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9 **SUPERIOR COURT OF CALIFORNIA**
10 **IN AND FOR THE COUNTY OF TULARE**

11 LUIS A. MARTINEZ TRUJILLO, on behalf
12 of all others similarly aggrieved,

13 Plaintiff,

14 vs. FORD SPRAYING, INC., a California
15 corporation, and DOES 1 through 50,
16 inclusive,

17 Defendants.

CASE NO. VCU298017

Assigned for All Purposes to:
Hon. Gary Johnson
Dept. 7

MEMORANDUM OF POINTS &
AUTHORITIES IN SUPPORT OF MOTION
AND MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT

Date: July 15, 2024
Time: 8:30 a.m.
Dept.: 7

1 **I. INTRODUCTION**

2 Plaintiff Luis A. Martinez Trujillo hereby moves the Court for an order granting
3 preliminary approval to a proposed non-reversionary class action settlement to resolve wage and
4 hour claims on behalf of approximately 83 individuals employed by Defendant Ford Spraying,
5 Inc. (“Ford” or “Defendant”) as non-exempt employees during the period of May 4, 2019 through
6 April 9, 2024. The proposed \$130,000 settlement will provide at least \$59,667 in cash payments
7 to the settlement class, with an average award of about \$719. The balance of approximately
8 \$70,333 will cover a modest enhancement award to Plaintiff, reasonable attorney’s fees and
9 actual litigation costs, settlement administration costs, and payment of civil penalties to the state.
10 The settlement is the product of Plaintiff’s pre- and post-filing investigation, a pre-mediation
11 exchange of information, and arms-length and adversarial negotiations overseen by experienced
12 and well-regarded mediator the Hon. Howard Broadman (Ret.).

13 As demonstrated below, the settlement is within the “range of reasonableness” for
14 preliminary approval. Plaintiff’s counsel believes the settlement is a significant result for the
15 class given the substantial risks inherent in this matter. Accordingly, Plaintiff requests the Court
16 enter an order: (1) granting preliminary approval to the proposed class action settlement; (2)
17 conditionally certifying the settlement class as defined below; (3) appointing J. Kirk Donnelly
18 and the Law Offices of J. Kirk Donnelly, APC as Class Counsel; (4) appointing plaintiff Luis A.
19 Martinez Trujillo as the Class Representative; (5) appointing Phoenix Settlement Administrators
20 as the Settlement Administrator; (6) approving the form of notice to the class and the procedure
21 for providing such notice; and (7) scheduling a final fairness hearing.

22 **II. FACTUAL BACKGROUND AND PROCEDURAL POSTURE**

23 On May 4, 2023, Plaintiff filed a complaint against Defendant alleging a single cause of
24 action under the Private Attorneys General Act (“PAGA”) for several alleged violations of the
25 Labor Code and IWC Wage Orders. Plaintiff filed his complaint on behalf of individuals who
26 worked for Defendant as non-exempt employees in California during the relevant time frame.
27 Defendant operates an agricultural spraying business located in Ivanhoe, California, and provides
28 spraying services in the surrounding areas. Plaintiff Trujillo worked for Ford as a non-exempt

1 employee for approximately two years from January 2021 to December 2022. [Declaration of J.
2 Kirk Donnelly (“Donnelly Decl.”), ¶ 4.]

3 Plaintiff alleges Defendant failed to pay all wages due to the class members because it
4 failed to include non-discretionary, non-hourly compensation, such as shift differential pay, in the
5 calculation of the “regular rate” used to determine the correct overtime rate. As a result, per
6 Plaintiff, Ford underpaid for overtime. Plaintiff further alleged Ford failed to provide all required
7 meal and rest breaks on a fully compliant basis, and that review of employee time records
8 suggests meal periods frequently were untimely, and that required meal and rest breaks were not
9 provided on shifts over 10 hours. Plaintiff further contends Ford did not pay an extra hour of
10 premium pay in lieu of missed or non-compliant breaks. Plaintiff next contended that he and other
11 class members had to use their personal phones on company business without reimbursement, and
12 that their wage statements were inaccurate and did not include all information required by the
13 Labor Code. [Donnelly Decl., ¶ 5.]

