DOUGLAS HAN (SBN 232858)
SHUNT TATAVOS-GHARAJEH (SBN 272164)
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 Plaintiffs

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

DAISY AYALA, individually, and on behalf of other members of the general public similarly situated;

Plaintiff,

v.

CARTER SHIPPING SERVICES LLC, a California limited liability company; and DOES 1 through 100, inclusive;

Defendants.

Case No.: 30-2022-01268249-CU-OE-CXC

Assigned for All Purposes to:
Honorable Melissa McCormick
Department CX-104

CLASS ACTION

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

[Reservation Number: 74409231]

[Declaration of Proposed Class Counsel (Douglas Han); Declaration of Proposed Class Representatives (Daisy Ayala and Josephine Castaneda); Declaration of Lisa Mullins; and Declaration of Joshua Carter filed concurrently herewith]

Hearing Date: March 20, 2025
Hearing Time: 2:00 p.m.
Hearing Place: Department CX-104

Complaint Filed: July 1, 2022
FAC Filed: December 22, 2023
Trial Date: None Set

PLEASE TAKE NOTICE that on March 20, 2025 at 2:00 p.m. or as soon as the matter may be heard, before the Honorable Melissa McCormick in Department CX-104 of the Orange County Superior Court located at 751 West Santa Ana Boulevard, Santa Ana, California 92701, Plaintiffs Daisy Ayala and Josephine Castaneda ("Plaintiffs," "Plaintiff Ayala," and "Plaintiff Castaneda") will and hereby does move for an order:

- Granting Preliminary Approval of the proposed class action settlement described herein and as set forth in the Joint Stipulation of Class Action and PAGA Settlement ("Settlement Agreement," "Settlement," or "Agreement"), attached as **Exhibit 2** to the Declaration of Douglas Han, including, and not limited to, the means of allocation and distribution of funds;
- Conditionally certifying the proposed Class for settlement purposes only;
- Appointing Plaintiffs as the class representatives;
- Appointing Justice Law Corporation as Class Counsel;
- Approving the proposed Notice of Class Action and PAGA Settlement ("Class Notice") attached as **Exhibit A** to the [Proposed] Order Preliminarily Approving Class Action Settlement and Settlement Agreement;
- Approving the proposed Request for Exclusion Form ("Exclusion Form") attached as **Exhibit B** to the [Proposed] Order Preliminarily Approving Class Action Settlement and Settlement Agreement;
- Approving the proposed Objection Form attached as **Exhibit C** to the [Proposed] Order Preliminarily Approving Class Action Settlement and Settlement Agreement;
- Directing the mailing of the proposed Class Notice, Exclusion Form, and Objection Form (collectively, known as the "Notice Packet") with a postage-paid return envelope to the proposed Class;
- Approving the proposed deadlines for the notice and settlement administration process;
- Approving ILYM Group, Inc. as the Settlement Administrator; and

- Scheduling a hearing to consider whether to grant Final Approval of the Settlement Agreement, at which time the Court will also consider whether to grant Final Approval of the requests for the Attorney Fee Award, Cost Award, Class Representative Enhancement Payments, Administration Costs, and Private Attorneys General Act of 2004 ("PAGA") Payment.

This motion is based upon the following memorandum of points and authorities; Declaration of Proposed Class Counsel (Douglas Han); Declaration of Proposed Class Representatives (Daisy Ayala and Josephine Castaneda); Declaration of Lisa Mullins; Declaration of Joshua Carter; [Proposed] Order filed concurrently with this motion; pleadings and other records on file with the Court in this matter; and such documentary evidence and oral argument as may be presented at the hearing on this motion.

Dated: October 21, 2024

JUSTICE LAW CORPORATION

By: ______________________
Douglas Han
Attorneys for Plaintiffs

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases **Page(s)**

I. INTRODUCTION

This motion seeks preliminary approval of a fixed total non-reversionary proposed wage-and-hour class action settlement by Plaintiffs on behalf of themselves and all current and former hourly-paid or non-exempt employees of Defendant Carter Shipping Services LLC ("Defendant") within the State of California at any time during the period from June 3, 2020 through June 13, 2023 ("Class," "Class Members," and "Class Period"). At the time of this filing, the number of Class Members confirmed by Defendant is estimated to be four hundred fifty-two (452). (Declaration of Douglas Han In Support of Motion For Preliminary Approval of Class Action Settlement ("Han Decl."), ¶¶ 7, 8.)

