

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
FLORENCE DIVISION

Carol Blackmon and Anthony Oliver,  
individually and on behalf of all other  
persons similarly situated,

Plaintiffs,

vs.

Honda of South Carolina Mfg., Inc.,

Defendant.

Civil Action No. 4:04-1254-27

**ORDER GRANTING PRELIMINARY  
APPROVAL OF CLASS CERTIFICATION,  
CLASS ACTION SETTLEMENT  
AGREEMENT AND RELEASE AND  
NOTIFICATION TO CLASS MEMBERS**

This matter is before the Court on the joint motion of plaintiffs Carol Blackmon and Anthony Oliver (collectively "the plaintiffs" or "the class representatives"), acting individually and on behalf of all other persons similarly situated, and Honda of South Carolina Mfg., Inc. ("HSC"), for an Order granting Preliminary Approval of Class Certification; and Preliminary Approval of the Class Action Settlement Agreement and Release ("Settlement Agreement") and for permission to send notice of the proposed settlement of the class.<sup>1</sup> For the reasons stated herein, the Court finds that the relevant factors weigh in favor of approval of the settlement and, accordingly, hereby grants preliminary approval of the settlement agreement as outlined herein.

**I. FACTUAL BACKGROUND**

HSC is a South Carolina corporation engaged in the manufacture of all terrain vehicles and personal watercraft at its facility located in Timmonsville, South Carolina. HSC has operated in

<sup>1</sup> As discussed herein, pursuant to the settlement agreement in this matter, HSC is charged with the responsibility of notifying all non-exempt associates who were employed or placed at HSC during the relevant period.

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South Carolina since 1998. The company employs more than 1500 full-time associates.<sup>2</sup> HSC also has at its facility a certain number of temporary associates who are employed by temporary employment agencies and placed at HSC.

This case arises from a HSC policy that required its associates to bring their uniforms to work, change into the uniforms prior to beginning their shift and change out of the uniform at the end of their shifts. Associates were not compensated for the time spent "donning and doffing" the uniforms. In addition, temps who were employed by temp agencies and assigned to HSC were also required to change into and out of uniforms during the period of their assignment. The uniform consists of a hat, a snap-button jacket, and a pair of pants. Steel-toed boots or shoes are also required, but the associates may wear the boots or shoes to and from work.

Effective August 1, 2003, associates were no longer required to change into and out of the uniform on HSC premises, but were allowed the option of wearing the uniforms to and from HSC. The parties have agreed that for purposes of the proposed settlement, the relevant time period is July 1, 2001 to July 31, 2003 ("Relevant Period"). The beginning and ending dates of the Relevant Period were determined as follows: The beginning date, July 1, 2001, is the date which is three years prior to the approximate date that the class representatives filed their consents to be a part of this action with the Court (July 1, 2004). The ending date, July 31, 2003, is the last day on which associates were required to change into and out of uniforms at the HSC facility.

This action was commenced in the Circuit Court for Florence County on March 11, 2004 and was subsequently removed to this Court. In her original complaint, brought on an individual basis only, Ms. Blackmon claimed generally that she had not received all of the compensation and

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<sup>2</sup> HSC refers to its employees as "associates."

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overtime due her prior to her termination in April, 2002. The action was removed to this Court based on federal question jurisdiction, since it appeared Ms. Blackmon had raised a claim pursuant to the Fair Labor Standards Act, 29 U.S.C. §§ 201, *et seq.* ("FLSA"). Ms. Blackmon subsequently filed an amended complaint in which she asserted a collective action alleging a violation of the FLSA based on the time spent donning and doffing uniforms at HSC. The complaint was amended a second time to add Anthony Oliver as a proposed class representative with Ms. Blackmon ("the plaintiffs"). Specifically, the plaintiffs contend that they, along with other similarly situated HSC associates, are entitled to back pay for time spent changing into and out of the HSC uniform at the beginning and end of their work shifts at HSC.

As noted, HSC properly removed the case to federal court pursuant to the FLSA, and then filed a motion to dismiss and an answer. By its responsive pleadings, HSC denied any and all liability to the named plaintiffs and any other potential class members on two grounds. First, HSC was prepared to establish that the time spent changing into and out of uniforms was not compensable under the FLSA. Its position is consistent with that of a number of courts, which have held that the donning and doffing of standard uniforms and safety equipment does not qualify as compensable work for purposes of the FLSA. In *Reich v. IBP, Inc.*, 38 F.3d at 1125-26, the Tenth Circuit addressed this issue and held that the donning and doffing of standard safety equipment, including safety glasses, ear plugs, hardhat, and safety shoes does not qualify as "work" under the FLSA. Second, HSC contends that even if changing into and out of the HSC uniform was compensable work under the FLSA, the time spent changing was *de minimus*, and therefore no overtime was owed any of its non-exempt associates.

By contrast, the plaintiffs contend that the time spent donning and doffing was compensable work pursuant to the Portal-to-Portal Act because the uniforms were required by HSC and were integral and indispensable to the associates' work at HSC. The plaintiffs further contended that the time required to change into and out of the uniforms was not *de minimus* and thus, compensation was due the associates for the donning and doffing during the relevant time period. The plaintiffs relied heavily on the Ninth Circuit decision of *Ballaris v. Wacker Stiltronic Corporation*, 370 F.3d 901 (9<sup>th</sup> Cir. 2004), in which the court held that time employees spent changing into and out of uniforms was compensable. Thus, both parties vigorously disputed the case.