14 Based on these allegations, Plaintiff’s complaint asserted a claim for PAGA civil penalties
15 for the alleged failure to pay all wages due, failure to provide meal and rest breaks, failure to
16 reimburse business expenses, failure to provide accurate wage statements, and failure to pay
17 wages due on separation of employment. [Donnelly Decl., ¶ 6.]

18 Ford has at all times denied Plaintiffs’ allegations and maintained its meal break and
19 payroll policies and procedures comply with California law, that it provided its employees with
20 required meal and rest breaks, that it properly tracked employee time and paid Plaintiff and all
21 other employees all wages due at the correct hourly and overtime rates. Additionally, Ford
22 strongly contends the case cannot be maintained as any kind of class or representative action,
23 arguing that to the extent class members missed meal breaks, that such breaks were non-
24 compliant, or that any unpaid “off the clock” work occurred, it was intermittent and infrequent
25 and evidence of such violations would be purely anecdotal, and therefore individualized issues
26 predominate and trial would be unmanageable. [Donnelly Decl., ¶ 7.]

27 After Plaintiff filed his complaint, the Parties engaged in substantial meet and confer
28 discussions regarding discovery, potential law and motion, and other case management issues,

1 and ultimately agreed to attempt early mediation, and further agreed to explore settlement on a
2 class action basis. Thereafter, the Parties engaged in additional informal discovery to facilitate an
3 exchange of information necessary to engage in a meaningful mediation. Consequently,
4 Plaintiff's counsel reviewed payroll records, personnel policies/handbooks, meal break policies,
5 personnel files, and a random sampling of paystubs and time records produced by Ford for
6 several hundred pay periods. Defendant also provided documents and information reflecting the
7 estimated total amount of workweeks and pay periods they worked, number of class members,
8 and average hourly pay rates, among other relevant data. [Donnelly Decl., ¶ 8.]

9 The Parties then engaged the Hon. Howard Broadman (Ret.), a highly respected mediator
10 with extensive wage and hour class action experience and, on February 7, 2024, participated in a
11 mediation with Judge Broadman. The arms-length negotiations were hard-fought and adversarial
12 as the Parties exchanged extensive information on their legal and factual positions, and made
13 numerous offers and counter-offers. Ultimately, the Parties reached agreement on all major issues
14 to resolve the matter on both a class and PAGA basis. The Parties thereafter collaboratively
15 drafted the Settlement Agreement setting forth the full and final settlement terms. Finally, in
16 order to fully effectuate the settlement, the Parties stipulated to the filing of First Amended
17 Complaint alleging class claims consistent with the PAGA allegations. [Donnelly Decl., ¶ 9.]

18 **III. THE PROPOSED SETTLEMENT TERMS**

19 Under the settlement, Ford will pay \$130,000.00 into a common fund, the Gross
20 Settlement Amount ("GSA"). Reasonable attorney's fees of up to one-third of the GSA, or
21 \$43,333.33, actual litigation costs of up to \$9,000, a modest enhancement award of up to \$7,500
22 for plaintiff, settlement administration costs of no more than \$5,500, and \$5,000 for alleged civil
23 penalties under PAGA,¹ all will be paid from the GSA. The remainder of approximately \$59,667
24 will be allocated among the Participating Class Members based on their total weeks worked
25 during the Class Period. No portion of the GSA will revert to Ford. [Donnelly Decl., ¶ 10.]

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28 ¹ Consistent with PAGA, \$3,750 of that amount will go the LWDA for the State's share of the civil penalties, and the remaining \$1,250 will be distributed pro rata to the Aggrieved Employees.

1 **A. Certification of the Settlement Class**

2 The settlement provides for conditional certification of a settlement class including all
3 individuals who worked for Defendant as a non-exempt employee during the Class Period, which
4 runs from May 4, 2019 through April 9, 2024. The Settlement Class consists of approximately 83
5 individuals. [Donnelly Decl., ¶ 11.]

