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Attorneys for Plaintiff PASSION MORRIS

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**IN AND FOR THE COUNTY OF KERN**

PASSION MORRIS, an individual, on behalf of  
herself and on behalf of all persons similarly  
situated,

Plaintiff,

v.

HABERFELDE FORD, a California corporation;  
JIM BURKE FORD LINCOLN, an unknown  
business entity; and DOES 1 through 100,  
Inclusive,

Defendants.

Case No. BCV-23-100471

**DECLARATION OF JACKLAND K. HOM,  
ESQ. IN SUPPORT OF PLAINTIFF'S  
MOTION FOR PRELIMINARY  
APPROVAL OF CLASS ACTION AND  
PAGA SETTLEMENT**

Date: August 13, 2024

Time: 8:30 a.m.

Location: Metropolitan Division Justice Building  
1415 Truxtun Ave  
Bakersfield, CA 93301

Judge: Hon. Thomas S. Clark

Dept.: 17

1 I, JACKLAND K. HOM, declare as follows:

2 1. I am over eighteen years of age and if called as a witness, I could and would competently  
3 testify to the following facts from my own personal knowledge. I am the managing partner of the law  
4 firm of Zakay Law Group, APLC ("Class Counsel"), co-counsel of record for Plaintiff Passion Morris  
5 "Plaintiff") in this wage and hour class action filed against defendants Haberfelde Ford and Jim Burke  
6 Ford Lincoln ("Defendants").

7 2. This declaration is being submitted in support of Plaintiff's motion for Preliminary  
8 Approval of Class Action and PAGA Settlement.

9 3. Attached hereto as **Exhibit "1"** is a true and correct copy of the Stipulation of Settlement  
10 of Class and PAGA Action Claims and Release of Claims ("Agreement" or "Settlement Agreement").  
11 Attached as **Exhibit "A"** to the Agreement is a true and correct copy of the proposed Class Notice.

12 4. Attached hereto as **Exhibit "2"** is a true and correct copy of the proof of filing with the  
13 Labor and Workforce Development Agency notice of this settlement with the Settlement Agreement  
14 and Motion for Preliminary Approval of Class Action and PAGA Action Settlement evidencing Class  
15 Counsel's compliance with California Labor Code Section 2699(l)(2).

16 5. Attached hereto as **Exhibit "3"** is a true and correct copy of the bid for settlement  
17 administration submitted by Apex Class Action LLC, in the amount of \$9,290.00.

18 6. An objective evaluation of the Settlement confirms that the relief negotiated on behalf of  
19 the Class is fair, reasonable, and adequate. The Settlement was negotiated by the Parties at arm's length.  
20 The Settlement confers substantial benefits to the Settlement Class. The relief offered by the Settlement  
21 is particularly impressive when viewed against the difficulties encountered by plaintiffs pursuing wage  
22 and hour cases (*see infra*). Indeed, by settling now rather than proceeding to trial, Class Members will  
23 not have to wait (possibly years) for relief, nor will they have to bear the risk of class certification being  
24 denied or of Defendant prevailing at trial. Given that there are approximately 644 Settlement Class  
25 Members, **the average gross recovery is approximately \$1,366.45** (Net Settlement Amount divided by  
26 Class Members).

27 7. As discussed below, the proposed Settlement satisfies all criteria for preliminary  
28 settlement approval and falls within the range of reasonableness. The average Individual Settlement

1 Payment to the Settlement Class meets or exceeds awards in similar wage and hour class actions.  
2 Moreover, the proposed Settlement Class is appropriate for provisional certification. Accordingly,  
3 Plaintiff respectfully requests the Court grant preliminary approval of the Settlement.

4 8. Defendants own, operate, and/or manage car dealerships in California, including Kern  
5 County, where Plaintiff worked. This action asserts claims on behalf of all non-exempt employees who  
6 are or previously were employed by Defendants, who performed work in California during the period  
7 of February 14, 2019 through June 13, 2024 (the “Class Period”). Plaintiff worked for Defendants as a  
8 non-exempt employee in California from approximately December 2019 to October of 2020. At all  
9 times during her employment, Plaintiff earned an hourly wage and was entitled to legally compliant  
10 meal and/or rest periods, and minimum, regular and overtime wages for all hours worked. Throughout  
11 his employment, Plaintiff was subject to Defendants’ written policies and procedures.

12 9. Generally, Plaintiff’s complaint alleged that Defendants failed to provide compliant meal  
13 and rest periods, failed to allow employees to take duty-free meal and rest periods, failed to pay all  
14 minimum, regular and overtime wages, failed to correctly calculate the regular rate of pay, failed to pay  
15 for all hours worked, failed to maintain true and accurate records; failed to reimburse employees for  
16 required business expenditures, failed to provide accurate itemized wage statements, and failed to  
17 timely pay wages due during, and upon termination of employment. Defendants forcefully deny liability  
18 for each of Plaintiff’s claims. Further, Defendants assert that it fully complied with all applicable  
19 employment laws and raised several other significant defenses to Plaintiff’s claims, including but not  
20 limited to, asserting that it maintained compliant reimbursement policies, maintained facially compliant  
21 meal and rest period policies, issued compliant wage statements, and timely paid all wages when due.

22 10. On February 14, 2023, Plaintiff filed her class action complaint alleging ten causes of  
23 action for; (1) Violation of Cal. Lab. Code §§ 510 and 1198 (Unpaid Overtime); (2) Violation of Cal.  
24 Lab. Code §§ 226.7 and 512(a) (Unpaid Meal Period Premiums); (3) Violation of Cal. Lab. Code §  
25 226.7 (Unpaid Rest Period Premiums); (4) Violation of Cal. Lab. Code §§ 1194, 1197, and 1197.1  
26 (Unpaid Minimum Wages); (5) Violation of Cal. Lab. Code §§ 201 and 202 (Final Wages Not Timely  
27 Paid); (6) Violation of Cal. Lab. Code § 204 (Wages Not Timely Paid During Employment); (7)  
28 Violation of Cal. Lab. Code § 226(a) (Non-Compliant Wage Statements); (8) Violation of Cal. Lab.

1 Code § 1174(d) (Failure to Keep Requisite Payroll Records); (9) Violation of Cal. Lab. Code §§ 2800  
2 and 2802 (Unreimbursed Business Expenses); and (10) Violation of Cal. Business & Professions Code  
3 §§ 17200, *et seq.*

4 11. Plaintiff's complaint alleged that Defendants failed to provide compliant meal and rest  
5 periods, failed to allow employees to take duty-free meal and rest periods, failed to pay all minimum,  
6 regular and overtime wages, failed to correctly calculate the regular rate of pay, failed to pay for all  
7 hours worked, failed to maintain true and accurate records; failed to reimburse employees for required  
8 business expenditures, failed to provide accurate itemized wage statements, and failed to timely pay  
9 wages due during, and upon termination of employment. *Id.* Shortly after filing the action, the Parties  
10 engaged in written discovery. Prior to the Parties' respective discovery response deadlines, the Parties  
11 agreed to attend private mediation. Prior to mediation, the Parties agreed to informally exchange  
12 documents and information in connection with the Action. As part of this process, Defendants provided  
13 time and pay records for 218 employees, approximately 33.9% of the total Class. Plaintiff's statistician  
14 found this to be sufficient to develop a meaningful damages model. Additionally, the 33.9% sample is  
15 statistically reliable, approximately resulting in a confidence level of 95% with a margin of error of  
16 5.4%. In addition to the time and payroll records, Defendants produced written policies and agreements  
17 contained in, among other things, the Employee Policy Handbook.

18 12. On March 15, 2024, the Parties participated in an all-day mediation presided over by  
19 Brian Sinclair, Esq., a mediator of wage and hour class actions. After arms-length negotiations and  
20 bargaining, the Parties reached a settlement in principle of \$1,500,000, with the understanding that this  
21 settlement would also include not only a release of the PAGA claims alleged, but also a release of class  
22 claims for the same Labor Code violations, and within the same time period. The Parties thereafter  
23 documented the agreement in the form of a Settlement Agreement, which was signed by the Parties and  
24 is now presented to this Court for preliminary approval.

25 13. In order to facilitate the Settlement, on March 18, 2024, Plaintiff filed a Notice of  
26 Violations with the LWDA and served the same on Defendants. On July 3, 2024, Plaintiff filed a First  
27 Amended Complaint to add an additional cause of action for violations of the Private Attorneys General  
28 Act, California Labor Code section 2698, *et seq.*

1           14. Plaintiff seeks to represent a putative class of all non-exempt employees who are or  
2 previously were employed by Defendants, who performed work in California during the period of  
3 February 14, 2019 through June 13, 2024 (the “Class Period”). The Action seeks unpaid wages,  
4 statutory and PAGA penalties, attorneys’ fees, and litigation costs<sup>1</sup>. Plaintiff also seeks to represent a  
5 PAGA group of Aggrieved Employees which is comprised of all non-exempt employees who are or  
6 previously were employed by Defendants, who performed work in California during the period of  
7 February 12, 2023 through June 13, 2024 (the “PAGA Period”).

8           15. Class Counsel has conducted a thorough investigation into the facts of the action. Class  
9 Counsel has diligently evaluated the Class Members’ claims against Defendants. Prior to the mediation,  
10 counsel for Defendants provided Class Counsel with access to the necessary data and information as  
11 noted above to evaluate the claims by the Class. Class Counsel reviewed the production of documents  
12 from the Defendants and conducted an extensive review of a significant sample of time records and  
13 data with the assistance of an expert, Berger Consulting Group (“BCG”). Based on the foregoing and  
14 their own independent investigation, evaluation and experience, Class Counsel believe that the  
15 Settlement is fair, reasonable, and adequate and is in the best interest of the Class in light of all known  
16 facts and circumstances, including the risk of significant delay, defenses asserted by Defendants, and  
17 potential appellate issues.

18           16. Plaintiff and Class Counsel recognize the expense and time involved in continuing to  
19 litigate and ultimately trying the Action against Defendants through possible appeals which could take  
20 several years. Class Counsel have also taken into account the uncertain outcome and risk of litigation,  
21 especially in complex actions such as the one here. Class Counsel are also mindful of, and recognize,  
22 the inherent problems of proof under, and asserted defenses to, the claims asserted in the Action. Based  
23 upon their evaluation, Plaintiff and Class Counsel have determined that the Settlement set forth in the  
24 Agreement is in the best interest of the Class Members.

25           17. The Gross Settlement Amount of \$1,500,000.00 is fair and reasonable considering the  
26 nature and magnitude of the claims being settled and the various potential impediments to recovery.  
27 Prior to mediation, Class Counsel retained BCG to develop economic damage models measuring

28 <sup>1</sup> Plaintiff will provide a lodestar analysis for the fees and supporting evidence of the costs with the final approval papers.

1 Defendants' liability exposure while accounting for the uncertainties of continued litigation. The  
2 various models were informed by Class Counsel's investigation, including the analysis of a significant  
3 sample of time and payroll data. Class Counsel projected Defendants' liability exposure for *class claims*  
4 (excluding penalties) at \$3,328,403.50 and Defendants' *maximum* exposure (including waiting time and  
5 wage statement penalties) at \$5,905,445.50. Thus, the Gross Settlement Amount of \$1,500,000.00  
6 represents approximately 45% of Defendants' *class-wide* liability exposure and 25.4% of Defendants'  
7 *maximum* exposure.

8 18. Plaintiff alleges Defendants failed to include certain non-discretionary bonuses when  
9 calculating the regular rate of pay in paying meal period premiums. Defendants paid Class Members  
10 non-discretionary incentive compensation in the form of various bonus payments. This performance-  
11 based bonus compensation was required to be calculated into the regular rate of pay for purposes of  
12 meal period premiums. In reviewing the paystubs, it is clear that the bonus compensation was not  
13 calculated into the regular rate of pay. Plaintiff estimates Defendants' exposure for the underpayment  
14 of meal period premiums caused by Defendants' failure to properly take into account non-discretionary  
15 bonuses when calculating employees' regular rate of pay for meal period premiums to be \$196,489.

16 19. Plaintiff also alleged in this action that Defendants consistently violated the law by failing  
17 to provide meal periods. Even when Defendants did provide meal breaks, they regularly violated the  
18 law by providing late, short, and interrupted meal and rest periods. Specifically, Plaintiff and Class  
19 Members were required to perform work-related tasks during their meal and rest periods, including but  
20 not limited to, fulfilling orders, assisting customers and receiving and responding to work-related  
21 communications. In total, Class Counsel estimated Defendants' exposure for the meal and rest claims  
22 at \$2,332,664.

23 20. Defendants argued, inter alia, that it provided the Class Members with compliant meal  
24 and rest periods and maintained facially compliant meal and rest period policies, such that any missed  
25 meal and rest periods were by choice of each individual Class Member. Thus, Defendants argued that  
26 there was no potential liability for Plaintiff's alleged meal and rest period violations and any claimed  
27 violations required a highly individualized inquiry not suitable to class treatment.  
28

1           21. Plaintiff alleges Defendants required Plaintiff and Class Members to perform work  
2 related trainings and other work-related tasks “off-the-clock”. Specifically, Plaintiff alleges that she  
3 and Class Members were required to undergo mandatory Covid-19 health screenings, including  
4 temperature checks, before clocking in for their shifts. Further, Plaintiff and Class Members were  
5 required to engage in work-related communications prior to clocking in for their shifts. Plaintiff and  
6 Class Members were prohibited from clocking in before undergoing mandatory Covid-19 temperature  
7 checks because Defendants did not allow employees work if they exhibited any symptoms. Similarly,  
8 Plaintiff was not able to clock in before participating in work-related communications with supervisors  
9 and salespeople because these conversations occurred as soon as employees entered the work premises  
10 and prior to clocking in.

11           22. Defendants vigorously denied liability for this claim. Defendants argued that Plaintiff and  
12 Class Members were paid for all their time worked and any time spent performing off-the-clock tasks  
13 was voluntary, de minimus and, thus, not compensable. As such, Defendants argued that all Class  
14 Members were properly paid minimum and overtime compensation for all hours worked. Plaintiff  
15 estimated Defendants’ exposure for this claim at \$639,070.50.

