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7
8 Counsel for Plaintiff LUIS A. MARTINEZ TRUJILLO

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
FOR FINAL APPROVAL OF CLASS ACTION
SETTLEMENT AND REQUEST FOR
ATTORNEY'S FEES AND COSTS

Date: February 10, 2024
Time: 8:30 a.m.
Dept.: 7

1 **I. INTRODUCTION**

2 Plaintiff and Class Representative Luis A. Martinez Trujillo seeks final approval of a non-
3 reversionary class action settlement resolving wage and hour claims on behalf of 84 individuals
4 who worked for defendant Ford Spraying, Inc. (“Ford” or “Defendant”) as current and former
5 non-exempt California employees who worked for Defendant at any time during the
6 period between May 4, 2019 through April 9, 2024. The proposed \$130,000 total settlement
7 provides about \$62,750 in cash payments to the Class, with an average award of about \$747, plus
8 additional amounts payable under PAGA. The remaining balance will cover a modest service
9 award to Plaintiff, settlement administration costs, civil penalties to the state, and reasonable
10 attorney’s fees and costs. The parties and their counsel finalized the settlement after extensive and
11 difficult arms-length negotiations overseen by an experienced and highly-regarded mediator. The
12 Court conditionally certified the Class and preliminarily approved the settlement on July 29,
13 2024. Since then, the Court-approved notice form was mailed to the Class Members on
14 September 3, 2024, and they have reacted very favorably to the settlement. As of the filing of this
15 motion, no Class Members have requested exclusion, and there are no objections.

16 Class Counsel secured an excellent settlement with Ford after extensive
17 investigation, litigation, and settlement negotiation and administration, all without any
18 compensation for services rendered or costs expended. The class notice duly informed
19 the class members that Class Counsel would request attorney’s fees not to exceed one-
20 third of the Gross Settlement Amount, or \$43,333.33, along with reimbursement of no
21 more than \$9,000 for actual costs incurred litigating this matter. As of the filing of this
22 motion, *not one Class Member objected* to the proposed fee award. Consistent with the
23 Settlement and notice, Plaintiff now respectfully requests the Court award Class
24 Counsel’s fees in the amount of \$43,333.33 and costs in the amount of \$8,413.52, as
25 described in the Declaration of J. Kirk Donnelly (“Donnelly Decl.”) filed herewith. The
26 requested attorney’s fees are well within the range of reasonableness, especially
27 considering the complex and risky nature of this litigation, the contingent risk assumed,
28 the nearly two-plus year delay in payment and, when subjected to a lodestar crosscheck,

1 result in a base lodestar that is larger than the fees requested on a percentage of the
2 recovery basis.

3 Accordingly, on behalf of himself and the Settlement Class, Plaintiff respectfully
4 requests the Court grant this motion, give full and final approval to the settlement, grant
5 Class Counsel's request for attorney's fees and costs, and enter judgment accordingly.

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

7 On May 4, 2023, Plaintiff filed a complaint against Defendant alleging a single cause of
8 action under the Private Attorneys General Act ("PAGA") for several alleged violations of the
9 Labor Code and IWC Wage Orders. Plaintiff filed his complaint on behalf of individuals who
10 worked for Defendant as non-exempt employees in California during the relevant time frame.
11 Defendant operates an agricultural spraying business in Ivanhoe, California, and provides
12 spraying services in the surrounding areas. Plaintiff worked for Ford as a non-exempt employee
13 for approximately two years from January 2021 to December 2022. [Donnelly Decl., ¶ 2.]

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

25 Based on these allegations, Plaintiff's initial complaint asserted a claim for PAGA civil
26 penalties for the alleged failure to pay all wages due, failure to provide meal and rest breaks,
27 failure to reimburse business expenses, failure to provide accurate wage statements, and failure to
28 pay wages due on separation of employment. [Donnelly Decl., ¶ .]

1 Ford has at all times denied Plaintiff's allegations and maintained its meal break and
2 payroll policies and procedures comply with California law, that it provided its employees with
3 required meal and rest breaks, that it properly tracked employee time and paid Plaintiff and all
4 other employees all wages due at the correct hourly and overtime rates. Additionally, Ford
5 strongly contends the case cannot be maintained as any kind of class or representative action,
6 arguing that to the extent class members missed meal breaks, that such breaks were non-
7 compliant, or that any unpaid "off the clock" work occurred, it was intermittent and infrequent
8 and evidence of such violations would be purely anecdotal, and therefore individualized issues
9 predominate and trial would be unmanageable. [Donnelly Decl., ¶ 7.]

10 After Plaintiff filed his complaint, the Parties met and conferred on discovery, potential
11 law and motion, and other case management issues, and ultimately agreed to attempt early
12 mediation. The Parties then engaged in extensive informal discovery to facilitate an exchange of
13 information necessary to engage in a meaningful mediation. The Parties then engaged the Hon.
14 Howard Broadman (Ret.), a highly respected mediator with extensive wage and hour class action
15 experience and, on February 7, 2024, participated in a full day mediation with Judge Broadman.
16 By the end of the day, the Parties were able to reach agreement on all major issues. Additionally,
17 with Judge Broadman's assistance, the Parties agreed to resolve the claims on a class-wide basis
18 as well as under PAGA and, accordingly, Plaintiff filed a First Amended Complaint adding class
19 allegations. [Donnelly Decl., ¶¶ 5-6.] The Court granted preliminary approval to the settlement on
20 July 29, 2024.

21 Class Notices were mailed to class members on September 3, 2024, with a 60-day
22 window (to November 4, 2024) for class members to opt out or object to the proposed
23 settlement. [Declaration of Madely Nava ("Nava Decl."), ¶ 7, 11-12.]

