

DOUGLAS HAN (SBN 232858)
SHUNT TATAVOS-GHARAJEH (SBN 272164)
WILLIAM WILKINSON (SBN 346777)
HAIG HOGDANIAN (SBN 334699)
JUSTICE LAW CORPORATION
751 N. Fair Oaks Avenue, Suite 101
Pasadena, California 91103
Telephone: (818) 230-7502
Facsimile: (818) 230-7259

Attorneys for Plaintiff

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO**

AKIM COTTON, individually, and on behalf
of other members of the general public
similarly situated;

Plaintiff,

v.

CUSTOM CARE LOGISTICS LLC, a
California limited liability company; and
DOES 1 through 100, inclusive;

Defendants.

Case No.: 34-2022-00320283-CU-OE-GDS

Assigned for All Purposes to:
Honorable Jill H. Talley
Department 23

CLASS ACTION

**PLAINTIFF'S NOTICE OF MOTION
AND MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT, CONDITIONAL
CERTIFICATION, APPROVAL OF
CLASS NOTICE, SETTING OF FINAL
APPROVAL HEARING DATE;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

[Declaration of Proposed Class Counsel
(Douglas Han); Declaration of Kurt Speck;
and [Proposed] Order filed concurrently
herewith]

[Reservation ID: A-320283-001]

Hearing Date: April 5, 2024
Hearing Time: 9:00 a.m.
Hearing Place: Department 23

Complaint Filed: May 19, 2022
FAC Filed: June 7, 2023
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on April 5, 2024 at 9:00 a.m., or as soon as the matter may
2 be heard, before the Honorable Jill H. Talley in Department 27 of the Sacramento County Superior
3 Court (Gordon D. Schaber Sacramento County Courthouse) located at 720 9th Street, Sacramento,
4 California 95814, Plaintiff Akim Cotton (“Plaintiff”) will and hereby does move for an order:

- 5 • Granting Preliminary Approval of the class action settlement described herein and
6 as set forth in the Class Action and PAGA Settlement Agreement (“Settlement
7 Agreement,” “Settlement,” or “Agreement”), attached as **Exhibit 2** to the
8 declaration of Douglas Han, including, and not limited to, the means of allocation
9 and distribution of funds;
- 10 • Conditionally certifying the Class for settlement purposes only;
- 11 • Appointing Plaintiff as the class representative;
- 12 • Appointing Justice Law Corporation as Class Counsel;
- 13 • Approving the Court Approved Notice of Class Action Settlement and Hearing
14 Date for Final Court Approval (“Class Notice”) attached as **Exhibit A** to the
15 Settlement Agreement;
- 16 • Directing the mailing of the Class Notice with a postage-paid return envelope to
17 the Class;
- 18 • Approving the proposed deadlines for the settlement administration process;
- 19 • Approving Phoenix Class Action Administration Solutions as the Administrator;
20 and
- 21 • Scheduling a hearing to consider whether to grant Final Approval of the Settlement
22 Agreement, at which time the Court will also consider whether to grant Final
23 Approval of the requests for the Class Counsel Fees Payment, Class Counsel
24 Litigation Expenses Payment, Class Representative Service Payment, and
25 Administration Expenses Payment, and approval of the allocation of the Private
26 Attorney General Act of 2004 (“PAGA”) Penalties.

27 ///

28 ///

- 1 • Pursuant to Local Rule 1.06(A), the court will make a tentative ruling on the merits
2 of this matter by 2:00 p.m., the court day before the hearing. The complete text of
3 the tentative rulings for the department may be downloaded off the court's website.
4 If the party does not have online access, they may call the dedicated phone number
5 for the department as referenced in the local telephone directory between the hours
6 of 2:00 p.m. and 4:00 p.m. on the court day before the hearing and receive the
7 tentative ruling. If you do not call the court and the opposing party by 4:00 p.m. the
8 court day before the hearing, no hearing will be held.

9 This motion is based upon the following memorandum of points and authorities;
10 Declaration of Proposed Class Counsel (Douglas Han); Declaration of Kurt Speck; [Proposed]
11 Order filed concurrently with this motion; pleadings and other records on file with the Court in
12 this matter; and such documentary evidence and oral argument as may be presented at the hearing.

13
14 Dated: January 31, 2024

JUSTICE LAW CORPORATION

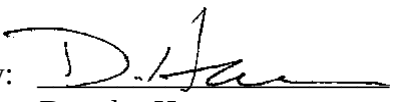
15
16 By: 
17 Douglas Han
18 Attorneys for Plaintiff
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

I.	INTRODUCTION	10
II.	BACKGROUND	10
III.	INVESTIGATION/ LITIGATION HISTORY	10
a.	Discovery, Investigation, and the Parties' Staunchly Conflicting Positions	10
b.	The Parties Were Able to Reach an Agreement on Settlement of the Action	11
i.	The Parties Attended Mediation Which Led to the Settlement	11
ii.	The Settlement Was Reached as a Result of Arm's-Length Negotiations	11
iii.	The Settlement Is the Result of Thorough Investigation and Discovery	12
c.	Terms of the Proposed Settlement	12
i.	Deductions from the Settlement.....	12
ii.	Calculating Settlement Payments	13
iii.	Notice to the Class	13
iv.	Distribution of Funds	13
v.	Release of Claims	14
d.	Counsel for Both Parties Are Experienced in Similar Litigation	15
IV.	ARGUMENT	15
a.	Class Action Settlements Are Subject to Court Review	15
b.	The Proposed Settlement Is a Reasonable Compromise of Claims	16
i.	The Settlement Amount of \$165,000 Is Fair and Reasonable	16
ii.	The PAGA Penalties of \$10,000 Is Reasonable	17
c.	Discount Analysis Justifies the Settlement	18
d.	Conditional Certification of the Class Is Appropriate	19
i.	The Proposed Class Is Ascertainable and Sufficiently Numerous.....	20
ii.	Class Members Share a Well-defined Community of Interest	20
1.	Common Issues Predominate.....	20