II. BACKGROUND

On July 1, 2022, Plaintiff Ayala filed a wage-and-hour class action lawsuit against Defendant in the Superior Court of California, County of Orange, alleging nine (9) causes of action. (Han Decl., *supra*, at ¶ 9.)

The Parties remotely attended mediation with the mediator Lisa Klerman on June 8, 2023, resulting in the Parties reaching a tentative settlement via a mediator's proposal. (Han Decl., *supra*, at ¶ 10.)

In line with the settlement, on June 26, 2023, Plaintiff Castaneda provided written notice to the California Labor and Workforce Development Agency and Defendant of the specific provisions of the Labor Code she contends were violated and the theories supporting her contentions. (Han Decl., *supra*, at ¶ 11; Exhibits 3, 4.)

On December 22, 2023, Plaintiff Ayala then filed a First Amended Complaint adjusting the "class" definition, adding Plaintiff Castaneda as a named plaintiff, and adding a cause of action for violation of Labor Code section 2698 (PAGA). (Han Decl., *supra*, at ¶ 12; Exhibit 5.)

/ / /

/ / /

/ / /

III. INVESTIGATION/ LITIGATION HISTORY

a. Discovery, Investigation, and the Parties' Staunchly Conflicting Positions

Plaintiffs propounded form interrogatories, special interrogatories, requests for admission, and requests for production of documents. (Han Decl., *supra*, at ¶ 14.) Defendant responded to the formal discovery requests. (*Ibid.*) The Parties then met and conferred and agreed to engage in an informal exchange of information and eventually remotely attended mediation. (*Ibid.*)

Prior to mediation, Defendant produced several documents relating to its wage-and-hour policies, practices, and procedures. (Han Decl., *supra*, at ¶ 15.) Plaintiffs also reviewed time and pay records and information relating to the size and scope of the Class. (*Ibid.*) Putative class members were also located and interviewed to obtain a better understanding of the extent and frequency of the alleged day-to-day violations. (*Ibid.*) Finally, the Parties discussed Defendant's current financial condition and recent financial hardships it has been experiencing. (*Ibid.*)

Based upon the information provided and interviews with putative class members, Plaintiffs contend – and Defendant denies – that Defendant: (1) failed to provide employees with legally mandated meal and rest breaks; (2) failed to pay employees for all hours worked; (3) failed to reimburse employees for necessary business expenses; (4) issued noncompliant wage statements; and (5) is liable for waiting time penalties. (Han Decl., *supra*, at ¶¶ 17-23.)

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

i. The Parties Attended Mediation Which Led to the Settlement

The Parties remotely attended mediation with the mediator. (Han Decl., *supra*, at ¶ 24.) During the mediation, the Parties discussed the risks of continued litigation, likelihood of certification, and merits of the claims and defenses versus the benefits of settlement. (*Ibid.*) During the mediation, the Parties discussed Defendant's current financial condition and financial hardships it has been experiencing in recent years. (*Ibid.*) Under the auspices of the mediator via a mediator's proposal, the Parties managed to negotiate a settlement, the terms of which were memorialized in the Agreement. (*Id.* at ¶ 24; Exhibits 2, 6.)

/ / /

/ / /

ii. The Settlement Was Reached as a Result of Arm's-length Negotiations

The Settlement was reached because of arm's-length negotiations. (Han Decl., *supra*, at ¶ 27.) Though cordial and professional, the settlement negotiations have always been adversarial and non-collusive in nature. (*Ibid.*) At the mediation, the Parties' counsel conducted extensive arm's-length settlement negotiations until an agreement was ultimately reached. (*Ibid.*)

Plaintiffs and Class Counsel believe in the merits of the case but also recognize the expense and length of additional proceedings necessary to continue the litigation. (Han Decl., *supra*, at ¶ 28.) Plaintiffs and Class Counsel have considered the uncertainty and risk of further litigation, potential outcome, and difficulties and delays inherent in such litigation. (*Ibid.*) Plaintiffs and Class Counsel also considered Defendant's present financial condition, financial hardships it has been experiencing in recent years, and its ability to fund a settlement. (*Ibid.*) Plaintiffs and Class Counsel believe the settlement set forth in the Agreement is a fair, adequate, and reasonable settlement and is in the Class Members' best interests. (*Ibid.*)