24 **III. THE PROPOSED SETTLEMENT TERMS**

25 Under the settlement, Ford will pay \$130,000.00 into a common fund, the Gross
26 Settlement Amount ("GSA"). Reasonable attorney's fees of up to one-third of the GSA, or
27 \$43,333.33, actual litigation costs of up to \$9,000 (only \$8,413.52 is requested), a modest
28 enhancement award of up to \$7,500 for plaintiff, settlement administration costs of \$5,500, and

1 \$5,000 for alleged civil penalties under PAGA,¹ all will be paid from the GSA. The remainder of
2 approximately \$62,750 will be allocated among the Participating Class Members based on their
3 total weeks worked during the Class Period. No portion of the GSA will revert to Ford.

4 [Donnelly Decl., ¶ 10.]

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

6 The settlement provides for conditional certification of a settlement class including all
7 current and former non-exempt California employees who worked for Defendant at any time
8 during the period of May 4, 2019 through April 9, 2024. The Settlement Administrator
9 ultimately mailed class notices to 84 individuals identified as members of the Class. [Nava
10 Decl., ¶ 7.] Nothing has changed to require reconsideration of the Court's certification of
11 the Settlement Class.

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

13 As noted, the settlement obligates Ford to pay \$130,000 to resolve the Settlement Class's
14 claims, inclusive of attorney's fees and costs. At least \$62,750 from the GSA will be distributed
15 to the Participating Class Members. This is a cash settlement that does not require Participating
16 Class Members to submit a claim form to receive their settlement share. Participating Class
17 Members will receive their settlement checks automatically via First Class U.S. Mail. One-third
18 of each settlement share will be allocated to wages and the remaining two-thirds will be allocated
19 to expenses, penalties and interest. Ford will pay any and all applicable employer-side payroll
20 taxes separately and in addition to the GSA. Subject to the Court's approval, any amounts not
21 claimed (because a class member does not cash his or her settlement check) will be forwarded to
22 Valley Children's Hospital as proposed *cy pres* beneficiary. [Donnelly Decl., ¶ 12.]

23 Each Participating Class Member will receive a share of the Net Settlement Amount based
24 on his or her position held and total weeks worked for Ford during the Class Period while
25 employed as a non-exempt employee. Thus, each Class Member's Individual Settlement Payment
26 will be calculated using criteria typically used in determining appropriate amounts of alleged

27 _____
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 unpaid wages, unpaid premium wages for missed meal breaks, unreimbursed expenses, and
2 potential statutory penalties under applicable law. These methods are intended to ensure each
3 Class Member receives a portion of the available settlement funds corresponding to the relative
4 value of his or her potential claims. The proposed allocation provides a reasonable way to
5 compensate Class Members based on the amount of time they worked for Ford, and the number
6 of instances they missed a break, were not provided compensation in lieu of such missed breaks,
7 or lost wages due to alleged miscalculated and underpaid overtime.

8 The average class award will be approximately \$747, and class awards will range from
9 about \$8 to over \$2,100. The average PAGA award will be about \$29. [Nava Decl., ¶¶ 16, 18.]

10 **C. Settlement Administration**

11 Apex Class Action, LLC, as the Court-approved Settlement Administrator, mailed the
12 Notice Packet to the Class members after making all reasonable effort to ascertain the best
13 mailing address, including running each address through the National Change of Address
14 database and "skip-tracing" any Notice Packets returned as undeliverable. [Nava Decl., ¶¶ 3-
15 9.] The Class Notice, previously approved by the Court, duly informed Class Members of
16 the settlement terms, including the estimated relief each Class Member will receive, the
17 amounts to be requested for attorney's fees and the class representative enhancement awards,
18 and the right to opt out of or object to the settlement. [Nava Decl., ¶ 7, Exh. A.] Apex mailed
19 84 Notice Packets on September 3, 2024. [Nava Decl., ¶ 7.] Ultimately, only one Notice
20 Packet was deemed undeliverable, representing a 98.8% success rate. [Nava Decl., ¶ 10.] The
21 60-day response window for objecting to the settlement expire on November 4, 2024. [Nava
22 Decl., ¶¶ 11-13.] As of the filing of this motion, Apex has received zero requests for
23 exclusion (for a 100% participation rate), and zero objections to the settlement. No disputes
24 have been submitted regarding the information used to calculate class member settlement
25 shares. [Nava Decl., ¶¶ 11-13.]

26 **D. Release of Claims**

27 All Participating Class Members will be deemed to release Ford from all claims alleged in
28 the operative complaint, or that could have been brought based on the allegations in the operative

1 complaint, including PAGA claims, from May 4, 2019 through April 9, 2024. The release is
2 limited to the claims that were actually pleaded or could have been pleaded based on the alleged
3 facts in the operative complaint. [Donnelly Decl., ¶ 17.]

4 **E. PAGA Claims and Notice to the LWDA**

5 The Parties allocated \$5,000 to payment of civil penalties under PAGA for such claims
6 against Ford, as addressed in more detail below, and Plaintiff submits that amount is fair,
7 reasonable, and adequate, and consistent with PAGA's underlying purposes. As required by
8 Labor Code section 2699(l)(2), Plaintiff gave notice of the settlement and preliminary approval
9 hearing to the LWDA via its online portal. [Donnelly Decl., ¶ 19; Exh. 1.]

10 **IV. ARGUMENT**

11 The law favors settlement, particularly in class actions where substantial resources
12 can be conserved by avoiding the time, cost, and rigors of formal litigation. H. Newberg &
13 A. Conte, 4 Newberg on Class Actions (4th ed. 2002), § 11.41; Class Plaintiffs v. City of
14 Seattle (9th Cir. 1992) 955 F.2d 1268, 1276, cert. denied, 506 U.S. 953; Van Bronkhorst v.
15 Safeco Corp. (9th Cir. 1976) 529 F.2d 943,950; Potter v. Pacific Coast Lumber Co. (1951) 37
16 Cal.2d 592, 602. Nevertheless, to make certain the rights of absent parties are not unjustly
17 compromised, the settlement of a class action requires court approval. Cal. Rule of Court
18 3.769; Dunk v. Ford Motor Co. (1996) 48 Cal.App.4th 1794, 1801; Wershba v. Apple
19 Computer (2001) 91 Cal.App.4th 224, 245. The purpose of that judicial review is to protect
20 against fraud or collusion, and to ensure fairness to absent class members. Dunk, 48
21 Cal.App.4th at 1800-01; Newberg, at §§ 11.22, *et seq.* Review is accomplished through a
22 two-step process intended to determine whether, under the totality of circumstances, the
23 settlement is fair, reasonable and adequate. Dunk, 48 Cal.App.4th at 1801; Wershba, 91
24 Cal.App.4th at 245.