16           23. Plaintiff further alleged that Defendants required the Class to use personal cell phones to  
17 receive and respond to work-related communications with supervisors, co-workers and customers.  
18 California employers who require employees to use a personal cellular device for work purposes must  
19 reimburse the employee for the cost incurred in furnishing the device, including voice and data service.  
20 (See *Cal. Labor Code* § 2802(a), providing that “An employer shall indemnify his or her employee for  
21 all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of  
22 his or her duties, or of his or her obedience to the directions of the employer...”). Defendants vigorously  
23 denied liability for this claim and argued that employees were not required to use their personal cell  
24 phone for work-related purposes and all incurred personal expenses, if any, were fully reimbursed.  
25 Plaintiff estimated Defendants’ exposure for this claim at \$160,180 or \$10 per month for each member  
26 of the Class during the Class Period.

27           24. Plaintiff also alleged that the Defendants’ labor code violations resulted in derivative  
28 liability for wage statement violations and waiting time penalties. Class Counsel considered the

1 arguable presence of various penalties and weighed the potential recoveries against probable defenses.  
2 Specifically, Defendants argued that Plaintiff could not prove the “willful” prong needed to obtain  
3 waiting time penalties under Labor Code section 203. Additionally, Defendants argued that Plaintiff  
4 could not show that Class Members suffered an “injury” because of wage statement violations, as  
5 required by Labor Code section 226. (*Naranjo v. Spectrum Security Services, Inc.* (2023) 88  
6 Cal.App.5th 927.) Notwithstanding the uncertain nature of the claims, Plaintiff estimated Defendants’  
7 exposure for these penalties to be approximately \$2,577,042 (\$1,285,692 for Labor Code section 203  
8 penalties and \$1,291,350 for Labor Code section 226 penalties).

9 25. In total, Class Counsel projected Defendants’ liability exposure for PAGA claims at  
10 \$2,427,400 if successful at trial.

11 26. Here, the Parties negotiated a good faith payment for PAGA Penalties in the amount of  
12 \$50,000 which is 3.3% of the Gross Settlement Amount. This amount falls well within the range of  
13 approved PAGA Penalties. Seventy-Five percent (75%) of the PAGA Penalties (\$37,500.00) will be  
14 paid to the LWDA (“LWDA Payment”) with the remaining twenty-five percent (25%) of the PAGA  
15 Penalties (\$12,500.00) will be distributed to the Aggrieved Employees, which is within the range of  
16 PAGA Penalties approved by courts and should be approved.

17 27. In order to recover any PAGA penalties, Plaintiff would be required at trial to prove each  
18 of the underlying Labor Code violations. *See Cardenas v. McLane Foodservice, Inc.*, 2011 U.S. Dist.  
19 LEXIS 13126, \*10 (C.D. Cal. 2011) (“Given the statutory language [of PAGA], a plaintiff cannot  
20 recover on behalf of individuals whom the plaintiff has not proven suffered a violation of the Labor  
21 Code by the defendant.”). Here, Plaintiff would need to prove that each Aggrieved Employee suffered  
22 a violation for each pay period the employee worked. Again, Defendants raised several defenses that  
23 presented serious threats to the claims of the Plaintiff and the Aggrieved Employees. In addition to  
24 those arguments discussed *supra*, Defendants also argued that the Court of Appeals decision in *Cacho*  
25 *v. Eurostar, Inc.* (2019) 43 Cal.App.5th 885, weakened Plaintiff’s claims, on liability, value, and  
26 manageability as to the rest period claims.

27 28. With respect to the most immediate challenge, i.e., class certification, the risks attendant  
28 to the certification of similar wage and hour claims are demonstrated by *Magadia v. Wal-Mart*

1 *Associates, Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit, vacated reversed and remanded  
2 a \$110 million judgement against an employer for, *inter alia*, inaccurately paying overtime, and directed  
3 the trial court to enter judgement in favor of the employer. *See also O’Conner v. Uber Technologies,*  
4 *Inc.* (9th Cir. 2018) 904 F.3d 1087 (decertification of wage and hour misclassification action); *see also*  
5 *Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1, 31 (reversing a trial verdict in favor  
6 plaintiffs in a wage and hour class action)); *Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th  
7 1077, 1088 (“[T]he reason, if any, that employees might not take their breaks were predominantly  
8 individualized questions of fact not susceptible to class treatment.”); *Ali v. U.S.A. Cab Ltd.* (2009) 176  
9 Cal.App.4th 1333, 1341 (affirming denial of certification because employees’ declarations attesting to  
10 having taken meal and rest breaks demonstrated that individualized inquiries were required to show  
11 harm); *Campbell v. Best Buy Stores, L.P.,* (C.D. Cal. 2013) 2013 WL 5302217 at \*11-13 (following  
12 *Brinker* and denying certification of proposed off-the-clock and rest and meal break classes due to lack  
13 of uniform policy); *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying  
14 certification of driver meal and rest period claims based on the predominance of individual issues).  
15 Collectively, the examples cited above illustrate the uncertain nature of class litigation. Consequently,  
16 the uncertainty of obtaining certification through a contested motion is a significant risk factor favoring  
17 settlement.

18 29. Finally, continuing to litigate this action would require continued and extensive resources  
19 coupled with significant Court time to proceed through trial and post-trial motions; which can often  
20 take years. Furthermore, wage and hour litigation is complex and expensive, as it often necessitates  
21 extensive expert testimony, particularly with regards to damages. But even if Plaintiff is successful at  
22 trial, Plaintiff is acutely aware that a judgment does not end the litigation. Plaintiff fully expects that  
23 Defendants would appeal any favorable judgment. As demonstrated by *Magadia, supra*, 999 F.3d 668,  
24 the risk of an appeal and subsequent reversal is real.

25 30. In this matter, Class Counsel negotiated a Gross Settlement Amount of \$1,500,000.00  
26 that is approximately 45% of Defendants’ *class-wide* liability exposure as estimated by Class Counsel  
27 at the time of mediation. Given the amount of the settlement here, as compared to potential value of the  
28 claims, offset by the various inherent risks to continued litigation, the settlement is fair and reasonable.

1           31.     The relief provided in the Settlement will benefit all Class Members who do not opt out.  
2 The Settlement does not improperly grant preferential treatment to Plaintiff or segments of the Class in  
3 any way. Each Class Member will be entitled to a cash payment based on the plan of allocation  
4 described herein. Each Settlement Class Member's Individual Settlement Payment will be determined  
5 based upon the weeks worked by that employee during the prescribed Class Period.

6           32.     Plaintiff will apply to the Court for an Enhancement Award in consideration of her  
7 service, and for the risks undertaken on behalf of the Class. Plaintiff performed her duties admirably by  
8 working with Class Counsel. The requested Enhancement Award of \$10,000 is within the accepted  
9 range of awards for purposes of preliminary approval. Plaintiff has not negotiated individual settlement  
10 payments with Defendants.

11          33.     The stage of the proceedings at which this Settlement was reached also militates in favor  
12 of preliminary approval and ultimately, final approval of the Settlement. Class Counsel has conducted  
13 a thorough investigation into the facts of the class action. Prior to the mediation, Class Counsel  
14 performed a significant review and analysis of Defendants' documents, time records and pay records.  
15 Class Counsel engaged in a thorough research and analysis of the relevant claims and data.

16          34.     Class Counsel are also experienced with the claims at issue here, as Class Counsel  
17 previously litigated and settled similar claims in numerous other actions. Accordingly, the Settlement  
18 did not occur until Class Counsel possessed sufficient information to make an informed judgment  
19 regarding the likelihood of success on the merits and results that could be obtained through further  
20 litigation.

21          35.     Here, the approximately 644 current and former employees that comprise the Class are  
22 sufficiently numerous for class certification. (*See Bowles v. Superior Court*, 44 Cal.2d 574 (1955) (class  
23 with 10 members sufficiently numerous); *Rose v. City of Hayward*, 126 Cal.App.3d 926, 934 (1981)  
24 (class of 48 members satisfies numerosity requirement)). All of these employees are ascertainable  
25 because the Class Members can readily be determined through examination of Defendants' employment  
26 files.

27          36.     Here, Plaintiff contends that common questions of law and fact are present. Specifically:  
28 (i) whether Defendants failed to pay Class Members for all hours worked; (ii) whether Defendants failed

1 to provide meal and rest periods to Class Members; (iii) whether Defendants failed to correctly calculate  
2 the regular rate of pay for purposes of meal period premiums, (iv) whether Defendants failed to issue  
3 wage statements that complied with Labor Code 226(a); (v) whether Defendant failed to pay wages  
4 when due; (vi) whether Defendant failed to reimburse for mandatory business expenses; and (vii)  
5 whether Defendants are liable for attorneys' fees and costs.

6 37. In the instant case, Plaintiff contends that the typicality requirement is fully satisfied.  
7 Plaintiff, like every other member of the Class, was employed by Defendants and is a member of the  
8 Class. Plaintiff was subject to the same practices affecting all other Class Members concerning non-  
9 compliant meal and rest periods and Defendants' failure to pay meal or rest period premiums, unpaid  
10 wages as a result of off-the-clock work, unreimbursed business expenses, regular rate of pay  
11 calculations, and received similar wage statements. Plaintiff's claims and the Class Members' claims  
12 arise from the same course of conduct by Defendants, involve the same policies, are based on the same  
13 legal theories, and are subject to the same defenses. Plaintiff did not separately negotiate an individual  
14 settlement with Defendants.

15 38. First, Plaintiff effectively communicated with Class Counsel, provided documents to  
16 them and participated in the investigation and negotiations in the Action. Second, Plaintiff retained  
17 competent counsel who are experienced in employment class actions. Third, there is no antagonism  
18 between the interests of Plaintiff and those of the Class. Both Plaintiff and the Class Members seek  
19 monetary relief under the same set of facts and legal theories.

20 39. The Court has broad discretion in approving a practical notice program. The Parties have  
21 agreed upon procedures by which the Class Members will be provided with written notice of the  
22 Settlement similar to that approved and utilized in hundreds of class action settlements. The Notice  
23 Packet, drafted jointly and agreed upon by the Parties through their respective counsel and to be  
24 approved by the Court, includes all relevant information. (*See Exhibit A* to the Agreement.) The Notice  
25 Packet will state that the Class Members shall have forty-five (45) days from the date that the Notice  
26 Packet is mailed to them to request exclusion or to submit an objection. The Class Members will be  
27 given an opportunity to object to the terms of the Agreement and/or the request for attorneys' fees and  
28 costs and to participate at the final approval hearing, in accordance with the instructions set forth in the

1 Notice Packet. Class Members will be instructed to only contact the Settlement Administrator, Class  
2 Counsel and/or Defendants' Counsel and not the Court. Class Members who do not opt out will  
3 automatically receive an Individual Settlement Payment. This notice program was designed to  
4 meaningfully reach the Class Members and advises them of all pertinent information concerning the  
5 Settlement. The mailing and distribution of the Notice Packet satisfies the requirements of due process,  
6 is the best notice practicable under the circumstances, and constitutes due and sufficient notice to all  
7 persons entitled thereto. The Notice Packet provides information on the terms and provisions of the  
8 Settlement; the benefits that the Settlement provides for Class Members; the date, time, and place of  
9 the final settlement approval hearing; and the procedure and deadline for submitting comments,  
10 objections, and requests for exclusion. The Notice Packet complies with Rules of Court 3.766 and  
11 3.769(f).

12 40. The Settlement provides for an Enhancement Award of \$10,000 for Plaintiff. The  
13 Enhancement Award is fair and reasonable compensation for the Plaintiff's efforts bringing the action,  
14 assisting Class Counsel with the litigation and settlement, regularly conferring with Class Counsel on  
15 the status of her case and the strategies for prosecuting the claims, conducting a mediation to come to a  
16 fair and equitable agreement reviewing the proposed Settlement to ensure that its terms are fair and  
17 provide adequate relief for the Settlement Class, and agreeing to provide Defendants a general release  
18 of all claims arising out of her employment.

19 41. Class Counsel on behalf of Plaintiff will file a formal motion for the negotiated  
20 Enhancement Award once preliminary approval of the Settlement is granted. Plaintiff respectfully  
21 submits that the above showing is sufficient for preliminary approval of the negotiated Enhancement  
22 Award.

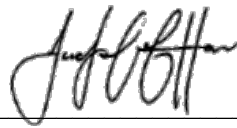
23 42. Class Counsel took this matter on a contingency fee basis and invested significant time  
24 and expense successfully prosecuting Plaintiff's claims. Considering the positive outcome for the Class  
25 Members, and in light of the supporting authority, the proposed award of Class Counsel Award is fair  
26 and reasonable.

27 43. Plaintiff will file a formal motion for the negotiated award of the Attorneys' Fees and  
28 Expenses once preliminary approval of the Settlement is granted. Plaintiff respectfully submits that the

1 above showing is sufficient for preliminary approval of the negotiated attorneys' fees. Subject to Court  
2 approval, the Agreement provides for Attorneys' Fees not to exceed Thirty-Five (35) percent of the  
3 Gross Settlement Amount, currently estimated to be \$1,500,000.00, and Attorneys' Expenses, not to  
4 exceed \$25,000. (Agreement at I(E), I(F), III(M)(10)).

5 I declare under penalty of perjury under the laws of the State of California that the foregoing is  
6 true and correct. Executed this 19th day of July 2024, at San Diego, California.

7 **ZAKAY LAW GROUP, APLC**

8  
9 By:  \_\_\_\_\_

10 JACKLAND K. HOM  
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# **EXHIBIT 1**

**ZAKAY LAW GROUP, APLC**

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**IN AND FOR THE COUNTY OF KERN**

PASSION MORRIS, an individual, on behalf  
of herself, and on behalf of all persons similarly  
situated,

Plaintiffs,

v.

HABERFELDE FORD, a California  
Corporation; JIM BURKE FORD LINCOLN,  
an unknown business entity; and DOES 1  
through 50, Inclusive,

Defendants.