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

The Parties thoroughly investigated and evaluated the factual strengths and weaknesses of the claims and defenses and engaged in sufficient investigation, research, and discovery. (Han Decl., *supra*, at ¶ 29.) The Settlement Agreement was only possible following significant investigation and evaluation of the relevant policies and procedures in place and the data produced. (*Ibid.*) This information permitted Class Counsel to engage in a comprehensive analysis of liability and potential damages. (*Ibid.*) This case has reached the stage where the Parties understand "the strength of the case; the reasonableness of the settlement in light of the attendant risks of litigation, and in light of the best possible recovery" sufficient to support the Settlement's reasonableness, adequacy, and fairness. (Han Decl., *supra*, at ¶ 29; *Boyd v. Bechtel Corp.* (N.D.Cal. 1979) 485 F.Supp. 610, 617.)

/ / /

/ / /

/ / /

c. Terms of the Proposed Settlement

i. Deductions from the Settlement

The Parties agreed (subject to and contingent upon the Court's approval) this case be settled and compromised for a fixed total non-revisionary amount of $100,000 ("Gross Settlement Amount"), which includes: (1) Attorney Fee Award of up to $33,333.33 (1/3 of the Gross Settlement Amount); (2) Cost Award of up to $15,000; (3) Class Representative Enhancement Payments totaling $10,000; (4) Administration Costs of up to $10,000; and (5) PAGA Payment of $5,000. (Han Decl., *supra*, at ¶ 25.)

ii. Calculation of the Individual Settlement Shares

After all Court-approved deductions from the Gross Settlement Amount, it is estimated $26,666.67 ("Net Settlement Amount") will be distributed to Participating Class Members, resulting in a gross *average* Individual Settlement Share of $59.00. (Han Decl., *supra*, at ¶ 26.)

Individual Settlement Shares will be calculated using the formula set forth in the Settlement Agreement. (Han Decl., *supra*, at ¶ 24; Exhibit 2, *supra*, at § III(H)(1).) Eligible Aggrieved Employees' portion of the PAGA Payment will be calculated using the formula set forth in the Settlement Agreement. (*Id.* at § III(I)(7)(g).)

iii. The Allocation of 20% to Wages and 80% to Penalties and Interest Is Justified Under the Claims of this Action

Individual Settlement Shares will be apportioned as follows: (1) twenty percent (20%) as wages; and (2) eighty percent (80%) as penalties and interest. (Han Decl., *supra*, at ¶ 24; Exhibit 2, *supra*, at § III(H)(2).)

/ / /

/ / /

/ / /

The allocation of wages, penalties, and interest indicated above was based on the realistic exposure that Plaintiffs could expect to receive for meal and rest break premiums, unpaid wages, and underpaid wages. (Han Decl., *supra*, at ¶ 47.) Plaintiffs added the realistic exposure for rest break premiums and meal break premiums ($26,840.21 + $75,152.57 = $101,992.78). (*Ibid.*) Plaintiffs then added the $101,992.78 to the low end realistic exposure for unpaid wages due to off-the-clock work ($101,992.78 + $14,091.11 = $116,083.89). (*Ibid.*) The realistic exposure of $116,083.89 that Plaintiffs can expect to receive if they were to prevail at trial for meal and rest break premiums and low end unpaid wages due to off-the-clock work represents about twenty-one percent (20.90%) of the low end total realistic exposure and PAGA penalties ($116,083.89 ÷ $555,460.42 = 0.20899 x 100 = 20.90%). (Han Decl., *supra*, at ¶ 47.) Because this represents about twenty percent (20%) of wages, it is appropriate to allocate twenty percent (20%) of the Individual Settlement Shares as wages and eighty percent (80%) of the Individual Settlement Shares as penalties and interest pursuant to the Settlement Agreement. (*Ibid.*)

iv. Notice to the Class

Within thirty (30) calendar days after entry of the Preliminary Approval Order, Defendant shall deliver to the Settlement Administrator the Class Data. (Han Decl., *supra*, at ¶ 24; Exhibit 2, *supra*, at § III(L)(2)(a).) Afterwards, the Settlement Administrator will conduct a National Change of Address Database search for all Class Members to obtain the most up-to-date address information. (*Ibid.*)

Within twenty-one (21) calendar days after receiving the Class Data, the Settlement Administrator will mail the Notice Packet to all identified Class Members via first-class regular U.S. Mail, using the most current mailing address information available. (Han Decl., *supra*, at ¶ 24; Exhibit 2, *supra*, at § III(L)(2)(b).) Class Members are not required to submit a claim form to receive their Individual Settlement Shares. (*Id.* at § I(W).)