2.	Plaintiff’s Claims Are Typical of the Class Claims.....	21
3.	Plaintiff Is Adequate to Represent the Class.....	21
4.	Class Action is Superior for the Fair and Efficient Adjudication of this Controversy	22
e.	The Settlement Is Fair, Reasonable, and Adequate	22
f.	Notice to the Class Complies with California Rules of Court, Rule 3.769(f).....	22
V.	CONCLUSION.....	23

TABLE OF AUTHORITIES

<u>Cases</u>	<u>Page(s)</u>
<i>Acosta v. TransUnion, LLC</i>	
(C.D. Cal. 2007) 240 F.R.D. 564	19
<i>Aguiar v. Cintas Corp. No. 2</i>	
(2006) 144 Cal.App.4th 121	17
<i>Amaro v. Anaheim Arena Management, LLC</i>	
(2021) 69 Cal.App.5th 521	14
<i>Bartold v. Glendale Federal Bank</i>	
(2000) 81 Cal.App.4th 816	20
<i>In re Beef Industry Antitrust Litigation</i>	
(5th Cir. 1979) 607 F.2d 167	15
<i>Boyd v. Bechtel Corp.</i>	
(N.D.Cal. 1979) 485 F.Supp.610	12
<i>Brinker Restaurant Corp. v. Superior Court</i>	
(2012) 53 Cal.4th 1004	21
<i>Capitol People First v. Department of Developmental Services</i>	
(2007) 155 Cal.App.4th 676	20
<i>Classen v. Weller</i>	
(1983) 145 Cal.App.3d 27	21
<i>Detroit v. Grinnell Corp.</i>	
(2d Cir. 1974) 495 F.2d 448.....	19
<i>Dunbar v. Albertson's Inc.</i>	
(2006) 141 Cal.App.4th 1422	17
<i>Dunk v. Ford Motor Co.</i>	
(1996) 48 Cal.App.4th 1794	15, 22
///	
///	

<u>Cases</u>	<u>Page(s)</u>
<i>Espinoza v. Galardi South Enters.</i>	
(S.D.Fla. Jan. 11, 2016, No. 14-21244-CIV-GOODMAN) 2016	
U.S.Dist.LEXIS 2904	21
<i>Ghazaryan v. Diva Limousine, Ltd.</i>	
(2008) 169 Cal.App.4th 1524	20
<i>Green v. Obledo</i>	
(1981) 29 Cal.3d 126	15
<i>Harris v. Superior Court</i>	
(2007) 154 Cal.App.4th 164	17
<i>Hicks v. Kaufman & Broad Home Corp.</i>	
(2001) 89 Cal.App.4th 908	20
<i>Hopson v. Hanesbrands Inc.</i>	
(N.D. Cal. Apr. 3, 2009) No. 08-00844, 2009 U.S. Dist. LEXIS 33900	18
<i>In re General Motors Corp. Engine Interchange Litigation</i>	
(7th Cir. 1979) 594 F.2d 1106	19
<i>Iowa Beef Processors, Inc. v. Meat Price Investigators Ass’n</i>	
(1981) 452 U.S. 905.....	15
<i>Jones v. JGC Dallas LLC</i>	
(N.D.Tex. Nov. 29, 2012, Civil Action No. 3:11-CV-2743-O) 2012 U.S.Dist.LEXIS	
185042.....	21
<i>Kullar v. Foot Locker Retail, Inc.</i>	
(2008) 168 Cal.App.4th 116	16
<i>Linder v. Thrifty Oil Co.</i>	
(2000) 23 Cal.4th 429	19
<i>Linney v. Cellular Alaska Partnership</i>	
(9th Cir. 1998) 151 F.3d 1234	19
///	

<u>Cases</u>	<u>Page(s)</u>
<i>Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles</i>	
(2010) 186 Cal.App.4th 399	16
<i>Nordstrom Com. Cases</i>	
(2010) 186 Cal.App.4th 576	18
<i>Sav-On Drug Stores, Inc. v. Superior Court</i>	
(2004) 34 Cal.4th 319	17, 19, 20
<i>Thurman v. Bayshore Transit Mgmt.</i>	
(2012) 203 Cal.App.4th 1112	17
<i>Vasquez v. Superior Court</i>	
(1971) 4 Cal.3d 800	15
<i>Walsh v. IKON Office Solutions, Inc.</i>	
(2007) 148 Cal.App.4th 1440	17
<u>Rules</u>	
California Rules of Court, Rule 3.769	15
California Rules of Court, Rule 3.769 (f)	22
California Rules of Court, Rule 3.769 (g).....	15
Federal Rule 23	15
<u>Statutes</u>	
Business & Professions Code § 17200	16
Code of Civil Procedure § 382.....	19, 22
Code of Civil Procedure § 877.6.....	16
Code of Civil Procedure § 1542.....	14
Labor Code § 201.....	17
Labor Code § 202.....	17
Labor Code § 203.....	17
Labor Code § 204.....	17
Labor Code § 218.5.....	17