Prior to the voluntary mediation of this case, a considerable amount of procedural challenges were raised. Specifically, the amended complaint was initially filed in state court prior to the removal of the case to federal court and, consequently, HSC filed a motion to dismiss the amended complaint. The plaintiffs then filed a petition for class notice and supporting memorandum. Subsequently, the plaintiffs filed a motion seeking an order of default based on HSC's alleged failure to answer the second amended complaint. HSC then filed a motion to strike the affidavit of default.

While these motions were pending, the parties negotiated an agreement pursuant to which the plaintiffs withdrew their motion for default judgment and filed a second amended complaint in this Court. HSC then withdrew its motion to dismiss and filed an answer to the second amended complaint and an opposition to the petition for class notice. The parties then engaged in informal negotiations by which the plaintiffs made a demand and HSC made a counter-offer. The parties subsequently voluntarily agreed to participate in mediation. As a part of the agreement, HSC

agreed to toll the limitations period for potential class members during the pendency of the settlement negotiations and mediation.

The mediation took place on November 19, 2004. The parties agreed to a settlement amount of one million four hundred forty seven thousand seven hundred fifty and 00/100 dollars (\$1,447,750), and to payment of attorney's fees of five hundred thousand and 00/100 dollars (\$500,000). Class representatives are to receive compensation of \$2,000. The settlement agreement also provides that HSC will pay all non-exempt associates who changed into and out of uniforms 1 ½ times their hourly rate for a period of 25 months, to be calculated at a rate of 7.3 minutes per day. The settlement agreement also provides that up to \$10,000 from the \$1,447,750 will be paid to a certified public accountant selected by the Class representatives to perform a spot check of HSC's calculations and payments to class members. The parties understood at the time of the mediation and settlement that HSC had not completed its own preliminary investigation into the number of associates who would be encompassed within the settlement class and had not yet calculated the exact amount to be paid to each associate. Thus, the parties acknowledged the possibility that there may be excess funds after payment to class members who opt in. The excess may result from funds not distributed to those class members who decline to opt in, who have moved and cannot be located by HSC, or who are deceased. The parties therefore agreed that excess funds will be paid to Timmonsville School District 4. In addition, the settlement agreement provides that there is no admission of liability by HSC with regard to any of the plaintiffs' allegations. The settlement class will only be the Potential Class Members who elect to "opt-in."

In addition, in an effort to be inclusive, HSC has agreed to include in this class action temps who were assigned to HSC and were also required to change into and out of uniforms during the

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relevant time period. As part of this agreement, HSC will reimburse the temporary agencies that employed these associates and placed them with HSC during the relevant time period.<sup>3</sup> The amount of this payment is approximately ninety-three thousand seven hundred twenty five and 27/100 dollars, (\$93,725.27), which will be paid in addition to the amounts discussed above. By making this voluntary payment to the temporary agencies, HSC in no way concedes or admits any liability for such payment, that it is a co-employer with the employment agencies nor does it admit any legal requirement to make such payment to the temporary agencies.<sup>4</sup>

## II. ANALYSIS OF FAIRNESS AND ADEQUACY OF PROPOSED SETTLEMENT

It is well-settled that the district court must approve a proposed settlement agreement in a collective or class action in order to protect the interests of absence persons. *See In re Jiffy Lube Securities Litigation*, 927 F.2d 155, 158 (4<sup>th</sup> Cir. 1991); *accord Clark v. Experian Information Solutions, Inc.*, 2004 WL 256433 (D.S.C.) (unpublished). The settlement approval process requires the Court to find that the settlement is both fair and adequate. *See id.* at \*7. The fairness prong addresses the question of whether “the settlement was reached as a result of good-faith bargaining at arm’s length, without collusion.” *In re Jiffy Lube*, 927 F.2d at 159. As the plaintiffs’ correctly posit, the following factors are to be considered by the Court in determining whether the settlement is fair:

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<sup>3</sup> The temporary employment agencies involved are: Olsten, CMS, AccuStaff, Spherion, and MegaForce. The total amount of additional dollars to be contributed to this settlement voluntarily by HSC to compensate all temporary associates during the relevant time period is approximately \$93,725.27.

<sup>4</sup> For purposes of this voluntary payment, HSC is hereby agreeing to assume responsibility for notifying all temporary agencies of the payments to be made by them to temps who opt in and for assuring that the temporary agencies cut and mail the checks to temps who opt in. By assuming this responsibility, HSC has not and does not concede that it is a co-employer with the said temporary agencies, but is taking these actions solely to achieve a final and fair resolution of this issue without further dispute or litigation.

(1) the posture of the case at the time settlement was proposed, (2) the extent of discovery that had been conducted, (3) the circumstances surrounding the negotiations, and (4) the experience of counsel in the [substantive] area [and] class action litigation.

*See id.* at \*7.