6 **B. The Benefit Conferred on the Settlement Class**

7 As noted, the settlement obligates Ford to pay \$130,000 to resolve the Settlement Class's
8 claims, inclusive of attorney's fees and costs. At least \$59,667 from the GSA will be distributed
9 to the Participating Class Members. This is a cash settlement that does not require Participating
10 Class Members to submit a claim form to receive their settlement share. Participating Class
11 Members will receive their settlement checks automatically via First Class U.S. Mail. One-third
12 of each settlement share will be allocated to wages and the remaining two-thirds will be allocated
13 to expenses, penalties and interest. Ford will pay any and all applicable employer-side payroll
14 taxes separately and in addition to the GSA. Subject to the Court's approval, any amounts not
15 claimed (because a class member does not cash his or her settlement check) will be forwarded to
16 the California State Controller's Unclaimed Property Fund. [Donnelly Decl., ¶ 12.]

17 Each Participating Class Member will receive a share of the Net Settlement Amount based
18 on his or her position held and total weeks worked for Ford during the Class Period while
19 employed as a non-exempt employee. Thus, each Class Member's Individual Settlement Payment
20 will be calculated using criteria typically used in determining appropriate amounts of alleged
21 unpaid wages, unpaid premium wages for missed meal breaks, unreimbursed expenses, and
22 potential statutory penalties under applicable law. These methods are intended to ensure each
23 Class Member receives a portion of the available settlement funds corresponding to the relative
24 value of his or her potential claims. The proposed allocation provides a reasonable way to
25 compensate Class Members based on the amount of time they worked for Ford, and the number
26 of instances they missed a break, were not provided compensation in lieu of such missed breaks,
27 or lost wages due to alleged miscalculated and underpaid overtime. The average award across the
28 board will be approximately \$719. There are approximately 42 Aggrieved Employees also

1 eligible to receive a share of the PAGA civil penalties, and their average PAGA award will be
2 about \$30. [Donnelly Decl., ¶ 13.]

3 As discussed below, the overall settlement amount is reasonable in light of the
4 considerable risks associated with Plaintiff's claims as well as the delay and risk posed by
5 continuing to litigate such disputed allegations. In Plaintiff's counsel's judgment, the total value
6 recovered for the class is substantial and in the range of reasonableness.

7 **C. Settlement Administration**

8 Subject to the Court's approval, the Parties have agreed on Apex Class Action, LLC
9 ("Apex") as the Settlement Administrator. Apex is qualified and has significant experience
10 administering class action settlements, including numerous wage and hour matters. Apex's fees
11 will not exceed \$5,500.00. If the Court approves less than the above amount, the difference will
12 remain in the Net Settlement Amount for distribution to the Participating Class Members.
13 [Donnelly Decl., ¶ 14; Declaration of Sean Hartranft, ¶¶ 2-7; Exhs. A-B.]

14 **D. The Class Notice**

15 The proposed Notice (Exhibit A to the Settlement Agreement) sets out information about
16 this case and explains the basic settlement terms in plain language. The Notice also sets forth the
17 individualized information used to calculate Class Members' Individual Settlement Payments and
18 each Class Member's estimated settlement award. The Notice likewise details the procedures for
19 Class Members to dispute their individual information, the procedure for submitting an objection
20 to the Settlement, and the procedure to request exclusion. In sum, the Notice provides the Class
21 Members with the information necessary to evaluate the Settlement, provides fair opportunity to
22 participate in, opt out of, or object to the proposed Settlement, and otherwise complies with
23 California Rules of Court 3.769(f) and 3.766(d). Coupled with the notice procedure, the
24 proposed Notice provides the Class with the best notice practicable. [Donnelly Decl., ¶ 15.]

25 **E. Right to Correct Information, Opt Out, or Object**

26 Class Members will have forty-five (45) days to dispute the information in their Notice
27 used to calculate their settlement award, and also have 45 days to submit any objections to the
28 settlement or to request exclusion. In the event a Class Member disputes their individual

1 information, the Settlement Administrator will review the Class Member's records as well as any
2 additional information submitted, and make a final determination. [Donnelly Decl., ¶ 16.]

3 **F. Release of Claims**

4 All Participating Class Members will be deemed to release Ford from all claims alleged in
5 the operative complaint, or that could have been brought based on the allegations in the operative
6 complaint, including PAGA claims, from May 4, 2019 through April 9, 2024. The release is
7 limited to the claims that were actually pleaded or could have been pleaded based on the alleged
8 facts in the operative complaint. [Donnelly Decl., ¶ 17.]