<u>Statutes</u>	<u>Page(s)</u>
Labor Code § 221.....	17
Labor Code § 226.3.....	17
Labor Code § 226.7.....	17
Labor Code § 226 (a)	17
Labor Code § 245.....	17
Labor Code § 246 (l).....	17
Labor Code § 246.....	17
Labor Code § 247.....	17
Labor Code § 248.....	17
Labor Code § 249.....	17
Labor Code § 510.....	17
Labor Code § 512 (a)	17
Labor Code § 558.....	17
Labor Code § 1174.5.....	17
Labor Code § 1174 (d).....	17
Labor Code § 1194.....	17
Labor Code § 1197.....	17
Labor Code § 1197.1.....	17
Labor Code § 1198.....	17
Labor Code § 2800.....	17
Labor Code § 2802.....	17

1 **I. INTRODUCTION**

2 This motion seeks preliminary approval of a non-reversionary proposed wage-and-hour
3 class action settlement by Plaintiff on behalf of himself and all current and former hourly-paid or
4 non-exempt employees of Defendant Custom Care Logistics LLC (“Defendant”) within the State
5 of California at any time during the period from September 14, 2018, through June 10, 2023
6 (“Class,” “Class Members,” and “Class Period”). At the time of this filing, the number of Class
7 Members is estimated to be eight hundred forty (840), which was confirmed by Defendant.
8 (Declaration of Douglas Han In Support of Plaintiff’s Motion for Preliminary Approval of Class
9 Action Settlement (“Han Decl.”), ¶¶ 8-9.)

10 **II. BACKGROUND**

11 On May 19, 2022, Plaintiff filed a wage-and-hour class action lawsuit in the Superior Court
12 of California, County of Sacramento. (Han Decl., *supra*, at ¶ 10.)

13 On March 28, 2023, after engaging in discovery, investigations, and negotiations the
14 Parties remotely attended mediation with the mediator Lisa Klerman, resulting in a settlement via
15 a mediator’s proposal. (Han Decl., *supra*, at ¶ 11.)

16 On May 4, 2023, Plaintiff provided written notice to the California Labor and Workforce
17 Development Agency and Defendant. (Han Decl., *supra*, at ¶ 12; Exhibit 3.)

18 On June 7, 2023, Plaintiff filed a First Amended Complaint that added the following cause
19 of action: violation of Labor Code section 2698, *et seq.* (Han Decl., *supra*, at ¶ 13; Exhibit 4.)

20 **III. INVESTIGATION/ LITIGATION HISTORY**

21 **a. Discovery, Investigation, and the Parties’ Staunchly Conflicting Positions**

22 Plaintiff propounded form interrogatories, special interrogatories, requests for admission,
23 and requests for production of documents. (Han Decl., *supra*, at ¶ 15.) Defendant responded to
24 the formal discovery requests. (*Ibid.*) The Parties met and conferred and agreed to engage in an
25 informal exchange of information and then eventually remotely attended mediation. (*Ibid.*)

26 ///

27 ///

28 ///

1 Prior to the mediation, Defendant produced several documents relating to its policies,
2 practices, and procedures. (Han Decl., *supra*, at ¶ 16.) As part of Defendant’s production, Plaintiff
3 also reviewed time records, pay records, and information relating to the size and scope of the Class.
4 (*Ibid.*) Dozens of individuals were also interviewed to attain a better understanding of the extent
5 and frequency of the alleged day-to-day violations. (*Ibid.*) The Parties discussed Defendant’s
6 current financial condition and the recent financial hardships it has been experiencing. (*Ibid.*)

7 Based on the information provided by Defendant and interviews with putative class
8 members, Plaintiff contends – and Defendant denies – Defendant: (1) failed to provide employees
9 with legally mandated meal and rest breaks; (2) failed to pay employees for all hours worked; (3)
10 failed to include non-discretionary bonuses in employees’ regular rate of pay for purposes of
11 overtime compensation; (4) failed to pay short-shift penalties for alternative workweek schedules;
12 (5) failed to reimburse employees for necessary business expenses; (6) issued noncompliant wage
13 statements; and (7) is liable for waiting time penalties. (Han Decl., *supra*, at ¶¶ 18-26.)

14 **b. The Parties Were Able to Reach an Agreement on Settlement of the Action**

15 **i. The Parties Attended Mediation Which Led to the Settlement**

16 The Parties remotely attended mediation with an experienced mediator on March 28, 2023.
17 (Han Decl., *supra*, at ¶ 27.) During the mediation, the Parties discussed Defendant’s current
18 financial condition and the financial hardships it has been experiencing in recent years. (*Ibid.*)
19 Under the auspices of the mediator, the Parties reached a settlement, the terms were memorialized
20 in the Settlement Agreement. (*Id.* at ¶ 27; Exhibits 2, 5.)