The second prong of the analysis to determine whether to approve a settlement, is for the Court to consider whether the settlement is adequate. In assessing adequacy of a settlement, a Court must consider:

(1) the relative strength of the plaintiffs' case on the merits, (2) the existence of any difficulties of proof or strong defenses the plaintiffs are likely to encounter if the case goes to trial, (3) the anticipated duration and expense of additional litigation, (4) the solvency of the defendants and the likelihood of recovery on a litigated judgment, and (5) the degree of opposition to the settlement.

*See Clark v. Experian Information Solutions, Inc.*, 2004 WL 256433 at \*8. A review of these factors supports the conclusion that the proposed settlement is both fair and adequate and should be granted preliminary approval.

The case was settled relatively early in the proceedings, prior to the commencement of discovery. However, prior to settlement, it was clear by the pleadings and the various filings that both parties intended to vigorously set forth their claims and defenses. To the parties' credit, they agreed early on to engage in mediation of the case. The mediation was complex and involved a number of detailed calculations and each party worked hard to close what initially appeared to be an insurmountable gap between the plaintiffs' demand and HSC's offer. Thus, although the case was settled fairly early on in the proceedings, the case was hard fought and the actions of the parties supports the conclusion that the settlement was reached as a result of good-faith bargaining at arm's length, without collusion as required.

In addition, the affidavits from counsel for the plaintiffs indicate that they are well versed and experienced in the area of class and collective action litigation. The attorneys aver that they have handled numerous employment cases and class actions. One of the attorneys, Justin Lucey, Esquire, has earned a good reputation in the legal community in the employment law area and has extensive experience in multi-plaintiff litigation, having successfully represented plaintiffs in other class action claims. Accordingly, the experience of counsel also weighs in favor of preliminary approval of the proposed settlement agreement. Thus, the Court finds that the settlement agreement as proposed is fair.

A consideration of the factors pertaining to the adequacy of the proposed settlement also supports a finding that the settlement as proposed is adequate. Given the positions of the parties and the law at issue as discussed above, it is clear that the first two factors set forth by the court in *Clark, supra.*, the strength of the parties positions' as well as difficulties that may be encountered by the parties, have been met.

As to the anticipated duration and expense of additional litigation, HSC submits that any trial of this matter would have involved complex issues of proof and been both long and expensive for all parties. Both sides would likely have incurred the expense of experts regarding the productions processes involved and the purpose of the uniforms involved. In addition, the sheer number of associates involved would have required a substantial number of witnesses, both lay and expert, to establish what time was actually spent donning and doffing and how any overtime for such time could and should be calculated.

With regard to the issue of the solvency of the defendants and the likelihood of recovery on a litigated judgment, it is clear that HSC is solvent and would be able to withstand any judgment

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under this action if the plaintiffs would have prevailed. Given the relative positions of the parties and the variance in the applicable law on the subject, however, it is not at all certain who the prevailing party would have been in this case and this Court finds that the risk to be undertaken by in continued litigation of this case weighs in favor of preliminary approval of the settlement, which obviously will remove the risk to the plaintiffs that there is no recovery at all. In addition, the settlement will end the disruption to HSC's work process and allows it to continue as a productive corporate citizen providing jobs and economic security to its workforce.

Finally, as to the degree of opposition to the settlement, by the position of the parties and the relative speed with which the parties reached a resolution, it is evident that both the named plaintiffs and HSC are in agreement with this resolution. Based on the submissions of the parties, the Court finds that the vast number of associates will likely elect to opt in to the settlement and that there will likely be little, if any, opposition to the settlement. For all of these reasons, the Court hereby grants preliminary approval of the proposed settlement agreement and grants leave to the parties to issue notice of the settlement to the potential class members as set forth below.

### **III. CLASS DEFINITION AND PROVISIONAL CERTIFICATION**

The parties to this litigation have agreed, for the purpose of settlement only, that a class should be certified (the "Settlement Class"), defined as follows:

ANY INDIVIDUAL WHO WAS OR IS AN ASSOCIATE EMPLOYED BY HONDA OF SOUTH CAROLINA MFG., INC. AND ANY INDIVIDUAL WHO WAS OR IS AN EMPLOYEE OF A TEMPORARY AGENCY ASSIGNED TO HONDA OF SOUTH CAROLINA MFG., INC. AT ANY TIME BETWEEN JULY 1, 2001 AND JULY 31, 2003. THE CLASS EXCLUDES SALARIED ASSOCIATES WHO ARE CONSIDERED "EXEMPT" UNDER THE FAIR LABOR STANDARDS ACT.

Insofar as this matter has been settled by agreement, subject to final Court approval, and pursuant to the terms of the attached Settlement Agreement, and for purposes of settlement only, HSC does not dispute class certification or the inclusion of temps, who are not HSC employees, in the settlement. HSC's recognition of and agreement to the Settlement Class is solely for the purpose of this settlement and is not and shall not in any way be construed as an admission that class certification is appropriate if this settlement is not approved

This action is a collective "class" action pursuant to 29 U.S.C. § 216 *et seq.* The Court has undertaken an independent evaluation of class status. As the issues are currently framed, and based on the requirements for a collective action pursuant to 29 U.S.C. § 216, the Court finds for purposes of this settlement that the prerequisites of 29 U.S.C. § 216 have been satisfied. Accordingly, this Court finds that certification of the Class is appropriate and conditionally certifies the Class as defined above. This Order is subject to alteration based on changes in circumstances and to final approval after notice has been given to the Class and a Fairness Hearing has been held. This Order incorporates the terms of the Settlement Agreement.