/ / /

/ / /

/ / /

v. Distribution of Funds

The Settlement will be funded and distributed in the manner and schedule set forth in the Settlement Agreement. (Han Decl., *supra*, at ¶ 24; Exhibit 2, *supra*, at §§ III(I)(2), III(I)(3).)

Participating Class Members and Eligible Aggrieved Employees must cash or deposit their settlement checks within one hundred eighty (180) calendar days after the checks are mailed to them. (Han Decl., *supra*, at ¶ 24; Exhibit 2, *supra*, at § III(I)(5).) Uncashed settlement checks will be paid to the California State Controller's Unclaimed Property Division. (*Ibid.*)

vi. Release of Claims

As of the Effective Date and upon Defendant's fulfillment of its payment obligations set forth in the Settlement Agreement, Participating Class Members shall fully and finally release and discharge the Released Parties from the Released Claims. (Han Decl., *supra*, at ¶ 24; Exhibit 2, *supra*, at §§ I(JJ), III(M).)

As of the Effective Date and upon Defendant's fulfillment of its payment obligations set forth in the Settlement Agreement, Plaintiffs and Eligible Aggrieved Employees will be bound by a release of all claims and causes of action falling under the definition of PAGA Released Claims occurring during the PAGA Period. (Han Decl., *supra*, at ¶ 24; Exhibit 2, *supra*, at §§ I(EE), III(N).)

As of the Effective Date and upon Defendant's fulfillment of its payment obligations set forth herein, Plaintiffs provides a general release of claims for themselves and any spouse, heirs, successors, and assigns (Han Decl., *supra*, at ¶ 24; Exhibit 2, *supra*, at § III(O).) Plaintiffs stipulate and agree that as of the Effective Date, Plaintiffs shall be deemed to have expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of Civil Code section 1542, or any other similar provision under federal or state law. (*Ibid.*)

/ / /

/ / /

/ / /

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

d. Counsel for Both Parties Are Experienced in Similar Litigation

Counsel for both Parties are particularly experienced in wage-and-hour employment law and class actions. (Han Decl., *supra*, at ¶¶ 2-6; Exhibit 1.) Class Counsel have prosecuted numerous cases on behalf of employees for Labor Code violations and are experienced and qualified to evaluate the class claims, advantages, and disadvantages of settlement versus trial, and viability of the defenses. (*Ibid.*) Class Counsel's experience guided their determination to endorse the Settlement.[1] (*Ibid.*)

IV. ARGUMENT

a. Class Action Settlements Are Subject to Court Review

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

/ / /

1 The final factor mentioned in *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794 – the number of objectors – is not determinable until the Notice Packet has been provided to the Class Members, and they have had an opportunity to respond. This information will be provided to the Court in conjunction with the Motion for Final Approval of Class Action Settlement.

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

> (a) A settlement or compromise of an entire class action, or a cause of action in a class action, or as to a party, requires the approval of the court after hearing.
>
> …
>
> (b) Any party to a settlement agreement may serve and file a written notice of motion for preliminary approval of the settlement. The settlement agreement and proposed notice to class members must be filed with the motion, and the proposed order must be lodged with the motion.

Courts have discretion to approve settlements that are fair, not collusive, and consider "'all the normal perils of litigation as well as the additional uncertainties inherent in complex class 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.)

b. The Proposed Settlement Is a Reasonable Compromise of Claims

An understanding of the amount in controversy is an important factor if settlement "of the class members' claims is reasonable in light of the strengths and weaknesses of the claims and the risks of the particular litigation." (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129; see also *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 409.) The most important factor is "'"the strength of the case for plaintiffs on the merits, balanced against the amount offered in settlement."'" (*Kullar*, at p. 130; *Munoz*, at p. 409.)

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

/ / /

/ / /

/ / /

i. The Settlement Amount of $100,000 Is Fair and Reasonable

The Settlement was only possible following significant investigation and evaluation of the relevant policies and procedures and the data produced for the putative class, as referenced in Section III(b) above, permitting Class Counsel to engage in a comprehensive analysis of liability and potential damages. (Han Decl., *supra*, at ¶ 29.)