21 **ii. The Settlement Was Reached as a Result of Arm’s-Length Negotiations**

22 The Settlement was reached because of arm’s-length negotiations. (Han Decl., *supra*, at ¶
23 30.) Though cordial and professional, the settlement negotiations have always been adversarial
24 and non-collusive in nature. (*Ibid.*) At the mediation, both Parties’ counsel conducted extensive
25 arm’s-length settlement negotiations until an agreement was ultimately reached. (*Ibid.*)

26 ///

27 ///

28 ///

1 Plaintiff and Class Counsel recognize the expense and length of additional proceedings
2 necessary to continue the litigation through trial and through any possible appeals. (Han Decl.,
3 *supra*, at ¶ 31.) Plaintiff and Class Counsel also considered the uncertainty and risk of further
4 litigation, potential outcomes, and difficulties and delays inherent in such litigation. (*Ibid.*)
5 Plaintiff and Class Counsel also considered Defendant’s present financial condition, financial
6 hardships it has been experiencing in recent years, and its ability to fund a settlement. (*Ibid.*) Based
7 on the foregoing, Plaintiff and Class Counsel believe the Settlement is a fair, adequate, and
8 reasonable settlement and is in the best interests of Class Members. (*Ibid.*)

9 **iii. The Settlement Is the Result of Thorough Investigation and Discovery**

10 The Parties investigated and evaluated the strengths and weaknesses of the claims and
11 defenses before reaching the Settlement and engaged in research and discovery to support the
12 Settlement. (Han Decl., *supra*, at ¶ 32.) The Settlement was only possible following significant
13 investigation and evaluation of the relevant policies and practices, permitting Class Counsel to
14 engage in a comprehensive analysis of liability and potential damages. (*Ibid.*) This case has
15 reached the stage where the Parties understand “the strength of the case; the reasonableness of the
16 settlement in light of the attendant risks of litigation, and in light of the best possible recovery”
17 sufficient to support the Settlement’s reasonableness, adequacy, and fairness. (Han Decl., *supra*,
18 at ¶ 29; *Boyd v. Bechtel Corp.* (N.D.Cal. 1979) 485 F.Supp. 610, 617.)

19 **c. Terms of the Proposed Settlement**

20 **i. Deductions from the Settlement**

21 The Parties agreed (subject to the Court’s approval) this action be settled and compromised
22 for the non-reversionary total sum of \$165,000 (“Gross Settlement Amount”) which includes: (1)
23 Class Counsel Fees Payment not to exceed \$55,000; (2) Class Counsel Litigation Expenses
24 Payment not to exceed \$20,000; (3) Class Representative Service Payment not to exceed \$10,000;
25 (4) Administration Expenses Payment not to exceed \$15,000; and (5) PAGA Penalties not to
26 exceed \$10,000. (Han Decl., *supra*, at ¶ 28.)

27 ///

28 ///

1 **ii. Calculating Settlement Payments**

2 After all Court-approved deductions from the Gross Settlement Amount, it is estimated
3 \$55,000 (“Net Settlement Amount”) will be paid to Participating Class Members. (Han Decl.,
4 *supra*, at ¶ 29.)

5 Participating Class Member will receive a proportionate share of the Net Settlement
6 Amount using the formula set forth in the Settlement Agreement. (Han Decl., *supra*, at ¶ 27;
7 Exhibit 2, *supra*, at § C(2)(d).) Individual Class Payments will be allocated twenty percent (20%)
8 to the settlement of wages claims and eighty percent (80%) to the settlement of claims for interests
9 and penalties. (*Id.* at § C(2)(d)(i).)

10 In addition, the portion of the PAGA Penalties paid to each Aggrieved Employee shall be
11 determined using the formula set forth in the Settlement Agreement. (Han Decl., *supra*, at ¶ 27;
12 Exhibit 2, *supra*, at § C(2)(e)(i).) Aggrieved Employees’ portion of the PAGA Penalties will be
13 allocated as one hundred percent (100%) penalties. (*Id.* at § C(2)(d)(e)(ii).)

14 **iii. Notice to the Class**

15 No later than thirty (30) calendar days after the Court grants Preliminary Approval of the
16 Settlement, Defendant will deliver the Class Data to the Administrator. (Han Decl., *supra*, at ¶ 27;
17 Exhibit 2, *supra*, at § G(4)(a).) No later than fourteen (14) days after receiving the Class Data, the
18 Administrator will send the Class Notice to all Class Members identified in the Class Data via
19 first-class United States Postal Service mail. (*Id.* at § G(4)(c).)

20 **iv. Distribution of Funds**

21 The Gross Settlement Amount will be funded pursuant to the timeline and manner set forth
22 in the Settlement. (Han Decl., *supra*, at ¶ 27; Exhibit 2, *supra*, at §§ D(2), D(3).) The timeline to
23 fund the Gross Settlement Amount is critical for Defendant due to the financial hardships it has
24 been experiencing in recent years. (*Ibid.*) Uncashed settlement checks will be canceled and
25 transmitted to the California Controller’s Unclaimed Property Fund. (*Id.* at §§ D(3)(a), D(3)(c).)

26 ///

27 ///

28 ///

1 **v. Release of Claims**

2 Effective on the date when Defendant fully funds the entire Gross Settlement Amount and
3 funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, all
4 Participating Class Members, on behalf of themselves and their former and present representatives,
5 agents, attorneys, heirs, administrators, successors, and assigns, release the Released Parties from
6 the Released Class Claims. (Han Decl., *supra*, at ¶ 27; Exhibit 2, *supra*, at § E(2).)

7 Effective on the date when Defendant fully funds the entire Gross Settlement Amount and
8 funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, all
9 Participating and Non-Participating Class Members, who are Aggrieved Employees, are deemed
10 to release, on behalf of themselves and their former and present representatives, agents, attorneys,
11 heirs, administrators, successors, and assigns, the Released Parties from the Released PAGA
12 Claims. (Han Decl., *supra*, at ¶ 27; Exhibit 2, *supra*, at § E(3).)

