzed, and the possibility of appeals, among other things. During all settlement discussions,  
15 the Parties conducted their negotiations at arm’s-length from adversarial positions.

16 After a full day of negotiations, Mr. Serratore proposed the principal terms of a class-  
17 action settlement. Thereafter, Plaintiff Gonzalez and Defendant accepted Mr. Serratore’s  
18 proposal and stipulated to the material terms of the Agreement. Per the terms of the Agreement,  
19 Plaintiff Gonzalez dismissed his PAGA action to reach a global settlement in this Action.

20 Plaintiffs allege that since January 1, 2017, Defendant violated the California Labor and  
21 Business and Professions Codes by carrying out a uniform practice and procedure of failing to  
22 compensate Plaintiffs and other class members for minimum and overtime wages, failing to  
23 provide legally mandated meal and rest breaks, failing to pay premium wages for non-compliant  
24 meal breaks, failing to pay timely wages, failing to provide accurate and itemized wage  
25 statements, and failing to reimburse business expenses.

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Defendant has denied and continues to deny all allegations and claims and assertions made and legal theories alleged during the course of the lawsuit. Defendant has vigorously contested the claims alleged in this Action and has contended that its employees have been properly paid in accordance with the law.

### **III. SUMMARY OF THE SETTLEMENT TERMS**

Under the terms of the Agreement, Defendant will pay a Maximum Settlement Amount of up to \$410,000 to all Class Members on a claims-made basis.<sup>10</sup> Subject to Court approval, the Net Settlement Amount, which is the maximum amount that will be made available to pay the Class Members, will be calculated by deducting the following amounts from the Maximum Settlement Amount: (1) Attorneys' Fees and Costs in an amount not to exceed \$143,500, which is thirty-five percent (35%) of the Maximum Settlement Amount, for attorneys' fees and reimbursement of litigation costs and expenses in an amount up to \$20,000; (2) Class Representative Enhancement Payments in an amount not to exceed \$7,500 to each Plaintiff; (3) payment in the amount of \$15,000 to the LWDA for its portion of the PAGA penalties; and (4) Claims Administration Costs, which are currently estimated at \$6,399 but will not exceed \$7,500.<sup>11</sup> The Parties have agreed to retain Simpluris as the Claims Administrator to handle the notice and claims administration.<sup>12</sup>

Class Members will have sixty (60) calendar days from the initial mailing of the Notice Packet by the Claims Administrator within which to postmark their Claim Forms for return to the Claims Administrator ("Response Deadline"). The Response Deadline may also be extended by express agreement between Class Counsel and Defendant.<sup>13</sup>

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<sup>10</sup> Settlement Agreement, *supra*, at ¶ 28.

<sup>11</sup> *Id.* at ¶¶ 11, 15, 21, 27, 29.

<sup>12</sup> *Id.* at ¶ 14.

<sup>13</sup> *Id.* at ¶ 40.

1 Individual Settlement Payments will be calculated and apportioned from the Net  
2 Settlement Amount based on the number of Workweeks a Class Member worked during the  
3 Class Period.<sup>14</sup> The Claims Administrator will calculate Individual Workweeks to determine  
4 the Class Workweeks during the Class Period.<sup>15</sup> The Claims Administrator will calculate the  
5 number of Workweeks by calculating the number of days each Class Member was employed  
6 during the Class Period, dividing by seven (7), and rounding up to the nearest whole number.<sup>16</sup>  
7 To determine each Class Member's estimated Individual Settlement Payment, the Claims  
8 Administrator will use the following formula: Estimated Individual Settlement Payment = (Net  
9 Settlement Amount ÷ Class Workweeks) x Individual Workweeks for each individual Class  
10 Member.<sup>17</sup>

11 Defendant will pay no less than fifty percent (50%) of the Net Settlement Amount to  
12 Class Members who submit timely and valid Claim Forms.<sup>18</sup> If the total claimed Individual  
13 Settlement Payments would equal less than fifty percent (50%) of the Net Settlement Amount,  
14 the Claims Administrator will proportionately increase the Individual Settlement Payment for  
15 each Claimant so that the amount actually distributed to Claimants will equal at least fifty  
16 percent (50%) of the Net Settlement Amount.<sup>19</sup> Any unclaimed amounts above fifty percent  
17 (50%) of the Net Settlement Amount will be the exclusive property of Defendant.<sup>20</sup>

18 All Individual Settlement Payments will be allocated as follows: twenty percent (20%)  
19 of each Individual Settlement Payment will be allocated as wages, and eighty percent (80%)  
20 will be allocated as interest and penalties. The portion allocated to wages will be reported on  
21 an IRS Form W-2 and the portions allocated to interest and penalties will be reported on an IRS  
22 Form-1099 by the Claims Administrator.<sup>21</sup> The Claims Administrator will be responsible for  
23 issuing to Plaintiffs, Claimants, and Class Counsel any W-2, 1099, or other tax forms as may be  
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25 <sup>14</sup> Settlement Agreement, *supra*, at ¶ 57.

26 <sup>15</sup> *Id.* at ¶ 57(a).

26 <sup>16</sup> Settlement Agreement, *supra*, at ¶ 41.

27 <sup>17</sup> *Id.* at ¶ 57(b).

27 <sup>18</sup> *Id.* at ¶ 29.

27 <sup>19</sup> *Id.* at ¶¶ 29, 55, 57(c).

28 <sup>20</sup> *Id.* at ¶¶ 29, 73.

28 <sup>21</sup> *Id.* at ¶ 78.