Case No.: BCV-23-100471

[Action Filed February 14, 2023]

**STIPULATION OF SETTLEMENT OF  
CLASS AND PAGA ACTION CLAIMS  
AND RELEASE OF CLAIMS**

1 This Stipulation of Settlement of Class and PAGA Action Claims and Release of Claims is  
2 entered into by and between Plaintiff PASSION MORRIS (hereinafter “Plaintiff”), an individual, on  
3 behalf of the Settlement Class, and in her representative capacity on behalf of the State of California  
4 and the Aggrieved Employees, and Defendants HABERFELDE FORD and JIM BURKE FORD  
5 LINCOLN (hereinafter “Defendant” or “Defendants”):

6 **I. DEFINITIONS**

- 7 A. “Action” shall mean the putative class action lawsuit designated *Morris v Haberfelde*  
8 *Ford et al.*, Kern County Superior Court, Case No. BCV-23-100471, filed February  
9 14, 2023.
- 10 B. “Administration Costs” shall mean the amount paid to the Settlement Administrator  
11 from the Gross Settlement Amount for administering the Settlement pursuant to this  
12 Agreement currently estimated not to exceed \$10,000.00.
- 13 C. “Aggrieved Employees” means all non-exempt employees who are or previously  
14 were employed by Defendants, who performed work in California during the period  
15 of February 12, 2023 through June 13, 2024 (the “PAGA Period”).
- 16 D. “Agreement” or “Settlement Agreement” means this Stipulation of Settlement of  
17 Class and PAGA Action and Release of Claims.
- 18 E. “Attorneys’ Expenses” means the award of expenses that the Court authorizes to be  
19 paid to Class Counsel for the expenses they have incurred of up to \$25,000.00.
- 20 F. “Attorneys’ Fees” means the award of fees that the Court authorizes to be paid to  
21 Class Counsel for the services they have rendered to Plaintiff and the Settlement  
22 Class in the Action, currently not to exceed 35% of the Gross Settlement Amount  
23 currently estimated to be \$525,000.00 out of \$1,500,000.00. Attorneys’ fees will be  
24 divided between Class Counsel as follows (35% to Lawyers for Justice, PC, 32.5%  
25 to JCL Law Firm, APC, and 32.5% to Zakay Law Group, APLC).
- 26 G. “Class” or the “Class Members” means all non-exempt employees who are or  
27 previously were employed by Defendants, who performed work in California during  
28 the period of February 14, 2019 through June 13, 2024 (the “Class Period”).

- 1 H. "Class Counsel" shall mean Jean-Claude Lapuyade, Esq. of JCL Law Firm, APC,  
2 Shani Zakay of Zakay Law Group, APLC, and Edwin Aiwazian of Lawyers for  
3 Justice, PC.
- 4 I. "Class Data" means information regarding Class Members that Defendants will in  
5 good faith compile from its records and provide to the Settlement Administrator. It  
6 shall be formatted as a Microsoft Excel spreadsheet and shall include: each Class  
7 Member's full name; last known address; Social Security Number; start dates and end  
8 dates of employment.
- 9 J. "Class Period" means the period beginning February 14, 2019 through June 13, 2024.
- 10 K. "Class Representative" shall mean plaintiff Passion Morris.
- 11 L. "Court" means the Superior Court for the State of California, County of Kern  
12 currently presiding over the Action.
- 13 M. "Defendants" shall mean Habermelde Ford and Jim Burke Ford Lincoln.
- 14 N. "Effective Date" means the date of final approval if no objections are filed to the  
15 settlement. If objections are filed and overruled, and no appeal is taken of the final  
16 approval order, then the effective date of final approval will be the date the Court  
17 enters the order and judgment granting final approval of the settlement. If an appeal  
18 is taken from the Court's overruling of objections to the settlement, then the effective  
19 date of final approval will be twenty (20) days after the appeal is withdrawn or after  
20 an appellate decision affirming the final approval decision becomes final.
- 21 O. "Enhancement Award" means an award in the amount of \$10,000.00 or in an amount  
22 that the Court authorizes to be paid to the Class Representative, in addition to her  
23 Individual Settlement Payment and her individual Aggrieved Employee Payment, in  
24 recognition of her efforts and risks in assisting with the prosecution of the Action.
- 25 P. "Funding Date" shall mean the date by which Defendants have paid the entire Gross  
26 Settlement Amount to the Claims Administrator in accord with the terms of this  
27 Agreement. Defendants will pay the Gross Settlement Amount to the Settlement  
28 Administrator thirty (30) calendar days after the Effective Date.

- 1 Q. “Gross Settlement Amount” means One Million Five Hundred Thousand Dollars and  
2 Zero Cents (\$1,500,000.00) that Defendants must pay into the QSF in connection with  
3 this Settlement, inclusive of the sum of Individual Settlement Payments,  
4 Administration Costs, Attorneys’ Fees and Attorneys’ Expenses, Enhancement  
5 Award, and the PAGA Penalties and *exclusive* of the employer’s share of payroll tax,  
6 if any, triggered by any payment under this Settlement.
- 7 R. “Individual Settlement Payments” means the amount payable from the Net Settlement  
8 Amount to each Settlement Class Member and excludes any amounts distributed to  
9 Aggrieved Employees pursuant to PAGA.
- 10 S. “Net Settlement Amount” or “NSA” means the Gross Settlement Amount, less  
11 Attorneys’ Fees and Attorneys’ Expenses, Enhancement Award, PAGA Penalties,  
12 and Administration Costs.
- 13 T. “Notice Packet” means the Class Notice to be provided to the Class Members by the  
14 Settlement Administrator in the form set forth as **Exhibit A** to this Agreement (other  
15 than formatting changes to facilitate printing by the Settlement Administrator).
- 16 U. “Operative Complaint” shall mean the First Amended Complaint filed in the Action.
- 17 V. “PAGA” means the California Labor Code Private Attorneys General Act of 2004,  
18 Labor Code § 2698 *et seq.*
- 19 W. “PAGA Payment Ratio” means the respective Pay Periods during the PAGA Period  
20 for each Aggrieved Employee divided by the sum total of the Pay Periods for all  
21 Aggrieved Employees during the PAGA Period.
- 22 X. “PAGA Pay Periods,” for purposes of calculating the distribution of the Aggrieved  
23 Employee Payment, as defined herein, means the number of pay periods of  
24 employment during the PAGA Period that each Aggrieved Employee worked in  
25 California. The Aggrieved Employees worked 8,625 PAGA Pay Periods during the  
26 PAGA Period.
- 27 Y. “PAGA Period” means the period beginning February 12, 2023 through June 13,  
28 2024.

- 1 Z. "PAGA Penalties" shall mean \$50,000.00 to be allocated from the Gross Settlement  
2 Amount, with 25% of the payment going to the Aggrieved Employees ("Aggrieved  
3 Employee Payment") and 75% of the payment going to the Labor and Workforce  
4 Development Agency ("LWDA Payment"). The amount of the PAGA Penalties is  
5 subject to Court approval pursuant to California Labor Code section 2699(l). Any  
6 reallocation of the Gross Settlement Amount to increase the PAGA Penalties will not  
7 constitute grounds by either party to void this Agreement, so long as the Gross  
8 Settlement Amount remains the same.
- 9 AA. "Parties" means Plaintiff and Defendants, collectively, and "Party" shall mean either  
10 Plaintiff or Defendants, individually.
- 11 BB. "Payment Ratio" means the respective Workweeks for each Class Member divided  
12 by the sum total Workweeks for all Class Members.
- 13 CC. "Plaintiff" shall mean Passion Morris.
- 14 DD. "QSF" means the Qualified Settlement Fund established, designated, and maintained  
15 by the Settlement Administrator to fund the Gross Settlement Amount.
- 16 EE. "Released Class Claims" shall mean the release from the Class Members of all class  
17 claims alleged in the operative complaint, or which could have been alleged in the  
18 operative complaint based on the facts alleged, which occurred during the Class  
19 Period, and expressly excluding all other claims, including claims for vested benefits,  
20 wrongful termination, unemployment insurance, disability, social security, workers'  
21 compensation, and class claims outside of the Class Period.
- 22 FF. "Released PAGA Claims" means all PAGA claims alleged in the operative complaint  
23 in the Action and Plaintiff's PAGA notice to the LWDA which occurred during the  
24 PAGA Period, and expressly excluding all other claims, including claims for vested  
25 benefits, wrongful termination, unemployment insurance, disability, social security,  
26 workers' compensation, and PAGA claims outside of the PAGA Period.
- 27  
28

1 GG. "Plaintiff's Release" means all claims she has or may have against the Released  
2 Parties (as defined below), including a waiver of any and all provisions of California  
3 Civil Code section 1542.

4 HH. "Released Parties" shall mean Defendants.

5 II. "Response Deadline" means the date forty-five (45) calendar days after the Settlement  
6 Administrator mails Notice Packets to Class Members and the last date on which  
7 Class Members may submit requests for exclusion or objections to the Settlement.

8 JJ. "Settlement" means the disposition of the Action pursuant to this Agreement.

9 KK. "Settlement Administrator" means APEX Class Action LLC, 18 Technology Drive,  
10 Ste. 164, Irvine, CA 92618; Tel: 1-800-355-0700; Fax: 1-949-878-3536. The  
11 Settlement Administrator establishes, designates and maintains, as a QSF under  
12 Internal Revenue Code section 468B and Treasury Regulation section 1.468B-1, into  
13 which the amount of the Gross Settlement Amount is deposited for the purpose of  
14 resolving the claims of Settlement Class Members. The Settlement Administrator  
15 shall maintain the funds until distribution in an account(s) segregated from the assets  
16 of Defendants and any person related to Defendants. *All accrued interest shall be*  
17 *paid and distributed to the Settlement Class Members as part of their respective*  
18 *Individual Settlement Payment.*

19 LL. "Settlement Class Members" or "Settlement Class" means all Class Members who  
20 have not submitted a timely and valid request for exclusion as provided in this  
21 Agreement.

22 MM. "Workweeks" for purposes of calculating the distribution of the Net Settlement  
23 Amount, means any seven (7) consecutive days beginning on Sunday and ending on  
24 Saturday, in which a class member is employed by Defendants during the Class  
25 Period in California.

26 **II. RECITALS**

27 A. On February 14, 2023, Plaintiff filed the Action, alleging claims for:

28 1. Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);

2. Violation of California Labor Code §§ 226.7 and 512(a) (Unpaid Meal Period Premiums);
  3. Violation of California Labor Code § 226.7 (Unpaid Rest Period Premiums);
  4. Violation of California Labor Code §§ 1194, 1197 and 1197.1 (Unpaid Minimum Wages);
  5. Violation of California Labor Code §§ 201 and 202 (Final Wages Not Timely Paid);
  6. Violation of California Labor Code § 204 (Wages Not Timely Paid During Employment);
  7. Violation of California Labor Code § 226(a) (Non-Compliant Wage Statements);
  8. Violation of California Labor Code § 1174(d) (Failure to Keep Requisite Payroll Records);
  9. Violation of California Labor Code § 2800 and 2802 (Unreimbursed Business Expenses);
  10. Violation of California Business & Professions Code §§ 17200, *et seq.*
- B. On March 18, 2024, in order to facilitate the Settlement, Plaintiff filed a Notice of Violations with the Labor and Workforce Development Agency (LWDA) and served the same on Defendants.
- C. On July 3, 2024, Plaintiff filed the operative First Amended Complaint, which alleges an additional cause of action for Violations of the Private Attorneys General Act [Labor Code §§ 2698, *et seq.*].
- D. The Class Representative believes she has claims based on alleged violations of the California Labor Code, and the Industrial Welfare Commission Wage Orders, and that class certification is appropriate because the prerequisites for class certification can be satisfied in the Action, and this action is manageable as a PAGA representative action.

1 E. Defendants deny any liability or wrongdoing of any kind associated with the claims  
2 alleged in the Action, dispute any wages, damages and penalties claimed by the Class  
3 Representative are owed, and further contend that, for any purpose other than  
4 settlement, the Action is not appropriate for class or representative action treatment.  
5 Defendants contend, among other things, that at all times they complied with the  
6 California Labor Code and the Industrial Welfare Commission Wage Orders.

7 F. The Class Representative is represented by Class Counsel. Class Counsel investigated  
8 the facts relevant to the Action, including conducting an independent investigation as  
9 to the allegations, reviewing documents and information exchanged through informal  
10 discovery, and reviewing documents and information provided by Defendants  
11 pursuant to informal requests for information to prepare for mediation. Defendants  
12 produced for the purpose of settlement negotiations certain employment data  
13 concerning the Settlement Class, which Class Counsel reviewed and analyzed with  
14 the assistance of an expert. Based on their own independent investigation and  
15 evaluation, Class Counsel are of the opinion that the Settlement with Defendants are  
16 fair, reasonable, and adequate, and is in the best interest of the Settlement Class  
17 considering all known facts and circumstances, including the risks of significant  
18 delay, defenses asserted by Defendants, uncertainties regarding class certification,  
19 and numerous potential appellate issues. Although it denies any liability, Defendants  
20 is agreeing to this Settlement solely to avoid the inconveniences and cost of further  
21 litigation. The Parties and their counsel have agreed to settle the claims on the terms  
22 set forth in this Agreement.

23 G. On March 15, 2024, the Parties participated in mediation presided over by Brian  
24 Sinclair, Esq, an experienced mediator of wage and hour class and PAGA actions.  
25 The mediation concluded with a settlement.

26 H. This Agreement represents a compromise and settlement of highly disputed claims.  
27 Nothing in this Agreement is intended or will be construed as an admission by  
28 Defendants that the claims in the Action of Plaintiff or the Class Members have merit

1 or that Defendants bear any liability to Plaintiff or the Class on those claims or any  
2 other claims, or as an admission by Plaintiff that Defendants' defenses in the Action  
3 have merit.

4 I. The Parties believe that the Settlement is fair, reasonable and adequate. The  
5 Settlement was arrived at through arm's-length negotiations, taking into account all  
6 relevant factors. The Parties recognize the uncertainty, risk, expense and delay  
7 attendant to continuing the Action through trial and any appeal. Accordingly, the  
8 Parties desire to settle, compromise and discharge all disputes and claims arising from  
9 or relating to the Action fully, finally, and forever.

10 J. The Parties agree to certification of the Class for purposes of this Settlement only. If  
11 for any reason the settlement does not become effective, Defendants reserve the right  
12 to contest certification of any class for any reason and reserves all available defenses  
13 to the claims in the Action.

