

By Gricelda Evans, Deputy

FILED
KERN COUNTY

AUG 13 2024

BY *[Signature]* DEPUTY

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10 Attorneys For Plaintiff PASSION MORRIS

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

12 **IN AND FOR THE COUNTY OF KERN**

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

16 Plaintiff,

17 v.

18 HABERFELDE FORD, a California
 19 corporation; JIM BURKE FORD LINCOLN,
 an unknown business entity; and DOES 1-50,
 Inclusive,

20 Defendants.

Case No. BCV-23-100471

21 ~~PROPOSED~~ **ORDER GRANTING**
 22 **PLAINTIFF'S MOTION FOR**
 23 **PRELIMINARY APPROVAL OF CLASS**
 24 **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 This matter having come before the Honorable Judge Thomas S. Clark of the Superior Court of
2 the State of California, in and for the County of Kern, at 8:30 a.m. on August 13, 2024. The Court,
3 having carefully considered the briefs, argument of counsel and all the matters presented to the Court,
4 and good cause appearing, hereby GRANTS Plaintiff's Motion for Preliminary Approval of Class
5 Action and PAGA Settlement.

6 **IT IS HEREBY ORDERED:**

7 1. The Court preliminarily approves the Stipulation of Settlement of Class and PAGA
8 Action Claims and Release of Claims ("Settlement Agreement" or "Agreement"). This is based on
9 the Court's determination that the Settlement Agreement is within the range of possible final
10 approval, pursuant to the provisions of Section 382 of the California Code of Civil Procedure and
11 California Rules of Court, rule 3.769.

12 2. This Order incorporates by reference the definitions in the Agreement, and all terms
13 defined therein shall have the same meaning in this Order as set forth in the Agreement.

14 3. Subject to the terms of the Settlement Agreement, the Gross Settlement Amount that
15 Defendants shall pay is One Million Five Hundred Thousand Dollars and Zero Cents
16 (\$1,500,000.00). It appears to the Court on a preliminary basis that the settlement amount and terms
17 are fair, adequate, and reasonable as to all Class Members when balanced against the probable
18 outcome of further litigation relating to certification, liability, and damages issues. It further appears
19 that investigation and research have been conducted such that counsel for the Parties are able to
20 reasonably evaluate their respective positions. It further appears to the Court that settlement at this
21 time will avoid substantial additional costs by all Parties, as well as avoid the delay and risks that
22 would be presented by the further prosecution of the litigation. It further appears that the Settlement
23 has been reached as the result of intensive, serious, and non-collusive arms-length negotiations.

24 4. The Court preliminarily finds that the Settlement appears to be within the range of
25 reasonableness of a settlement that could ultimately be given final approval by this Court. The Court
26 has reviewed the monetary recovery that is being granted as part of the Settlement and preliminarily
27 finds that the monetary settlement awards made available to the Class Members are fair, adequate,
28 and reasonable when balanced against the probable outcome of further litigation relating to

1 certification, liability, and damages issues.

2 5. Plaintiff seeks Attorneys' Fees and Expenses in the amount of up to thirty-five percent
3 (35%) of the Gross Settlement Amount for attorneys' fees, currently estimated at Five Hundred
4 Twenty-Five Thousand Dollars and Zero Cents (\$525,000.00), an award of litigation expenses
5 incurred not to exceed Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00), and proposed
6 Enhancement Award to the Class Representative, Passion Morris, in an amount not to exceed Ten
7 Thousand Dollars and Zero Cents (\$10,000.00). While these awards appear to be within the range of
8 reasonableness, the Court will not approve the Attorneys' Fees and Expenses or Enhancement Award
9 until the Final Approval Hearing.

10 6. The Court recognizes that Plaintiff and Defendants stipulate and agree to certification
11 of a class for settlement purposes only. This stipulation will not be deemed admissible in this, or any
12 other proceeding should this Settlement not become final. For settlement purposes only, the Court
13 conditionally certifies the following Class:

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

17 7. The Court concludes that, for settlement purposes only, the Class meets the
18 requirements for certification under section 382 of the California Code of Civil Procedure in that: (a)
19 the Class is ascertainable and so numerous that joinder of all members of the Class Members is
20 impracticable; (b) common questions of law and fact predominate, and there is a well-defined
21 community of interest amongst the Class Members with respect to the subject matter of the litigation;
22 (c) the claims of the Class Representative are typical of the claims of the Class Members; (d) the
23 Class Representative will fairly and adequately protect the interests of the Class Members; (e) a class
24 action is superior to other available methods for the efficient adjudication of this controversy; and (f)
25 Class Counsel are qualified to act as counsel for the Class Representative in his individual capacity
26 and as the representative of the Class Members.

27 8. The Court provisionally appoints plaintiff Passion Morris as the representative of the
28 Class.

1 9. The Court provisionally appoints Jean-Claude Lapuyade, Esq., of the JCL Law Firm,
2 A.P.C., Shani Zakay, of the Zakay Law Group, APLC, and Edwin Aiwazian, of Lawyers for Justice,
3 PC, as Class Counsel for the Class Members.