1 required by law for all amounts paid pursuant to this Agreement. The Claims Administrator  
2 will also be responsible for forwarding all payroll taxes and penalties to the appropriate  
3 government authorities.<sup>22</sup>

4 Any Class Member wishing to opt-out from this Stipulation of Settlement must sign and  
5 postmark a written Request for Exclusion to the Claims Administrator by the Response  
6 Deadline.<sup>23</sup> The written request (“Request for Exclusion”) must: (a) be signed by the Class  
7 Member; (b) contain the name, address, telephone number, and last four digits of the Social  
8 Security Number of the Class Member requesting exclusion; (c) clearly state the name of this  
9 case, the case number, and that the Class Member does not wish to be included in the settlement;  
10 (d) be returned by mail to the Claims Administrator at the specified address and/or facsimile  
11 number; and (e) be postmarked on or before the Response Deadline. The date of the postmark  
12 on the return mailing envelope will be the exclusive means to determine whether a Request for  
13 Exclusion has been timely submitted. A Class Member who does not request exclusion from  
14 the settlement (“Settlement Class Member”) will be bound by all terms of the settlement, if the  
15 settlement is granted final approval by the Court.<sup>24</sup> Only those Class Members that do not  
16 submit a Claim Form have the right to opt-out of the Settlement by submitting a Request for  
17 Exclusion.<sup>25</sup>

18 To object to the Settlement, a Class Member must file a valid Notice of Objection with  
19 the Court and serve copies of the Notice of Objection on the Parties before the Response  
20 Deadline.<sup>26</sup> For the Notice of Objection to be valid, it must include: (a) the objector’s full name,  
21 signature, address, and telephone number; (b) a written statement of all grounds for the objection  
22 accompanied by any legal support for such objection; (c) a clear reference to the title of this case  
23 and case number; and (d) copies of any papers, briefs, or other documents upon which the  
24 objection is based.<sup>27</sup> The postmark date of the filing and service will be deemed the exclusive  
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26 <sup>22</sup> Settlement Agreement, *supra*, at ¶ 79.

27 <sup>23</sup> Settlement Agreement, *supra*, at ¶ 67.

28 <sup>24</sup> *Id.* at ¶¶ 39, 68.

<sup>25</sup> *Id.* at ¶ 67.

<sup>26</sup> *Id.* at ¶ 69.

<sup>27</sup> Settlement Agreement, *supra*, at ¶ 30.

1 means for determining that the Notice of Objection is timely. Class Members who fail to object  
2 in the specific and technical manner specified above will be deemed to have waived all  
3 objections to the Settlement and will be foreclosed from making any objections and seeking any  
4 adjudication or review, whether by appeal or otherwise, to this Stipulation of Settlement.<sup>28</sup>

5 Within three (3) business days after the Effective Date, the Claims Administrator will  
6 provide the Parties with an accounting of the amounts to be paid by Defendant pursuant to the  
7 terms of the Settlement, as well as an accounting of any additional amounts that it owes  
8 separately for employer-side payroll taxes. Defendant will deposit such amounts into a  
9 Qualified Settlement Fund account to be established by the Claims Administrator within  
10 fourteen (14) days after the Effective Date.<sup>29</sup> Within seven (7) business days of the third deposit,  
11 the Claims Administrator will calculate and pay all payments due under the Settlement,  
12 including (a) Individual Settlement Payments; (b) the LWDA Payment; (c) the Attorneys' Fees  
13 and Costs; (d) the Class Representative Enhancement Payments; and (e) all Claims  
14 Administration Costs, except that the entire amount payable for Claims Administration Costs  
15 may be paid to the Claim Administrator.<sup>30</sup>

16 Any checks issued by the Claims Administrator to Claimants will be negotiable for at  
17 least one hundred twenty (120) calendar days. Those funds represented by settlement checks  
18 returned as undeliverable and those settlement checks remaining un-cashed for more than one  
19 hundred twenty (120) calendar days after issuance will be sent to the California State  
20 Controller's Unclaimed Property Fund.<sup>31</sup>

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27 <sup>28</sup> *Id.*, ¶ 69.

28 <sup>29</sup> Settlement Agreement, ¶ 49.

<sup>30</sup> *Id.*, ¶ 72.

<sup>31</sup> *Id.*, ¶ 75.

1           **A.     Range of Individual Settlement Payments That Will Likely Be Issued**  
2                                   **to Class Members.**

3           Class Members who submit valid and timely claims to the Claims Administrator will be  
4 issued payments based on the number of Workweeks they worked during the Class Period. As  
5 discussed above, the Individual Settlement Payments will be calculated by dividing the Net  
6 Settlement Amount by the Class Workweeks and multiplying that number by the Individual  
7 Workweeks<sup>32</sup>

8           **IV.   LEGAL   STANDARD   FOR   PRELIMINARY   APPROVAL   OF   CLASS   ACTION**  
9                                   **SETTLEMENTS**

10          The settlement of a class action requires court approval. *Dunk v. Ford Motor Co.* (1996)  
11 48 Cal.App.4th 1794, 1800; Code Civ. Proc. § 1781(f). California courts look to federal  
12 authority for guidance with class action settlements. *Dunk, supra*, 48 Cal.App.4th at p. 1801,  
13 n.7 (citing *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 821). The decision to approve or  
14 reject a proposed settlement is within the court’s discretion. *Wershba v. Apple Computer, Inc.*  
15 (2001) 91 Cal.App.4th 224, 234-35 (“In general, questions whether a settlement was fair and  
16 reasonable, whether certification of the class was proper, and whether the attorney fee award  
17 was proper are matters addressed to the trial court’s broad discretion.”). Accordingly, a court’s  
18 decision to approve a class action settlement may be reversed only upon a strong showing of  
19 “clear abuse of discretion.” *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026;  
20 *Class Plaintiffs v. City of Seattle* (9th Cir. 1982) 955 F.2d 1268, 1276.