14 Based on these Recitals that are a part of this Agreement, the Parties agree as follows:

15 **III. TERMS OF AGREEMENT**

16 A. Settlement Consideration and Settlement Payments by Defendants.

17 1. Settlement Consideration. In full and complete settlement of the Action, and  
18 in exchange for the releases set forth below, Defendants will pay the sum of  
19 the Individual Settlement Payments, the Enhancement Award, the Attorneys'  
20 Fees and Attorneys' Expenses, PAGA Penalties, and the Administration  
21 Costs, as specified in this Agreement, equal to the Gross Settlement Amount  
22 of One Million Five Hundred Thousand Dollars and Zero Cents  
23 (\$1,500,000.00). The Parties agree that this is a non-reversionary Settlement  
24 and that no portion of the Gross Settlement Amount shall revert to Defendants.  
25 Other than the Defendants' share of employer payroll taxes and as provided  
26 in Section III.A.2 below, Defendants shall not be required to pay more than  
27 the Gross Settlement Amount.  
28

- 1                   2.     Class Size. Defendants represent that the Settlement Class was comprised of  
2                             644 individuals who collectively worked approximately 65,462 workweeks  
3                             (“Projected Workweeks”) during the Class Period. The Parties acknowledge  
4                             and agree that this data (and other information provided by Defendants for  
5                             purposes of mediation) was relied on to extrapolate and reach an arms-length  
6                             negotiation of Plaintiff’s claims in the Action through the Class Period. One  
7                             week prior to the filing of the motion for Preliminary Approval, the Settlement  
8                             Administrator will provide Class Counsel with a declaration under penalty of  
9                             perjury confirming the number of applicable Class Members and workweeks  
10                            they worked during the Class Period. No later than thirty (30) days after  
11                            execution of this Settlement Agreement, Defendants will provide the  
12                            Settlement Administrator with the Class Data in order to ensure the Settlement  
13                            Administrator has sufficient time to prepare the foregoing declaration prior to  
14                            the filing of the motion for Preliminary Approval. If the Projected Workweeks  
15                            increases by more than 10% of the estimated stated herein, the Gross  
16                            Settlement Amount shall increase proportionally for the number of  
17                            workweeks over 110% of the 65,462 Projected Workweeks (72,008). For  
18                            example, if the number of workweeks increases by 111%, the GSA would  
19                            increase by 1%.
- 20                   3.     Settlement Payment. Defendants shall deposit the Gross Settlement Amount  
21                            into the QSF, through the Settlement Administrator by the Funding Date. Any  
22                            interest accrued will be added to the NSA and distributed to the Settlement  
23                            Class Members except that if final approval is reversed on appeal, then  
24                            Defendants are entitled to prompt return of the principal and all interest  
25                            accrued.
- 26                   4.     Defendants’ Share of Payroll Taxes. Defendants’ share of employer side  
27                            payroll taxes is in addition to the Gross Settlement Amount and shall be paid  
28                            together with the Gross Settlement Amount on the Funding Date.

- 1 B. Release by Settlement Class Members. As of the Funding Date, in exchange for the  
2 consideration set forth in this Agreement, Plaintiff and the Settlement Class Members  
3 release the Released Parties from the Released Class Claims for the Class Period.
- 4 C. Release by the Aggrieved Employees. As of the Funding Date, in exchange for the  
5 consideration set forth in this Agreement, the Plaintiff, the LWDA and the State of  
6 California release the Released Parties from the Released PAGA Claims for the PAGA  
7 Period. As a result of this release, the Aggrieved Employees shall be precluded from  
8 bringing claims against Defendants for the Released PAGA Claims.
- 9 D. General Release by Plaintiff. As of the Funding Date, for the consideration set forth  
10 in this Agreement, Plaintiff waives, releases, acquits and forever discharges the  
11 Released Parties from any and all claims, whether known or unknown, which exist or  
12 may exist on either Plaintiff's behalf as of the date of this Agreement, including but  
13 not limited to any and all tort claims, contract claims, wage claims, wrongful  
14 termination claims, disability claims, benefit claims, public policy claims, retaliation  
15 claims, statutory claims, personal injury claims, emotional distress claims, invasion of  
16 privacy claims, defamation claims, fraud claims, quantum meruit claims, and any and  
17 all claims arising under any federal, state or other governmental statute, law, regulation  
18 or ordinance, including, but not limited to claims for violation of the Fair Labor  
19 Standards Act, the California Labor Code, the Wage Orders of California's Industrial  
20 Welfare Commission, other state wage and hour laws, the Americans with Disabilities  
21 Act, the Age Discrimination in Employment Act (ADEA), the Employee Retirement  
22 Income Security Act, Title VII of the Civil Rights Act of 1964, the California Fair  
23 Employment and Housing Act, the California Family Rights Act, the Family Medical  
24 Leave Act, California's Whistleblower Protection Act, California Business &  
25 Professions Code Section 17200 et seq., and any and all claims arising under any  
26 federal, state or other governmental statute, law, regulation or ordinance. Plaintiff also  
27 waives and relinquishes any and all claims, rights or benefits that she may have under  
28 California Civil Code § 1542, which provides as follows:

1  
2 ***A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE***  
3 ***CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO***  
4 ***EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE***  
5 ***RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE***  
6 ***MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR***  
7 ***OR RELEASED PARTY.***  
8

9 Thus, notwithstanding the provisions of section 1542, and to implement a full and  
10 complete release and discharge of the Released Parties, Plaintiff expressly  
11 acknowledges this Settlement Agreement is intended to include in its effect, without  
12 limitation, all claims Plaintiff does not know or suspect to exist in Plaintiff's favor at  
13 the time of signing this Settlement Agreement, and that this Settlement Agreement  
14 contemplates the extinguishment of any such claims. Plaintiff warrants that Plaintiff  
15 has read this Settlement Agreement, including this waiver of California Civil Code  
16 section 1542, and that Plaintiff has consulted with or had the opportunity to consult  
17 with counsel of Plaintiff's choosing about this Settlement Agreement and specifically  
18 about the waiver of section 1542, and that Plaintiff understands this Settlement  
19 Agreement and the section 1542 waiver, and so Plaintiff freely and knowingly enters  
20 into this Settlement Agreement. Plaintiff further acknowledges that Plaintiff later may  
21 discover facts different from or in addition to those Plaintiff now knows or believes to  
22 be true regarding the matters released or described in this Settlement Agreement, and  
23 even so Plaintiff agrees that the releases and agreements contained in this Settlement  
24 Agreement shall remain effective in all respects notwithstanding any later discovery  
25 of any different or additional facts. Plaintiff expressly assumes any and all risk of any  
26 mistake in connection with the true facts involved in the matters, disputes, or  
27 controversies released or described in this Settlement Agreement or with regard to any  
28 facts now unknown to Plaintiff relating thereto.

1 E. Conditions Precedent: This Settlement will become final and effective only upon the  
2 occurrence of all of the following events:

- 3 1. The Court enters an order granting preliminary approval of the Settlement;
- 4 2. The Court enters an order granting final approval of the Settlement and a Final  
5 Judgment;
- 6 3. If an objector appears at the final approval hearing, the time for appeal of the  
7 Final Judgment and Order Granting Final Approval of Class Action  
8 Settlement expires; or, if an appeal is timely filed, there is a final resolution of  
9 any appeal from the Judgment and Order Granting Final Approval of Class  
10 Action Settlement; and
- 11 4. Defendants fully fund the Gross Settlement Amount.

12 F. Nullification of Settlement Agreement. If this Settlement Agreement is not  
13 preliminarily or finally approved by the Court, fails to become effective, or is reversed,  
14 withdrawn or modified by the Court, or in any way prevents or prohibits Defendants  
15 from obtaining a complete resolution of the Released Claims, or if Defendants fail to  
16 fully fund the Gross Settlement Amount:

- 17 1. This Settlement Agreement shall be void *ab initio* and of no force or effect,  
18 and shall not be admissible in any judicial, administrative or arbitral  
19 proceeding for any purpose or with respect to any issue, substantive or  
20 procedural;
- 21 2. The conditional class certification (obtained for any purpose) shall be void *ab*  
22 *initio* and of no force or effect, and shall not be admissible in any judicial,  
23 administrative or arbitral proceeding for any purpose or with respect to any  
24 issue, substantive or procedural;
- 25 3. None of the Parties to this Settlement will be deemed to have waived any  
26 claims, objections, defenses or arguments in the Action, including with respect  
27 to the issue of class certification; and

4. Defendants shall bear the sole responsibility for any cost to issue or reissue any curative notice to the Settlement Class Members and all Settlement Administration Costs incurred to the date of nullification.

G. Certification of the Settlement Class. The Parties stipulate to conditional class certification of the Class for the Class Period for purposes of settlement only. In the event that this Settlement is not approved by the Court, fails to become effective, or is reversed, withdrawn or modified by the Court, or in any way prevents or prohibits Defendants from obtaining a complete resolution of the Released Claims, the conditional class certification (obtained for any purpose) shall be void *ab initio* and of no force or effect, and shall not be admissible in any judicial, administrative or arbitral proceeding for any purpose or with respect to any issue, substantive or procedural.

H. Tax Liability. The Parties make no representations as to the tax treatment or legal effect of the payments called for, and Class Members and/or Aggrieved Employees are not relying on any statement or representation by the Parties in this regard. Class Members and/or Aggrieved Employees understand and agree that they will be responsible for the payment of any taxes and penalties assessed on the Individual Settlement Payments and/or Aggrieved Employees' individual shares of the Aggrieved Employee Payment described and will be solely responsible for any penalties or other obligations resulting from their personal tax reporting of Individual Settlement Payments and/or Aggrieved Employees' individual shares of the Aggrieved Employee Payment.

I. Circular 230 Disclaimer. Each Party to this Agreement (for purposes of this section, the "acknowledging party" and each Party to this Agreement other than the acknowledging party, an "other party") acknowledges and agrees that: (1) no provision of this Agreement, and no written communication or disclosure between or among the Parties or their attorneys and other advisers, is or was intended to be, nor shall any such communication or disclosure constitute or be construed or be relied upon as, tax advice within the meaning of United States Treasury Department circular 230 (31 CFR

part 10, as amended); (2) the acknowledging party (a) has relied exclusively upon his, her or its own, independent legal and tax counsel for advice (including tax advice) in connection with this Agreement, (b) has not entered into this Agreement based upon the recommendation of any other Party or any attorney or advisor to any other Party, and (c) is not entitled to rely upon any communication or disclosure by any attorney or adviser to any other party to avoid any tax penalty that may be imposed on the acknowledging party, and (3) no attorney or adviser to any other Party has imposed any limitation that protects the confidentiality of any such attorney's or adviser's tax strategies (regardless of whether such limitation is legally binding) upon disclosure by the acknowledging party of the tax treatment or tax structure of any transaction, including any transaction contemplated by this Agreement.

J. Preliminary Approval Motion. Class Counsel shall draft and file the motion for preliminary approval within sixty (60) calendar days of execution of this Agreement, or within the statutory timeframe as determined by the Court's setting of the preliminary approval hearing, which shall include this Settlement Agreement. Plaintiff will provide Defendants with a draft of the Motion at least 3 business days prior to the filing of the Motion to give Defendants an opportunity to propose changes or additions to the Motion.

K. Settlement Administrator. The Settlement Administrator shall be responsible for: establishing and administering the QSF; calculating, processing and mailing payments to the Class Representative, Class Counsel, LWDA and Class Members; printing and mailing the Notice Packets to the Class Members as directed by the Court; receiving and reporting the objections and requests for exclusion; calculating, deducting and remitting all legally required taxes from Individual Settlement Payments and distributing tax forms for the Wage Portion, the Penalties Portion and the Interest Portion of the Individual Settlement Payments and/or Aggrieved Employees' individual shares of the Aggrieved Employee Payment; processing and mailing tax payments to the appropriate state and federal taxing authorities; providing

1 declaration(s) as necessary in support of preliminary and/or final approval of this  
2 Settlement; and other tasks as the Parties mutually agree or the Court orders the  
3 Settlement Administrator to perform. The Settlement Administrator shall keep the  
4 Parties timely apprised of the performance of all Settlement Administrator  
5 responsibilities by among other things, sending a weekly status report to the Parties'  
6 counsel stating the date of the mailing, the of number of Elections Not to Participate  
7 in Settlement it receives (including the numbers of valid and deficient), and number of  
8 objections received.

9 L. Notice Procedure.

10 1. Class Data. No later than ten (10) calendar days after the Preliminary  
11 Approval Date, Defendants shall provide the Settlement Administrator with  
12 the Class Data for purposes of preparing and mailing Notice Packets to the  
13 Class Members.

14 2. Notice Packets.

15 a) The Notice Packet shall contain the Notice of Class Action Settlement  
16 in a form substantially similar to the form attached as **Exhibit A**. The  
17 Notice of Class Action Settlement shall inform Class Members and  
18 PAGA Class Members that they need not do anything in order to  
19 receive an Individual Settlement Payment and/or Aggrieved  
20 Employees' individual shares of the Aggrieved Employee Payment  
21 and to keep the Settlement Administrator apprised of their current  
22 mailing address, to which the Individual Settlement Payments and/or  
23 Aggrieved Employees' individual shares of the Aggrieved  
24 Employment Payment will be mailed following the Funding Date. The  
25 Notice of Class Action Settlement shall set forth the release to be given  
26 by all members of the Class who do not request to be excluded from  
27 the Settlement Class and/or Aggrieved Employees in exchange for an  
28 Individual Settlement Payment and/or Aggrieved Employees'

1 individual shares of the Aggrieved Employment Payment, the number  
2 of Workweeks worked by each Class Member during the Class Period  
3 and PAGA Period, if any, and the estimated amount of their Individual  
4 Settlement Payment if they do not request to be excluded from the  
5 Settlement and each Aggrieved Employees' share of the Aggrieved  
6 Employment Payment, if any. The Settlement Administrator shall use  
7 the Class Data to determine Class Members' Workweeks and PAGA  
8 Workweeks. The Notice will also advise the Aggrieved Employees  
9 that they will release the Released PAGA Claims and will receive their  
10 share of the Aggrieved Employee Payment regardless of whether they  
11 request to be excluded from the Settlement.

12 b) The Notice Packet's mailing envelope shall include the following  
13 language: "IMPORTANT LEGAL DOCUMENT- YOU MAY BE  
14 ENTITLED TO PARTICIPATE IN A CLASS ACTION  
15 SETTLEMENT; A PROMPT REPLY TO CORRECT YOUR  
16 ADDRESS IS REQUIRED AS EXPLAINED IN THE ENCLOSED  
17 NOTICE."