4 10. The Court hereby approves, as to form and content, the Proposed Notice of Pendency
5 of Class Action Settlement and Final Hearing Date (“Notice Packet”) attached to the Agreement as
6 Exhibit “A”. The Court finds that the Notice Packet appears to fully and accurately inform the Class
7 Members and Aggrieved Employees of all material elements of the proposed Settlement, including
8 the right of any Class Member to be excluded from the Class by submitting a written request for
9 exclusion, and of each Class Member’s right and opportunity to object to the Settlement. The Court
10 further finds that the distribution of the Notice Packet substantially, in the manner and form set forth
11 in the Agreement and this Order meets the requirements of due process, is the most reasonable notice
12 under the circumstances, and shall constitute due and sufficient notice to all persons entitled thereto.
13 The Court orders the mailing of the Notice Packet by first class mail, pursuant to the terms set forth in
14 the Agreement.

15 11. The Court hereby appoints APEX Class Action, LLC as Settlement Administrator.
16 Within ten (10) calendar days of the Preliminary Approval Date, Defendants shall provide to the
17 Settlement Administrator the Class Data, including information regarding Class Members that
18 Defendants will in good faith compile from its records, including the Class Member’s name, last-
19 known mailing address, Social Security number, and start dates and end dates of employment. Within
20 twenty-one (21) calendar days after preliminary approval of the Settlement, the Settlement
21 Administrator shall mail the Notice Packet to all identified, potential Class Members via first class
22 U.S. Mail using the most current mailing address information available.

23 12. The Court hereby preliminarily approves the proposed procedure for exclusion from the
24 Settlement. Any Class Member may individually choose to opt out of and be excluded from the
25 Settlement as provided in the Notice Packet by following the instructions for requesting exclusion
26 from the Settlement of the Released Class Claims that are set forth in the Notice Packet. All requests
27 for exclusion must be postmarked or received by the Response Deadline which is forty-five (45)
28 calendar days after the date the Notice Packet is mailed to the Class Members or, in the case of a re-

1 mailed Notice, not more than fifteen (15) calendar days from the date of re-mailing of the Notices.
2 Any such person who chooses to opt out of and be excluded from the Settlement will not be entitled
3 to an Individual Settlement Payment under the Settlement and will not be bound by the Settlement, or
4 have any right to object, appeal or comment thereon. Class Members who have not requested
5 exclusion shall be bound by all determinations of the Court, the Agreement and Judgment. A request
6 for exclusion may only opt out that particular individual, and any attempt to affect an opt-out of a
7 group, class, or subclass of individuals is not permitted and will be deemed invalid.

8 13. Any Class Member who has not opted out may appear at the final approval hearing and
9 may object or express the Class Member's views regarding the Settlement and may present evidence
10 and file briefs or other papers that may be proper and relevant to the issues to be heard and
11 determined by the Court as provided in the Notice. Class Members will have forty-five (45) calendar
12 days from the date the Settlement Administrator mails the Notice Packet to postmark their written
13 objections to the Settlement Administrator.

14 14. A final approval hearing shall be held before this Court on 1-17-25 at
15 8:30 AM in Department 17 of the Kern County Superior Court to determine all necessary matters
16 concerning the Settlement, including: whether the proposed settlement of the Action on the terms and
17 conditions provided for in the Agreement is fair, adequate and reasonable and should be finally
18 approved by the Court; whether an Order Granting Final Approval should be entered herein; whether
19 the plan of allocation contained in the Agreement should be approved as fair, adequate and reasonable
20 to the Class; and to finally approve the Attorneys' Fees and Expenses, Service Award, and the
21 Administration Costs.

22 15. Neither the Settlement nor any exhibit, document, or instrument delivered thereunder
23 shall be construed as a concession or admission by Defendants in any way, and shall not be used as
24 evidence of, or used against Defendants as an admission or indication in any way, including with
25 respect to any claim of any liability, wrongdoing, fault, or omission by Defendants or with respect to
26 the truth of any allegation asserted by any person. Whether or not the Settlement is finally approved,
27 neither the Settlement, nor any exhibit, document, statement, proceeding or conduct related to the
28 Settlement, nor any reports or accounts thereof, shall in any event be construed as, offered or

1 admitted in evidence as received as or deemed to be evidence for any purpose adverse to the
2 Defendants, including, but not limited to, evidence of a presumption, concession, indication or
3 admission by Defendants of any liability, fault, wrongdoing, omission, concession or damage.

4 16. In the event the Settlement does not become effective in accordance with the terms of
5 the Agreement, or the Settlement is not finally approved, or is terminated, canceled, or fails to
6 become effective for any reason, this Order shall be rendered null and void and shall be vacated, and
7 the Parties shall revert to their respective positions as of before entering into the Agreement. In such
8 an event, the Court's orders regarding the Settlement, including this Preliminary Approval Order,
9 shall not be used or referred to in litigation for any purpose. Nothing in this paragraph is intended to
10 alter the terms of the Settlement Agreement with respect to the effect of the Settlement Agreement if
11 it is not approved.

12 17. Pending final determination of whether the Settlement should be approved, Class
13 Representative and all Class Members are barred and enjoined from filing, commencing, prosecuting,
14 intervening in, instigating or in any way participating in the commencement or prosecution of any
15 lawsuit, action or administrative, regulatory, arbitration or other proceeding, in any forum, asserting
16 any claims that are, or relate in any way to, the Released Claims, unless and until they submit a
17 timely request for exclusion pursuant to the Agreement.

18 18. The Court reserves the right to adjourn or continue the date of the final approval
19 hearing and all dates provided for in the Agreement without further notice to Class Members and
20 retains jurisdiction to consider all further applications arising out of or connected with the proposed
21 Settlement.

22
23 Dated: 8-13-24



JUDGE OF THE SUPERIOR COURT

THOMAS S. CLARK

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