9 **G. Attorney's Fees and Costs, and Plaintiff's Enhancement Award**

10 The settlement provides Defendant will not oppose a request for reasonable attorney's
11 fees not to exceed one-third of the Gross Settlement Amount, or \$43,333.33, nor will it oppose a
12 request for reimbursement of actual litigation costs and expenses of up to \$9,000.00. Defendant
13 also will not oppose a request for an enhancement award to Plaintiff of not more than \$7,500.00
14 each in recognition of his time spent on this matter, the risks he undertook on behalf of the class,
15 and the benefit conferred to the class. Plaintiff's counsel will provide the Court with appropriate
16 summaries and evidence of its efforts and time records in anticipation of the Final Approval
17 Hearing, and Plaintiff has submitted his declaration herewith. If the Court approves less than the
18 above amounts, the difference will remain in the Net Settlement Amount for distribution to the
19 Participating Class Members. [Donnelly Decl., ¶ 18.]

20 **H. PAGA Claims and Notice to the LWDA**

21 The Parties allocated \$5,000 to payment of civil penalties under PAGA for such claims
22 against Ford, as addressed in more detail below, and Plaintiff submits that amount is fair,
23 reasonable, and adequate, and consistent with PAGA's underlying purposes. As required by
24 Labor Code section 2699(l)(2), Plaintiff gave notice of the settlement and preliminary approval
25 hearing to the LWDA via its online portal. [Donnelly Decl., ¶ 19; Exh. 3.]

26 **IV. ARGUMENT**

27 **A. Standard of Review for a Class Action Settlement**

28 The law favors settlement, particularly in class actions where substantial resources can be

1 conserved by avoiding the time, costs and rigors of formal litigation. H. Newberg & A. Conte, 4
2 Newberg on Class Actions (4th ed. 2002) § 11.41; Class Plaintiffs v. City of Seattle (9th Cir.
3 1992) 955 F.2d 1268, 1276, cert. denied, 506 U.S. 953; Potter v. Pacific Coast Lumber Co.
4 (1951) 37 Cal.2d 592, 602. Nevertheless, to ensure the rights of absent class members are not
5 unjustly compromised, settlement of a class action requires court approval. Cal. Rule of Court.
6 3.769; Wershba v. Apple Computer (2001) 91 Cal.App.4th 224, 245; Dunk v. Ford Motor Co.
7 (1996) 48 Cal.App.4th 1794, 1801. This judicial review protects against fraud or collusion and
8 ensures fairness to the absent class members. Dunk, 48 Cal.App.4th at 1800-01. Judicial review
9 occurs via a two-step process to determine, under all the circumstances, if the proposed settlement
10 is fair, reasonable and adequate. Id. at 1801; Wershba, 91 Cal.App.4th at 245.

11 The first step is a motion for preliminary approval, through which the parties present the
12 court with the proposed settlement and seek a determination if it is sufficiently fair and reasonable
13 to warrant notice to the class and further proceedings as to its fairness and adequacy. Cal. Rule of
14 Court 3.769(c). This preliminary evaluation determines if the proposed settlement is within the
15 “range of reasonableness” and if notice should be provided to the class regarding the settlement’s
16 proposed terms and conditions, and whether a final fairness hearing should be scheduled.
17 Wershba, 91 Cal.App.4th at 234-35; North County Contractors Ass’n, Inc. v. Touchstone Ins.
18 Servs. (1994) 27 Cal.App.4th 1085, 1089-90. Considering the strong judicial policy favoring
19 settlement of class actions, courts generally apply a presumption of fairness to class action
20 settlements when (1) the settlement results from arms-length bargaining, (2) investigation and
21 discovery are sufficient to allow counsel and the court to act intelligently, (3) counsel is
22 experienced in similar litigation, and (4) the percentage of objectors is small. Dunk, 48
23 Cal.App.4th at 1802; Wershba, 91 Cal.App.4th at 245.