13 Effective on the date when Defendant fully funds the entire Gross Settlement Amount and
14 funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments,
15 Plaintiff and his former and present spouses, representatives, agents, attorneys, heirs,
16 administrators, successors, and assigns release the Released Parties from Plaintiff's Release. (Han
17 Decl., *supra*, at ¶ 27; Exhibit 2, *supra*, at § E(1).) Plaintiff expressly waives and relinquishes the
18 provisions, rights, and benefits, if any, of section 1542 of the Civil Code. (*Id.* at § E(1)(a).)

19 With regards to class action releases, “[A] court may release not only those claims alleged
20 in the complaint and before the court, but also claims which ‘could have been alleged by reason of
21 or in connection with any matter or fact set forth or referred to in’ the complaint.”” (*Amaro v.*
22 *Anaheim Arena Management, LLC* (2021) 69 Cal.App.5th 521, 537.) The scope of the releases in
23 this case are acceptable because they are limited to the scope of the allegations in the operative
24 complaints. Moreover, the released claims are ““based on *the identical factual predicate* as that
25 underlying the claims in the settled class action.”” (*Ibid.*) In other words, the released claims do
26 not ““go beyond the scope of the allegations in the operative complaint”” (*Ibid.*)

27 ///

28 ///

1 **d. Counsel for Both Parties Are Experienced in Similar Litigation**

2 Both Parties' counsel are experienced in wage-and-hour employment law and class actions.
3 (Han Decl., *supra*, at ¶¶ 2-7; Exhibit 1.) Class Counsel have prosecuted numerous cases on behalf
4 of employees for Labor Code violations and are experienced and qualified to evaluate the class
5 claims, settlement versus trial on a fully informed basis, and viability of the defenses. (*Ibid.*) This
6 experience instructed Class Counsel on the risks and uncertainties of further litigation and guided
7 their determination to endorse the Settlement.¹ (*Ibid.*)

8 **IV. ARGUMENT**

9 **a. Class Action Settlements Are Subject to Court Review**

10 California Rules of Court, rule 3.769 requires court approval for class action settlements.²
11 “Before final approval, the court must conduct an inquiry into the fairness of the proposed
12 settlement.” (Cal. Rules of Court, rule 3.769(g).) Rule 3.769 further requires a noticed motion for
13 preliminary approval of class settlements:

14 (a) A settlement or compromise of an entire class action, or a cause of action in
15 a class action, or as to a party, requires the approval of the court after
16 hearing.

16 ...
17 (c) Any party to a settlement agreement may serve and file a written notice of
18 motion for preliminary approval of the settlement. The settlement
19 agreement and proposed notice to class members must be filed with the
20 motion, and the proposed order must be lodged with the motion.

21 Courts have discretion to approve settlements that are fair, not collusive, and consider “all
22 the normal perils of litigation as well as the additional uncertainties inherent in complex class
23 actions.”” (*In re Beef Industry Antitrust Litigation* (5th Cir. 1979) 607 F.2d 167, 179, cert. den. *sub*
nom. Iowa Beef Processors, Inc. v. Meat Price Investigators Ass’n (1981) 452 U.S. 905.)

24 ¹ The final factor mentioned in *Dunk* – the number of objectors – is not determinable until
25 the Class Notice has been provided to the Class, and they have had an opportunity to respond. This
26 information will be provided to the Court in conjunction with the Motion for Final Approval of
27 Class Action Settlement.

28 ² The California Supreme Court has also authorized California's trial courts to use Federal
Rule 23 and cases applying it for guidance in considering class issues. (See *Vasquez v. Superior*
Court (1971) 4 Cal.3d 800, 821; see *Green v. Obledo* (1981) 29 Cal.3d 126, 145-146.) Where
appropriate, the Parties cite Federal Rule 23 and federal case law in addition to California law.

1 **b. The Proposed Settlement Is a Reasonable Compromise of Claims**

2 An understanding of the amount in controversy is an important factor in whether the
3 settlement “of the class members’ claims is reasonable in light of the strengths and weaknesses of
4 the claims and the risks of the particular litigation.” (*Kullar v. Foot Locker Retail, Inc.* (2008) 168
5 Cal.App.4th 116, 129; see also *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186
6 Cal.App.4th 399, 409.) The most important factor in this regard is ““the strength of the case for
7 plaintiffs on the merits, balanced against the amount offered in settlement.”” (*Kullar*, at p. 129;
8 see also *Munoz*, at p. 409.)

9 *Kullar* instructs the court is not to “decide the merits of the case or to substitute its
10 evaluation of the most appropriate settlement for that of the attorneys.” (*Kullar v. Foot Locker*
11 *Retail, Inc.*, *supra*, 168 Cal.App.4th at p. 133.) *Kullar* does not require a statement of the maximum
12 amount the class could recover if plaintiff prevailed on all his claims, provided there is a record
13 that allows ““an understanding of the amount that is in controversy and the realistic range of
14 outcomes of the litigation.”” (*Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*, *supra*, 186
15 Cal.App.4th at p. 409.) “[A]s the court does when it approves a settlement as in good faith under
16 Code of Civil Procedure § 877.6, the court must at least satisfy itself that the class settlement is
17 within the ‘ballpark’ of reasonableness.” (*Kullar*, at p. 133.)