This investigation and evaluation informed the central theories of liability that are predicated on the alleged: (1) failure to pay overtime wages; (2) failure to provide meal and rest breaks and pay applicable premiums; (3) failure to pay minimum wages; (4) failure to timely pay wages; (5) failure to issue compliant wage statements; (6) failure to reimburse business expenses; (7) violation of PAGA; and (8) violation of Business & Professions Code sections 17200. (Han Decl., *supra*, at ¶ 30.) Defendant vehemently denies the theories of liability. (*Id.* at ¶ 31.)

Although Plaintiffs believe the case is suitable for certification, uncertainties with respect to certification are always present. (Han Decl., *supra*, at ¶ 32.) As the California Supreme Court ruled in *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, class certification is a matter of the trial court's sound discretion. (*Ibid.*) Decisions following *Sav-On Drug Stores, Inc.* have reached different conclusions concerning certification of wage-and-hour claims.[3] (*Ibid.*) These factors led to discounting the calculations of the potential damages.

/ / /

/ / /

/ / /

---

[3] (See e.g. *Harris v. Superior Court* (2007) 154 Cal.App.4th 164 [reversing decertification of class claiming misclassification and ordering summary adjudication in favor of employees], review granted Nov. 28, 2007, (2007) 171 P.3d 545 [not cited as precedent, but rather for 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].)

ii. The PAGA Payment of $5,000 Is Reasonable

The provisions of the Labor Code potentially triggering PAGA penalties include, but are not limited to, Labor Code sections 201, 202, 203, 204, 218.5, 221, 226(a), 226.3, 226.7, 246(l), 229, 510, 512(a), 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1198, 2800, and 2802. (Han Decl., *supra*, at ¶ 40.) Defendant asserted, regardless of the results of the underlying causes of action, PAGA penalties are not mandatory but permissive and discretionary. (*Ibid.*) Defendant maintained it had a strong argument it would be unjust to award maximum PAGA penalties given the law's unsettled state. (Han Decl., *supra*, at ¶ 40; *Thurman v. Bayshore Transit Mgmt.* (2012) 203 Cal.App.4th 1112 [reducing penalties by 30% under this authority].) Without stacking and limited to the initial violation, the PAGA penalties would be limited to **$7,500** (75 employees x $100 initial violation) on the low end and **$52,500** (75 employees x $100 initial violation x 7 theories of recovery) on the high end. (Han Decl., *supra*, at ¶¶ 41-44.)

Plaintiffs also recognized the risk any PAGA award could be reduced. (Han Decl., *supra*, at ¶ 45.) Many of the causes of action brought were duplicative of the statutory claims. (*Ibid.*) The maximum penalties for each pay period are likely not justified, and it was arguable the Court would award the maximum penalties. (*Ibid.*) Thus, allocating $5,000 to PAGA civil penalties was reasonable given that Defendant is paying an additional $95,000 in the class settlement. (*Ibid.*) When PAGA penalties are negotiated in 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 generally considered reasonable.[4] (*Ibid.*)

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.

/ / /

/ / /

---

4 (*Hopson v. Hanesbrands Inc.* (N.D.Cal. Apr. 3, 2009, No. CV-08-00844 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".)

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 **$2,966,961.45** on the low end and **$3,024,476.18** on the high end. (Han Decl., *supra*, at ¶ 46.)

Category	**Potential Exposure**	**Certification Risk**	**Merits Risk**	**Realistic Exposure**
Rest Break Premiums	$306,745.20	75%	65%	$26,840.21
Meal Break Premiums	$613,490.40	65%	65%	$75,152.57
Overtime/Minimum Wage: Off-the-Clock Work	$115,029.45 to $172,544.18	65%	65%	$14,091.11 to $21,136.66
Unreimbursed Business Expenses	$63,660	45%	75%	$8,753.25
Wage Statement Penalty	$258,750	70%	70%	$23,287.50
Waiting Time Penalty	$1,609,286.40	70%	70%	$144,835.78
MAXIMUM TOTAL EXPOSURE	**$2,966,961.45** to **$3,024,476.18**[5]			**$292,960.42** to **$300,005.97**[6]

Based on this analysis, the realistic recovery is **$292,960.42** on the low end and **$300,005.97** on the high end. (Han Decl., *supra*, at ¶ 54.) The Gross Settlement Amount is about three percent (3.31%) of the maximum potential exposure and thirty-three percent (33.33%) of the maximum realistic exposure. (*Ibid.*) This is reasonable when considering Defendant's present financial condition and recent financial hardships. (*Ibid.*)

/ / /

/ / /

/ / /

5 (Han Decl., *supra*, at ¶¶ 33-39.)