24 If the court grants preliminary approval, it then orders the class be given notice in an
25 appropriate manner, establishes a schedule and procedures for class members to request exclusion
26 or object, and sets the matter for a final fairness hearing. Typically, any motion for attorney’s
27 fees and costs, and any enhancement for the class representative(s), is filed subsequent to
28 preliminary approval and heard with the motion for final approval, as part of the second step of

1 the two-step approval process. Dunk, 48 Cal.App.4th at 1800; Wershba, 91 Cal.App.4th at 232.

2 The proposed settlement in this matter warrants preliminary approval under the liberal
3 standard discussed above, as it is fair, reasonable and adequate under all the circumstances, and
4 represents a favorable result for the class.

5 **B. The Proposed Settlement Class Should Be Conditionally Certified**

6 The purpose of conditional class certification for purposes of settlement is to facilitate
7 provision of notice of the proposed settlement’s terms, and the date and time of the final fairness
8 hearing. In this context, courts apply lesser scrutiny than they would otherwise in the context of
9 certifying a class. Dunk, 48 Cal.App.4th at 1807, n.19; Global Minerals & Metals Corp. v.
10 Superior Court (2003) 113 Cal.App.4th 836, 839 (“[I]t is well established that trial courts should
11 use different standards to determine the propriety of a settlement class.”)

12 In the present matter, conditional certification is proper since this matter satisfies all
13 requirements for class certification under Code of Civil Procedure section 382. First, the class is
14 both sufficiently numerous, consisting of approximately 83 individuals, and ascertainable by
15 reference to Defendant’s personnel and payroll records. [Donnelly Decl., ¶ 20.] Next, Plaintiff is
16 an adequate class representative, as his claims do not conflict with and are not antagonistic to the
17 claims of other class members. Further, his claims are typical given he is a member of the class
18 and his claims arise from the same employment practices and course of conduct giving rise to the
19 claims of the other class members. [Donnelly Decl., ¶ 21; Declaration of Luis A. Martinez
20 Trujillo, ¶¶ 2-9.] Lastly, his counsel is experienced and adequate class counsel. [Donnelly
21 Decl., ¶¶ 35-37.]

22 Next, common questions of law and fact predominate – particularly for purposes of a
23 settlement class – as the Class Members all were subject to the same meal rest break policies, the
24 same alleged policy that shorted them on hours worked. Since the focus of the claims against
25 Ford concerns the legality of common policies applied uniformly to the entire class, common
26 issues predominate over individualized inquiries concerning liability. Ford’s alleged failure to
27 pay overtime wages at the correct rate is company-wide policy applied equally and consistently to
28 all class members, and this policy is either compliant with California law or it is not. Regardless

1 of that determination, it will decide liability for all class members one way or another. Similarly,
2 whether Ford required employees to use their personal phones for work without proper
3 reimbursement raises another issue common to all class members. [Donnelly Decl., ¶ 22.]

4 By now it is well-settled that a theory of recovery asserting the existence of a uniform
5 policy violating California law is sufficient to satisfy the requirements for class certification.
6 Jones v. Farmers Ins. Exch. (2013) 221 Cal.App.4th 986, 996 (“Claims alleging that a uniform
7 policy consistently applied to a group of employees is in violation of the wage and hour laws are
8 of the sort routinely, and properly, found suitable for class treatment”); Williams v. Superior
9 Court (2013) 221 Cal.App.4th 1353 (“A company-wide practice can sustain a common question
10 of fact or law that supports commonality for class certification”). Lastly, a class action is
11 superior to other means for the fair and efficient adjudication of this controversy. [Donnelly
12 Decl., ¶ 23.]

13 C. **The Proposed Settlement Meets the Dunk and Kullar Factors and is**
14 **within the Range of Reasonableness**

15 The proposed settlement resulted from serious, arms-length negotiations facilitated by
16 respected mediator the Hon. Howard Broadman (Ret.), who has extensive experience mediating
17 wage and hour class actions. [Donnelly Decl., ¶ 9.] Plaintiff’s counsel J. Kirk Donnelly has years
18 of litigation experience, including litigating wage and hour class actions. Plaintiff’s counsel is
19 well-qualified to evaluate the risks and benefits of pursuing further litigation or settling the
20 matter. [Donnelly Decl., ¶¶ 35-37.]

