

DOUGLAS HAN (SBN 232858)
SHUNT TATAVOS-GHARAJEH (SBN 272164)
TALIA LUX (SBN 336074)
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 SAN BERNARDINO**

FREDERICK EVANS and BRENDON
SIMPSON, individually, and on behalf of
other members of the general public similarly
situated;

Plaintiff,

v.

TRANSCONTINENTAL ONTARIO INC., a
California corporation; TC
TRANSCONTINENTAL PACKAGING
INC., a Delaware corporation; TC
TRANSCONTINENTAL U.S.A. INC., a New
York corporation; and DOES 1 through 100,
inclusive;

Defendants.

FREDERICK EVANS and BRENDON
SIMPSON, individually, and on behalf of
aggrieved employees pursuant to the Private
Attorneys General Act ("PAGA");

Plaintiff,

v.

TRANSCONTINENTAL ONTARIO INC., a
California corporation; TC
TRANSCONTINENTAL PACKAGING
INC., a Delaware corporation; TC
TRANSCONTINENTAL U.S.A. INC., a New
York corporation; and DOES 1 through 100,
inclusive;

Defendants.

Case No.: CIVSB2317702

[Consolidated with Case No. CIVSB2331552]

Assigned for All Purposes to:
Honorable Jeffrey R. Erickson
Department S-14

CLASS ACTION

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

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

Hearing Date: July 11, 2024

Hearing Time: 8:30 a.m.

Hearing Place: Department S-14

Complaint Filed: July 31, 2023

Trial Date: None Set

Case No.: CIVSB2331552

[Consolidated with Case No. CIVSB2317702]

Assigned for All Purposes To:
Honorable Thomas S. Garza
Department S-27

Complaint Filed: December 4, 2023

Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on July 11, 2024, at 8:30 a.m. or as soon as the matter
2 may be heard, before the Honorable Jeffrey R. Erickson in Department S-14 of the San Bernardino
3 County Superior Court located at 247 West Third Street, San Bernardino, California 92415,
4 Plaintiffs Fredrick Evans and Brendon Simpson (“Plaintiffs”) will and hereby do move for an
5 order:

- 6 • Granting Preliminary Approval of the class action settlement described herein and
7 as set forth in the Joint Stipulation and Settlement Agreement (“Settlement
8 Agreement,” “Settlement,” or “Agreement”), attached as **Exhibit 2** to the
9 declaration of Douglas Han, including, and not limited to, the means of allocation
10 and distribution of funds;
- 11 • Conditionally certifying the Class for settlement purposes only;
- 12 • Appointing Plaintiffs as the class representatives;
- 13 • Appointing Justice Law Corporation as Class Counsel;
- 14 • Approving the Court Approved Notice of Class Action Settlement and Hearing
15 Date for Final Court Approval (“Class Notice”) attached as **Exhibit A** to the
16 Settlement Agreement;
- 17 • Approving the Election Not To Participate In Class Action Settlement (“Opt Out
18 Form”) (“Exclusion Form”) attached as **Exhibit B** to the Settlement Agreement.
- 19 • The Class Notice and Exclusion Form are collectively known as the Notice Packet.
- 20 • Directing the mailing of the Notice Packet with a postage-paid return envelope to
21 the Class;
- 22 • Approving the proposed deadlines for the settlement administration process;
- 23 • Approving Phoenix Class Action Administration Solutions as the Settlement
24 Administrator; and
- 25 • Scheduling a hearing to consider whether to grant Final Approval of the Settlement
26 Agreement, at which time the Court will also consider whether to grant Final
27 Approval of the requests for the Attorney Fee Award, Cost Award, Class
28

Representative Enhancement Payments, Administration Costs, and approval of the allocation of the Private Attorney 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); [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: May 7, 2024

JUSTICE LAW CORPORATION

By: 
Douglas Han
Attorneys for Plaintiff

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I. INTRODUCTION

This motion seeks preliminary approval of a 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 employed by Defendants Transcontinental Ontario Inc., TC Transcontinental Packaging Inc., and TC Transcontinental U.S.A. Inc. (“Defendants”) within the state of California at any time between July 31, 2019 and May 15, 2024 or the date of preliminary approval, whichever date is earlier (“Class,” “Class Members,” and “Class Period”). At the time of this filing, the number of Class Members is estimated to be two hundred twenty-one (221), which was confirmed by Defendants. (Declaration of Douglas Han In Support of Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement (“Han Decl.”), ¶¶ 8-9.)