18 3. Notice by First Class U.S. Mail. Upon receipt of the Class Data, the  
19 Settlement Administrator will perform a search based on the National Change  
20 of Address Database to update and correct any known or identifiable address  
21 changes. No later than twenty one (21) calendar days after preliminary  
22 approval of the Settlement, the Settlement Administrator shall mail copies of  
23 the Notice Packet to all Class Members via regular First-Class U.S. Mail. The  
24 Settlement Administrator shall exercise its best judgment to determine the  
25 current mailing address for each Class Member. The address identified by the  
26 Settlement Administrator as the current mailing address shall be presumed to  
27 be the best mailing address for each Class Member.  
28

- 1                   4.     Undeliverable Notices. Any Notice Packets returned to the Settlement  
2                   Administrator as non-delivered on or before the Response Deadline shall be  
3                   re-mailed to any forwarding address provided. If no forwarding address is  
4                   provided, the Settlement Administrator shall promptly attempt to determine a  
5                   correct address by lawful use of skip-tracing, or other search using the name,  
6                   address and/or Social Security number of the Class Member involved, and  
7                   shall then perform a re-mailing, if another mailing address is identified by the  
8                   Settlement Administrator. In addition, if any Notice Packets, which are  
9                   addressed to Class Members who are currently employed by Defendants, are  
10                  returned to the Settlement Administrator as non-delivered and no forwarding  
11                  address is provided, the Settlement Administrator shall notify Defendants.  
12                  Defendants will request that the currently employed Class Member provide a  
13                  corrected address, and transmit to the Administrator any corrected address  
14                  provided by the Class Member. Class Members who received a re-mailed  
15                  Notice Packet shall have their Response Deadline extended fifteen (15) days  
16                  from the original Response Deadline.
- 17                5.     Disputes Regarding Individual Settlement Payments. Class Members will  
18                have the opportunity, should they disagree with Defendants' records regarding  
19                the start and end dates of employment, to provide documentation and/or an  
20                explanation to show contrary dates. If there is a dispute, the Settlement  
21                Administrator will consult with the Parties to determine whether an  
22                adjustment is warranted. The Settlement Administrator shall determine the  
23                eligibility for, and the amounts of, any Individual Settlement Payments under  
24                the terms of this Agreement. The Settlement Administrator's determination  
25                of the eligibility for and amount of any Individual Settlement Payment shall  
26                be binding upon the Class Member and the Parties.
- 27                6.     Disputes Regarding Administration of Settlement. Any disputes not resolved  
28                by the Settlement Administrator concerning the administration of the

1 Settlement will be resolved by the Court under the laws of the State of  
2 California. Before any such involvement of the Court, counsel for the Parties  
3 will confer in good faith to resolve the disputes without the necessity of  
4 involving the Court.

- 5 7. Exclusions. The Notice of Class Action Settlement contained in the Notice  
6 Packet shall state that Class Members who wish to exclude themselves from  
7 the Settlement must submit a written request for exclusion to the Settlement  
8 Administrator by the Response Deadline. The written request for exclusion  
9 must state that the Class Member wishes to exclude himself or herself from  
10 the Settlement and (1) must contain the name, address, and the last four digits  
11 of the Social Security number of the person requesting exclusion; (2) must be  
12 signed by the Class Member; (3) must be postmarked or fax stamped by the  
13 Response Deadline and returned to the Settlement Administrator at the  
14 specified address or fax telephone number; and (4) contain a typewritten or  
15 handwritten notice stating in substance that he or she wishes to be excluded  
16 from the settlement of the class action lawsuit entitled *Morris v Habermeld*  
17 *Ford, et al.*, currently pending in Superior Court of Kern, Case No. BCV-23-  
18 100471. The request for exclusion will not be valid if it is not timely  
19 submitted, if it is not signed by the Class Member, or if it does not contain the  
20 name and address and last four digits of the Social Security number of the  
21 Class Member. The date of the postmark on the mailing envelope or fax stamp  
22 on the request for exclusion shall be the exclusive means used to determine  
23 whether the request for exclusion was timely submitted. Any Class Member  
24 who submits a timely request for exclusion shall be excluded from the  
25 Settlement Class will not be entitled to an Individual Settlement Payment and  
26 will not be otherwise bound by the terms of the Settlement or have any right  
27 to object, appeal or comment thereon. However, any Class Member that  
28 submits a timely request for exclusion that is also a member of the Aggrieved

1 Employees will still receive his/her pro rata share of the PAGA Settlement, as  
2 specified below, and in consideration, will be bound by the Release by the  
3 Aggrieved Employees as set forth herein. Settlement Class Members who fail  
4 to submit a valid and timely request for exclusion on or before the Response  
5 Deadline shall be bound by all terms of the Settlement and any final judgment  
6 entered in this Action if the Settlement is approved by the Court. No later than  
7 twenty-one (21) calendar days after the Response Deadline, the Settlement  
8 Administrator shall provide counsel for the Parties with a final list of the Class  
9 Members who have timely submitted timely requests for exclusion. At no time  
10 shall any of the Parties or their counsel seek to solicit or otherwise encourage  
11 members of the Class to submit requests for exclusion from the Settlement.

- 12 8. Objections. The Notice of Class Action Settlement contained in the Notice  
13 Packet shall state that Class Members who wish to object to the Settlement  
14 may submit to the Settlement Administrator a written statement of objection  
15 (“Notice of Objection”) by the Response Deadline. The postmark date of  
16 mailing shall be deemed the exclusive means for determining that a Notice of  
17 Objection was served timely. The Notice of Objection, if in writing, must be  
18 signed by the Settlement Class Member and state: (1) the case name and  
19 number; (2) the name of the Settlement Class Member; (3) the address of the  
20 Settlement Class Member; (4) the last four digits of the Settlement Class  
21 Member’s Social Security number; (5) the basis for the objection; and (6) if  
22 the Settlement Class Member intends to appear at the Final  
23 Approval/Settlement Fairness Hearing. Class Members who fail to make  
24 objections in writing in the manner specified above may still make their  
25 objections orally at the Final Approval/Settlement Fairness Hearing with the  
26 Court’s permission. Settlement Class Members will have a right to appear at  
27 the Final Approval/Settlement Fairness Hearing to have their objections heard  
28 by the Court regardless of whether they submitted a written objection. At no

time shall any of the Parties or their counsel seek to solicit or otherwise encourage Class Members to file or serve written objections to the Settlement or appeal from the Order and Final Judgment. Class Members who submit a written request for exclusion may not object to the Settlement. Class Members may not object to the PAGA Penalties.

M. Funding and Allocation of the Gross Settlement Amount. Defendants are required to pay the Gross Settlement Amount plus any employer's share of payroll taxes as mandated by law within the time specified hereinabove on the Funding Date.

1. Calculation of Individual Settlement Payments. Individual Settlement Payments shall be paid from the Net Settlement Amount and shall be paid pursuant to the formula set forth herein. Using the Class Data, the Settlement Administrator shall add up the total number of Workweeks for all Class Members. The respective Workweeks for each Class Member will be divided by the total Workweeks for all Class Members, resulting in the Payment Ratio for each Class Member. Each Class Member's Payment Ratio will then be multiplied by the Net Settlement Amount to calculate each Class Member's estimated Individual Settlement Payments. Each Individual Settlement Payment will be reduced by any legally mandated employee tax withholdings (e.g., employee payroll taxes, etc.). Individual Settlement Payments for Class Members who submit valid and timely requests for exclusion will be redistributed to Settlement Class Members who do not submit valid and timely requests for exclusion on a pro rata basis based on their respective Payment Ratios.

2. Calculation of Individual Payments to the Aggrieved Employees. Using the Class Data, the Settlement Administrator shall add up the total number of PAGA Pay Periods for all Aggrieved Employees during the PAGA Period. The respective PAGA Pay Periods for each Aggrieved Employees will be divided by the total PAGA Pay Periods for all Aggrieved Employees, resulting

1 in the “PAGA Payment Ratio” for each Aggrieved Employee. Each Aggrieved  
2 Employee’s PAGA Payment Ratio will then be multiplied by the Aggrieved  
3 Employee Payment to calculate each Aggrieved Employee’s estimated share  
4 of the Aggrieved Employee Payment.

5 3. Allocation of Individual Settlement Payments. For tax purposes, Individual  
6 Settlement Payments shall be allocated and treated as 20% wages (“Wage  
7 Portion”) and 80% penalties and pre-judgment interest (“Penalties and Interest  
8 Portion”). The Wage Portion of the Individual Settlement Payments shall be  
9 reported on IRS Form W-2 and the Penalties and Interest Portion and Interest  
10 Portion of the Individual Settlement Payments shall be reported on IRS Form  
11 1099 issued by the Settlement Agreement.

12 4. Allocation of Aggrieved Employee Payments. For tax purposes, Aggrieved  
13 Employee Settlement Payments shall be allocated and treated as 100%  
14 penalties and shall be reported on IRS Form 1099.

15 5. No Credit Toward Benefit Plans. The Individual Settlement Payments and  
16 individual shares of the PAGA Penalties made to Settlement Class Members  
17 and/or Aggrieved Employees under this Settlement Agreement, as well as any  
18 other payments made pursuant to this Settlement Agreement, will not be  
19 utilized to calculate any additional benefits under any benefit plans to which  
20 any Class Members may be eligible, including, but not limited to profit-  
21 sharing plans, bonus plans, 401(k) plans, stock purchase plans, vacation plans,  
22 sick leave plans, PTO plans, and any other benefit plan. Rather, it is the  
23 Parties’ intention that this Settlement Agreement will not affect any rights,  
24 contributions, or amounts to which any Class Members may be entitled under  
25 any benefit plans.

26 6. All monies received by Settlement Class Members under the Settlement which  
27 are attributable to wages shall constitute income to such Settlement Class  
28 Members solely in the year in which such monies actually are received by the

1 Settlement Class Members. It is the intent of the Parties that Individual  
2 Settlement Payments and individual shares of the PAGA Penalties provided for  
3 in this Settlement agreement are the sole payments to be made by Defendants to  
4 Settlement Class Members and/or Aggrieved Employees in connection with this  
5 Settlement Agreement, with the exception of Plaintiff, and that the Settlement  
6 Class Members and/or Aggrieved Employees are not entitled to any new or  
7 additional compensation or benefits as a result of having received the Individual  
8 Settlement Payments and/or their shares of the Aggrieved Employee Payment.

9 7. Mailing. Individual Settlement Payments and Aggrieved Employee Payments  
10 shall be mailed by regular First-Class U.S. Mail to Settlement Class Members'  
11 and/or Aggrieved Employees' last known mailing address no later than fifteen  
12 (15) calendar days after the Funding Date.

13 8. Expiration. Any checks issued to Settlement Class Members and Aggrieved  
14 Employees shall remain valid and negotiable for one hundred and eighty (180)  
15 days from the date of their issuance. If a Settlement Class Member and/or  
16 Aggrieved Employees does not cash his or her settlement check within 90  
17 days, the Settlement Administrator will send a letter to such persons, advising  
18 that the check will expire after the 180<sup>th</sup> day, and invite that Settlement Class  
19 Member and/or Aggrieved Employees to request reissuance in the event the  
20 check was destroyed, lost or misplaced. In the event an Individual Settlement  
21 Payment and/or Aggrieved Employees' individual share of the PAGA  
22 Penalties check has not been cashed within one hundred and eighty (180) days,  
23 all funds represented by such uncashed checks, plus any interest accrued  
24 thereon, shall be paid to the Court Appointed Special Advocates (CASA) of  
25 Kern County pursuant to California Code of Civil Procedure section 386.

26 9. Enhancement Award. In addition to the Individual Settlement Payment as a  
27 Settlement Class Member and her individual share of the Aggrieved  
28 Employee Payment, Plaintiff will apply to the Court for an award of not more

1 than \$10,000.00, as the Enhancement Award. Defendants will not oppose an  
2 Enhancement Award of not more than \$10,000.00 for Plaintiff. The  
3 Settlement Administrator shall pay the Enhancement Award, either in the  
4 amount stated herein if approved by the Court or some other amount as  
5 approved by the Court, to Plaintiff from the Gross Settlement Amount no later  
6 than fifteen (15) calendar days after the Funding Date. Any portion of the  
7 requested Enhancement Award that is not awarded to the Class Representative  
8 shall be part of the Net Settlement Amount and shall be distributed to  
9 Settlement Class Members as provided in this Agreement. The Settlement  
10 Administrator shall issue an IRS Form 1099 — MISC to Plaintiff for her  
11 Enhancement Award. Plaintiff shall be solely and legally responsible to pay  
12 any and all applicable taxes on her Enhancement Award and shall hold  
13 harmless the Released Parties from any claim or liability for taxes, penalties,  
14 or interest arising as a result of the Enhancement Award. Approval of this  
15 Settlement shall not be conditioned on Court approval of the requested amount  
16 of the Enhancement Award. If the Court reduces or does not approve the  
17 requested Enhancement Award, Plaintiff shall not have the right to revoke the  
18 Settlement, and it will remain binding.

- 19 10. Attorneys' Fees and Attorneys' Expenses. Defendants understand Class  
20 Counsel will file a motion for or Attorneys' Fees not to exceed thirty-five  
21 percent (35%) of the Gross Settlement Amount currently estimated to be  
22 \$525,000.00 **and** Attorneys' Expenses supported by declaration not to exceed  
23 Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00). Any awarded  
24 Attorneys' Fees and Attorneys' Expenses shall be paid from the Gross  
25 Settlement Amount. Any portion of the requested Attorneys' Fees and/or  
26 Attorneys' Expenses that are not awarded to Class Counsel shall be part of the  
27 Net Settlement Amount and shall be distributed to Settlement Class Members  
28 as provided in this Agreement. The Settlement Administrator shall allocate

1 and pay the Attorneys' Fees to Class Counsel from the Gross Settlement  
2 Amount no later than fifteen (15) calendar days after Defendants fully fund  
3 the Settlement. Class Counsel shall be solely and legally responsible to pay  
4 all applicable taxes on the payment made pursuant to this paragraph. The  
5 Settlement Administrator shall issue an IRS Form 1099 — MISC to Class  
6 Counsel for the payments made pursuant to this paragraph. In the event that  
7 the Court reduces or does not approve the requested Attorneys' Fees, Plaintiff  
8 and Class Counsel shall not have the right to revoke the Settlement, or to  
9 appeal such order, and the Settlement will remain binding.

10 11. PAGA Penalties. Fifty Thousand Dollars and Zero Cents (\$50,000.00) shall  
11 be allocated from the Gross Settlement Amount for settlement of claims for  
12 civil penalties under the Private Attorneys General Act of 2004 ("PAGA  
13 Penalties"). The Settlement Administrator shall pay seventy-five percent  
14 (75%) of the PAGA Penalties (\$37,500.00) to the California Labor and  
15 Workforce Development Agency no later than fifteen (15) calendar days after  
16 the Effective Date (hereinafter "LWDA Payment"). Twenty-five percent  
17 (25%) of the PAGA Penalties (\$12,500.00) will be distributed to the  
18 Aggrieved Employees as described in this Agreement (hereinafter "Aggrieved  
19 Employee Payment"). For purposes of distributing the PAGA Penalties to the  
20 Aggrieved Employees, each Aggrieved Employee shall receive their pro-rata  
21 share of the Aggrieved Employee Payment using the PAGA Payment Ratio  
22 as defined above.