21          The approval process of any class action settlement is done in two steps: (1) an earlier  
22 conditional review by the court; and (2) a later detailed review after the period during which  
23 notice is distributed to class members for their comment or objections. Conte & Newberg,  
24 *Newberg on Class Actions* (4th ed. 2002) § 11.24. This procedure, which is commonly utilized  
25 by both federal and state courts, assures class members of the protection of procedural due  
26 process safeguards, and enables a court to fulfill its role as the guardian of the interests of the  
27 settlement class.

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<sup>32</sup> Settlement Agreement, *supra*, ¶ 57(b).

1           Accordingly, preliminary approval does not require a court to make a final determination  
2           that the settlement is fair, reasonable, and adequate. Rather, that decision is made only at the  
3           final approval stage, after notice of the settlement has been given to the class members and they  
4           have had an opportunity to voice their views of the settlement or to exclude themselves from the  
5           settlement. See Cal. R. Ct. 3.769(g). In considering a potential class settlement, the court also  
6           need not reach any ultimate conclusions on the issues of fact and law which underlie the merits  
7           of the dispute, and need not engage in a trial on the merits. See *City of Detroit v. Grinnell*  
8           *Corporation* (2d Cir. 1974) 495 F. 2d 448, 456; *Officers for Justice v. Civil Service Commission*  
9           *of City and County of San Francisco* (9th Cir. 1982) 688 F. 2d 615, 625. Neither formal notice  
10          nor a hearing is required for the trial court to grant provisional class certification and preliminary  
11          approval; the court may grant such relief upon an informal application by the settling parties,  
12          and may conduct any necessary hearing in court or in chambers, at the court’s discretion.  
13          *Newberg*, at § 11.25.

14       **V.    PRELIMINARY APPROVAL OF THE PROPOSED SETTLEMENT IS APPROPRIATE**

15           To grant preliminary approval of a class action settlement, the trial court must  
16          preliminarily determine whether the settlement is fundamentally fair, adequate, and reasonable.  
17          *Dunk, supra*, 48 Cal.App.4th at p. 1800. The court has broad powers to determine whether a  
18          proposed settlement is fair under the circumstances of the case. *Id.* at p. 1801. To make this  
19          fairness determination, courts must consider several relevant factors, including “the strength of  
20          the plaintiffs’ case, the risk, expense, complexity and likely duration of further litigation, the  
21          risk of maintaining class action status through trial, the amount offered in settlement, the extent  
22          of discovery completed and the stage of the proceedings, [and] the experience and views of  
23          counsel [.]” *Dunk, supra*, 48 Cal.App.4th at p. 1801. “The list of factors is not exclusive and  
24          the court is free to engage in a balancing and weighing of the factors depending on the  
25          circumstances of each case.” *Wershba, supra*, 91 Cal.App.4th at p. 245. Furthermore, courts  
26          give “proper deference to the private consensual decision of the parties[.]” *Hanlon, supra*, 150  
27          F. 3d at p. 1027 (citation omitted).

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1 The burden is on the proponent of the settlement to show that it is fair and reasonable.  
2 *Wershba, supra*, 91 Cal.App.4th at p. 245. However, a presumption of fairness exists where:  
3 (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery  
4 are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in  
5 similar litigation; and (4) the percentage of objectors is small. *Id.*; *Dunk, supra*, 48 Cal.App.4th  
6 at p. 1802; *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th  
7 1135, 1151.

8 **A. The Proposed Settlement Agreement Resulted from Arm's Length**  
9 **Negotiations Based Upon Extensive Investigation and Discovery.**

10 Class Counsel have actively litigated this case since it was commenced on February 7,  
11 2020 and were actively preparing for class certification. Class Counsel's extensive formal and  
12 informal investigations into the facts of this case, including multiple interviews of Plaintiffs and  
13 dozens of putative class members and extensive review and analysis of a volume of documents  
14 and data provided by Defendant and obtained through other sources. These documents and data  
15 included, and were not limited to, personnel records for Plaintiffs and other putative class  
16 members (including detailed time and pay records), payroll and pay history data for Class  
17 Members, timecards, Defendant's handbook, and Defendant's operations and employment  
18 policies, procedures, and practices. Counsel for the parties met and conferred on various  
19 occasions regarding the pleadings and discovery, among other issues. The parties conducted an  
20 informal exchange of information and data prior to and during mediation, which included a large  
21 volume of documents and analytical data. Class Counsel scrutinized and analyzed the documents  
22 and data to determine Defendant's degree of potential liability and the value of Plaintiffs' and  
23 Class Members' claims. Based on these documents and data, as well as discussions with defense  
24 counsel, Class Counsel were able to determine, among other things, the total number of Class  
25 Members during the applicable Class Period and the average rate of pay for Defendant's non-  
26 exempt, hourly employees. The information and data obtained in this case enabled Class  
27 Counsel to create a damages model based on the analyzed data in light of countervailing  
28 interpretations of California law. This is in stark contrast with *Kullar*, where it was unclear

1 whether the plaintiff had even so much as reviewed any documents. *Kullar, supra*, 168  
2 Cal.App.4th at p. 129.<sup>33</sup>

3 Furthermore, on November 4, 2020, the parties participated in mediation conducted by  
4 Steve Serratore, Esq., a well-respected mediator. During the mediation, the parties exchanged  
5 further information and discussed all aspects of the case, including the risks and delays of further  
6 litigation and the risks to both parties of proceeding with a motion for class certification,  
7 Plaintiffs' theory of liability, the evidence produced and analyzed, and the possibility of appeals,  
8 among other things. During all settlement discussions, the parties conducted their negotiations  
9 at arm's length in an adversarial position.<sup>34</sup>