II. BACKGROUND

On July 28, 2023, Plaintiffs provided written notice to the LWDA and Defendants. (Han Decl., *supra*, at ¶ 10; Exhibit 3.)

On July 31, 2023, Plaintiffs filed a wage-and-hour class action lawsuit against Defendants in the Superior Court of California, County of San Bernardino, alleging eight (8) causes of action (Case No. CIVSB2317702). (Han Decl., *supra*, at ¶ 11.)

On December 4, 2023, Plaintiffs filed a representative PAGA action against Defendants in the Superior Court of California, County of San Bernardino (Case No. CIVSB2331552). (Han Decl., *supra*, at ¶ 12; Exhibit 4.)

After engaging in discovery, investigations, and negotiations, the Parties attended mediation on February 15, 2024 with the mediator Michael Ludwig and negotiated a global settlement. (Han Decl., *supra*, at ¶ 13.)

In line with the settlement, the Parties stipulated to consolidate both lawsuits and designate the class action lawsuit as the lead case. (Han Decl., *supra*, at ¶ 14.)

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/ / /

1 **III. INVESTIGATION/ LITIGATION HISTORY**

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

3 After initiating this lawsuit, the Parties engaged in discovery. (Han Decl., *supra*, at ¶ 16.)
4 The Parties met and conferred and agreed to engage in an informal exchange of information and
5 then eventually remotely attended mediation. (*Ibid.*)

6 Prior to the mediation, Defendants produced several documents relating to its policies,
7 practices, and procedures. (Han Decl., *supra*, at ¶ 17.) As part of Defendants’ production, Plaintiffs
8 also reviewed time records, pay records, and information relating to the size and scope of the Class.
9 (*Ibid.*) Putative class members were also located and interviewed to attain a better understanding
10 of the extent and frequency of the alleged day-to-day violations. (*Ibid.*)

11 Based on the information provided by Defendants and interviews with putative class
12 members, Plaintiffs contend – and Defendants deny – Defendants: (1) failed to provide employees
13 with legally mandated meal and rest breaks; (2) failed to pay employees for all hours worked; (3)
14 failed to include non-discretionary bonuses in employees’ regular rate of pay; (4) failed to
15 reimburse employees for necessary business expenses; (5) issued noncompliant wage statements;
16 and (6) are liable for waiting time penalties. (Han Decl., *supra*, at ¶¶ 19-26.)

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

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

19 The Parties remotely attended mediation with an experienced mediator. (Han Decl., *supra*,
20 at ¶ 27.) Under the auspices of the mediator, the Parties reached a global settlement, the terms were
21 memorialized in the Settlement Agreement. (*Id.* at ¶ 27; Exhibits 2, 5.)

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

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

27 ///

1 Plaintiffs and Class Counsel recognize the expense and length of additional proceedings
2 necessary to continue the litigation through trial and any possible appeals. (Han Decl., *supra*, at ¶
3 31.) Plaintiffs and Class Counsel also considered the uncertainty and risk of further litigation,
4 potential outcome, and difficulties and delays inherent in such litigation. (*Ibid.*) Based on the
5 foregoing, Plaintiffs and Class Counsel believe the Settlement is a fair, adequate, and reasonable
6 settlement and is in the best interests of the Class Members. (*Ibid.*)

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

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

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

18 **i. Deductions from the Settlement**

19 The Parties agreed this action be settled and compromised for the non-reversionary total
20 sum of \$850,000 which includes: (1) Attorney Fee Award up to \$297,500 (35% of the Gross
21 Settlement Amount); (2) Cost Award up to \$20,000; (3) Class Representative Enhancement
22 Payments totaling \$20,000; (4) Administration Costs up to \$15,000; and (5) PAGA Payment up to
23 \$50,000. (Han Decl., *supra*, at ¶ 28.)