#### **IV. APPROVAL OF SETTLEMENT AGREEMENT AND PROPOSED NOTICE**

The Court has been advised that the parties have agreed to settle this action as to the Class upon the terms and conditions set forth in the Settlement Agreement, to the extent it is not modified by this Order and further this Court is informed that the parties agree to the modifications. Counsel for the parties have appeared in court at a preliminary hearing at which they presented the terms of the settlement. The parties have also submitted for approval a proposed Notice of Class Action, Proposed Settlement and Fairness Hearing ("Notice") with attached Request for Inclusion. Attached hereto as **Exhibit A**.

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Based upon the Settlement Agreement (as modified by this Order) and the record, it appears to the Court, upon preliminary examination, that through hard work and effort, the Class Counsel has obtained an excellent result for the class members and that HSC has demonstrated good faith and a willingness to resolve this action without any admission of liability because it values its reputation as a good corporate citizen and its commitment to its associates and the Timmonsville community. The Court finds that Settlement Agreement is fair, reasonable, just and adequate, and that a final Fairness Hearing should be held after Notice to the Class of the proposed Settlement for final determination as to whether the Settlement Agreement is fair, reasonable, just, and adequate and whether a Final Order and Judgment should be entered in this action.

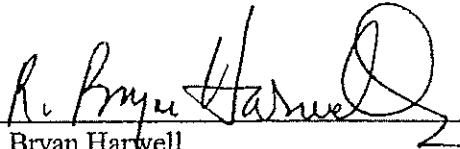
Therefore, it is hereby **ORDERED** that:

1. This action is preliminarily certified as a proper collective "class" action for settlement purposes, and the Plaintiffs named in the case caption are approved as Class Representatives;
2. The Court appoints and approves Justin O'Toole Lucey, Esquire and M. Lee Robertson, Esquire, as counsel for the Class;
3. The settlement on the terms and conditions set forth in the Settlement Agreement (as modified by this Order) is fair, reasonable and adequate and is therefore preliminarily approved by this Court;
4. The proposed Notice is approved and deemed to be adequate to protect the rights of Class members;
5. The Clerk of Court is hereby directed to sign the proposed Notice; and

6. HSC is directed to take reasonable measures to identify and notify all members of the Class of the Settlement by mailing the Notice via first class mail, postage pre-paid, to the last known address for each person identified as falling within the class definition, or in the case of temps, to communicate with the temp agencies listed herein to ensure that temps falling within the class definition receive the Notice via first class mail, postage pre-paid and to keep Class Counsel informed of these measures. HSC shall bear all costs related to the mailing of the Notice to associates and to temps.

In the event that the proposed Settlement as provided in the Settlement Agreement (as modified by this Order) is not given final approval by the Court, or for any reason the parties fail to obtain a Final Order as contemplated in the Settlement Agreement, or the Settlement Agreement is terminated pursuant to the terms of the Settlement Agreement or Order of this Court, this Preliminary Approval Order shall become null and void and shall be of no further force or effect and shall not be used or referred to for any purposes whatsoever in this or any other action, case or controversy. The Lawsuit will continue as an active case, and Class Counsel will be required to pursue certification of the class as a litigation class. If so certified, all individuals who opted-in for settlement purposes will be bound by the ultimate outcome of the class.

**IT IS SO ORDERED.**

  
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R. Bryan Harwell  
United States District Judge

Florence, South Carolina  
February 22, 2005

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LARRY W. PROPPES, CLERK  
FLORENCE, SC

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
FLORENCE DIVISION

Carol Blackmon and Anthony )  
Oliver, individually and on behalf )  
Of all others similarly situated, )

Plaintiffs, )

Honda of South Carolina Mfg., )

Defendants. )

SETTLEMENT AGREEMENT

THE UNDERSIGNED PARTIES and their attorneys hereby agree that the above matter has been settled upon the following terms:

1. Class settlement amount: [REDACTED] plus attorney fees
2. Allocation mechanism: approximately 7 minutes per <sup>month</sup> employee per shift worked in the three year period of July 1, 2001 through July 31, 2003, at overtime rate (similar to the six minute calculation for a two year period produced by Regina Lewis Esq. under cover letter dated Nov. 1, 2004, and used for the basis of negotiations).
3. Attorney fees and expenses: [REDACTED] (approximately 25% of total settlement)
4. Class Representative Compensation: [REDACTED] (out of funds in para 1)
5. Audit budget: [REDACTED] (spot check calculations and payment to class members) (out of funds in para 1)
6. Initial Fairness Hearing: As early in December as Judge Harwell will see us.
7. Final Fairness Hearing (to the extent objections are received) date set by judge approximately 50 days post initial hearing (providing Honda ten days to ship notice after court approval)
8. Inquiry calls: ~~Neutral third party answering service - results in long form notice being mailed out.~~ *(11)*
9. Further inquiry: Letter, fax, or email to plaintiff's counsel (who will provide a copy of it and proposed response to Honda) *(11)*