23 12. Administration Costs. The Settlement Administrator shall be paid for the  
24 costs of administration of the Settlement from the Gross Settlement Amount.  
25 The estimate of the Administration Costs is \$10,000.00. The Settlement  
26 Administrator shall be paid the Administration Costs no later than fifteen (15)  
27 calendar days after the Effective Date.  
28

1 N. Final Approval Motion. Class Counsel and Plaintiff shall use best efforts to file with  
2 the Court a Motion for Order Granting Final Approval and Entering Judgment, within  
3 twenty-eight (28) days following the expiration of the Response Deadline, or within  
4 the statutory timeframe as determined by the Court's setting of the final approval  
5 hearing, which motion shall request final approval of the Settlement and a  
6 determination of the amounts payable for the Enhancement Award, the Attorneys'  
7 Fees and Attorneys' Expenses, the PAGA Penalties, and the Administration Costs.  
8 Plaintiff will provide Defendants with a draft of the Motion at least 3 business days  
9 prior to the filing of the Motion to give Defendants an opportunity to propose changes  
10 or additions to the Motion.

11 1. Declaration by Settlement Administrator. No later than seven (7) days after  
12 the Response Deadline, the Settlement Administrator shall submit a  
13 declaration in support of Plaintiff's motion for final approval of this  
14 Settlement detailing the number of Notice Packets mailed and re-mailed to  
15 Class Members, the number of undeliverable Notice Packets, the number of  
16 timely requests for exclusion, the number of objections received, the amount  
17 of the average Individual Settlement Payment and highest Individual  
18 Settlement Payment, the Administration Costs, and any other information as  
19 the Parties mutually agree or the Court orders the Settlement Administrator to  
20 provide.

21 2. Final Approval Order and Judgment. Class Counsel shall present an Order  
22 Granting Final Approval of Class Action Settlement to the Court for its  
23 approval, and Judgment thereon, at the time Class Counsel files the Motion  
24 for Final Approval.

25 N. Review of Motions for Preliminary and Final Approval. Class Counsel will provide  
26 an opportunity for Counsel for Defendants to review the Motions for Preliminary and  
27 Final Approval, including the Order Granting Final Approval of Class Action  
28 Settlement, and Judgment before filing with the Court. The Parties and their counsel

1 will cooperate with each other and use their best efforts to effect the Court's approval  
2 of the Motions for Preliminary and Final Approval of the Settlement, and entry of  
3 Judgment.

4 O. Cooperation. The Parties and their counsel will cooperate with each other and use  
5 their best efforts to implement the Settlement.

6 P. Interim Stay of Proceedings. The Parties agree to stay all proceedings in the Action,  
7 except such proceedings necessary to implement and complete the Settlement, pending  
8 the Final Approval/Settlement Fairness Hearing to be conducted by the Court.

9 Q. Amendment or Modification. This Agreement may be amended or modified only by  
10 a written instrument signed by counsel for all Parties or their successors-in-interest.

11 R. Entire Agreement. This Agreement and any attached Exhibit constitute the entire  
12 Agreement among these Parties, and no oral or written representations, warranties or  
13 inducements have been made to any Party concerning this Agreement or its Exhibit  
14 other than the representations, warranties and covenants contained and memorialized  
15 in this Agreement and its Exhibit.

16 S. Authorization to Enter into Settlement Agreement. Counsel for all Parties warrant and  
17 represent they are expressly authorized by the Parties whom they represent to negotiate  
18 this Agreement and to take all appropriate Action required or permitted to be taken by  
19 such Parties pursuant to this Agreement to effectuate its terms, and to execute any other  
20 documents required to effectuate the terms of this Agreement. The persons signing  
21 this Agreement on behalf of Defendants represent and warrant that he/she is authorized  
22 to sign this Agreement on behalf of Defendants. Plaintiff represents and warrants that  
23 she is authorized to sign this Agreement and that she has not assigned any claim, or  
24 part of a claim, covered by this Settlement to a third-party.

25 T. No Public Comment: The Parties and their counsel agree that they will not issue any  
26 press releases, initiate any contact with the press, respond to any press inquiry, or have  
27 any communication with the press about the fact, amount, or terms of the Settlement  
28 Agreement. Class Counsel further agrees not to use the Settlement Agreement or any

1 of its terms for any marketing or promotional purposes. Nothing herein will restrict  
2 Class Counsel from including publicly available information regarding this settlement  
3 in future judicial submissions regarding Class Counsel's qualifications and experience.  
4 Further, Class Counsel will not include, reference, or use the Settlement Agreement  
5 for any marketing or promotional purposes, either before or after the Motion for  
6 Preliminary Approval is filed.

7 U. Binding on Successors and Assigns. This Agreement shall be binding upon, and inure  
8 to the benefit of, the successors or assigns of the Parties, as previously defined.

9 V. California Law Governs. All terms of this Agreement and the Exhibit and any disputes  
10 shall be governed by and interpreted according to the laws of the State of California.

11 W. Counterparts. This Agreement may be executed in one or more counterparts. All  
12 executed counterparts and each of them shall be deemed to be one and the same  
13 instrument provided that counsel for the Parties to this Agreement shall exchange  
14 among themselves copies or originals of the signed counterparts.

15 X. This Settlement Is Fair, Adequate and Reasonable. The Parties believe this Settlement  
16 is a fair, adequate, and reasonable settlement of this Action and have arrived at this  
17 Settlement after extensive arms-length negotiations, taking into account all relevant  
18 factors, present and potential.

19 Y. Jurisdiction of the Court. The Parties agree that the Court shall retain jurisdiction with  
20 respect to the interpretation, implementation, and enforcement of the terms of this  
21 Agreement and all orders and judgments entered in connection therewith, and the  
22 Parties and their counsel submit to the jurisdiction of the Court for purposes of  
23 interpreting, implementing and enforcing the settlement and all orders and judgments  
24 entered in connection with this Agreement.

25 Z. Invalidity of Any Provision. Before declaring any provision of this Agreement invalid,  
26 the Court shall first attempt to construe the provisions valid to the fullest extent  
27 possible consistent with applicable precedents so as to define all provisions of this  
28 Agreement valid and enforceable.

1 AA. Waiver of Certain Appeals. The Parties agree to waive appeals and to stipulate to class  
2 certification for purposes of this settlement only.

3 BB. No Admissions by the Parties. Plaintiff has claimed and continues to claim that the  
4 Released Claims have merit and give rise to liability on the part of Defendants.  
5 Defendants claim that the Released Claims have no merit and do not give rise to  
6 liability. This Agreement is a compromise of disputed claims. Nothing contained in  
7 this Agreement and no documents referred to and no action taken to carry out this  
8 Agreement may be construed or used as an admission by or against the Defendants or  
9 Plaintiff or Class Counsel as to the merits or lack thereof of the claims asserted. Other  
10 than as may be specifically set forth herein, each Party shall be responsible for and  
11 shall bear its/his own attorney's fees and costs.

12 IT IS SO AGREED, FORM AND CONTENT, BY PLAINTIFF:

13 DATED: 07/15/2024

14   
Passion Morris Jul 15, 2024 16:28 PDT

15 PASSION MORRIS

16  
17 IS SO AGREED, FORM AND CONTENT, BY DEFENDANTS:

18  
19 DATED: \_\_\_\_\_

20 HABERFELDE FORD and JIM BURKE FORD  
21 LINCOLN

22 \_\_\_\_\_  
Printed Name

23 \_\_\_\_\_  
Title

24  
25 IT IS SO AGREED AS TO FORM BY COUNSEL:

26  
27 DATED: 07/16/2024

JCL LAW FIRM, A.P.C.

28 By: 

28

1 AA. Waiver of Certain Appeals. The Parties agree to waive appeals and to stipulate to class  
2 certification for purposes of this settlement only.

3 BB. No Admissions by the Parties. Plaintiff has claimed and continues to claim that the  
4 Released Claims have merit and give rise to liability on the part of Defendants.  
5 Defendants claim that the Released Claims have no merit and do not give rise to  
6 liability. This Agreement is a compromise of disputed claims. Nothing contained in  
7 this Agreement and no documents referred to and no action taken to carry out this  
8 Agreement may be construed or used as an admission by or against the Defendants or  
9 Plaintiff or Class Counsel as to the merits or lack thereof of the claims asserted. Other  
10 than as may be specifically set forth herein, each Party shall be responsible for and  
11 shall bear its/his own attorney's fees and costs.

12 IT IS SO AGREED, FORM AND CONTENT, BY PLAINTIFF:

13  
14 DATED: \_\_\_\_\_

15 PASSION MORRIS

16  
17 IS SO AGREED, FORM AND CONTENT, BY DEFENDANTS:

18  
19 DATED: 7/16/24

20 Joe Hay  
HABERFELDE FORD and JIM BURKE FORD  
LINCOLN

21 Joe Hay  
22 Printed Name

23 President  
24 Title

25 IT IS SO AGREED AS TO FORM BY COUNSEL:

26  
27 DATED: \_\_\_\_\_

JCL LAW FIRM, A.P.C.

28 By: \_\_\_\_\_  
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Attorneys for Plaintiff and the Settlement Class  
Members

DATED: \_\_\_\_\_

ZAKAY LAW GROUP, APLC

By: \_\_\_\_\_

Attorneys for Plaintiff and the Settlement Class  
Members

DATED: \_\_\_\_\_

LAWYERS FOR JUSTICE, PC

By: \_\_\_\_\_

Edwin Aiwazian, Esq.

Morgan Barney, Esq.

Attorneys for Plaintiff and the Settlement Class  
Members

DATED: 7/17/24

LeBEAU THELEN, LLP

By: 

Daniel K. Klingenberg, Esq.

Mathew J. Dobbs, Esq.

Attorneys for Defendants

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Attorneys for Plaintiff and the Settlement Class  
Members

DATED: 07/16/2024

ZAKAY LAW GROUP, APLC

By:  \_\_\_\_\_

Attorneys for Plaintiff and the Settlement Class  
Members

DATED: \_\_\_\_\_

LAWYERS FOR JUSTICE, PC

By: \_\_\_\_\_  
Edwin Aiwazian, Esq.  
Morgan Barney, Esq.  
Attorneys for Plaintiff and the Settlement Class  
Members

DATED: \_\_\_\_\_

LeBEAU THELEN, LLP

By: \_\_\_\_\_  
Daniel K. Klingenberg, Esq.  
Mathew J. Dobbs, Esq.  
  
Attorneys for Defendants

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Attorneys for Plaintiff and the Settlement Class  
Members

DATED: \_\_\_\_\_

ZAKAY LAW GROUP, APLC

By: \_\_\_\_\_

Attorneys for Plaintiff and the Settlement Class  
Members

DATED: July 17, 2024

LAWYERS FOR JUSTICE, PC

By:   
Edwin Aiwazian, Esq.

Morgan Barney, Esq.  
Attorneys for Plaintiff and the Settlement Class  
Members

DATED: \_\_\_\_\_

LeBEAU THELEN, LLP

By: \_\_\_\_\_

Daniel K. Klingenberg, Esq.  
Mathew J. Dobbs, Esq.

Attorneys for Defendants

# **EXHIBIT A**

**NOTICE OF PENDENCY OF CLASS ACTION SETTLEMENT  
AND FINAL HEARING DATE**

*(Morris v Haberfelde Ford, et al., Kern County Superior Court Case No. BCV-23-100471)*

**YOUR LEGAL RIGHTS MAY BE AFFECTED WHETHER YOU ACT OR DO NOT ACT. PLEASE  
READ THIS NOTICE CAREFULLY.**

| <b>SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:</b> |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
|---------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Do Nothing and Receive a Payment</b>                             | <p>To receive a cash payment from the Settlement, you do <b>not</b> have to do anything.</p> <p><b>Your estimated Settlement Share is: \$&lt;[REDACTED]&gt;. See the explanation below.</b></p> <p>After final approval by the Court, the payment will be mailed to you at the same address as this notice. If your address has changed, please notify the Settlement Administrator as explained below. In exchange for the settlement payment, you will release claims against the Defendants as detailed below.</p> |
| <b>Exclude Yourself</b>                                             | <p>If you wish to exclude yourself from the Settlement, you must send a written request for exclusion to the Settlement Administrator as provided below. If you request exclusion, you will receive <b>no money from the Settlement</b>.</p> <p>Instructions are set forth below.</p>                                                                                                                                                                                                                                 |
| <b>Object</b>                                                       | <p>You may write to the Court about why you believe the settlement should not be approved.</p> <p>Directions are provided below.</p>                                                                                                                                                                                                                                                                                                                                                                                  |

**1. Why did I get this Notice?**

A proposed class action settlement (the “Settlement”) of this lawsuit pending in the Superior Court for the State of California, County of Kern (the “Court”) has been reached between Plaintiff Passion Morris (“Plaintiff”) and Defendants Haberfelde Ford and Jim Burke Ford Lincoln. (“Defendants”). The Court has granted preliminary approval of the Settlement. **You may be entitled to receive money from this Settlement.**

**You have received this Class Notice because you have been identified as a member of the Class, which is defined as:**

All non-exempt employees who are or previously were employed by Defendants, who performed work in California during the period of February 14, 2019 through June 13, 2024.

The “Class Period” is the period of time running from February 14, 2019 through June 13, 2024.

This Class Notice explains the lawsuit, the Settlement, and your legal rights. It is important that you read this Notice carefully as your rights may be affected by the Settlement.

## **2. What is this class action lawsuit about?**

On February 14, 2023, Plaintiff filed a Complaint against Defendants in the Superior Court of the State of California, County of Kern. Plaintiff asserted the following claims against Defendants for: (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime); (2) Violation of California Labor Code §§ 226.7 and 512(a) (Unpaid Meal Period Premiums); (3) Violation of California Labor Code § 226.7 (Unpaid Rest Period Premiums); (4) Violation of California Labor Code §§ 1194, 1197 and 1197.1 (Unpaid Minimum Wages); (5) Violation of California Labor Code §§ 201 and 202 (Final Wages Not Timely Paid); (6) Violation of California Labor Code § 204 (Wages Not Timely Paid During Employment); (7) Violation of California Labor Code § 226(a) (Non-Compliant Wage Statements); (8) Violation of California Labor Code § 1174(d) (Failure to Keep Requisite Payroll Records); (9) Violation of California Labor Code § 2800 and 2802 (Unreimbursed Business Expenses); and (10) Violation of California Business & Professions Code §§ 17200, et seq. On March 18, 2024, in order to facilitate the Settlement, Plaintiff filed a Notice of Violations with the Labor and Workforce Development Agency (LWDA) and served the same on Defendants. On July 3, 2024, Plaintiff filed the operative First Amended Complaint, which alleges an additional cause of action for Violations of the Private Attorneys General Act [Labor Code §§ 2698, et seq.].