25 On a motion for final approval, the trial court is charged with determining whether, in
26 light of the total circumstances of the action and the response of the class members to the
27 proposed settlement, the settlement is fair, reasonable, and adequate. Dunk, 48 Cal.App.4th at
28 1801-02; Wershba, 91 Cal.App.4th at 244-45. The court has broad discretion in making that

determination and may consider a number of relevant factors, including: the strength of plaintiff's case; the likelihood of potential recovery; the risk, expense and likely duration of further litigation; the amount offered in settlement; the extent of discovery and stage of the proceedings; the experience and opinion of counsel; and the reaction of class members to the settlement. Id. In light of the strong judicial policy favoring the settlement of class actions, courts generally apply a presumption of fairness to a proposed class action settlement when: (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small. Dunk, 48 Cal.App.4th at 1802; Wershba, 91 Cal.App.4th at 245.

A. The Proposed Settlement Merits Final Approval

The proposed settlement of this action warrants final approval under the standards summarized above. The settlement is fair, reasonable and adequate, and represents a favorable resolution of highly disputed claims. Further, the settlement thus far has been overwhelmingly approved by the class members, as there are no objections and no Class Member requested exclusion.

1. The Settlement Is the Product of Arm's-Length, Informed Negotiations

The settlement is not the result of fraud or collusion. Rather, the proposed settlement was reached following arm's-length negotiations presided over by the Hon. Howard Broadman (Ret.), a highly respected and well-known mediator with extensive experience mediating wage and hour class actions. [Donnelly Decl., ¶ 6.] Moreover, Plaintiff and his counsel were well-informed about the facts and the law, and counsel J. Kirk Donnelly has years of litigation experience, including litigating wage and hour class actions. Plaintiff's counsel are well-qualified to evaluate the risks and benefits of pursuing further litigation or settling the matter. [Donnelly Decl., ¶¶ 25-27.] Defendant Ford likewise was represented by highly-qualified and experienced defense counsel. Both sides advocated vigorously for their clients, and nothing was "left on the table."

1 **2. The Class Reacted Favorably to the Settlement**

2 The settlement was well-received by the class. As of the filing of this motion, no
3 objections have been filed, and no Class Member has requested exclusion out of 84 settlement
4 class members. [Nava Decl., ¶¶ 11-12.] As many courts recognize, class member reaction to the
5 settlement is one of the most important factors to consider in determining if final approval should
6 be granted. Mandujano v. Basic Vegetable Prods., Inc., 541 F.2d 832, 837 (9th Cir. 1976); see
7 also In re: American Bank Note Holographics, 127 F.Supp.2d 418, 425 (S.D.N.Y. 2001) (“It is
8 well-settled that the reaction of the class to the settlement is perhaps the most significant factor to
9 be weighed in considering its adequacy”) (internal quotation marks omitted).

10 **3. The Proposed Settlement Meets the Dunk and Kullar Factors and is**
11 **within the Range of Reasonableness**

12 The proposed settlement involves a substantial sum of money that, when distributed,
13 will confer meaningful monetary benefits on the Class members. As described above, each
14 individual award will be based on an allocation consistent with the nature of the claims
15 asserted and will fairly and equitably allocate the available funds in relation to the degree of
16 damage each Class member incurred. While Class members who worked for only a short
17 period of time will receive relatively small sums, those with longer tenures and who worked
18 more hours and shifts, and earned more compensation throughout the class period, will
19 receive appropriately larger awards.

20 Prior to mediation, the parties engaged in extensive informal discovery to facilitate
21 settlement discussions. As a result, Plaintiff reviewed documents and information regarding
22 Ford’s payroll practices, pay stubs and time records for a sampling of pay periods, meal and rest
23 break policies, etc., and information from Defendant regarding class size and breakdown of job
24 positions, work weeks, rates of pay, and other information used to formulate a damages model.
25 Plaintiff’s counsel is confident they obtained sufficient information to enable them to understand
26 the law and facts of this case and make an informed decision regarding the proposed settlement
27 and whether it is in the best interests of the class. [Donnelly Decl., ¶¶ 8, 24.]

28 Using that data, Plaintiff ran various calculations and estimated Ford’s likely maximum

1 exposure on the class claims at approximately \$568,330, including \$10,700 on the unpaid wage
2 claims, \$160,470 on the meal break claims, \$64,200 on the rest break claims, \$35,660 on the
3 expense reimbursement claim, \$149,700 on the wage statement claims, and \$147,600 on the
4 waiting time penalty claims. [Donnelly Decl., ¶¶ 25-26.] Plaintiff and his counsel substantially
5 discounted the value of these claims, however, in light of the multiple and considerable risks
6 posed by proceeding with the litigation.

7 On the unpaid wage claims, Plaintiff alleged he and other employees were not paid all
8 overtime wages due because Ford did not include certain forms of compensation, primarily shift
9 differential pay for working a night shift, in the “regular rate of pay” used to calculate the correct
10 overtime rate. “Regular rate of pay, which can change from pay period to pay period, includes
11 adjustments to the straight time rate, reflecting, among other things, shift differentials and the per-
12 hour value of any non-hourly compensation the employee has earned.” Alvarado v. Dart
13 Container Corp. of California (2018) 4 Cal.5th 542, 554. As a result, Plaintiff contends Ford
14 frequently underpaid the Class Members for their overtime. While Plaintiff believes this is one of
15 his stronger claims, he also recognizes the exposure is nominal, as the amount lost typically is
16 only a few dollars per work week. [Donnelly Decl., ¶ 27.]