MISCELLANEOUS PROVISIONS

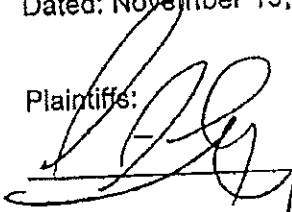
- 10 No admission of liability
- 11 Non publicity agreement (except as necessary to inform class members)
- 12 Honda communicates notice to the class (w/approved content)
- 13 ~~Any dispute submitted to Dawes Cooke or Judge Harwell for binding resolution~~ (10)
- 14 ~~Any left over funds escheat to a mutually agreed non secular school in or near Timmonsville school district 4.~~   
 *undisputed donated by Honda to* (14)
- 15 Atty fees to be place in escrow within ten days of initial court approval and released the day the fairness hearing approval order is filed. *Escrow shall be held in bank of at New Smith.* (14)
- 16 ~~Honda to use separate, dedicated checking account to disburse class checks to simplify audit~~ (14)

17 NOTICE

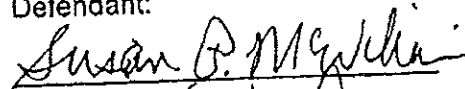
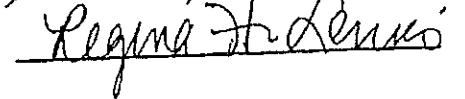
- a) based on payroll records
- b) reasonable effort to remail returned notices w/in ten days to substitute address from phone book or Internet
- c) court approved content (w/agreement of plaintiffs counsel)
- d) will provide opt out right upto 48 hours before fairness hearing

Dated: November 19, 2004

Plaintiffs:

  
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\_\_\_\_\_

Defendant:

  
  
\_\_\_\_\_

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
FLORENCE DIVISION**

Carol Blackmon and Anthony Oliver and all  
other persons similarly situated,

Plaintiffs,

vs.

Honda of South Carolina Mfg., Inc.,

Defendant.

Civil Action No. 4:04-1254-27

**NOTICE OF COLLECTIVE "CLASS"  
ACTION, PROPOSED SETTLEMENT  
AND FAIRNESS HEARING**

**PLEASE READ THIS NOTICE CAREFULLY AND IN ITS ENTIRETY.  
YOUR RIGHTS MAY BE AFFECTED BY LEGAL PROCEEDINGS DESCRIBED IN  
THIS NOTICE.**

THIS IS NOTICE OF:

- (1) THE PROPOSED SETTLEMENT OF A COLLECTIVE (OR CLASS) ACTION LAWSUIT;
- (2) A CONDITIONAL CERTIFICATION OF A SETTLEMENT CLASS;
- (3) A COURT HEARING TO DETERMINE THE FAIRNESS, ADEQUACY AND REASONABLENESS OF THE PROPOSED SETTLEMENT;
- (4) YOUR RIGHTS TO SUPPORT, OBJECT TO, OR INCLUDE YOURSELF IN THE PROPOSED SETTLEMENT; AND
- (5) THE FOLLOWING IMPORTANT DATES AND DEADLINES:

"Opt-In" Postmark Deadline	July 8, 2005
Comment/Objection Postmark Deadline	July 8, 2005
Fairness Hearing	July 15, 2005

1. **WHY SHOULD I READ THIS NOTICE?**

Your rights may be affected by the proposed settlement of the lawsuit entitled, ("*Carol Blackmon and Anthony Oliver and all other persons similarly situated v. Honda of South Carolina Mfg., Inc.*") Civil Action No. 4:04-1254-27 (the "Lawsuit"), pending in the United States District Court for the District of South Carolina, Florence Division (the "Court").

2. **WHAT IS THE LAWSUIT ABOUT?**

Carol Blackmon and Tony Oliver ("Class Representatives") filed this lawsuit as a collective "class" action on behalf of all associates employed by Honda of South Carolina Mfg., Inc. ("HSC"), between July 1, 2001 and July 31, 2003. The Class Representatives allege that HSC failed to pay associates the overtime rate of one and one-half (1½) times their regular rate of pay for time spent changing into and out of uniforms. In addition, temporary employees ("temps") employed by employment agencies and placed at HSC, although not employees of HSC, are being included in this class action. If the Court approves the proposed settlement, no trial will occur, and the claims of any person covered by the class definition who elects to "opt-in" to the lawsuit, will be forever ended.

3. **WHO IS COVERED BY THE PROPOSED SETTLEMENT?**

The Class Representatives and HSC have entered into a Settlement Agreement dated as of November 19, 2004 (the "Settlement") to settle the lawsuit. The people covered by the Settlement Agreement will include all persons as defined below who "opt-in" to the lawsuit ("Potential Class Members"). The Potential Class Members for the lawsuit consist of:

ANY INDIVIDUAL WHO WAS OR IS AN ASSOCIATE  
EMPLOYED BY HONDA OF SOUTH CAROLINA MFG., INC.  
AND ANY INDIVIDUAL WHO WAS OR IS AN EMPLOYEE  
OF A TEMPORARY AGENCY ASSIGNED TO HONDA OF  
SOUTH CAROLINA MFG., INC. AT ANY TIME BETWEEN  
JULY 1, 2001 AND JULY 31, 2003. THE CLASS EXCLUDES

SALARIED ASSOCIATES WHO ARE CONSIDERED  
"EXEMPT" UNDER THE FAIR LABOR STANDARDS ACT.