24 **ii. Calculating Settlement Payments**

25 After all Court-approved deductions from the Gross Settlement Amount, it is estimated
26 \$447,500 (“Net Settlement Amount”) will be paid to Participating Class Members – with a gross
27 average Individual Settlement Share estimated at \$2,024.89. (Han Decl., *supra*, at ¶ 29.)

1 The Participating Class Members will receive a proportionate share of the Net Settlement
2 Amount using the formula set forth in the Settlement Agreement. (Han Decl., *supra*, at ¶ 27;
3 Exhibit 2, *supra*, at § III(F)(5)(a).) Individual Settlement Shares will be allocated thirty percent
4 (30%) to the settlement of wage claims and seventy percent (70%) to the settlement of claims for
5 interest, penalties, and reimbursements. (*Id.* at § III(F)(5)(b).)

6 The portion of the PAGA Payment that is to be paid to each Aggrieved Employee shall be
7 determined using the formula set forth in the Settlement Agreement. (Han Decl., *supra*, at ¶ 27;
8 Exhibit 2, *supra*, at § III(F)(7)(a).) Aggrieved Employees' portion of the PAGA Payment will be
9 allocated as one hundred percent (100%) penalties. (*Id.* at § III(F)(7)(b).)

10 **iii. Notice to the Class**

11 Within fifteen (15) business days after entry of the Preliminary Approval Order,
12 Defendants shall deliver the Class Data to the Settlement Administrator. (Han Decl., *supra*, at ¶
13 27; Exhibit 2, *supra*, at § III(I)(2)(a).) No later than fourteen (14) business days after receiving the
14 Class Data, the Settlement Administrator will send the Notice Packet with a translation to all Class
15 Members identified in the Class Data via first-class U.S. Mail. (*Id.* at § III(I)(2)(c).)

16 **iv. Distribution of Funds**

17 The Gross Settlement Amount will be funded and distributed pursuant to the timeline and
18 manner set forth in the Settlement. (Han Decl., *supra*, at ¶ 27; Exhibit 2, *supra*, at §§ III(I)(9)(a),
19 III(I)(9)(b).) Uncashed settlement checks will be canceled and transmitted to the California
20 Controller's Unclaimed Property Fund. (*Id.* at § III(I)(10).)

21 **v. Release of Claims**

22 Upon the Effective Final Settlement Date, each Participating Class Member shall release
23 Defendants and the Released Parties, and each of them, from the Released Class Claims. (Han
24 Decl., *supra*, at ¶ 27; Exhibit 2, *supra*, at §§ I(JJ), III(J)(1).)

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1 As of the Effective Final Settlement Date, the Settlement forever bars Plaintiffs, LWDA,
2 and any other representative, proxy, or agent thereof, including, but not limited to, any and all
3 Aggrieved Employees during the PAGA Period, from pursuing any action for civil penalties under
4 the Labor Code section 2698, *et seq.*, or any of the Released PAGA Claims against, the Released
5 Parties based on or arising out of alleged violations of Labor Code sections alleged in the complaint
6 and PAGA Notice. (Han Decl., *supra*, at ¶ 27; Exhibit 2, *supra*, at §§ I(KK), III(J)(2).)

7 As of the Effective Final Settlement Date, and in exchange for the Class Representative
8 Enhancement Payments to each Plaintiffs, in recognition of their work and effort in obtaining the
9 benefits for the Class and undertaking the risk for the payment of costs if this matter had not
10 successfully resolved, Plaintiffs provides a general release of claims for themselves and their
11 spouses, heirs, successors, and assigns. (Han Decl., *supra*, at ¶ 27; Exhibit 2, *supra*, at § III(K).)
12 Plaintiffs' Release of Claims also includes a waiver of Civil Code section 1542. (*Ibid.*)

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

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

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

3 **IV. ARGUMENT**

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

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

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

11 . . .