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

28 In response, Ford emphasized its written policies are compliant, and that it provided many

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

9 On the expense reimbursement claim, Plaintiff claimed that he and the Class Members
10 regularly had to use their personal phones while on the clock and for work purposes to, inter alia,
11 communicate with supervisors, take pictures of their work, send it reports on fuel consumed by
12 company vehicles, and so on. Per Plaintiff, Ford did not pay any reimbursement for use of
13 personal phones. Ford on the other hand argued that any use of personal mobile devices was
14 unnecessary to perform the job and therefore was purely for personal convenience. If so, then the
15 expense was neither reasonable nor necessary, and therefore no reimbursement was required.
16 Labor Code § 2802. [Donnelly Decl., ¶ 30.]

17 On the claims under Labor Code section 226, for inaccurate wage statements, Plaintiff
18 argued his wage statements did not include the employer address, as required by Section
19 226(a)(8), and further misstated total hours worked, in violation of Section 226(a)(2), in many
20 instances because the statements “double counted” certain hours worked. Plaintiff also alleged
21 derivative wage statement violations based on the alleged underpaid overtime and meal/rest break
22 violations, and further alleged derivative Labor Code 203 violations for failure to timely pay all
23 wages due on separation of employment. Being derivative, these claims accordingly are subject to
24 the same risks and uncertainties applicable to the primary claims, plus additional risks posed by
25 the need to take into account the discretionary nature of such awards and the “good faith” and
26 other defenses available to Defendant. Amaral v. Cintas Corp. No. 2 (2008) 163 Cal.App.4th
27 1157, 1203-4 (employer did not willfully fail to pay wages under Labor Code § 203 even though
28 class prevailed on underlying claim for failure to pay living wages). Thus, while these claims

1 largely are derivative of the unpaid wage claims, they also are subject to additional defenses.

2 [Donnelly Decl., ¶ 31.]

3 As far as potential PAGA liability, the allegedly aggrieved employees theoretically are
4 entitled to penalties totaling about \$500,000 in civil penalties should Plaintiff prevail on all
5 claims, establish violations of the multiple Labor Code sections at issue, and secure maximum
6 penalties for each and every pay period. [Donnelly Decl., ¶ 32.] As with the class claims,
7 Plaintiff discounted the potential PAGA penalties based on Ford's various defenses on the merits
8 and also accounted for the Court's wide discretion to reduce such penalties, or to decline to award
9 penalties at all. Labor Code § 2699(e)(2); Carrington v. Starbucks Corp. (2018) 30 Cal.App.5th
10 504 (trial court awarded penalties of \$5 per pay period after a bench trial, which decision was
11 upheld on appeal); In re Taco Bell Wage and Hour Actions (E.D. Cal. Apr. 8, 2016) 2016 U.S.
12 Dist. LEXIS 48557 (PAGA penalties denied after trial). Accordingly, the Parties allocated \$5,000
13 to PAGA penalties, and Plaintiff submits this amount is reasonable under the circumstances and
14 in line with comparable settlements in other wage and hour class actions in California. *E.g.*, Van
15 Kempen v. Matheson Tri-Gas, Inc. (N.D. Cal. Aug. 25, 2017) 2017 U.S. Dist. LEXIS 137182
16 (granting final approval of \$5,000 PAGA penalty from \$370,000 settlement, or 1.4 percent of
17 total settlement); Slavkov v. First Water Heater Partners I (N.D. Cal. July 25, 2017) 2017 U.S.
18 Dist. LEXIS 116303 (finding a \$7,500 PAGA payment reasonable when measured against the
19 overall settlement of \$345,000 and the possible weaknesses in Plaintiffs' case, or 2.2 percent of
20 total settlement). Additionally, the LWDA has been informed of the terms of the PAGA portion
21 of the settlement, and will be able to weigh in as necessary. Jennings v. Open Door Mktg. Inc.
22 (N.D. Cal. Oct. 3, 2018) 2018 U.S. Dist. LEXIS 171356, at *27 (approving settlement with
23 PAGA penalties of 0.6% where "[p]laintiffs [have] submitted the settlement agreement to the
24 LWDA, and the LWDA has not objected to the settlement.

25 The settlement obviates the significant risk that this Court may find any kind of class
26 resolution unachievable or might deny certification of all or some of Plaintiff's claims.
27 Furthermore, even if Plaintiffs obtained certification of all or some of the claims, continued
28 litigation would be expensive as the parties pursued merits discovery, a probable motion to

1 decertify, as well as trial and possible appeals, and would substantially delay any recovery by the
2 class with no assurance of recovering significantly more than the proposed settlement. Overall,
3 while Plaintiff is confident in the merits of his claims, a legitimate controversy exists as to each
4 cause of action. Plaintiff also recognizes proving the amount of wages and penalties due each
5 Class Member would be an expensive and uncertain proposition. [Donnelly Decl., ¶ 19.]

6 Plaintiff and counsel discounted the value of the class claims consistent with the risks
7 discussed above, and carefully weighed the likelihood of the class receiving substantially greater
8 benefit if the litigation continued. Plaintiff and counsel concluded – in light of these very real and
9 substantial risks – settlement on the proposed terms and without prolonged and costly litigation
10 was in the best interests of the class. The overall \$130,000 recovery represents a significant
11 percentage of Defendant’s potential exposure and, given the risks addressed above, a total
12 recovery for the class of \$130,000, which will result in average award of some \$____ per class
13 member, is a significant result well within the range of reasonableness considering all potential
14 outcomes, and it will provide direct monetary awards to all Class Members without further delay.
15 [Donnelly Decl., ¶ 20.]