Defendants deny any liability or wrongdoing of any kind associated with the claims alleged in the Action, dispute any wages, damages and penalties claimed by the Class Representative are owed, and further contend that, for any purpose other than settlement, the Action is not appropriate for class or representative action treatment. Defendants contend, among other things, that at all times they complied with the California Labor Code and the Industrial Welfare Commission Wage Orders.

On March 15, 2024, the Parties participated in an all-day mediation with Brian Sinclair, Esq., an experienced mediator of wage and hour class actions. The mediation concluded with a settlement. The Court granted preliminary approval of the Settlement on <<INSERT PRELIMINARY APPROVAL DATE>>. At that time, the Court also preliminarily approved the Plaintiff to serve as the Class Representative, and the law firms of JCL Law Firm, APC, Zakay Law Group, APC and Lawyers for Justice, PC to serve as Class Counsel.

## **3. What are the terms of the Settlement?**

Gross Settlement Amount. Defendants have agreed to pay an “all in” amount of One Million Five Hundred Thousand Dollars and Zero Cents (\$1,500,000) (the “Gross Settlement Amount”) to fund the settlement. The Gross Settlement Amount includes the payment of all Individual Settlement Payments to Settlement Class Members, Class Counsel’s Attorneys’ Fees and Expenses, Administration Costs, the LWDA Payment, Aggrieved Employee Payments, and the Enhancement Award to the Plaintiff.

After the Judgment becomes Final, Defendants will pay the Gross Settlement Amount by depositing the money with the Settlement Administrator. “Final” means the date the Judgment is no longer subject to appeal, or if an appeal is filed, the date the appeal process is completed, and the Judgment is affirmed.

Amounts to be Paid from the Gross Settlement Amount. The Settlement provides for certain payments to be made from the Gross Settlement Amount, which will be subject to final Court approval, and which will be deducted from the Gross Settlement Amount before settlement payments are made to Class Members, as follows:

- Administration Costs. Payment to the Settlement Administrator, estimated not to exceed \$10,000.00 for expenses, including expenses of sending this Notice, processing opt outs, and distributing settlement payments.
- Attorneys’ Fees and Costs. Payment to Class Counsel of an award of Attorneys’ Fees of no more than 35% of the Gross Settlement Amount (currently \$525,000.00) and Attorneys’ Expenses of not more than

\$25,000.00 for all expenses incurred as documented in Class Counsel's billing records, both subject to Court approval. Class Counsel have been prosecuting the Actions on behalf of Plaintiff and the Class on a contingency fee basis (that is, without being paid any money to date) and have been paying all litigation costs and expenses.

- Enhancement Award. Enhancement Award of up to Ten Thousand Dollars (\$10,000.00) to Plaintiff, or such lesser amount as may be approved by the Court, to compensate her for services on behalf of the Class in initiating and prosecuting the Action, and for the risks she undertook.
- PAGA Payment. A payment of \$50,000.00 relating to Plaintiff's claim under the Private Attorneys General Act ("PAGA"), \$37,500.00 of which will be paid to the State of California's Labor and Workforce Development Agency ("LWDA") and the remaining \$12,500.00 will be distributed to Aggrieved Employees as part of the Net PAGA Amount.
- Calculation of Payments to Participating Class Members. After all the above payments of the court-approved Attorneys' Fees, Attorneys' Expenses, Enhancement Award, PAGA Payment, and the Administration Costs are deducted from the Gross Settlement Amount, the remaining portion, called the "Net Settlement Amount," shall be distributed to class members who do **not** request exclusion ("Settlement Class Members"). The Settlement Share for each Settlement Class Member will be calculated by dividing the Net Settlement Amount by the total number of workweeks for all Settlement Class Members that occurred during the Class Period and multiplying the result by each individual Settlement Class Member's workweeks that occurred during the Class Period. A "workweek" is defined as any seven (7) consecutive days beginning on Sunday and ending on Saturday, in which a class member is employed by Defendants during the Class Period in California.
- Calculation of PAGA Penalties Payments to Aggrieved Employees. The Net PAGA Amount shall be distributed to Aggrieved Employees irrespective of whether they exclude themselves or opt-out. The Net PAGA Amount will be divided by the total number of pay periods worked by all Aggrieved Employees during the PAGA Period, and then taking that number and multiplying it by the number of pay periods worked by each respective Aggrieved Employee during the PAGA Period. "Aggrieved Employees" means all non-exempt employees who are or previously were employed by Defendants, who performed work in California during the PAGA Period. The PAGA Period means the period of February 12, 2023 through June 13, 2024.

**If the Settlement is approved by the Court, you will automatically be mailed a check for your Settlement Share to the same address as this Class Notice. You do not have to do anything to receive a payment.** If your address has changed, you must contact the Settlement Administrator to inform them of your correct address to insure you receive your payment.

Tax Matters. Twenty percent (20%) of each Settlement Share is allocated to wages. Taxes are withheld from this amount, and each Participating Class Member will be issued an Internal Revenue Service Form W-2 for such payment. Eighty percent (80%) of each Settlement Share is allocated to interest, penalties and other non-wage payments, and no taxes will be withheld, and each Participating Class Member will be issued an Internal Revenue Service Form 1099 for such payment. In addition, no taxes will be withheld from the PAGA Penalties paid to Aggrieved Employees, and each Aggrieved Employee will be issued an Internal Revenue Service Form 1099 for such payment. Neither Class Counsel nor Defendants' counsel intend anything contained in this Settlement to constitute advice regarding taxes or taxability. You may wish to consult a tax advisor concerning the tax consequences of the payments received under the Settlement.

No Credit Toward Benefit Plans. The Individual Settlement Payments and individual shares of the PAGA Settlement made to Settlement Class Members and/or Aggrieved Employees under this Settlement Agreement, as well as any other payments made pursuant to this Settlement Agreement, will not be utilized to calculate any

additional benefits under any benefit plans to which any Class Members may be eligible, including, but not limited to profit-sharing plans, bonus plans, 401(k) plans, stock purchase plans, vacation plans, sick leave plans, PTO plans, and any other benefit plan. Rather, it is the Parties' intention that this Settlement Agreement will not affect any rights, contributions, or amounts to which any Class Members may be entitled under any benefit plans.

Conditions of Settlement. This Settlement is conditioned upon the Court entering an order granting final approval of the Settlement and entering judgment.

#### **4. What Do I Release Under the Settlement?**

Released Claims. Upon entry of final judgment and funding in full of the Gross Settlement Amount by Defendants, Plaintiff and the Settlement Class Members shall release all Released Class Claims that occurred during the Class Period as to the Released Parties. Released Class Claims means all class claims alleged in the operative complaint, or which could have been alleged in the operative complaint, or which could have been alleged in the operative complaint based on the facts alleged, which occurred during the Class Period, and expressly excluding all other claims, including claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers' compensation, and class claims outside of the Class Period. The Released PAGA Claims shall be released as follows. As of the Settlement Effective Date and upon funding in full of the Gross Settlement Amount by Defendants, all Aggrieved Employees shall release all Released PAGA Claims, irrespective of whether they opted-out of the class settlement, and will be bound by this PAGA Release (the "PAGA Release"). "Released PAGA Claims" means all PAGA claims alleged in the operative complaint in the Action and Plaintiff's PAGA notice to the LWDA which occurred during the PAGA Period, and expressly excluding all other claims, including claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers' compensation, and PAGA claims outside of the PAGA Period.

This means that, if you do not timely and formally exclude yourself from the settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Defendants about the legal issues resolved by this Settlement. It also means that all of the Court's orders in this Action will apply to you and legally bind you.

#### **5. How much will my payment be?**

Defendants' records reflect that you have << >> Workweeks worked during the Class Period (February 14, 2019 through June 13, 2024).

Based on this information, your estimated Settlement Share is << >>.

Defendants' records reflect that you have << >> pay periods worked during the PAGA Period (February 12, 2023 through June 13, 2024).

Based on this information, your estimated PAGA Payment Share is << >>.

If you wish to challenge the information set forth above, then you must submit a written, signed dispute challenging the information along with supporting documents, to the Settlement Administrator at the address provided in this Notice no later than \_\_\_\_\_ [forty-five (45) days after the Notice or fifteen (15) days after the re-mailed Notice].

#### **6. How can I get a payment?**

**To get money from the settlement, you do not have to do anything.** A check for your settlement payment will be mailed automatically to the same address as this Notice. If your address is incorrect or has changed, you must notify the Settlement Administrator. The Settlement Administrator is: APEX Class Action LLC.

The Court will hold a hearing on \_\_\_\_\_ to decide whether to finally approve the Settlement. If the Court approves the Settlement and there are no objections or appeals, payments will be mailed within a few months after this hearing. If there are objections or appeals, resolving them can take time, perhaps more than a year. Please be patient. After entry of the Judgment, the Settlement Administrator will provide notice of the final judgment to the Class Members by posting a copy of the Judgment on the administrator's website at [www.\\_\\_\\_\\_\\_.com](http://www._____.com)

#### **7. What if I don't want to be a part of the Settlement?**

If you do not wish to participate in the Settlement, you may exclude yourself from the Settlement or "opt out." **If you opt out, you will receive NO money from the Settlement, and you will not be bound by its terms, except as provided as follows.** Irrespective of whether you exclude yourself from the Settlement or "opt out," you will be bound by the PAGA Release, you will be deemed to have released the Released PAGA Claims, and you will receive a share of the Net PAGA Amount.

To opt out, you must submit to the Settlement Administrator, by First Class Mail, a written, signed and dated request for exclusion postmarked no later than \_\_\_\_\_. The address for the Settlement Administrator is APEX Class Action LLC, 18 Technology Drive, Ste. 164, Irvine, CA 92618. The request for exclusion must state in substance that the Class Member has read the Class Notice and that he or she wishes to be excluded from the settlement of the class action lawsuit entitled *Morris v Haberfelde Ford, et al.*, currently pending in Superior Court of Kern, Case No. BCV-23-100471. The request for exclusion must contain your name, address, signature and the last four digits of your Social Security Number for verification purposes. The request for exclusion must be signed by you. No other person may opt out for a member of the Class.

Written requests for exclusion that are postmarked after \_\_\_\_\_, or are incomplete or unsigned will be rejected, and those Class Members will remain bound by the Settlement and the release described above.

#### **8. How do I tell the Court that I would like to challenge the Settlement?**

Any Class Member who has not opted out and believes that the Settlement should not be finally approved by the Court for any reason, may object to the proposed Settlement. Objections may be in writing and state the Class Member's name, current address, telephone number, and describe why you believe the Settlement is unfair and whether you intend to appear at the final approval hearing. All written objections or other correspondence must also state the name and number of the case, which is *Morris v Haberfelde Ford, et al., Kern County Superior Court Case No. BCV-23-100471*. You may also object without submitting a written objection by appearing at the final approval hearing scheduled as described in Section 9 below.

To object to the Settlement, you cannot opt out. If the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way as Class Members who do not object. Any Class Member who does not object in the manner provided in this Class Notice shall have waived any objection to the Settlement, whether by appeal or otherwise.

**Written objections must be delivered or mailed to the Settlement Administrator no later than \_\_\_\_\_.** The address for the Settlement Administrator is \_\_\_\_\_.

The addresses for the Parties' counsel are as follows:

**Class Counsel:**

Jean-Claude Lapuyade, Esq.  
JCL Law Firm, APC  
5440 Morehouse Drive, Suite 3600  
San Diego, CA 92121  
Tel.: (619) 599-8292

**Class Counsel:**

Shani O. Zakay, Esq.  
Zakay Law Group, APLC  
5440 Morehouse Drive, Suite 3600  
San Diego, CA 92121  
Tel: (619) 599-8292

**Counsel for Defendants:**

Daniel K. Klingenger, Esq.  
Mathew J. Dobbs, Esq.  
LeBeau Thelen, LLP  
5001 East Commercecenter Drive,  
Suite 300

Fax: (619) 599-2891

E-Mail: [jlapyade@jcl-lawfirm.com](mailto:jlapyade@jcl-lawfirm.com)

Fax: (619) 599-8291

Email: [shani@zakaylaw.com](mailto:shani@zakaylaw.com)

Post Office Box 12092

Tel.: (661) 325-8962

Fax: (661) 325-1127

E-Mail:

[dklingenger@lebaeauthelen.com](mailto:dklingenger@lebaeauthelen.com)

[mdobbs@lebeauthelen.com](mailto:mdobbs@lebeauthelen.com)

#### 9. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Final Approval Hearing at **00:00 AM/PM on** \_\_\_\_\_, at the Kern County Superior Court, Department 17, located at 1215 Truxtun Avenue, Bakersfield, CA 93301 before Judge Thomas S. Clark. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. The purpose of this hearing is for the Court to determine whether to grant final approval to the Settlement. If there are objections, the Court will consider them. The Court will listen to people who have made a timely written request to speak at the hearing or who appear at the hearing to object. This hearing may be rescheduled by the Court without further notice to you. **You are not required to attend** the Final Approval Hearing, although any Class Member is welcome to attend the hearing.

#### 10. How do I get more information about the Settlement?

You may call the Settlement Administrator at \_\_\_\_\_ or write to *Morris v Habermelde Ford, et al., Kern County Superior Court Case No. BCV-23-100471*, Settlement Administrator, c/o \_\_\_\_\_.

This notice summarizes the proposed settlement. More details are in the Settlement Agreement. You may receive a copy of the Settlement Agreement, the Final Judgment or other Settlement documents by writing to JCL Law firm, APC, 5440 Morehouse Drive, Suite 3600, San Diego, CA 92121 or by visiting the website listed in this notice.

**PLEASE DO NOT CALL THE COURT ABOUT THIS NOTICE.**

#### IMPORTANT:

- You must inform the Settlement Administrator of any change of address to ensure receipt of your settlement payment.
- Settlement checks will be null and void 180 days after issuance if not deposited or cashed. In such event, the Settlement Administrator shall pay all funds from such uncashed checks to Court Appointed Special Advocates (CASA) of Kern County. If your check is lost or misplaced, you should contact the Settlement Administrator immediately to request a replacement.