12 (c) Any party to a settlement agreement may serve and file a written notice of
13 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.

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

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

19 An understanding of the amount in controversy is an important factor in whether the
20 settlement “of the class members’ claims is reasonable in light of the strengths and weaknesses of
21 the claims and the risks of the particular litigation.” (*Kullar v. Foot Locker Retail, Inc.* (2008) 168
22 Cal.App.4th 116, 129; see also *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186

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

26 ² The California Supreme Court has authorized California’s trial courts to use Federal Rule
27 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.

Cal.App.4th 399, 409.) The most important factor in this regard is ““the strength of the case for plaintiffs on the merits, balanced against the amount offered in settlement.”” (*Kullar*, at p. 130; see also *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 amount the class could recover if plaintiff prevailed on all his claims, provided there is a record that allows “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 \$850,000 Is Fair and Reasonable

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

The claims are predicated on the purported: (1) failure to properly calculate and pay overtime wages; (2) failure to pay minimum wages; (3) failure to provide meal and rest breaks and consistently and properly pay applicable premium 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 section 17200, *et seq.* (Han Decl., *supra*, at ¶ 33.) Defendants vehemently deny the theories of liability. (*Id.* at ¶ 34.)

While Plaintiffs believe the case is suitable for certification, uncertainties with respect to certification are always present. (Han Decl., *supra*, at ¶ 35.) As the California Supreme Court ruled in *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, class certification is always a matter of the trial court’s sound discretion. (*Ibid.*) Decisions following *Sav-On Drug Stores, Inc.*

1 have reached different conclusions concerning certification of wage-and-hour claims.³ (*Ibid.*)
2 Thus, the calculations for potential damages were discounted.

3 **ii. The PAGA Payment of \$50,000 Is Reasonable**

4 The provisions of the Labor Code potentially triggering PAGA penalties include Labor
5 Code sections 201, 202, 203, 204, 210, 218.5, 221, 226(a), 226.3, 226.7, 246, 432.5, 510, 512(a),
6 551, 552, 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802. (Han Decl., *supra*, at ¶ 44.)
7 Defendants asserted, regardless of the results of the underlying causes of action, PAGA penalties
8 are not mandatory but permissive and discretionary. (*Ibid.*) Defendants also maintained they had
9 a strong argument that it would be unjust to award maximum PAGA penalties given the law's
10 current unsettled state concerning PAGA penalties. (Han Decl., *supra*, at ¶ 44; *Thurman v.*
11 *Bayshore Transit Mgmt.* (2012) 203 Cal.App.4th 1112 [reducing penalties by 30% under this
12 authority].) Furthermore, Defendants argued without stacking and limited to the initial violation,
13 the PAGA penalties would be limited to about **\$13,300** (133 employees x \$100 penalty for initial
14 violation) on the low end and **\$79,800** (133 employees x \$100 penalty for initial violation x 6
15 theories of recovery) on the high end. (Han Decl., *supra*, at ¶¶ 45-47.)

16 Plaintiffs recognized the risk that any PAGA award could be reduced. (Han Decl., *supra*,
17 at ¶ 48.) Many of the causes of action brought were also duplicative of the statutory claims. (*Ibid.*)
18 Allocating \$50,000 to PAGA civil penalties was reasonable given that Defendants are also paying
19 an additional \$800,000 in the class settlement. (*Ibid.*) When PAGA penalties are negotiated in
20
21
22

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

Considering the defenses, supporting evidence, and position that the case is not suitable for class treatment, 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 **\$3,236,333.93** on the low end and around **\$3,510,511.46** on the high end. (Han Decl., *supra*, at ¶ 49.)