However, the Settlement Class will only include the Potential Class Members who elect to "opt-in" to the class by executing and filing a Request for Inclusion, described more fully below. Those persons who join in the class will be paid the back wages described further below.

The Court, for purposes of the proposed Settlement only, conditionally certified a class consisting of all Class Members defined above. HSC has not admitted any liability by virtue of its entering into this settlement and has in fact denied any liability for compensation for time spent changing into and out of uniforms for two reasons: first, because under applicable law, this time was not compensable as "work," and second, because the time spent changing into and out of uniforms was so short as to be considered *de minimus*. The District Court has not ruled on any contentions of the parties or the merits of the dispute, and therefore no implications regarding the merits of the dispute of the litigation should be drawn from the issuance of this notice. The fact that HSC has voluntarily agreed to pay temporary agencies for temps assigned to it during the relevant time period does not constitute an admission that HSC and the temporary agencies are co-employers.

The Court also granted preliminary approval of the Settlement Agreement. **IF YOU DO NOT OPT-IN BY JULY 8, 2005, YOU WILL NOT BE INCLUDED AS A MEMBER OF THE SETTLEMENT CLASS.** This means that you will not receive the benefits of the Settlement, but will preserve any right you may have to bring a separate claim related to the allegations in this lawsuit. An explanation of what you need to do to opt-in is provided below at Paragraph 8.

4. **WHAT WILL YOU RECEIVE UNDER THE PROPOSED SETTLEMENT?**

The following is an outline of the benefits and certain other terms of the Settlement

Agreement. The complete terms of this Settlement are set forth in the Settlement Agreement.<sup>1</sup>

In the Settlement, HSC agrees to provide the following benefits and consideration to the Class Representatives and other Class Members:

- A. Each person identified as a Potential Class Member and who elects to opt-in, will receive a payment pursuant to the Settlement Agreement. The amount of the payment to each class member will be calculated by multiplying 7.3 minutes times each shift worked during the applicable time period and then calculating that total at the overtime rate for each individual, minus any withholding amounts HSC is legally required to withhold pursuant to the tax laws. The average payment to associates under this settlement is approximately \$750, less applicable withholding taxes. Those associates who worked during the entire period from July 1, 2001 to July 31, 2003, will receive more than the average. Those associates who did not work at HSC for the entire period will receive less than the average. The total hours for which you will receive payment and the total amount of the payment you will receive if you opt-in are shown on the Request for Inclusion form attached hereto.
- B. The Class Representatives, Carol Blackmon and Anthony Oliver, will each receive Two Thousand and No/100 (\$2,000.00) Dollars for being Class Representatives, in addition to the payments referenced in Paragraph 4A above.
- C. HSC will pay to Class Counsel, on behalf of the Class Members, the sum of Five Hundred Thousand and no/100 (\$500,000.00) Dollars as attorney's fees. The attorney's fees and expenses are approximately 25% of the total recovery.

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<sup>1</sup> The complete terms of this settlement are set forth in the Settlement Agreement, a copy of which is available from Class Counsel whose address is provided at the end of this Notice.

D. Left over funds will be paid to the Timmons ville School District 4. See Section 10 below.

5. **WHAT WILL I GIVE UP?**

In exchange for these benefits and consideration, Class Representatives and Class Members agree to forever release any and all claims they may have against HSC of South Carolina Mfg., Inc. and any and all affiliates and temporary agencies who could have been sued in this lawsuit or a related lawsuit for the non-payment of overtime wages arising from the changing into and out of uniforms at HSC during the period July 1, 2001 and July 31, 2003.

By participating in this collective (class) action Settlement (by opting-in), you agree to be bound by the terms of the Settlement Agreement and are waiving any right to pursue other litigation or make claims regarding the matters at issue in this lawsuit. The final settlement shall be forever binding upon the Class Representatives and Class Members, subject only to final approval by the Court. If the Court does not approve the Settlement, the Lawsuit will continue as an active case, and Class Counsel will be required to pursue certification of the Class as a litigation class. If so certified, all individuals who opted-in for settlement purposes will be bound by the ultimate outcome of the case.

6. **WHO REPRESENTS THE SETTLEMENT CLASS?**

The Court has designated the Named Plaintiffs, Carol Blackmon and Anthony Oliver, as Class Representatives. The Court has designated Justin O'Toole Lucey, Esquire, and M. Lee Robertson, Esquire as counsel for the Class as counsel to represent the Class ("Class Counsel").

7. **WHAT ARE THE REASONS FOR SETTLEMENT?**

The Class Representatives originally filed this action in state court and alleged the failure to pay overtime was in violation of state and federal law. HSC removed the case to federal court

pursuant to 29 U.S.C. § 216(b). These allegations have not been proven, and no trial has occurred. HSC denies all allegations of wrongdoing or liability of any kind whatsoever to the Class Representatives and has vigorously defended the case. The parties attended mediation on November 19, 2004 and reached a tentative resolution of the case. The Class Representatives and Class Counsel have reached this Settlement after lengthy negotiations with HSC. The Class Representatives, through the Class Counsel, on their own behalf and on behalf of all Potential Class Members, have conducted an extensive investigation of the facts and circumstances at issue in this lawsuit and the applicable law.

