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BRIAN PULLEN

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA - OAKLAND

BRIAN PULLEN, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

CORVUS INSURANCE HOLDINGS INC.,
and DOES 1 through 10, inclusive,

Defendants.

CASE NO. 21CV000413

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT**

DATE: June 16, 2023

TIME: 9:00 a.m.

DEPT: 21

Reservation No. 497698630590

Judge: Hon. Evelio Grillo

Complaint Filed: October 15, 2021

I. INTRODUCTION

Plaintiff Brian Pullen ("Plaintiff") has agreed to a \$100,000 non-reversionary settlement with defendant Corvus Insurance Holdings Inc. ("Corvus" or "Defendant") to resolve all claims alleged in this putative class and PAGA representative action pertaining to the alleged failure to reimburse Plaintiff and approximately 35 current and former employees of Corvus in violation of Labor Code § 2802, IWC Wage Order 4-2001 § 9(B), and Business & Professions Code § 17200, et seq.

1 Plaintiff respectfully requests the Court preliminarily approve the proposed settlement
2 memorialized in the Class and Representative Action Settlement Agreement and Release
3 (“Agreement”) attached as Exhibit 1 to the Declaration of Marita M. Lauinger, filed
4 herewith; conditionally certify the proposed Settlement Class; appoint Plaintiff as class
5 representative and his counsel as class counsel, approve and authorize the mailing of the
6 class notice (Exhibit 1 to the Agreement); and set deadlines for submission of requests for
7 exclusion and objections as well as a date for the final approval hearing.

8 **II. BACKGROUND**

9 On October 15, 2021, Plaintiff filed a putative class action in Alameda County
10 Superior Court against Corvus, asserting claims for failure to reimburse necessary business
11 expenses pursuant to California Labor Code section 2802, and a derivative claim for alleged
12 violation of the Unfair Competition Law, California Business and Profession Code section
13 17200 et seq. On October 4, 2021, Plaintiff submitted a letter to the California Labor and
14 Workforce Development Agency pursuant to the Labor Code Private Attorneys General Act
15 of 2004 (“PAGA”) giving notice that he intended to pursue civil penalties against Corvus for
16 alleged violations of Labor Code §§ 2802 and IWC Wage Order 4-2001 §9(B). After waiting
17 the requisite 65 days after submission of his LWDA letter, on December 9, 2021, Plaintiff
18 filed a First Amended Complaint to add a claim for civil penalties on behalf of the State of
19 California under PAGA. (Lauinger Decl. para. 3.)

20 The Parties engaged in formal discovery with both sides serving and responding to
21 extensive written discovery and producing documents. Defendant Corvus produced nearly
22 200 pages of documents in response to 9 requests for production and responded to 18 (two
23 sets) special interrogatories. Plaintiff produced documents and responded to 143 discovery
24 requests including 27 form interrogatories, 44 special interrogatories, 52 requests for
25 production of documents and 20 requests for admissions. (Lauinger Decl. para. 4.)

26 Before settlement negotiations, Defendant Corvus informally produced
27 documentation as to the number of putative class members and PAGA group members, as
28 well as aggregate workweek and pay period information. Defendant provided discovery

1 responses sufficient to enable Plaintiff and Class Counsel to rigorously evaluate the strengths
2 and risks of the case and perform an analysis of the potential damages arising from the claims
3 made in this case. (Lauinger Decl. para. 5.)

4 Through their respective counsel, the parties commenced direct settlement
5 negotiations. Counsel for Plaintiff and counsel for Defendant each have extensive experience
6 litigating and settling dozens of class actions. In light of their experience, and because they
7 anticipated that the size of the class and case was relatively small, counsel decided it would
8 make the most sense to try to resolve the case through direct negotiations in order to avoid
9 expending resources engaging a private mediator. Thus, direct and vigorous settlement
10 negotiations proceeded over the following several months and resulted in this class and
11 PAGA Settlement. (Lauinger Decl. para. 6.)

12 **III. TERMS OF THE SETTLEMENT**

13 **A. Settlement Fund**

14 Corvus will pay a total of \$100,000.00 on a non-reversionary basis, earmarked as
15 follows:

16 Amount Paid to Class Members	\$28,950.00
17 PAGA Payment to the LWDA	14,812.50
18 PAGA Payment to PAGA Members	4,937.50
19 Requested Service Award	2,500
20 Requested Attorneys' Fees	41,500
21 Requested Attorneys' Costs	2,750
22 Settlement Administration Costs	4,550
23 Total	\$100,000.00

24
25 (Agreement p.14, para. 8.)