21 California law recognizes several factors bearing on the fairness, adequacy, and
22 reasonableness of a proposed class settlement. Kullar v. Foot Locker Retail, Inc. (2008) 168
23 Cal.App.4th 116, 128. In relevant part, these factors include: 1) the amount offered in settlement
24 2) the strength of plaintiff’s case; 3) the risk, expense, complexity, and likely duration of further
25 litigation; 4) the risk of maintaining class action status throughout trial; 5) the experience and
26 views of counsel; and 6) the reaction of the class members to the proposed settlement. Id. As
27 demonstrated below, the proposed settlement satisfies these requirements.

28 Prior to mediation, the parties engaged in extensive informal discovery to facilitate

1 settlement discussions. As a result, Plaintiff reviewed documents and information regarding
2 Ford's payroll practices, pay stubs and time records for a sampling of pay periods, meal and rest
3 break policies, etc., and information from Defendant regarding class size and breakdown of job
4 positions, work weeks, rates of pay, and other information used to formulate a damages model.
5 Plaintiff's counsel is confident they obtained sufficient information to enable them to understand
6 the law and facts of this case and make an informed decision regarding the proposed settlement
7 and whether it is in the best interests of the class. [Donnelly Decl., ¶¶ 8, 24.]

8 Next, the proposed settlement falls within the range of reasonableness warranting
9 preliminary approval. The proposed settlement involves a significant sum that, when distributed,
10 will confer direct monetary benefits on the class members. As described above, each class
11 member will be entitled to a monetary payment without having to file a claim and each payment
12 will be relative to the value of his or her potential claims.

13 Plaintiff's analysis was supported by the pre-mediation production described above, which
14 permitted Plaintiff's counsel to estimate potential damages on various theories of liability. Using
15 that data, Plaintiff ran various calculations and estimated Ford's likely maximum exposure on the
16 class claims at approximately \$568,330, including \$10,700 on the unpaid wage claims, \$160,470
17 on the meal break claims, \$64,200 on the rest break claims, \$35,660 on the expense
18 reimbursement claim, \$149,700 on the wage statement claims, and \$147,600 on the waiting time
19 penalty claims. [Donnelly Decl., ¶¶ 25-26.] Plaintiff and his counsel substantially discounted the
20 value of these claims, however, in light of the multiple and considerable risks posed by
21 proceeding with the litigation.

22 On the unpaid wage claims, Plaintiff alleged he and other employees were not paid all
23 overtime wages due because Ford did not include certain forms of compensation, primarily shift
24 differential pay for working a night shift, in the "regular rate of pay" used to calculate the correct
25 overtime rate. "Regular rate of pay, which can change from pay period to pay period, includes
26 adjustments to the straight time rate, reflecting, among other things, shift differentials and the per-
27 hour value of any non-hourly compensation the employee has earned." Alvarado v. Dart
28 Container Corp. of California (2018) 4 Cal.5th 542, 554. As a result, Plaintiff contends Ford

1 frequently underpaid the Class Members for their overtime. While Plaintiff believes this is one of
2 his stronger claims, he also recognizes the exposure is nominal, as the amount lost typically is
3 only a few dollars per work week. [Donnelly Decl., ¶ 27.]

4 On the meal and rest break claims, while Ford's written policies generally appeared
5 compliant, Plaintiff's review of the time and payroll records suggested numerous de facto
6 violations, as many meal periods appeared untimely and did not start until after the fifth hour of
7 work. As held by the Donohue v. AMN Services, LLC (2021) 11 Cal.5th 58, even a "minor
8 infringement" of Wage Order meal period requirements, such as a meal period starting a few
9 minutes later, triggers an employer's premium pay obligations. Id. at 61. The Donohue Court also
10 clarified that a rebuttable presumption of liability applies when time records show shortened,
11 delayed, or missed meal periods. Id. at 74. Accordingly, Plaintiff contends that even if Ford
12 argues many of the untimely lunch breaks were only a couple of minutes late, that position is
13 unlikely to move the needle in light of Donohue. Plaintiff also argued Ford failed to provide third
14 rest breaks on shifts of 10 or more hours. [Donnelly Decl., ¶ 28.]