In evaluating the Settlement provided for herein, the Class Representatives and Class Counsel have considered the expense and length of time necessary to prosecute the lawsuit to final adjudication, including the likelihood that the matter will be submitted for appellate review. They have also considered the risks of unfavorable results upon trial or appellate review, the risks and difficulties associated with establishing any right to recover on the part of themselves and the Potential Class Members, the risks attendant to certification of the Class, the viability of HSC's affirmative defenses, and the substantial benefits provided to the Class Representatives and the Potential Class Members by the Settlement described in Paragraph 4.

The Class Representatives and Class Counsel have concluded that further conduct of this lawsuit would be protracted and expensive and that no party would have an assurance of success. They have also concluded that it is in the best interests of the Class Members to settle this lawsuit on the terms outlined in this Notice and as more fully set forth in the Settlement Agreement.

8. **WHAT DO I NEED TO DO TO PARTICIPATE IN THE SETTLEMENT?**

In order to participate in the Settlement, you must "opt-in" to the Lawsuit by completing

and making the attached Request for Inclusion form by July 8, 2005. If you do not "opt-in" to the Settlement, you will be excluded from the Settlement, and you will not have any right to object to the fairness, adequacy, propriety or effectiveness of the Settlement. Failure to "opt-in" will, however, allow you to retain the right to pursue litigation on your own behalf.

If you wish to "opt-in" to the proposed Settlement, you must personally sign the enclosed Request for Inclusion form and send it to Class Counsel, Justin O'Toole Lucey, Justin O'Toole Lucey, P.A., Post Office Box 806, Mount Pleasant, South Carolina 29465. Class Counsel will ensure that your Request for Inclusion is filed with the Clerk of Court. *The form must be returned by JULY 8, 2005.* The date of mailing will be determined by the postmark.

Request for Inclusion forms, which are not signed, or which are untimely or incomplete, will not be accepted and shall be of no force or effect.

No one else can sign your Request for Inclusion form for you unless they have a valid power of attorney or other properly executed document giving them authority to settle legal actions on your behalf. If the person signing is relying on such a document, they must attach a certified true copy of the document giving them the authority to sign the Request for Inclusion form. If you need to confirm the adequacy of a power of attorney or similar authority, or have any questions regarding completing the Request for Inclusion form, you should contact Class Counsel whose contact information is given on the last page of this document.

9. **WHAT IS THE SETTLEMENT APPROVAL PROCEDURE?**

A hearing (the "Fairness Hearing") will be held at 10:00 a.m. on July 15, 2005 before the Honorable R. Bryan Harwell in Courtroom No. 2 on the 3<sup>rd</sup> floor of the U.S. District Courthouse, 401 W. Evans Street, Florence, South Carolina.

If you fail to "opt-in" to the Settlement Class, you are not entitled to comment on the

proposed Settlement or to be heard at the Fairness Hearing. If you choose to "opt-in" to the Settlement Class and wish to object to the settlement, here is what you must do:

- A. Prepare a written objection. The objection must contain:
- 1) Your name, address and telephone number;
  - 2) The name of this case and the case number (*Blackmon, et al., v. Honda of South Carolina Mfg., Inc.*, Civil Action Number 4:04-1254-27).
  - 3) A statement of your objection to the Settlement and the reasons for your objection;
  - 4) A statement that you have opted-in to the Settlement Class;
  - 5) Documents or writings you want the Court to consider (if any);
  - 6) Your signature.
- B. Mail your originally signed objection by first-class mail, postmarked by July 8, 2005 to the following:

Justin O'Toole Lucey, Justin O'Toole Lucey, P.A., Post Office Box 806,  
Mount Pleasant, South Carolina 29465-0806;

If you do not wish to file an objection but wish to file a statement in support of the settlement or otherwise comment upon the settlement, such a statement or comments must also be postmarked no later than July 8, 2005 and mailed to the addresses listed above. **If you do not comply with the procedures and deadlines stated herein, you will not be entitled to be heard at the Fairness Hearing or otherwise contest the approval of the Settlement or to appeal from any orders or judgments of the Court entered thereon.**

The Court's determination at the Fairness Hearing regarding whether to give final approval to the proposed Settlement will be binding on all Class members (except for those who

have failed to “opt-in” to the Settlement Class). If the Court grants final approval of the Settlement, the Lawsuit will be dismissed, and the Settlement Class Members will be barred from further pursuing or again raising any claims made or which could have been made in the Lawsuit. If the Court does not approve the Settlement, the Lawsuit will continue as an active case, and Class Counsel will be required to pursue certification of the Class as a litigation class. If so certified, all individuals who opted-in for settlement purposes will be bound by the ultimate outcome of the case.

If you do not “opt-in” to the Settlement, you will have no right to comment on or object to the fairness, adequacy, propriety or effectiveness of the Settlement. Furthermore, if you do not opt-in you will not be barred by the terms of the Settlement or continued proceedings.