10 Arriving at a settlement that was acceptable to both parties was not easy. Defendant and  
11 its counsel felt very strongly about its ability to prevail on the merits and at the certification  
12 stage, while Plaintiffs and Class Counsel believed that they would have obtained class  
13 certification and prevailed at trial.<sup>35</sup> After over a year of litigation, the parties agreed that this  
14 case was well-suited for settlement given the legal issues relating to Plaintiffs' principal claims,  
15 Defendant's present and ongoing financial concerns, and the costs and risks to both sides that  
16 would attend further litigation.<sup>36</sup>

17 The proposed Settlement Agreement takes into account the strengths and weaknesses of  
18 each side's position and the uncertainty of how the case might have concluded at certification  
19 and/or trial.<sup>37</sup> Class Counsel conducted interviews with Plaintiffs and dozens of other putative  
20 class members. Class Counsel also reviewed and analyzed a volume of documents and data  
21 produced by both Plaintiffs and Defendant and performed significant research into the law  
22 concerning Defendant's defenses.<sup>38</sup> The proposed Settlement Agreement is based on this large  
23 volume of facts, evidence, and investigation. Additionally, Class Counsel have extensive  
24 experience in employment class actions, including significant experience in California wage-

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26 <sup>33</sup> Han. Decl., ¶ 14.

27 <sup>34</sup> Han Decl., ¶ 15.

28 <sup>35</sup> *Id.*, ¶ 11.

<sup>36</sup> *Id.*, ¶ 12.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*, ¶ 14.

and-hour litigation, and used that experience to assess the potential value of the claims.<sup>39</sup>

**B. The Settlement Agreement Is Fair, Reasonable, and Adequate.**

A Maximum Settlement Amount of up to \$410,000 represents a fair, adequate, and reasonable resolution of this case.<sup>40</sup> The proposed Settlement Agreement was calculated using information and data uncovered through litigation, formal and informal discovery, case investigation, and the informal exchange of information in the context of mediation.<sup>41</sup> The proposed Settlement Agreement takes into account the potential risks and rewards inherent in any case and, in particular, with this case.<sup>42</sup> Considering all of the facts in this case, the amount of the proposed Settlement represents a substantial global recovery for all Class Members.

Assuming that all of the requested payments, fees, and costs are approved and paid in the full amounts requested, the Net Settlement Amount is currently estimated to be approximately \$210,101.<sup>43</sup> No less than fifty percent (50%) of this sum will be paid out to the Class Members.<sup>44</sup> Individual Settlement Payments will be calculated and apportioned from the Net Settlement Amount based on the number of Workweeks a Class Member worked during the Class Period.<sup>45</sup> There is no reason to doubt the fairness of the proposed plan of allocation of the Settlement funds for purposes of preliminary approval. Even at the final approval stage, “[a]n allocation formula need only have a reasonable, rational basis [to warrant approval], particularly if recommended by experienced and competent class counsel.” *In re American Bank Note Holographics, Inc., Securities Litigation* (S.D.N.Y. 2001) 127 F.Supp.2d 418, 429-30.

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<sup>39</sup> Han Decl., ¶¶ 4-5.

<sup>40</sup> Settlement Agreement, *supra*, at ¶ 51.

<sup>41</sup> Han Decl., ¶ 14.

<sup>42</sup> *Id.*, ¶¶ 52-54.

<sup>43</sup> *Id.*, ¶ 7. The current estimate of the Net Settlement Amount is subject to the employee-side tax and withholdings on the wage portion of each Class Member’s share of the Net Settlement Amount.

<sup>44</sup> *Id.*, ¶ 29.

<sup>45</sup> *Id.*, ¶ 57.

1 In light of the above considerations, Class Counsel believe that the proposed Settlement  
2 Agreement as a whole is fair, reasonable, and adequate, and is in the best interest of the Class  
3 Members.<sup>46</sup> Although the recommendations of Class Counsel are not conclusive, the Court can  
4 properly take the recommendations into account, particularly if Class Counsel appears to be  
5 competent, have experience with this type of litigation, and significant discovery and  
6 investigation have been completed. *Newberg* §11.47. Accordingly, the Court should grant  
7 preliminary approval of the proposed Settlement.

8 **C. Value of Settlement.**

9 Pursuant to *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal. App. 4th 116, Plaintiffs  
10 have conducted a significant amount of discovery and investigation in order to evaluate the  
11 potential value and merit of all of the claims. The discovery and information obtained in this  
12 case allowed Plaintiffs to develop a damages model and complete evaluation of the defenses  
13 that Defendant has asserted.<sup>47</sup> As outlined in the Declaration of Douglas Han, Class Counsel  
14 performed an extensive analysis of each and every claim pursuant to *Kullar* prior to entering  
15 into the proposed Settlement Agreement.<sup>48</sup>

16 **VI. CONDITIONAL CERTIFICATION OF THE CLASS IS APPROPRIATE**

17 For settlement purposes only, the requisites for establishing conditional class  
18 certification are met. Code of Civil Procedure Section 382 “authorizes class actions ‘when the  
19 question is one of a common or general interest, of many persons, or when the parties are  
20 numerous, and it is impracticable to bring them all before the court.’” *Sav-On Drug Stores, Inc.*  
21 *v. Superior Court* (2004) 34 Cal. 4th 319, 326. California courts certify class actions where the  
22 plaintiff identifies “both [1] an ascertainable class and [2] a well-defined community of interest  
23 among class members.” *Id.*

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<sup>46</sup> Settlement Agreement, *supra*, at ¶ 51

28 <sup>47</sup> Han Decl., ¶ 14.