15 In response, Ford emphasized its written policies are compliant, and that it provided many
16 class members with the opportunity to take all required meal and rest breaks and thus met its
17 obligations under the law. Ford argued further that most if not all Class Members waived their
18 second meal periods and also that, in light of its compliant policies, whether a class member
19 missed a meal period, received a late meal period, or missed a rest break would have been
20 aberrational and against company policy. Ford also noted it paid for documented violations, as
21 reflected in the payroll records produced in the pre-mediation production. Thus, per Ford, these
22 issues are not amenable to class or representative treatment since their resolution would require
23 individualized inquiries as to why a break was missed or non-compliant. [Donnelly Decl., ¶ 29.]

24 On the expense reimbursement claim, Plaintiff claimed that he and the Class Members
25 regularly had to use their personal phones while on the clock and for work purposes to, inter alia,
26 communicate with supervisors, take pictures of their work, send it reports on fuel consumed by
27 company vehicles, and so on. Per Plaintiff, Ford did not pay any reimbursement for use of
28 personal phones. Ford on the other hand argued that any use of personal mobile devices was

unnecessary to perform the job and therefore was purely for personal convenience. If so, then the expense was neither reasonable nor necessary, and therefore no reimbursement was required. Labor Code § 2802. [Donnelly Decl., ¶ 30.]

On the claims under Labor Code section 226, for inaccurate wage statements, Plaintiff argued his wage statements did not include the employer address, as required by Section 226(a)(8), and further misstated total hours worked, in violation of Section 226(a)(2), in many instances because the statements “double counted” certain hours worked. Plaintiff also alleged derivative wage statement violations based on the alleged underpaid overtime and meal/rest break violations, and further alleged derivative Labor Code 203 violations for failure to timely pay all wages due on separation of employment. Being derivative, these claims accordingly are subject to the same risks and uncertainties applicable to the primary claims, plus additional risks posed by the need to take into account the discretionary nature of such awards and the “good faith” and other defenses available to Defendant. Amaral v. Cintas Corp. No. 2 (2008) 163 Cal.App.4th 1157, 1203-4 (employer did not willfully fail to pay wages under Labor Code § 203 even though class prevailed on underlying claim for failure to pay living wages). Thus, while these claims largely are derivative of the unpaid wage claims, they also are subject to additional defenses. [Donnelly Decl., ¶ 31.]

As far as potential PAGA liability, the allegedly aggrieved employees theoretically are entitled to penalties totaling about \$500,000 in civil penalties should Plaintiff prevail on all claims, establish violations of the multiple Labor Code sections at issue, and secure maximum penalties for each and every pay period. [Donnelly Decl., ¶ 32.] As with the class claims, Plaintiff discounted the potential PAGA penalties based on Ford’s various defenses on the merits and also accounted for the Court’s wide discretion to reduce such penalties, or to decline to award penalties at all. Labor Code § 2699(e)(2); Carrington v. Starbucks Corp. (2018) 30 Cal.App.5th 504 (trial court awarded penalties of \$5 per pay period after a bench trial, which decision was upheld on appeal); In re Taco Bell Wage and Hour Actions (E.D. Cal. Apr. 8, 2016) 2016 U.S. Dist. LEXIS 48557 (PAGA penalties denied after trial). Accordingly, the Parties allocated \$5,000 to PAGA penalties, and Plaintiff submits this amount is reasonable under the circumstances and

1 in line with comparable settlements in other wage and hour class actions in California. *E.g.*, Van
2 Kempen v. Matheson Tri-Gas, Inc. (N.D. Cal. Aug. 25, 2017) 2017 U.S. Dist. LEXIS 137182
3 (granting final approval of \$5,000 PAGA penalty from \$370,000 settlement, or 1.4 percent of
4 total settlement); Slavkov v. First Water Heater Partners I (N.D. Cal. July 25, 2017) 2017 U.S.
5 Dist. LEXIS 116303 (finding a \$7,500 PAGA payment reasonable when measured against the
6 overall settlement of \$345,000 and the possible weaknesses in Plaintiffs' case, or 2.2 percent of
7 total settlement). Additionally, the LWDA has been informed of the terms of the PAGA portion
8 of the settlement, and will be able to weigh in as necessary. Jennings v. Open Door Mktg. Inc.
9 (N.D. Cal. Oct. 3, 2018) 2018 U.S. Dist. LEXIS 171356, at *27 (approving settlement with
10 PAGA penalties of 0.6% where "[p]laintiffs [have] submitted the settlement agreement to the
11 LWDA, and the LWDA has not objected to the settlement.