16 Importantly, the mere fact that a settlement does not provide the same recovery as might
17 be achieved at trial is not a proper indicator of whether the settlement is fair, reasonable, and
18 adequate. Wershba, 91 Cal.App.4th at 246, 250 (“Compromise is inherent and necessary in the
19 settlement process...even if the relief afforded by the proposed settlement is substantially
20 narrower than it would be if the suits were to be successfully litigated, this is no bar to a class
21 settlement because the public interest may indeed be served by a voluntary settlement in which
22 each side gives ground in the interest of avoiding litigation”); Lane v. Facebook, Inc. (9th Cir.
23 2012) 696 F.3d 811, 819 (“[T]he question whether a settlement is fundamentally fair . . . is
24 different from the question whether the settlement is perfect in the estimation of the reviewing
25 court”); 7-Eleven Owners for Fair Franchising v. Southland Corp. (2000) 85 Cal.App.4th 1135,
26 1150 (“The fact that a proposed settlement may amount to only a fraction of the potential
27 recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and
28 should be disapproved”); White v. Experian Information Solutions, Inc. (C.D. Cal. 2011) 803

1 F.Supp.2d 1086, 1098 (rejecting contention settlement was not fair and reasonable even though it
2 represented 99% discount off the maximum value of the claims). Importantly as well, the
3 proposed settlement is non-reversionary and will provide timely benefits to the Class Members
4 without a claims process. White, 803 F.Supp.2d at 1098; c.f., Federal Judicial Center, Managing
5 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)
6 www.fjc.gov/sites/default/files/2012/ClassGd3.pdf (reversionary provisions and/or cumbersome
7 claims process may indicate lack of fairness). Plaintiff and his counsel submit the settlement is
8 within the “range of reasonableness,” and is fair and adequate for the Class.

9 **V. PLAINTIFF’S ENHANCEMENT AWARD**

10 Under the terms of the settlement, Plaintiff seeks a modest incentive award of \$7,500 for
11 his service in bringing these claims on behalf of the Class. The request is reasonable given the
12 risks he undertook on behalf of the Class Members. By contacting and retaining counsel to
13 pursue these claims, Plaintiff helped make this settlement possible for the absent Class Members,
14 while shouldering the risk of being liable for Defendant’s litigation costs. Plaintiff also exposed
15 himself to unwanted notoriety related to filing a public lawsuit (discoverable even through a
16 simple google search) for the benefit of other employees, placing himself at risk of discrimination
17 by future prospective employers. As set forth in more detail in his declaration submitted with the
18 preliminary approval motion, among taking many other actions assisting in the successful
19 litigation of this case, Plaintiff provided substantial factual information and documents to
20 counsel, attended numerous meetings/phone conferences with counsel to discuss the case, and
21 kept abreast of all significant developments. [Declaration of Luis A. Martinez Trujillo, ¶¶ 2-9;
22 Donnelly Decl., ¶ 21.] Accordingly, the requested enhancement payments to Plaintiff is
23 appropriate and justified as part of the settlement.

24 **VI. SETTLEMENT ADMINISTRATION COSTS**

25 The settlement provides for a payment to Apex for its services as the Settlement
26 Administrator. As set forth in the Declaration of Madely Nava, Apex has performed and will
27 continue to perform its required duties through final distribution of the settlement funds and
28 incurred \$5,500 in fees and expenses. [Nava Decl., ¶ 19.] Accordingly, Plaintiff respectfully

1 requests the Court approve payment of \$5,500 to Apex from the GSA. [Donnelly Decl., ¶ 22.]

2 **VII. ATTORNEY'S FEES AND COSTS**

3 **A. The Attorney's Fees Requested Are Fair and Reasonable and Should Be**
4 **Approved**

5 This Court has discretion over the amount of attorneys' fees awarded and court
6 approval is required for Class Counsel's fees. Cal. Rule of Court 3.769; Levy v. Toyota
7 Motor Sales, U.S.A. (1992) 4 Cal.App.4th 807, 813; Lealao v. Beneficial Cal., Inc. (2000) 82
8 Cal.App.4th 19. In defining a reasonable fee, the Court should attempt to mimic the
9 marketplace for cases involving significant contingent risk, such as this one. Deposit
10 Guaranty Nat'l Bank, Jackson, Miss. v. Roper (1980) 445 U.S. 326, 338, rehg. den. 446 U.S.
11 947; Lealao, 82 Cal.App.4th at 49-50 (court should attempt "to award the fee that informed
12 private bargaining, if it were truly possible, might have reached" in determining a reasonable
13 fee, and a fee award should approximate a "range of fees freely negotiated in comparable
14 litigation"). Here, Class Counsel's request for attorney's fees and costs is reasonable and
15 justified by the work performed, the benefits obtained, and the contingent risk assumed.

16 As addressed in detail above, at the time the parties reached the tentative settlement
17 success for Plaintiff and the putative class was far from certain. Plaintiff faced a real risk that
18 some or all the claims would not be certified for class treatment, as Defendant had strong
19 arguments that its compensation policies were legal and properly compensated the class
20 members, that the class might not be sufficiently numerous, and that many putative class
21 members previously waived the claims at issue. Even if Plaintiff certified some or all of the
22 claims and ultimately prevailed on the merits, it undoubtedly would have taken several years
23 to realize any recovery while they pursued class certification, trial, and an almost certain
24 appeal. [Donnelly Decl., ¶¶ 14-18.]

25 Nonetheless, Plaintiff succeeded and expeditiously obtained the relief he set out to
26 obtain, and the settlement provides substantial cash payments to Class Members, with an
27 average award of about \$747, and with a maximum award of over \$2,100. Importantly as
28 well, the Class Members have been overwhelmingly supportive of the Settlement – as of the

1 filing of this motion, there are no objections to the settlement and no opt outs. [Nava Decl.,
2 ¶¶ 11-12.]