<sup>48</sup> *Id.*, ¶¶ 17-51.

1 Here, the proposed Class is ascertainable and numerous as to make it impracticable to  
2 join all class members, and there are common questions of law and fact that predominate over  
3 any questions affecting any individual Class Member. Plaintiffs' claims are typical of the claims  
4 of the Class Members, and Class Counsel will fairly and adequately protect the interests of the  
5 Class.<sup>49</sup> Furthermore, prosecution of separate actions by individual Class Members would  
6 create the risk of inconsistent or varying adjudications, and a class action is superior to other  
7 available means for the fair and efficient adjudication of the case. As discussed below, this case  
8 is amenable to class certification.

9 **A. The Proposed Class Is Ascertainable and Sufficiently Numerous.**

10 "Ascertainability is required in order to give notice to putative class members as to whom  
11 the judgment in the action will be *res judicata*." *Hicks v. Kaufman & Broad Home Corp.* (2001)  
12 89 Cal. App. 4th 908, 914. "A class is ascertainable if it identifies a group of unnamed plaintiffs  
13 by describing a set of common characteristics sufficient to allow a member of that group to  
14 identify himself or herself as having a right to recover based on the description." *Bartold v.*  
15 *Glendale Federal Bank* (2000) 81 Cal.App.4th 816, 828. The proposed class must also be  
16 sufficiently numerous. *Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.

17 This action involves approximately three hundred (300) Class Members.<sup>50</sup> This Class is  
18 sufficiently numerous. See *Ghazaryan v. Diva Limousine, Ltd.* (2008) 169 Cal. App. 4th 1524,  
19 1531 n.5 (finding that a proposed class of "as many as 190 current and former employees" is  
20 sufficiently numerous). Furthermore, all Class Members can and will be identified by Defendant  
21 to the Claims Administrator through a review of Defendant's employment records with respect  
22 to hourly-paid or non-exempt employees who worked for Defendant in the State of California  
23 during the Class Period.

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28 <sup>49</sup> Han Decl., ¶ 13.

<sup>50</sup> Han Decl., ¶ 9.

1           **B.     The Class Members Share a Well-Defined Community of Interest.**

2           The community of interest requirement “embodies three factors: (1) predominant  
3 common questions of law or fact; (2) class representatives with claims or defenses typical of the  
4 class; and (3) class representatives who can adequately represent the class.” *Sav-On, supra*, 34  
5 Cal.4th at p. 326. “[T]he community of interest requirement for certification *does not mandate*  
6 *that class members have uniform or identical claims.*” *Capitol People First v. Department of*  
7 *Developmental Services* (2007) 155 Cal.App.4th 676, 692 (emphasis in original). Rather, courts  
8 focus on the Defendant’s internal policies and “pattern and practice . . . in order to assess whether  
9 that common behavior toward similarly situated plaintiffs renders class certification  
10 appropriate.” *Id.* (citing *Sav-On, supra*, 34 Cal.4th at 333).

11           The “common issues” requirement “involves analysis of whether the proponent’s ‘theory  
12 of recovery’ is likely to prove compatible with class treatment.” *Capitol People, supra*, 155  
13 Cal.App.4th at p. 690 (emphasis added) (citing *Sav-On, supra*, 34 Cal.4th at p. 327).  
14 Furthermore, the commonality inquiry centers on the “reasonableness” of the Defendant’s labor  
15 policies as applied to the potential class. *Ghazaryan, supra*, 169 Cal.App.4th at p. 1534.

16           Here, Plaintiffs assert that common issues of fact and law predominate as to each of the  
17 claims alleged by Plaintiffs. All non-exempt hourly employees who worked for Defendant  
18 during the Class Period were subject to the same or similar employment practices, policies, and  
19 procedures.<sup>51</sup> All of their claims surround Defendant’s common practice and scheme of failing  
20 to authorize and permit employees to take legally mandated meal and rest breaks, failing to  
21 compensate meal and rest premium wages, failing to compensate employees for all hours  
22 worked, failing to issue complete and accurate wage statements, failing to provide employees  
23 with timely wages within seventy-two (72) hours of their resignation or immediately after their  
24 termination, failing to reimburse employees for necessary business expenses, violating PAGA,  
25 and violating the California Business & Professions Code section 17200, et seq.<sup>52</sup> Based on  
26 these facts, Plaintiffs conclude that the proposed Class is readily certifiable in this case.

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          <sup>51</sup> Han Decl., ¶ 13.

<sup>52</sup> *Id.*, ¶ 11

1 Accordingly, the Court should provisionally certify the Class for settlement purposes only.

2 **VII. REQUEST FOR ATTORNEYS' FEES AND COSTS**

3 Class Counsel have actively litigated this case since it was commenced on February 7,  
4 2020 and were actively preparing for class certification. Class Counsel's extensive formal and  
5 informal investigations into the facts of this case, including multiple interviews of Plaintiffs and  
6 dozens of putative class members and extensive review and analysis of a volume of documents  
7 and data provided by Defendant and obtained through other sources. These documents and data  
8 included, and were not limited to, personnel records for Plaintiffs and other putative class  
9 members (including detailed time and pay records), payroll and pay history data for Class  
10 Members, timecard, Defendant's handbooks, and Defendant's operations and employment  
11 policies, procedures, and practices. Counsel for the parties met and conferred on various  
12 occasions regarding the pleadings and discovery, among other issues. The parties conducted an  
13 informal exchange of information and data prior to and during mediation, which included a large  
14 volume of documents and analytical data. Class Counsel scrutinized and analyzed the documents  
15 and data to determine Defendant's degree of potential liability and the value of Plaintiffs' and  
16 Class Members' claims. Based on these documents and data, as well as discussions with defense  
17 counsel, Class Counsel were able to determine, among other things, the total number of Class  
18 Members during the applicable class period and the average rate of pay for Defendant's non-  
19 exempt, hourly employees.<sup>53</sup> Class Counsel will provide evidence as to the time worked,  
20 litigation efforts, and further argument at the time of filing their memorandum in connection  
21 with the final fairness hearing and in support of their request for Attorneys' Fees and Costs.