# **EXHIBIT 2**

# **EXHIBIT 3**

**Quotation Request:**

Jackland Hom  
Zakay Law  
Jackland@zakaylaw.com  
619-255-9047

**Case Name:**

**Morris v. Haberfelde Ford**

**Date:**

Monday, April 15, 2024

**RFP Number:**

90470026

**Prepared By:**

Sean Hartranft  
Apex Class Action LLC  
Sean@apexclassaction.com  
949.878.3676

**Settlement Specifications**

|                                  |     |
|----------------------------------|-----|
| Estimated Class Size:            | 644 |
| Certified Language Translation:  | No  |
| Static Settlement Website        | No  |
| Percentage of Undeliverable Mail | 20% |

| Professional Services | Fee Calculation | Rate(s) | Quantity | Estimated Cost |
|-----------------------|-----------------|---------|----------|----------------|
|-----------------------|-----------------|---------|----------|----------------|

**Data Analytics and Standardization**

|                                                                                                                    |          |          |   |          |
|--------------------------------------------------------------------------------------------------------------------|----------|----------|---|----------|
| Import and Standardize Data*                                                                                       | Per Hour | \$125.00 | 2 | \$250.00 |
| Data Analyst                                                                                                       | Per Hour | \$150.00 | 2 | \$300.00 |
| *Data provided must be in a workable format. Apex can standardize provided data at an additional cost of \$150/hr. |          |          |   |          |
| Sub Total:                                                                                                         |          |          |   | \$550.00 |

**Mailing of Class Notice**

|                                                            |             |          |     |            |
|------------------------------------------------------------|-------------|----------|-----|------------|
| Form Set Up                                                | Per Hour    | \$120.00 | 1   | \$120.00   |
| Print & Mail Class Notice                                  | Per Piece   | \$1.50   | 644 | \$966.00   |
| USPS First Class Postage                                   | Per Piece   | \$0.66   | 644 | \$425.04   |
| Remail Undeliverable Mail (Skip-Trace)                     | Per Piece   | \$2.00   | 129 | \$257.60   |
| Receive and Process Undeliverable Mail                     | Per Hour    | \$75.00  | 1   | \$75.00    |
| Process Class Member Correspondence via mail, e-mail & fax | Per Piece   | \$75.00  | 2   | \$150.00   |
| NCOA Address Update (USPS)                                 | Static Rate | \$176.00 | 1   | \$176.00   |
| Sub Total:                                                 |             |          |     | \$2,169.64 |

**Project Management**

|                            |          |          |   |          |
|----------------------------|----------|----------|---|----------|
| Project Management         | Per Hour | \$150.00 | 3 | \$450.00 |
| Project Coordinator        | Per Hour | \$90.00  | 2 | \$180.00 |
| Data Analyst and Reporting | Per Hour | \$140.00 | 1 | \$140.00 |
| Sub Total:                 |          |          |   | \$770.00 |



| Professional Services | Fee Calculation | Rate(s) | Quantity | Estimated Cost |
|-----------------------|-----------------|---------|----------|----------------|
|-----------------------|-----------------|---------|----------|----------------|

| Toll-Free Contact Center, Website & Reporting |             |          |            |          |
|-----------------------------------------------|-------------|----------|------------|----------|
| Bilingual Toll-Free Contact Center            | Static Rate | \$185.52 | 1          | \$185.52 |
| Settlement Status Reports                     | Static Rate | \$750.00 | 1          | Waived   |
|                                               |             |          | Sub Total: | \$185.52 |

| Distribution & Settlement Fund Management             |           |            |            |            |
|-------------------------------------------------------|-----------|------------|------------|------------|
| Settlement Calculations (Preliminary and Final)       | Per Hour  | \$120.00   | 3          | \$360.00   |
| Account Management and Reconciliation                 | Per Hour  | \$140.00   | 3          | \$420.00   |
| Print & Mail Distribution Settlement Check (W-2/1099) | Per Piece | \$1.50     | 644        | \$966.00   |
| USPS First Class Postage                              | Per Piece | \$0.66     | 644        | \$425.04   |
| Remail Distribution to Updated Address (Skip Trace)   | Per Piece | \$2.00     | 64         | \$128.80   |
| Individual Income Tax Preparation & Reporting         | Per Hour  | \$100.00   | 10         | \$1,000.00 |
| QSF Income Tax Reporting (per calendar year)          | Per Year  | \$1,250.00 | 1          | \$1,250.00 |
|                                                       |           |            | Sub Total: | \$4,549.84 |

| Post Distribution Reconciliation  |          |          |            |            |
|-----------------------------------|----------|----------|------------|------------|
| Bank Account Reconciliation       | Per Hour | \$135.00 | 3          | \$405.00   |
| Project Management Reconciliation | Per Hour | \$100.00 | 3          | \$300.00   |
| Declarations                      | Per Hour | \$120.00 | 3          | \$360.00   |
|                                   |          |          | Sub Total: | \$1,065.00 |

|                  |  |  |  |            |
|------------------|--|--|--|------------|
| WILL NOT EXCEED: |  |  |  | \$9,290.00 |
|------------------|--|--|--|------------|

Thank you for your business!



## Terms & Conditions

The following Terms and Conditions govern the provision of all services to be provided by Apex Class Action and its affiliates ("Apex") to the Client. These terms and conditions are binding and shall apply to all services provided by Apex in relation to any related services or products.

1. **Services:** Apex commits to providing the Client with the administrative services detailed in the attached Proposal (the "Services").
2. **Payment Terms:** As compensation for the legal services to be provided, the Client agrees to pay Apex all fees detailed in the Proposal. The fees quoted in the Proposal (and any subsequent proposals for additional services) are estimates based on the information provided to Apex by the Client. Apex makes no representation that the estimated fees in the Proposal or any subsequent proposals for additional services shall equal the actual fees charged by Apex to the Client, which fees (including individual line items) may be greater or less than estimated. If additional services are requested on an hourly basis and are not specifically detailed in the Proposal, Apex will prepare estimates for such services subject to approval by the Client. In the performance of such additional services, Apex will charge standard hourly fees which shall apply.
3. **Incurred Expenses:** In relation to the provision of services outlined in this agreement, the Client agrees to reimburse Apex for all reasonable out-of-pocket expenses incurred. Such expenses may include, but are not limited to, costs associated with postage, media production or publication, banking fees, brokerage fees, messenger and delivery service expenses, travel expenses, filing fees, office supplies, meals, staff overtime expenses, and other related costs and expenses. If not otherwise specified in writing, fees for print notice and certain expenses, such as media publication and postage, must be paid immediately upon invoicing and, in certain cases, at least ten (10) days prior to the date on which such expenses will be incurred.
4. **Invoicing:** Apex shall present invoices for its fees and expenses on a monthly basis, except as provided in Section 3. The Client agrees to pay each invoice within 30 days of receipt. In case of non-payment within 90 days of the billing date, an additional service charge of 1.5% per month may apply. Apex reserves the right to increase its prices, charges, and rates annually, subject to reasonable adjustments. If any price increases exceed 10%, Apex shall give thirty (30) days' notice to the Client. In the event of any unpaid invoices beyond 120 days of the due date, Apex reserves the right to withhold services and reports until payment is received, subject to notice to the Client. It is important to note that Apex's failure to provide services and reports in such instances shall not constitute a default under this agreement.
5. **Case Duration:** The duration of these Terms and Conditions, except for the data storage obligations stated in Section 13, shall be in effect until 30 days following the completion of the Services as described in the Proposal. The parties may extend these Terms and Conditions in writing for a mutually agreed-upon period beyond this initial 30-day period.
6. **Termination of Services:** Either party may terminate the Services by providing thirty (30) days written notice to the other party. Alternatively, termination may occur immediately upon written notice for Cause, as defined below. Cause means (i) Apex's gross negligence or willful misconduct that causes serious and material harm to the Client; (ii) the Client's failure to pay Apex invoices for more than one hundred twenty (120) days from the date of the invoice; or (iii) the accrual of invoices or unpaid services where Apex reasonably believes it will not be paid. Termination of the Services shall not relieve the Client of its obligation to pay Apex for services rendered prior to the termination.
7. **Independent Contractor:** As an independent contractor, Apex will provide services under the terms of this agreement. It is agreed that neither Apex nor any of its employees will be considered an employee of the Client. Consequently, Apex and its employees will not be eligible for any benefits provided by the Client to its employees. The Client will not make any tax deductions from the payments due to Apex for state or federal tax purposes. Apex will be solely responsible for paying all taxes and other payments due on payments received from the Client under this agreement.
8. **Apex warrants** that the Services outlined in the Proposal will be performed in accordance with the standards generally adhered to by professionals providing similar services. It is acknowledged that the Services may entail the likelihood of some human and machine errors, omissions, delays, and losses that may result in damage. However, Apex shall not be held liable for such errors, omissions, delays, or losses unless they are caused by its gross negligence or willful misconduct. In the event of any breach of this warranty by Apex, the Client's sole remedy will be limited to Apex's rerunning, at its expense, any inaccurate output provided that such inaccuracies occurred solely as a result of Apex's gross negligence or willful misconduct under this agreement.
9. **Limitation of Liability:** The Client acknowledges that Apex shall not be held liable for any consequential, special, or incidental damages incurred by the Client in relation to the performance of Services, whether the claim is based on breach of warranty, contract, tort (including negligence), strict liability, or any other grounds. Under no circumstances shall Apex's liability to the Client, for any Losses (including court costs and reasonable attorney's fees), arising out of or in connection with these Terms and Conditions, exceed the total amount charged or chargeable to the Client for the specific service(s) that caused the Losses.
10. **Indemnification:** The Client agrees to indemnify and hold harmless Apex from any losses, suits, actions, judgments, fines, costs, liabilities, or claims arising from any action or proceeding relating to the Services provided by Apex, regardless of whether or not it results in liability (collectively referred to as "Indemnified Claims"). However, this indemnification provision shall not apply to the extent that such Indemnified Claims are caused by Apex's willful misconduct, gross negligence, or breach of these Terms and Conditions. This provision shall survive termination of the Services.

11. **Confidentiality:** Apex will uphold strict confidentiality between Apex and the Client and applies to all non-public records, documents, systems, procedures, processes, software, and other information received by either party in connection with the performance of services under these terms. Both Apex and the Client agree to keep confidential all such non-public information, including any material marked or identified as confidential or proprietary. Any such confidential information shall not be disclosed, provided, disseminated, or otherwise made available to any third party, except as required to fulfill the parties' obligations under these terms. The parties acknowledge that in the event of any request to disclose any confidential information in connection with a legal or administrative proceeding, or otherwise to comply with a legal requirement, prompt notice of such request must be given to the other party to enable that party to seek an appropriate protective order or other remedy or to waive compliance with the relevant provisions of these terms. If the Client seeks a protective order or another remedy, Apex, at the Client's expense, will cooperate with and assist the Client in such efforts. If the Client fails to obtain a protective order or waives compliance with the relevant provisions of these terms, Apex will disclose only that portion of the confidential information that it determines it is required to disclose. This confidentiality provision shall survive termination of the services provided. Both parties acknowledge and agree that any breach of this term may cause irreparable harm to the non-breaching party and that injunctive relief may be necessary to prevent any actual or threatened breach. The terms set forth between the parties supersede all prior negotiations, understandings, and agreements between the parties concerning confidentiality. These terms may only be amended in writing and signed by both parties.
12. **Ownership** of the programs, system data, and materials provided by Apex to the Client during the course of providing services herein shall solely belong to Apex. It is acknowledged that fees and expenses paid by the Client do not confer any rights in such property. It is also understood that the said property is made available to the Client solely for the purpose of using it during and in connection with the services provided by Apex.
13. **Upon the completion of the administration and unless retention instructions are ordered by the court, Apex will notify the client that it will destroy and/or return all confidential information and property within 90 days upon the client's written request. Alternatively, the material may be stored for one year at a monthly fee of \$1.50 per storage box for paper documents and \$0.01 per image for electronic copies over a period of three years, which compensates Apex for its electronic and hard-copy storage costs. Apex will not be liable for any damages, liability, or expenses incurred in connection with any delay in delivery of, or damage to disks, magnetic tapes, or any input data provided by the client or its representatives unless Apex has agreed in writing to assume such responsibility.**
14. **COMPLETE AGREEMENT.** These Terms and Conditions, along with the attached Proposal, represent the complete agreement and understanding between the parties and override any prior agreements (whether written or oral) between Apex and the Client regarding the subject matter. Any modification to these Terms and Conditions may only be made in writing and must be signed by both Apex and the Client. The headings in this document are included for convenience only and do not alter or restrict any provisions in these Terms and Conditions. They may not be used in the interpretation of these Terms and Conditions.
15. **This provision outlines the requirements for providing notice or other communication under this agreement. All such communications must be in writing and can be delivered either by personal delivery or through U.S. Mail with prepaid postage or overnight courier. Once delivered personally or sent through the mail, the notice will be considered given after five (5) days from the deposit date in the U.S. Mail. Alternatively, if sent through an overnight courier, the notice will be considered given one business day after delivery to the such courier. It's important to note that the notice must be provided to a responsible officer or principal of the Client or Apex, depending on the case.**
16. **Force Majeure:** In the event of any failure or delay in performance due to circumstances beyond Apex's control, including but not limited to strikes, lockouts, fires, floods, acts of God or public enemy, riots, civil disorders, insurrections, war or war conditions, or interference by civil or military authorities, Apex shall not be held liable for any resulting loss or damage. The time for performance under this agreement shall be extended for a period equal to the duration of the disabling cause and a reasonable time thereafter. This provision shall constitute a force majeure clause and shall be construed accordingly.
17. **The applicable state and federal laws shall govern the interpretation and enforcement of these Terms and Conditions. No choice of law or conflict of laws provisions shall affect this governing law provision.**
18. **Severability:** This applies to all clauses and covenants contained within these Terms and Conditions. In the event that any clause or covenant is deemed invalid, illegal, or unenforceable, the remaining provisions shall remain valid and enforceable to the fullest extent permissible by law. The validity, legality, and enforceability of the remaining provisions shall in no way be affected or impaired by the invalidity, illegality, or unenforceability of any provision deemed so.
19. **Nonwaiver:** This applies to these Terms and Conditions. This means that any failure by one party to enforce a provision of these terms on one or more occasions shall not be construed as a waiver of that provision. In other words, any failure to enforce a provision does not give up the right to enforce it in the future. All provisions of these Terms and Conditions remain in full force and effect, regardless of any prior failure to enforce them.