3 **B. The Requested Fee Award Is Reasonable and Appropriate**

4 The United States Supreme Court has ruled the parties to a class action properly may
5 negotiate not only the settlement of the action itself but also the payment of attorney's fees.
6 Evans v. Jeff D. (1986) 475 U.S. 717, 734-35, 738, fn. 30.) In Hensley v. Eckerhart (1983)
7 461 U.S. 424, 437, the Supreme Court explained that negotiated, agreed-upon attorney's fee
8 provisions are the ideal towards which the parties should strive: "A request for attorney's fees
9 should not result in a second major litigation. Ideally, of course, litigants will settle the
10 amount of a fee." The United States Supreme Court has reemphasized this policy and further
11 stressed trial courts have "a responsibility to encourage agreement" on fees. Blum v. Stenson
12 (1984) 465 U.S. 886, 902 n.19.

13 As part of the Settlement, Ford agreed not to object to an award of no more than 1/3
14 of the GSA for attorney's fees, or \$43,333.33, and up to \$9,000 in reimbursement for
15 litigation costs and expenses (only \$8,413.52 is requested). Such a fee is commensurate
16 with what the market would provide for similar services and the Court therefore can most
17 certainly enforce the agreement. As California's Court of Appeal has instructed:

18 Given the unique reliance of our legal system on private litigants to enforce substantive
19 provisions of law through class and derivative actions, attorneys providing the essential
20 enforcement services must be provided incentives roughly comparable to those negotiated
in the private bargaining that takes place in the legal marketplace, as it will otherwise be
economic for defendants to increase injurious behavior.

21 Lealao, 82 Cal.App.4th at 47.

22 Here, the parties did not negotiate the inclusion of attorney's fees until after extensive
23 arms-length bargaining regarding relief to the Class was completed. [Donnelly Decl.,
24 ¶ 23.] The requested fee and cost award was a product of these arms-length negotiations and
25 fairly reflects the marketplace value of the services rendered by Class Counsel in this case.
26 As a result, the fee agreed to by the parties should be approved.

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28 /////

1 C. **Class Counsel's Fees are Justified When Calculated as a Percentage of the**
2 **Common Fund**

3 In approving fee applications, courts typically apply either a percentage-of-recovery
4 method or the lodestar method. Laffitte v. Robert Half Int'l., Inc. (2016) 1 Cal.5th 480, 489;
5 Wershba v. Apple Computer, Inc. (2001) 91 Cal.App.4th 224, 254, disapproved on other
6 grounds, Hernandez v. Restoration Hardware, Inc. (2018) 4 Cal.5th 260. The California
7 Supreme Court recently recognized the advantages and equities of calculating attorney's fees
8 using the percentage-of-the-common-fund method in another wage-and-hour case:

9 The recognized advantages of the percentage method-including relative ease of
10 calculation, alignment of incentives between counsel and the class, a better
11 approximation of market conditions in a contingency case, and the encouragement it
12 provides counsel to seek an early settlement and avoid unnecessarily prolonging the
litigation convince us the percentage method is a valuable tool that should not be
denied our trial courts.

13 Laffitte, 1 Cal.5th at 503 (citations omitted).

14 Indeed, both California and federal courts have long recognized an appropriate
15 method for determining the award of attorney's fees is based on a percentage of the total
16 value of benefits afforded to class members by the settlement. Serrano v. Priest (1977) 20
17 Cal.3d 25, 34; Boeing Co. v. Van Gernert (1980) 444 U.S. 472, 478; Vincent v. Hughes Air
18 West, Inc. (9th Cir. 1977) 557 F.2d 759, 769. Awarding a fee based on a percentage of the
19 common fund recovered operates to "spread litigation costs proportionately among all the
20 beneficiaries so that the active beneficiary does not bear the entire burden alone." Vincent,
21 557 F.2d at 769.

22 In determining a reasonable common fund fee award, courts should also consider the
23 fact that fees serve as an economic incentive for lawyers to bring class action litigation to
24 achieve increased access to the judicial system for meritorious claims and to enhance
25 deterrents to wrongdoing. Conte, Attorney Fee Awards (2d ed. 1993) § 104. Without
26 prosecution on a contingent basis and use of the class action mechanism, the courthouse door
27 would effectively be closed to most class members due to the relatively small size of their
28 individual claims in relation to the enormous time and cost associated with class action

1 litigation.

2 Here, Class Counsel seek a fee award for their successful prosecution and resolution
3 of this action of no more than one-third of the total amount recovered by the Class via the
4 lawsuit, or \$43,333.33. The percentage requested is justified for the reasons set forth further
5 below, and comports with fee awards calculated on a percentage-of-the-benefit basis.
6 Indeed, review of class action settlements shows that courts have historically awarded fees in
7 the range of 20 to 50 percent, depending upon the circumstances of the case. In re Warner
8 Communications Sec. Litig. (S.D.N.Y. 1985) 618 F.Supp. 735, 749-50 (concluding that
9 percentage fees in common fund cases range from 20 to 50 percent); Newberg, Newberg on
10 Class Actions (3d ed.) § 14.03, pp. 13-14 ("Usually 50% of the fund is the upper limit on a
11 reasonable fee award from a common fund in order to assure that the fees do not consume a
12 disproportionate part of the recovery obtained for the class, although somewhat larger
13 percentages are not unprecedented.").

14 **D. A Lodestar Cross-Check Also Supports Class Counsel's Fee Request**

15 To ensure the fairness of an attorney's fee award, courts frequently conduct a lodestar
16 cross check of counsel's fees. "A lodestar cross-check thus provides a mechanism for
17 bringing an objective measure of the work performed into the calculation of a reasonable
18 attorney fee." Laffitte, 1 Cal.5th at 504. Here, Class Counsel spent 64.5 hours of time on this
19 matter, resulting in a modest and very reasonable lodestar of \$48,330.00.