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<sup>53</sup> Han Decl., ¶ 14.

1 The proposed Settlement Agreement establishes a Maximum Settlement Amount of up to  
2 \$410,00.<sup>54</sup> The proposed Settlement Agreement provides for Attorneys' Fees and Costs, which  
3 is composed of an award of attorneys' fees in an amount not to exceed thirty-five percent (35%)  
4 of the Maximum Settlement Amount (or \$143,500) and litigation costs and expenses in an  
5 amount not to exceed \$20,000.<sup>55</sup> The requested attorneys' fee award is commensurate with (1)  
6 the risk the Class Counsel took in bringing and litigating this case, (2) the extensive time, effort  
7 and expense dedicated to the case, (3) the skill and determination they have shown, (4) the  
8 results they have achieved throughout the litigation, (5) the value of the Settlement Agreement  
9 they have achieved for Class Members, and (6) the other cases they turned down in order to  
10 devote their time and efforts to this matter. The proposed Notice Packet will provide the Class  
11 Members with information as to the amounts allocated toward Attorneys' Fees and Costs under  
12 the Settlement Agreement and that Class Counsel will apply for Attorneys' Fees and Costs, as  
13 provided for by the Settlement Agreement.<sup>56</sup>

14 Trial courts have "wide latitude" in assessing the value of attorneys' fees and their  
15 decisions will "not be disturbed on appeal absent a manifest abuse of discretion." *Lealao v.*  
16 *Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 41. Indeed, it is long settled that the  
17 "experienced trial judge is the best judge of the value of professional services rendered in his  
18 court[.]" *Ketchum v. Moses* (2001) 24 Cal. 4th 1122, 1132. California law provides that attorney  
19 fee awards should be equivalent to fees paid in the legal marketplace to compensate for the result  
20 achieved and risk incurred. *See Lealao, supra*, 82 Cal.App.4th at p. 47. In *Lealao*, the court  
21 held that when an action leads to a recovery that can be "monetized" with a reasonable degree  
22 of certainty, the trial court should "ensure that the fee awarded is within the range of fees freely  
23 negotiated in the legal marketplace in comparable litigation." *Id.* at p. 50. In cases where class  
24 members present claims against a maximum settlement fund and the settlement agreement  
25 provides that the defendant agrees to paying the attorneys a percentage of the same, use of the  
26 percentage method is appropriate. *See Lealao, supra*, 82 Cal.App.4th at p. 32.

27 <sup>54</sup> Settlement Agreement, ¶ 28.

28 <sup>55</sup> Han Decl., ¶ 11.

<sup>56</sup> *Id.*, ¶ 63.

1 Class Counsel's application for attorneys' fees in light of the facts and circumstances  
2 surrounding the case is well within the range of reasonableness. Historically, courts have  
3 awarded fees as high as fifty percent (50%) of the settlement fund, depending on the  
4 circumstances of the case. *Newberg* § 14.03; *see also In re Ampicillin Antitrust Litigation* (D.  
5 D.C. 1981) 526 F. Supp. 494 (awarding attorneys' fees in the amount of 45% of the \$7.3 million  
6 settlement fund); *Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.* (S.D.N.Y. 1979)  
7 480 F. Supp. 1195 (awarding approximately 53% of the settlement fund as attorney fees).  
8 California Courts routinely approve attorneys' fees "averag[ing] around one-third of the  
9 recovery." *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 (lower court found 20 to  
10 40 percent range of contingency fee in marketplace was appropriate in class actions); *see also*  
11 *Estrada v. Dr. Pepper/Seven-Up*, Los Angeles County Superior Court, Case No. BC262247  
12 (May 2005) (wage and hour); *Moore v. IKEA*, Los Angeles Superior Court, Case No. BC263646  
13 (Sept. 2006) (wage and hour).

14 In the present case, Class Counsel have borne all the risks and costs of litigation and will  
15 not receive any compensation until recovery is obtained.<sup>57</sup> Class Counsel are well experienced  
16 in wage-and-hour class action litigation and used that experience to obtain a great result for the  
17 proposed Class.<sup>58</sup> Considering the amount of the fees requested, the work performed, and the  
18 risks incurred, the requested fees and litigation costs are reasonable and should be awarded.

19 **VIII. THE PROPOSED NOTICE IS ADEQUATE**

20 California statutory and case law vests the court with broad discretion in fashioning  
21 appropriate class notice. See Code Civ. Proc. § 1781; *Cartt v. Superior Court* (1975) 50  
22 Cal.App.3d 960, 973-74. A class notice is adequate if it "present[s] a fair recital of the subject  
23 matter and proposed terms" of the Settlement. *Mendoza v. United States* (9th Cir. 1980) 623  
24 F.2d 1338, 1351 (quoting *Marshall v. Holiday Magic* (9th Cir. 1977) 550 F.2d 1173, 1177).

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28 <sup>57</sup> Han Decl., ¶ 64.

<sup>58</sup> *Id.*, ¶¶ 4-5, 55-57.