6 (*Id.* at ¶¶ 48-53.)

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

d. Conditional Certification of the Class Is Appropriate

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

The Class is ascertainable and numerous as to make it impracticable to join all Class Members, and there are common questions of law and fact that predominate over any questions affecting any individual Class Member. (Han Decl., *supra*, at ¶ 55.) Plaintiffs contend, as former hourly-paid, non-exempt employees of Defendant, their claims are typical of the claims of the Class, and Class Counsel will fairly and adequately protect the interests of the Class. (*Ibid.*) Plaintiffs also assert the prosecution of separate actions by individual Class Members would create the risk of inconsistent or varying adjudications, and a class action is superior to other available means for the fair and efficient adjudication of the case. (*Ibid.*)

/ / /

/ / /

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 about four hundred fifty-two (452) Class Members, meaning the Class is sufficiently numerous. (Han Decl., *supra*, at ¶ 56; *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].) All Class Members can and will be identified by the Settlement Administrator through a review of employment records concerning all hourly-paid or non-exempt employees of Defendant within the State of California during the Class Period. (Han Decl., *supra*, at ¶ 56.)

ii. The 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.*)

/ / /

/ / /

/ / /

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].)

Plaintiffs assert common issues of fact and law predominate as to each of the claims alleged. (Han Decl., *supra*, at ¶ 57.) Plaintiffs contend all Class Members were subject to the same or similar employment practices, policies, and procedures described in detail above. (*Ibid.*)

2. Plaintiffs' 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.)

Plaintiffs are former employees of Defendant and allege they and the 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 ¶ 58.) Plaintiffs seek relief for these claims and derivative claims on behalf of the Class. (*Ibid.*) Plaintiffs' claims arise from the same employment practices and are based on the same legal theories as those applicable to the Class. (*Ibid.*)

/ / /

/ / /

/ / /

3. Plaintiffs Are Adequate to Represent the Class

Plaintiffs have proven to be adequate class representatives. (Han Decl., *supra*, at ¶ 59.) Plaintiffs conducted themselves diligently and responsibly in representing the Class in this litigation, understand the fiduciary obligations, and has actively participated in the prosecution of this case. (*Ibid.*) Plaintiffs spent time in meetings and conferences with Class Counsel to provide Class Counsel with a complete understanding of the work environment and requirements. (*Ibid.*) Plaintiffs also have no interest averse to the interests of the Class. (*Ibid.*)

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

A class action is superior to other available means for the fair and efficient adjudication of this controversy. Plaintiffs contend the joinder of all Class Members is impractical and that class treatment will permit many similarly situated persons to prosecute their common claims for settlement purposes simultaneously in a single forum without the duplication of effort and expense numerous individual actions would necessitate. Because some Class Members may still be current employees, Plaintiffs believe fear of retaliation further supports the superiority of class-wide relief as this fear often discourages current employees from seeking legal redress.

e. The Settlement Is Fair, Reasonable, and Adequate

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

/ / /

/ / /

/ / /

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

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

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

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

V. CONCLUSION

Plaintiffs submit the Settlement is in the best interests of the Class, as it is fair, adequate, and reasonable. Under the applicable class action criteria and guidelines, the Settlement should be preliminarily approved by the Court, Class should be conditionally certified for purposes of settlement only, and Notice Packet should be approved.

Dated: October 21, 2024

JUSTICE LAW CORPORATION

By: ______________________
Douglas Han
Attorneys for Plaintiffs

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 ccastro@justicelawcorp.com

On October 21, 2024, I served the foregoing document described as

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: **Ayala, et al. v. Carter Shipping Services LLC**
LWDA/Court Case No.: **LWDA-CM-964398-23**
Case No.: 30-2022-01268249-CU-OE-CXC
Orange 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 October 21, 2024, at Pasadena, California.

Christina Castro