12 The settlement obviates the significant risk that this Court may find any kind of class or
13 representative resolution unachievable or deny certification of all or some of Plaintiff's claims.
14 Furthermore, even if Plaintiff obtained certification of all or some of the claims, continued
15 litigation would be lengthy and expensive as the parties pursued merits discovery, a probable
16 motion to decertify, as well as trial and possible appeals, and would substantially delay any
17 recovery by the class with no assurance of recovering significantly more than the proposed
18 settlement. While Plaintiff is confident in the merits of these claims, legitimate controversies exist
19 regarding each one of them. Plaintiff also recognizes proving the amount of wages and penalties
20 due each Class Member would be an expensive, time-consuming, and uncertain proposition.
21 [Donnelly Decl., ¶ 33.]

22 Plaintiff and his counsel discounted the value of the class claims consistent with the risks
23 discussed above, and carefully weighed the likelihood of the class receiving substantially greater
24 benefit if the litigation continued. Plaintiff and counsel concluded – in light of these very real
25 and substantial risks – settlement on the proposed terms and without prolonged and costly
26 litigation was in the best interests of the class. The overall \$130,000 recovery represents a
27 significant percentage of Defendant's potential exposure. Given these risks, a total recovery for
28 the class of \$130,000, which will result in average award of \$719 per class member, is a

1 significant result well within the range of reasonableness considering all potential outcomes, and
2 it will provide direct monetary awards to all Class Members. [Donnelly Decl., ¶ 34.]

3 Importantly, the mere fact that a settlement does not provide the same recovery as might
4 be achieved at trial is not a proper indicator of whether the settlement is fair, reasonable, and
5 adequate. Wershba, 91 Cal.App.4th at 246, 250 (“Compromise is inherent and necessary in the
6 settlement process...even if the relief afforded by the proposed settlement is substantially
7 narrower than it would be if the suits were to be successfully litigated, this is no bar to a class
8 settlement because the public interest may indeed be served by a voluntary settlement in which
9 each side gives ground in the interest of avoiding litigation”); Lane v. Facebook, Inc. (9th Cir.
10 2012) 696 F.3d 811, 819 (“[T]he question whether a settlement is fundamentally fair . . . is
11 different from the question whether the settlement is perfect in the estimation of the reviewing
12 court”); 7-Eleven Owners for Fair Franchising v. Southland Corp. (2000) 85 Cal.App.4th 1135,
13 1150 (“The fact that a proposed settlement may amount to only a fraction of the potential
14 recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and
15 should be disapproved”); White v. Experian Information Solutions, Inc. (C.D. Cal. 2011) 803
16 F.Supp.2d 1086, 1098 (rejecting contention settlement was not fair and reasonable even though it
17 represented 99% discount off the maximum value of the claims). Importantly as well, the
18 proposed settlement is non-reversionary and will provide timely benefits to the Class Members
19 without a claims process. White, 803 F.Supp.2d at 1098; c.f., Federal Judicial Center, Managing
20 Class Action Litigation: A Pocket Guide for Judges (3d ed. 2010) at 20, available at [http://](http://www.fjc.gov/sites/default/files/2012/ClassGd3.pdf)
21 www.fjc.gov/sites/default/files/2012/ClassGd3.pdf (reversionary provisions and/or cumbersome
22 claims process may indicate lack of fairness). Plaintiff and his counsel submit the settlement is
23 within the “range of reasonableness,” and is fair and adequate for the Class.

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1 **V. CONCLUSION**

2 For all the foregoing reasons, Plaintiff respectfully requests that the Court grant this
3 motion, conditionally certify the settlement class, grant preliminary approval to the proposed
4 class action settlement, and enter the [Proposed] Order filed herewith.

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6 Dated: June 17, 2024

LAW OFFICES OF J. KIRK DONNELLY, APC

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8 
9 J. Kirk Donnelly
 Attorneys for Plaintiff Luis A. Martinez Trujillo