1 All Class Members will be mailed a Notice Packet, which is composed of the Claim  
2 Form<sup>59</sup> and the Notice of Class Action Settlement<sup>60</sup>. Each Notice Packet will be translated into  
3 Spanish and provide: (a) information regarding the nature of the Action; (b) a summary of the  
4 Settlement's principal terms; (c) the Class definition; (d) the total number of Workweeks each  
5 respective Class Member worked for Defendant during the Class Period; (e) each Class  
6 Member's estimated Individual Settlement Payment and the formula for calculating Individual  
7 Settlement Payments; (f) the dates which comprise the Class Period; (g) instructions on how to  
8 submit valid Claim Forms, disputes regarding Workweeks, Requests for Exclusion, or  
9 objections; (h) the requirements relating to, and deadlines by which the Class Member must  
10 submit, Claim Forms, disputes regarding Workweeks, Requests for Exclusions, and objections  
11 to the Settlement; (i) the claims to be released, as set forth herein; and (j) the date for the Final  
12 Approval Hearing.<sup>61</sup> A Class Members may dispute the information provided in their Notice  
13 Packets, but must do so in writing, via first class mail, and it must be postmarked by the  
14 Response Deadline. To the extent Class Members dispute the number of Workweeks to which  
15 they have been credited or the amount of their Individual Settlement Payment, Class Members  
16 must produce evidence to the Claims Administrator showing that such information is  
17 inaccurate.<sup>62</sup>

18 The proposed notice procedure provided by the proposed Settlement fulfills the  
19 requirement of neutrality in class notices. *Newberg*, at § 8.39. "Sufficient information about  
20 the case should be provided to enable class members to make an informed decision about their  
21 participation." *Manual for Complex Litigation* (4th ed. 2004) § 21.311. The proposed Notice  
22 Packet summarizes the proceedings to date and the terms and conditions of the proposed  
23 Settlement Agreement in an informative and coherent manner. The proposed Notice Packet  
24 recognizes that the Court has not yet granted final approval and apprises the Class Members of  
25 how to object to the proposed Settlement Agreement. The proposed Notice Packet also satisfies  
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27 <sup>59</sup> Settlement Agreement, **Exhibit A**.

28 <sup>60</sup> *Id.*, Exhibit B.

<sup>61</sup> *Id.*, ¶ 63.

<sup>62</sup> *Id.*, ¶ 64.

1 all due process requirements and complies with the standards of fairness, completeness, and  
2 neutrality. Fed. R. Civ. P. 23(c)(2) and 23(e); *Newberg*, at §§ 8.21, 8.39; *Manual*, at §§ 21.311,  
3 21.312; *See Cartt, supra*, 50 Cal. App. 3d at 960. Accordingly, the Court should approve the  
4 proposed Notice Packet.

5 **IX. APPOINTMENT OF SIMPLURIS, INC., AS THE CLAIMS ADMINISTRATOR**

6 The parties have selected Simpluris as the Claims Administrator to administer the  
7 proposed Settlement Agreement. The Claims Administrator will be responsible for  
8 administering the Settlement, including, but not limited to, printing, distributing, and tracking  
9 documents for this Settlement, translating documents into Spanish, mailing reminder post cards,  
10 calculating estimated amounts per Class Member, tax reporting, distributing the appropriate  
11 settlement amounts, and providing necessary reports and declarations, and other duties and  
12 responsibilities set forth in the Settlement Agreement to process the Settlement Agreement, and  
13 as requested by the Parties. At the request of Defendant, and upon receipt of funds from  
14 Defendant, the Claims Administrator will issue and send out Settlement Award checks to  
15 Claimants.<sup>63</sup>

16 The Claims Administration Costs are estimated to be \$6,399 but are set not to exceed  
17 \$7,500, which will be paid out of the Maximum Settlement Amount in accordance with the  
18 payment schedule provided for by the Settlement Agreement.<sup>64</sup> Considering the number of Class  
19 Members, the estimated costs are reasonable.<sup>65</sup> Accordingly, the Court should appoint Simpluris  
20 as the Claims Administrator and direct the mailing of the Notice Packet to the Class Members  
21 in the manner requested and based on the proposed deadlines as set forth in the Settlement  
22 Agreement and described in Part 10, *infra*.

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28 <sup>63</sup> Settlement Agreement, ¶¶ 15, 72.

<sup>64</sup> Settlement Agreement, ¶ 15.

<sup>65</sup> Han Decl., ¶ 72.

**X. PROPOSED DEADLINES FOR THE NOTICE PROCESS**

At this preliminary approval stage, Plaintiffs also seek approval of the proposed deadlines for the notice and claims administration process. *Newberg*, at § 11.26. The notice process entails mailing of the Notice Packet to all known and reasonably ascertainable Class Members based on Defendant's payroll records. Within fourteen (14) calendar days of entry of an Order of Preliminary Approval of this Settlement Within fourteen (14) calendar days of Preliminary Approval, Defendant will provide the Claims Administrator a complete list of all Class Members within the Class that will be formatted in a readable Microsoft Office Excel spreadsheet and will include each Class Member's full name; most recent mailing address and telephone number; Social Security number; dates of employment; and any other relevant information needed to calculate settlement payments ("Class List").<sup>66</sup> Within fifteen (15) calendar days of receipt of the Class List(s), the Claims Administrator will perform a search based on the National Change of Address Database ("NCOA"), or any other similar services available, and mail a Notice Packet to all Class Members via regular First-Class U.S. Mail, using the most current, known mailing addresses available.<sup>67</sup>

Any Notice Packets returned to the Claims Administrator as non-deliverable on or before the Response Deadline will be sent promptly via regular First-Class U.S. Mail to the forwarding address affixed thereto and the Claims Administrator will indicate the date of such re-mailing on the Notice Packet. If no forwarding address is provided, the Claims Administrator will promptly attempt to determine the correct address using a skip-trace and will then perform a single re-mailing within five (5) days after return of the Notice Packet.<sup>68</sup>

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<sup>66</sup> Settlement Agreement, ¶¶ 17, 60.