18 **i. The Settlement Amount of \$165,000 Is Fair and Reasonable**

19 The Settlement Agreement was only possible following significant investigation and
20 evaluation of the relevant policies and procedures, as well as the data Defendant produced for the
21 Class, as referenced in Section III above, permitting Class Counsel to engage in a comprehensive
22 analysis of liability and potential damages. (Han Decl., *supra*, at ¶ 32.)

23 The claims are predicated on the purported: (1) failure to properly calculate and pay
24 overtime wages; (2) failure to pay minimum wages; (3) failure to provide meal and rest breaks and
25 pay applicable premium wages; (4) failure to timely pay wages; (5) failure to issue compliant wage
26 statements; (6) failure to reimburse business expenses; (7) violation of PAGA; and (8) violation
27 of Business & Professions Code section 17200, *et seq.* (Han Decl., *supra*, at ¶ 33.) Defendant
28 vehemently denies the theories of liability. (*Id.* at ¶ 34.)

1 While Plaintiff believes the case is suitable for certification, uncertainties with respect to
2 certification are always present. (Han Decl., *supra*, at ¶ 35.) As the California Supreme Court ruled
3 in *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, class certification is always
4 a matter of the trial court's sound discretion. (*Ibid.*) Decisions following *Sav-On Drug Stores, Inc.*
5 have reached different conclusions concerning certification of wage-and-hour claims.³ (*Ibid.*)
6 Thus, the calculations for potential damages were discounted.

7 **ii. The PAGA Penalties of \$10,000 Is Reasonable**

8 The provisions of the Labor Code potentially triggering PAGA penalties in this case
9 include Labor Code sections 201, 202, 203, 204, 218.5, 221, 226(a), 226.3, 226.7, 246(l), 510,
10 512(a), 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1198, 2800, and 2802. (Han Decl., *supra*, at ¶
11 45.) Defendant asserts, regardless of the results of the underlying causes of action, PAGA penalties
12 are not mandatory but permissive and discretionary. (*Ibid.*) Defendant also maintains it had a
13 strong argument it would be unjust to award maximum PAGA penalties given the law's current
14 unsettled state concerning PAGA penalties. (Han Decl., *supra*, at ¶ 45; *Thurman v. Bayshore*
15 *Transit Mgmt.* (2012) 203 Cal.App.4th 1112 [reducing penalties by 30% under this authority].)
16 Defendant argued without stacking and limited to the initial violation, the PAGA penalties would
17 be limited to about **\$17,200** (172 employees x \$100 penalty for initial violation) on the low end
18 and **\$120,400** (172 employees x \$100 penalty for initial violation x 7 theories of recovery) on the
19 high end. (Han Decl., *supra*, at ¶¶ 46-48.)

20 Plaintiff recognized the risk that any PAGA award could be reduced. (Han Decl., *supra*,
21 at ¶ 49.) Many of the causes of action brought were also duplicative of the statutory claims. (*Ibid.*)
22 Allocating \$10,000 to PAGA civil penalties was reasonable given that Defendant is also paying
23 an additional \$155,000 in the class settlement. (*Ibid.*) When PAGA penalties are negotiated in

24 _____
25 ³ (See e.g. *Harris v. Superior Court* (2007) 154 Cal.App.4th 164 [reversing decertification
26 of class claiming misclassification and ordering summary adjudication in favor of employees],
27 review granted Nov. 28, 2007, (2007) 171 P.3d 545 [not cited as precedent, but rather for
28 illustrative purposes only]; *Walsh v. IKON Office Solutions, Inc.* (2007) 148 Cal.App.4th 1440
[affirming decertification of class claiming misclassification]; *Aguiar v. Cintas Corp. No. 2* (2006)
144 Cal.App.4th 121 [reversing denial of certification]; *Dunbar v. Albertson's Inc.* (2006) 141
Cal.App.4th 1422 [affirming denial of certification].)

good faith and “there is no indication that [the] amount was the result of self-interest at the expense of other Class Members,” such amounts are reasonable.⁴ (Han Decl., *supra*, at ¶ 49.)

Considering Defendant’s defenses, supporting evidence, position that the case is not suitable for class treatment, and current financial condition and recent financial hardships, the Settlement Agreement is reasonable, adequate, and fair.

c. Discount Analysis Justifies the Settlement

Excluding the civil penalties, which could be completely discretionary, the total estimated potential exposure, assuming certification and prevailing at trial, would be about **\$2,552,373.93** on the low end and around **\$2,607,432.78** on the high end. (Han Decl., *supra*, at ¶ 50.)

Category	Potential Exposure	Certification Risk	Merits Risk	Realistic Exposure
Rest Break Premiums	\$161,435.40	70%	60%	\$19,372.25
Meal Break Premiums	\$44,276.40	60%	60%	\$7,084.22
Overtime/Minimum Wage: Off-the-Clock Work	\$110,117.70 to \$165,176.55	60%	50%	\$22,023.54 to \$33,035.31
Regular Rate: Underpaid Overtime	\$5,009.74	30%	50%	\$1,753.41
Alternative Workweek Schedule: Underpaid Overtime	\$206,599.69	40%	50%	\$61,979.91
Unreimbursed Business Expenses	\$103,710	40%	80%	\$12,445.20
Wage Statement Penalty	\$146,200	70%	60%	\$17,544
Waiting Time Penalty	\$1,775,025	70%	60%	\$213,003
MAXIMUM TOTAL EXPOSURE	\$2,552,373.93 to \$2,607,432.78⁵			\$355,205.53 to \$366,217.30⁶

///

⁴ (*Hopson v. Hanesbrands Inc.* (N.D.Cal. Apr. 3, 2009, No. CV-08-0844 EDL) 2009 U.S.Dist.LEXIS 33900, at *24; see e.g. *Nordstrom Com. Cases* (2010) 186 Cal.App.4th 576, 579, “[T]rial court did not abuse its discretion in approving a settlement which does not allocate any damages to the PAGA claims”.)