Category	Potential Exposure	Certification Risk	Merits Risk	Realistic Exposure
Rest Break Premiums	\$397,228.39	70%	60%	\$47,667.41
Meal Break Premiums	\$660,790.68	60%	50%	\$132,158.14
Overtime/Minimum Wage: Off-the-Clock Work	\$548,355.06 to \$822,532.59	50%	50%	\$137,088.77 to \$205,633.15
Regular Rate	\$212,859	30%	50%	\$74,500.65
Unreimbursed Business Expenses	\$114,960	30%	70%	\$24,141.60
Wage Statement Penalty	\$532,000	40%	40%	\$191,520
Waiting Time Penalty	\$770,140.80	40%	40%	\$277,250.69
MAXIMUM TOTAL EXPOSURE	\$3,236,333.93 to \$3,510,511.46⁵			\$884,327.26 to \$952,871.64⁶

The realistic recovery for this case is about **\$884,327.26** on the low end and **\$952,871.64** on the high end. (Han Decl., *supra*, at ¶ 57.) The Gross Settlement Amount is about twenty-four percent (24.21%) of the maximum potential exposure and around eighty-nine percent (89.20%) of the maximum realistic exposure at trial, which is an excellent settlement. (*Ibid.*)

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 ¶¶ 36-43.)

⁶ (*Id.* at ¶¶ 50-56.)

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 P’ship* (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 the Class Members.

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 ¶ 58.) Plaintiffs contend 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 assert the prosecution of separate actions by individual Class Members would create the risk of inconsistent or varying adjudications. (*Ibid.*)

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1 **i. The Proposed Class Is Ascertainable and Sufficiently Numerous**

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

9 This case involves approximately two hundred twenty-one (221) Class Members, meaning
10 the Class is sufficiently numerous. (Han Decl., *supra*, at ¶ 59; *Ghazaryan v. Diva Limousine, Ltd.*
11 (2008) 169 Cal.App.4th 1524, 1531, n.5 [finding a proposed class of “as many as 190 current and
12 former employees” is sufficiently numerous].)

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

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

23 **1. Common Issues Predominate**

24 The “common issues” requirement “involves analysis of whether the proponent’s ‘theory
25 of recovery’ is likely to prove compatible with class treatment.” (*Capitol People First v.*
26 *Department of Developmental Services*, *supra*, 155 Cal.App.4th at p. 690.) In other words, courts
27 determine whether the elements necessary to establish liability are susceptible to common proof,
28

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 ¶ 60.) 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 Defendants 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 ¶ 61.) Plaintiffs seek 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. Plaintiffs Are Adequate to Represent the Class

Plaintiffs have proven to be adequate class representatives. (Han Decl., *supra*, at ¶ 62.) Plaintiffs conducted themselves diligently and responsibly in representing the Class in this litigation, understand the fiduciary obligations, and actively participated in the prosecution of this case. (*Ibid.*) Plaintiffs spent time in meetings and conferences with Class Counsel to provide them with a complete understanding of the work experience and environment. (*Ibid.*) Plaintiffs also have no interest averse to the interests of the other Class Members. (*Ibid.*)

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1 **V. CONCLUSION**

2 Plaintiffs submit 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 Notice Packet should be approved.
5

6 Dated: May 7, 2024

JUSTICE LAW CORPORATION

7 By: 
8 Douglas Han
9 *Attorneys for Plaintiff*

**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 Avenue, Suite 101, Pasadena, CA 91103 and my electronic service address is jtorrez@justicelawcorp.com

On May 7, 2024, I served the foregoing document described as

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

for the following case: **Evans, et al. v. Transcontinental Ontario, Inc., et al.**
LWDA/Court Case No.: **LWDA Case No.: CM- 971591-23**
Court Case No.: CIVSB2331552
San Bernardino 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

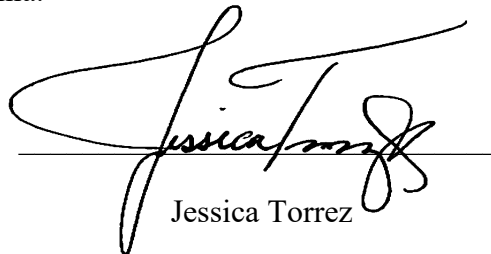
[X] BY ELECTRONIC SUBMISSION

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 May 7, 2024, at Pasadena, California.


Jessica Torrez