<sup>67</sup> *Id.*, ¶ 61.

<sup>68</sup> Settlement Agreement, ¶ 62.

1 Class Members will have sixty (60) calendar days from the initial mailing of the Notice  
2 Packet to submit their Claim Forms, Requests for Exclusions, or objections to the Claims  
3 Administrator.<sup>69</sup>

4 **XI. APPOINTMENT OF THE CLASS REPRESENTATIVES AND APPROVAL OF THE CLASS**  
5 **REPRESENTATIVE ENHANCEMENT PAYMENTS**

6 A named plaintiff is eligible for payment that reasonably compensates him for  
7 undertaking and fulfilling a fiduciary duty to represent absent class members. *Cellphone*  
8 *Termination Fee Cases, supra*, 186 Cal.App.4th at p. 1393; *Bell v. Farmers Ins. Exchange*  
9 (2004) 115 Cal.App.4th 715, 726 (upholding “service payments” to named plaintiffs for their  
10 efforts in bringing the case); *Stevens v. Safeway, Inc.* (C.D. Cal. Feb. 25, 2008) Case No. 05-  
11 01988, 2008 U.S. Dist. LEXIS 17119 (\$20,000 and \$10,000 to two class representatives); *In Re*  
12 *Janney Montgomery Scott LLC Financial Consultant Litig.* (E.D. Pa. July 16, 2009) Case No.  
13 06-3202, 2009 U.S. Dist. LEXIS 60790 (\$20,000 each to three class representatives).

14 Plaintiffs spent a considerable amount of time and effort in producing relevant  
15 documents and employment records and provided the facts and evidence necessary to prove the  
16 allegations.<sup>70</sup> Plaintiffs were available whenever Class Counsel needed them and actively tried  
17 to obtain information that would benefit the Class.<sup>71</sup> Plaintiffs have exhibited courage in  
18 vindicating the rights of the Class.<sup>72</sup> Class Counsel believe that no action would likely have been  
19 taken by Class Members individually, and that Plaintiffs’ services on behalf of the Class have  
20 advanced California’s public policy goal of enforcing wage-and-hour laws. See *Sav-On, supra*,  
21 34 Cal.4th 319, 340 (2004).

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26 <sup>69</sup> Settlement Agreement, ¶ 40.

27 <sup>70</sup> Han Decl., ¶ 66; Declaration of Daniel Ayala (“Plaintiff Ayala”), ¶¶ 3-4; Declaration of Juan Gonzalez  
28 (“Gonzalez Decl.”), ¶¶ 3-4

<sup>71</sup> Han Decl., ¶ 68; Ayala Decl., ¶ 4; Gonzalez Decl., ¶ 4.

<sup>72</sup> Han Decl., ¶ 67.

1 The requested Class Representative Enhancement Payments is fair and reasonable  
2 compensation for Plaintiffs' efforts in bringing the action, serving as private attorneys general  
3 under PAGA, assisting counsel with the investigation, litigation, and settlement, regularly  
4 conferring with Class Counsel on the status of the case and the strategies for prosecuting the  
5 claims, and reviewing the proposed settlement to ensure that its terms are fair and that it provides  
6 adequate relief to the proposed Class.<sup>73</sup> Accordingly, it is appropriate and just for the Class  
7 Representatives to receive reasonable Class Representative Enhancement Payments, in addition  
8 to their share of the Net Settlement Amount, for their services on behalf of the Class Members.

9 **XII. CONCLUSION**

10 For the foregoing reasons, Plaintiffs respectfully requests that the Court grant  
11 preliminary approval of the proposed Settlement Agreement; certify the proposed Class; appoint  
12 Justice Law Corporation as Class Counsel; preliminarily approve the request for an award of  
13 Attorneys' Fees and Costs; appoint Plaintiffs as the Class Representatives; preliminarily  
14 approve the request for the Class Representative Enhancement Payments; appoint Simpluris as  
15 the Claims Administrator; approve and direct the Claims Administrator to mail the Notice  
16 Packet to the proposed Class; and schedule a Final Approval/Settlement Fairness Hearing for a  
17 date to be determined by the Court.

18  
19 Dated: April 9, 2021

**JUSTICE LAW CORPORATION**

20  
21 By:   
22 Douglas Han  
23 *Attorneys for Plaintiffs*

24  
25  
26  
27  
28 \_\_\_\_\_  
<sup>73</sup> Han Decl., ¶¶ 69-70.

**PROOF OF SERVICE  
1013A(3) CCP**

**STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 751 N. Fair Oaks Avenue, Suite 101, Pasadena, California 91103 and my electronic service address is amcnevin@justicelawcorp.com.

On April 12, 2021, I served the foregoing document described as

**PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR PRELIMINARY  
APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS  
AND AUTHORITIES IN SUPPORT THEREOF**

For the following case: **Ayala, et al. v. J.C. Ford Company**  
LWDA/ Court Case No.: **LWDA Case No.: CM-806753-20**  
**Court Case No.: BCV-20-102948**  
**Kern County Superior Court**

on interested parties in this action by electronically submitting as follows:

State of California  
Labor & Workforce Development Agency  
800 Capitol Mall, MIC-55  
Sacramento, California 95814

**[X] BY ELECTRONIC SUBMISSION**

Pursuant to California Senate Bill No. 836, I caused the documents described above to be electronically submitted by and through the procedure stated on the website of the State of California Labor and Workforce Development Agency.

**[X] STATE**

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on April 12, 2021, at Pasadena, California.

  
Alexis McNevin