⁵ (Han Decl., *supra*, at ¶¶ 36-44.)

⁶ (*Id.* at ¶¶ 51-58.)

1 The realistic recovery for this case is about **\$355,205.53** on the low end and **\$366,217.30**
2 on the high end. (Han Decl., *supra*, at ¶ 59.) The Gross Settlement Amount is around six percent
3 (6.33%) of the maximum potential exposure and around forty-five percent (45.06%) of the
4 maximum realistic exposure at trial. (*Ibid.*) This is a reasonable settlement when considering
5 Defendant’s present financial condition and recent financial hardships. (*Ibid.*)

6 The only question at preliminary approval is whether the settlement is within the range of
7 possible approval. (*In re General Motors Corp. Engine Interchange Litigation* (7th Cir. 1979) 594
8 F.2d 1106, 1124; *Acosta v. TransUnion, LLC* (C.D. Cal. 2007) 240 F.R.D. 564, 575.) “The fact
9 that a proposed settlement may only amount to a fraction of the potential recovery does not, in and
10 of itself, mean that the proposed settlement is grossly inadequate and should be disapproved.”
11 (*Detroit v. Grinnell Corp.* (2d Cir. 1974) 495 F.2d 448, 455; see also *Linney v. Ceullar Alaska*
12 *Partnership* (9th Cir. 1998) 151 F.3d 1234, 1242, “[I]t is the very uncertainty of outcome in
13 litigation and avoidance of wasteful and expensive litigation that induce consensual settlements.
14 The proposed settlement is not to be judged against a hypothetical or speculative measure of what
15 might have been achieved by the negotiators”). Nevertheless, this settlement is in line with the
16 realistic exposure if Plaintiff prevailed at trial and provides a significant recovery for Class
17 Members when considering Defendant’s financial condition.

18 **d. Conditional Certification of the Class Is Appropriate**

19 Code of Civil Procedure section 382 “authorizes class actions ‘when the question is one of
20 a common or general interest, of many persons, or when the parties are numerous, and it is
21 impracticable to bring them all before the court.’” (*Sav-On Drug Stores, Inc. v. Superior Court*,
22 *supra*, 34 Cal.4th at p. 326.) California courts certify class actions if plaintiff identifies “both [1]
23 an ascertainable class and [2] a well-defined community of interest among class members.” (*Ibid.*)

24 The Class is ascertainable and numerous as to make it impracticable to join all Class
25 Members, and there are common questions of law and fact that predominate over any questions
26 affecting any individual Class Member. (Han Decl., *supra*, at ¶ 60.) Plaintiff contends his claims
27 are typical of the claims of the Class, and Class Counsel will fairly and adequately protect the
28 Class’s interests. (*Ibid.*) Plaintiff asserts the prosecution of separate actions by Class Members

would create the risk of inconsistent or varying adjudications. (Han Decl., *supra*, at ¶ 60.)

i. The Proposed Class Is Ascertainable and Sufficiently Numerous

“Ascertainability is required in order to give notice to putative class members as to whom the judgment in the action will be res judicata.” (*Hicks v. Kaufman & Broad Home Corp.* (2001) 89 Cal.App.4th 908, 914.) “A class is ascertainable if it identifies a group of unnamed plaintiffs by describing a set of common characteristics sufficient to allow a member of that group to identify himself or herself as having a right to recover based on the description.” (*Bartold v. Glendale Federal Bank* (2000) 81 Cal.App.4th 816, 828.) The proposed class must also be sufficiently numerous. (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.)

This case involves approximately eight hundred forty (840) Class Members, meaning the Class is sufficiently numerous. (Han Decl., *supra*, at ¶ 61; *Ghazaryan v. Diva Limousine, Ltd.* (2008) 169 Cal.App.4th 1524, 1531, n.5 [finding a proposed class of “as many as 190 current and former employees” is sufficiently numerous].)

ii. Class Members Share a Well-defined Community of Interest

The community of interest requirement “embodies three factors: (1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class.” (*Sav-On Drug Stores, Inc. v. Superior Court*, *supra*, 34 Cal.4th at p. 326.) “[T]he community of interest requirement for certification *does not mandate that class members have uniform or identical claims.*” (*Capitol People First v. Department of Developmental Services* (2007) 155 Cal.App.4th 676, 692 (emphasis in original).) Rather, courts focus on the defendant’s internal policies and “pattern and practice . . . in order to assess whether that common behavior toward similarly situated plaintiffs renders class certification appropriate.” (*Ibid.*) The application of each of these factors is discussed below.