20 As is fully detailed in the Donnelly Declaration, Class Counsel's efforts included:
21 (1) extensive pre-lawsuit investigation of the claims of Plaintiff and the putative class, including
22 legal research, obtaining Plaintiff's employment records, research into similar claims and claims
23 against other employers in the same industry, and attempts to locate and contact other FMA
24 employees; (2) drafting a PAGA notice letter; (3) drafting the initial complaint and related
25 documents; (4) case management, including communications with defense counsel, meeting and
26 conferring/preparing case management statements, etc.; (5) lengthy discussions with defense
27 counsel regarding settlement/mediation and informal discovery needed for meaningful settlement
28 discussions; (6) engaging in substantial informal discovery, including propounding informal

1 discovery “requests” and reviewing documents and other information produced; (7) drafting a
2 mediation brief and accompanying damages model after review and analysis of defendant’s
3 informal discovery production; (8) attending an all-day mediation; (9) negotiating and drafting
4 the settlement agreement and related documents; (10) drafting the amended complaint; (11)
5 drafting the motion for preliminary approval and supplemental papers re: changing the notice
6 period; (11) administration of the settlement, communications with the Settlement Administrator
7 and settlement class members; (12) drafting the motion for final approval and motion for
8 attorney’s fees, and attending the final approval hearing; and (13) extensive communications with
9 the Plaintiff regarding case status, case investigation and document review, mediation, and
10 settlement terms. Additionally, Class Counsel will incur additional time to attend the final
11 approval hearing and following final approval to, inter alia, respond to class member inquiries,
12 work with the Settlement Administrator on the distribution of settlement funds, and on the
13 compliance hearing. [Donnelly Decl., ¶ 24, Exh. 2.]

14 In pursuing this matter, Class Counsel incurred total attorney’s fees of \$48,330, and
15 the lodestar is based on a very reasonable number of hours worked to litigate this matter to a
16 successful conclusion (64.5 attorney and paralegal hours), and the requested attorney hourly rates
17 are reasonable and comport with hourly rates charged by other attorneys with similar experience
18 in this practice area in California. [Donnelly Decl., ¶¶ 25-32; Exh. 3.] On a lodestar basis, the fee
19 request of \$43,333.33 results in a fee request that is less than the actual final lodestar, and
20 thus there is no request for a lodestar enhancement. [Donnelly Decl., ¶¶ 31-32.] Class
21 Counsel submits effectively operates to show that the percentage fee request is reasonable
22 considering the actual fees requested are slightly lower than the value of the services
23 performed when valued via traditional hourly billing.

24 E. **The Award is Supported By 1) the Results Achieved; 2) the Risk, 3) the Skill**
25 **Required, 4) the Contingent Nature of the Fee and 5) Awards in Similar**
26 **Cases**

27 What has now emerged in most fee award decisions is the recognition that fee
28 determinations in both common fund and statutory fee situations are incapable of
mathematical precision because of the intangible factors that must be resolved in the court's

1 discretion based on the circumstances of each particular case. Conte, § 207, p. 44. In
2 determining an appropriate fee in a common fund case, a Court must decide, based on the
3 unique posture of each case, what percentage of the common fund would most reasonably
4 compensate Class Counsel given the nature of the litigation and the performance of counsel.
5 Paul, Johnson, Alston & Hunt v. Gaulty (9th Cir. 1989 886 F.2d 268, 272) (the benchmark
6 percentage fee may be adjusted to account for the circumstances involved in a case).

7 Courts apply a five-part test in calculating a reasonable percentage fee in common
8 fund cases: (1) the results achieved; (2) the risk of litigation; (3) the skill required and the
9 quality of work; (4) the contingent nature of the fee and the financial burden carried by the
10 plaintiffs; and (5) awards made in similar cases. Laffitte, 1 Cal.5th at 489.

11 **1. The Results Achieved.**

12 Class Counsel obtained an excellent result in this case for the Class Members. The
13 Settlement provides real monetary benefits to the Class Members, and the Settlement is
14 particularly advantageous to the Class Member because the proceeds will be distributed
15 shortly as opposed to waiting additional years for a similar, or possibly, less favorable result.
16 Considering many individual claims would be very modest and would not be cost-effective
17 to pursue successfully, the Settlement provided them with fair compensation for their claims.
18 Moreover, the absence of any objection to either the Settlement or the attorney's fee request
19 bolsters the excellent results. Indeed, the approval of the Class is overwhelming as indicated
20 by the fact that only one class member opted out. Additionally, the settlement amounts to a
21 substantial percentage of the maximum value of the amount the Class might have obtained if
22 it had tried the case and recovered on all theories seeking recovery of wages and penalties.
23 "It is well-settled law that a cash settlement amounting to only a fraction of the potential
24 recovery does not per se render the settlement inadequate or unfair." In re Omnivision
25 Techs., Inc., 559 (N.D. Cal. 2008) F.Supp.2d 1036, 1042.

26 **2. Class Counsel Bore Considerable Risk.**

27 At the time of filing the complaint, Class Counsel recognized that they would have to
28 expend a substantial amount of time and advance significant costs to prosecute a statewide

1 class action suit with no guarantee of compensation or reimbursement, in the hope of
2 prevailing against a sophisticated company represented by first-rate attorneys. Despite
3 their belief in the validity of Plaintiff's claims, they also knew they faced substantial risks
4 of class certification and the ability to prove class-wide and individual damages. In light of
5 the highly uncertain nature of this suit, Class Counsel also bore the risk that Defendant
6 would dig in and attempt to bury their small firm in work. Given the small size of Class
7 Counsel's firm, not receiving any compensation for several years while simultaneously
8 advancing litigation costs posed considerable risk and difficulty. [Donnelly Decl., ¶¶ 33-34.]