10. **WHAT WILL HAPPEN TO ANY FUNDS THAT ARE NOT PAID TO THE SETTLEMENT CLASS MEMBERS?**

If funds are not distributed to Settlement Class Members as a result of their failure to timely opt-in to the class or for any other reason, the Settlement provides that HSC will donate such funds to the Timmonsville School District 4. Accordingly, HSC will distribute the agreed upon settlement amount either to Settlement Class Members who opt-in, or to the Timmonsville School District 4. Therefore, your decision to opt into the Settlement Class will not affect the amount of funds to be distributed by HSC and will neither benefit nor have a detrimental impact on HSC.

11. **WHERE DO I GET ADDITIONAL INFORMATION?**

The foregoing is only a summary of the circumstances surrounding the Lawsuit, the claims asserted, the proposed Settlement, and related matters. You may seek the advice and guidance of Class Counsel or your own private attorney. You will not incur any expense if you

consult with Class Counsel regarding the proposed Settlement. However, consultation with your own private attorney may be at your own expense.

For more detailed information, you may review the pleadings, records and other papers on file in this Lawsuit, which may be inspected during regular business hours at the Office of the Clerk of Court, U.S. District Court, 401 Evans Street, Florence, South Carolina. Questions about the Settlement or this Notice may be addressed to the Class Counsel as follows:

**CLASS COUNSEL:**

Justin O'Toole Lucey, Esquire  
415 Mill Street  
P.O. Box 806  
Mt. Pleasant, SC 29465-0806  
(843) 849-8400  
jlucey@lucey-law.com

**REQUESTS FOR INCLUSION AND ANY REQUESTS TO BE HEARD AT THE FAIRNESS HEARING MUST BE MAILED TO CLASS COUNSEL AT THE ABOVE ADDRESS.**

**PLEASE DO NOT CONTACT THE COURT FOR ANY OTHER INFORMATION.**

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
FLORENCE DIVISION

Carol Blackmon and Anthony Oliver and all  
other persons similarly situated,

Plaintiffs,

vs.

Honda of South Carolina Mfg., Inc.,

Defendant.

Civil Action No. 4:04-1254-27

**NOTICE OF PENDING COLLECTIVE  
(CLASS) ACTION**

**REQUEST FOR INCLUSION**

Upon Completion and return of this form, [name]  
may be entitled to receive [amount of  
compensation] from Honda of South Carolina  
Mfg., Inc. for past due wages, upon Court Approval  
at a Fairness Hearing

The undersigned has read the NOTICE OF COLLECTIVE ACTION, PROPOSED SETTLEMENT AND HEARING, dated February 21, 2005, and DOES wish to be included as a member of the Settlement Class certified in the case of In Re Honda of South Carolina Mfg., Inc. FLSA Class Action Litigation (Case No. 4:04-1254-27) in the United States District Court for the District of South Carolina.

Date: \_\_\_\_\_

\_\_\_\_\_  
[Name]

If you wish to include yourself in the Settlement Class, you must complete and return this form by mailing to Justin O'Toole Lucey, Esquire, P.O. Box 806, Mt. Pleasant, SC 29465-0806 in the envelope provided. **ALL FORMS MUST BE POSTMARKED BY JULY 8, 2005 IN ORDER TO BE INCLUDED AS A MEMBER OF THE SETTLEMENT CLASS.**

If you have any questions concerning this Collective (class) action, or how to include yourself in the Settlement Class, you may contact Mr. Justin Lucey (Class Counsel) at 843-849-8400. PLEASE DO NOT CONTACT THE COURT, THE CLERK'S OFFICE OR THE JUDGE.

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA

FLORENCE DIVISION

Carol Blackmon and Anthony Oliver and all  
other persons similarly situated,

Plaintiffs,

vs.

Honda of South Carolina Mfg., Inc.,

Defendant.

Civil Action No. 4:04-1254-27

**NOTICE OF PENDING COLLECTIVE  
(CLASS) ACTION**

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**REQUEST FOR INCLUSION**

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Upon Completion and return of this form, [name]  
may be entitled to receive [amount of  
compensation] from [name of temp agency] for  
past due wages, upon Court Approval at a Fairness  
Hearing

The undersigned has read the NOTICE OF COLLECTIVE ACTION, PROPOSED SETTLEMENT AND HEARING, dated February 21, 2005 and DOES wish to be included as a member of the Settlement Class certified in the case of In Re Honda of South Carolina Mfg., Inc. FLSA Class Action Litigation (Case No. 4:04-1254-27) in the United States District Court for the District of South Carolina.

Date: \_\_\_\_\_

\_\_\_\_\_  
[Name]

If you wish to include yourself in the Settlement Class, you must complete and return this form by mailing to Justin O'Toole Lucey, Esquire, P.O. Box 806, Mt. Pleasant, SC 29465-0806 in the envelope provided. **ALL FORMS MUST BE POSTMARKED BY JULY 8, 2005 IN ORDER TO BE INCLUDED AS A MEMBER OF THE SETTLEMENT CLASS.**

If you have any questions concerning this Collective (class) action, or how to include yourself in the Settlement Class, you may contact Mr. Justin Lucey (Class Counsel) at 843-849-8400. PLEASE DO NOT CONTACT THE COURT, THE CLERK'S OFFICE OR THE JUDGE.