1. Common Issues Predominate

The “common issues” requirement “involves analysis of whether the proponent’s ‘theory of recovery’ is likely to prove compatible with class treatment.” (*Capitol People First v. Department of Developmental Services*, *supra*, 155 Cal.App.4th at p. 690.) In other words, courts determine whether the elements necessary to establish liability are susceptible to common proof,

even if the class members must individually prove their damages. (*Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1024). These types of claims are regularly granted class certification when the plaintiff can present evidence of common policies. (See e.g. *Jones v. JGC Dallas LLC* (N.D.Tex. Nov. 29, 2012, Civil Action No. 3:11-CV-2743-O) 2012 U.S.Dist.LEXIS 185042 [certified collective action involving 190 dancers]; *Espinoza v. Galardi South Enters.* (S.D.Fla. Jan. 11, 2016, No. 14-21244-CIV-GOODMAN) 2016 U.S.Dist.LEXIS 2904 [court certified class of dancers on state law claims].)

Plaintiff asserts common issues of fact and law predominate as to each of the claims alleged. (Han Decl., *supra*, at ¶ 62.) Plaintiff contends all Class Members were subject to the same or similar employment practices, policies, and procedures described in detail above. (*Ibid.*)

2. Plaintiff's Claims Are Typical of the Class Claims

Typical claims rely on legal theories and facts that are substantially like those of other class members. (*Classen v. Weller* (1983) 145 Cal.App.3d 27, 46.)

Plaintiff is a former employee of Defendant and alleges he and Class Members were employed by the same company and injured by the common policies and practices related to the claims described above. (Han Decl., *supra*, at ¶ 63.) Plaintiff seeks relief for these claims and derivative claims on behalf of the Class. (*Ibid.*) Thus, the claims arise from the same employment practices and are based on the same legal theories applicable to the Class. (*Ibid.*)

3. Plaintiff Is Adequate to Represent the Class

Plaintiff has proven to be an adequate class representative. (Han Decl., *supra*, at ¶ 64.) Plaintiff conducted himself diligently and responsibly in representing the Class in this litigation, understands the fiduciary obligations, and actively participated in the prosecution of this case. (*Ibid.*) Plaintiff spent time in meetings and conferences with Class Counsel to provide them with a complete understanding of the work experience and environment. (*Ibid.*) Plaintiff also has no interest averse to the interests of the other Class Members. (*Ibid.*)

///

///

///

1 **4. Class Action Is Superior for the Fair and Efficient Adjudication**
2 **of this Controversy**

3 A class action is superior to other available means for the fair and efficient adjudication of
4 this controversy. Plaintiff contends the joinder of all Class Members is impractical and that class
5 treatment will permit many similarly situated persons to prosecute their common claims for
6 settlement purposes simultaneously in a single forum without the duplication of effort and expense
7 that numerous individual actions would necessitate. Because several Class Members are also
8 current employees, Plaintiff believes fear of retaliation further supports the superiority of class-
9 wide relief as this fear often discourages current employees from seeking legal redress.

10 **e. The Settlement Is Fair, Reasonable, and Adequate**

11 In deciding whether to approve a proposed class action settlement under Code of Civil
12 Procedure section 382, the Court must find a proposed settlement is “fair, adequate and
13 reasonable.” (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.) A proposed class action
14 settlement is presumed fair under the following circumstances: (1) parties reached settlement after
15 arm’s-length negotiations; (2) investigation and discovery were sufficient to allow counsel and the
16 court to act intelligently; (3) counsel is experienced in similar litigation; and (4) percentage of
17 objectors is small. (*Id.* at p. 1802.) All these elements are present here.

18 **f. Notice to the Class Complies with California Rules of Court, Rule 3.769(f)**

19 California Rules of Court, rule 3.769(f), provides:

20 If the court has certified the action as a class action, notice of the final approval hearing
21 must be given to class members in the manner specified by the court. The notice must
22 contain an explanation of the proposed settlement and procedures for class members to
23 follow in filing written objections to it and in arranging to appear at the settlement hearing
24 and state any objections to the proposed settlement.

25 The Class Notice meets all these requirements. The Class Notice advises Class Members
26 of their right to participate in the Settlement, how and when to object to or request exclusion from
27 the Settlement, and date, time, and location of the Final Approval Hearing.

28 ///

///

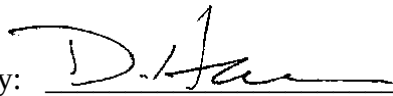
///

1 **V. CONCLUSION**

2 Plaintiff submits the Settlement is in the Class's best interests. Under the applicable class
3 action criteria and guidelines, the Settlement should be preliminarily approved by the Court, Class
4 should be conditionally certified for settlement purposes, and Class Notice should be approved.
5

6 Dated: January 31, 2024

JUSTICE LAW CORPORATION

7
8 By: 
9 Douglas Han
10 *Attorneys for Plaintiff*
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**PROOF OF SERVICE
1013A(3) CCP**

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 751 N. Fair Oaks Ave., Ste. 101 Pasadena, California 91103. My electronic service address is manderson@justicelawcorp.com

On January 31, 2024, I served the foregoing document described as

PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT, CONDITIONAL CERTIFICATION, APPROVAL OF CLASS NOTICE, SETTING OF FINAL APPROVAL HEARING DATE; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

for the following case: **Cotton v. Custom Care Logistics LLC**
LWDA/Court Case No.: **LWDA-CM-952782-23**
34-2022-00320283-CU-OE-GDS
Sacramento County Superior Court

on interested parties in this action by electronically submitting as follows:

State of California
Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, California 95814

[X] BY ELECTRONIC SUBMISSION

Pursuant to California Senate Bill No. 836, I caused the documents described above to be electronically submitted by and through the procedure stated on the website of the State of California Labor and Workforce Development Agency.

[X] STATE

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on January 31, 2024, at Pasadena, California.



Mariah Anderson