9 **3. The Skill Required and the Quality of Work.**

10 Practice in the narrow area of wage and hour litigation requires skill, knowledge and
11 experience. The issues presented in this case required more than just a general appreciation
12 of wage and hour law and class action procedure. This Settlement was possible only
13 because counsel persuaded Ford that Plaintiff and the putative class had a realistic
14 chance of prevailing on their claims despite Ford's contrary arguments, and that the case
15 would be pursued through class certification and trial if necessary. In successfully
16 navigating these hurdles, Class Counsel displayed appropriate skill while pursuing a
17 risky and difficult case.

18 **4. The Contingent Nature of the Fee and Risk Assumed**

19 There is a substantial difference between the risk assumed by attorneys being paid
20 by the hour and attorneys working on a contingent fee basis. The attorney being paid by
21 the hour can go to the bank with his fee. Powers v. Eichen (9th Cir. 2000) 229 F.3d
22 1249, 1256. The attorney working on a contingent basis can only log hours while
23 working without pay towards a result that will hopefully entitle him to a market fee
24 considering the risk and other factors of the undertaking. Id. at 1257. Otherwise, the
25 contingent fee attorney receives nothing. Id. In this case, Class Counsel subjected
26 themselves to this risk in this all or nothing contingent fee case wherein the necessity
27 and financial burden of private enforcement makes the requested award appropriate.

28 Counsel retained on a contingency fee basis, whether in private matters or in class

1 action litigation, is entitled to a premium beyond their standard, hourly, non-contingent
2 fee schedule to compensate for both the contingent risk assumed and the delay in
3 payment. The simple fact is that despite the most vigorous and competent of efforts,
4 success is never guaranteed. McKittrick v. Gardner (4th Cir. 1967) 378 F.2d 872, 875.
5 Indeed, if counsel is not adequately compensated for the risks inherent in difficult class
6 actions, competent attorneys will be discouraged from prosecuting similar cases.
7 Ketchum v. Moses (2001) 24 Cal.4th 1122, 1132-33; Cazares v. Saenz (1989) 208
8 Cal.App.3d 279, 287.

9 Here, the contingent fee practices of Plaintiff's counsel simply do not accommodate
10 the investment of unnecessary time in a case, and the adverse resolution of any one of several
11 difficult issues present in this matter could have doomed the entire effort. As discussed, the
12 attorney's fees in this case were not only contingent but fairly risky, and there was always a
13 palpable chance Plaintiff's counsel would receive nothing for any number of reasons.
14 [Donnelly Decl., ¶¶ 33-34.] Accordingly, the contingent nature of the fee and the financial
15 burdens on Class Counsel and Plaintiff also support the fee requested.

16 5. Awards in Other Cases

17 As discussed, the attorney's fees requested by Class Counsel are within the range of
18 fees awarded in comparable cases, and review of class action settlements over the past 10
19 years shows that the courts have historically awarded fees in the range of 20 to 50 percent,
20 depending upon the circumstances of the case. In re Warner Communications Sec. Litig.
21 (S.D.N.Y. 1985) 618 F.Supp. 735, 749-50 (concluding that percentage fees in common fund
22 cases range from 20 to 50 percent); Newberg, Newberg on Class Actions (3d ed.) § 14.03,
23 pp. 13-14 ("Usually 50% of the fund is the upper limit on a reasonable fee award from a
24 common fund in order to assure that the fees do not consume a disproportionate part of the
25 recovery obtained for the class, although somewhat larger percentages are not
26 unprecedented."). Class Counsel's requested fees equal to 1/3 of the gross amount recovered
27 on behalf of the class and are well within the range of reasonableness under either the
28 percentage of the recovery or the lodestar method in light of the contingent risk assumed, the

1 delay in payment, the result achieved, and the overall quality of the representation.

2 **F. Class Counsel's Costs and Expenses are Reasonable**

3 Plaintiff's counsel also requests reimbursement of actual out-of-pocket expenses incurred
4 to prosecute this action. These expenses were incidental and necessary to the effective
5 representation of the employees, and Plaintiff's counsel is permitted to recover litigation costs
6 and expenses under the common fund doctrine and the Settlement Agreement. Serrano, 20 Cal.3d
7 at 35 (common fund doctrine permits recovery of fees and costs from the fund); Rider v. County
8 of San Diego (1992) 11 Cal.App.4th 1410, 1424 n.6 (costs are recoverable from the common fund
9 "[o]f necessity, and for precisely the same reasons discussed above with respect to the recovery of
10 attorneys' fees by ... [Plaintiffs'] attorneys"). Plaintiff's counsel also is entitled to recover "those
11 out-of-pocket expenses that would normally be charged to a fee-paying client." Harris v.
12 Marhoefer (9th Cir. 1994) 24 F.3d 16, 19.

13 Per the Donnelly Declaration, Class Counsel incurred a total of \$8,413.52 in
14 expenses in connection with this matter. These expenses include amounts paid for court
15 filing fees, service of process, postage, expert fees, and mediation fees, all of which are
16 costs normally billed to and paid by the client. These costs were reasonably incurred in
17 the prosecution of this matter, and should be reimbursed in full. Plaintiff respectfully
18 requests that the Court authorize reimbursement of counsel's costs in the amount of
19 \$8,413.52. [Donnelly Decl., ¶¶ 35-36.]

20 **VIII. CONCLUSION**

21 For all the foregoing reasons, Plaintiff Luis A. Martinez Trujillo respectfully requests that
22 the Court grant this motion and grant final approval of the proposed class action settlement and
23 approve the payment of PAGA penalties to the State. Plaintiff further requests the Court approve
24 payment of the Settlement Administrator's fees and expenses, approve the requested class
25 representative enhancement payment, approve the award of attorney's fees and costs as requested,
26
27
28

1 and enter judgment in this action. Finally, Plaintiff request the Court set a final compliance
2 hearing for February 10, 2026, or a later date convenient for the Court.

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4 Dated: January 13, 2025

LAW OFFICES OF J. KIRK DONNELLY, APC

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