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1 **B. Class Definition**

2 The proposed Class is defined as:

3 All individuals who are or were employed by Defendant Corvus Insurance
4 Holdings, Inc. in California and who worked remotely at any time during the
 Class Settlement Period, from October 15, 2017 through December 31, 2022.

5 The Class consists of approximately 35 employees.

6 **C. Class Representatives and Class Counsel**

7 For settlement purposes only, Plaintiff's counsel requests the Court appoint the
8 named Plaintiff, Brian Pullen, as the class representative and Clapp & Lauinger LLP as class
9 counsel.

10 **D. Notice Procedure**

11 Subject to Court approval, the Parties have agreed ILYM Group, Inc. will be the
12 Settlement Administrator ("Administrator"). After Corvus provides the Administrator with a
13 list of Class Members, the Administrator will mail the Notice of Settlement of Class and
14 Representative Action ("Notice"), which is attached to the Settlement Agreement as Exhibit
15 1, to the Class Members. If any Notice is returned as undeliverable, the Administrator will
16 perform a customary skip-trace or similar procedure in an attempt to determine the person's
17 correct address. (Agreement pp. 11-12, para. 5(a).) Class Action Members may either object
18 to the Settlement or exclude themselves from the Settlement within 45 days of mailing the
19 initial Notice. (Agreement pp. 12-13, paras. 5(e)-(f).) There is no need to file a claim form
20 to receive a settlement payment. (Agreement p. 14, para. 9.).

21 **E. Distribution of the Settlement**

22 Class Action Members will receive payments based upon the number of eligible work
23 weeks they were employed during the Class Settlement Period. The Administrator will
24 calculate a per-work week settlement amount by subtracting the Court-approved attorneys'
25 fees, costs, service payments, administration costs and the PAGA payment from the fund and
26 dividing that amount by the total number of eligible work weeks worked by all Class Action
27 Members who did not submit a timely and valid request for exclusion. (Agreement p. 14,
28 para. 9.)

1 The PAGA Payment will be distributed 75% to the LWDA and 25% to the PAGA
2 Members. PAGA Members are a subset of the Class and are defined as:

3 All individuals who are or previously were employed by Defendant Corvus
4 Insurance Holdings, Inc. in California at any time during the PAGA
Settlement Period, October 4, 2020 through December 31, 2022.

5 There are approximately 34 PAGA Members. The individual PAGA payments will
6 be distributed based upon the number of eligible pay periods worked by the PAGA Member.
7 (Agreement p. 14, para. 10.)

8 **F. Release of Claims**

9 Settlement Class Members will release all claims that could have been pleaded based
10 on the allegations of the original and amended complaints (FAC) and the PAGA notice letter,
11 including claims for unreimbursed business expenses, unlawful and deceptive business
12 practices and claims for statutory or civil penalties and other relief based on the same facts
13 alleged in the FAC and the PAGA notice letter. (Agreement p. 6, para. 34.)

14 The Released PAGA Claims are all claims for civil penalties that were alleged or
15 could have been alleged based on the facts asserted in the FAC and the PAGA notice letter
16 for violations of Labor Code § 2802 and section 9(B) of IWC Wage Order 4-2001, as well as
17 claims for attorneys' fees, litigation costs and interest. (Agreement p. 6, para. 35.)

18 The named Plaintiff has also agreed to a complete general release to the maximum
19 extent permitted by law. (Agreement p. 2, para. 9.)

20 **IV. CONDITIONAL CERTIFICATION OF SETTLEMENT CLASS**

21 The proposed settlement class meets the requirements for conditional certification of
22 the settlement class. To obtain certification, the plaintiff must establish the existence of both
23 an ascertainable class and a well-defined community of interest among the class members.
24 (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.) The community of interest
25 requirement involves three factors: "(1) predominant common questions of law or fact; (2)
26 class representatives with claims or defenses typical of the class; and, (3) class
27 representatives who can adequately represent the class." (*Lockheed Martin Corp. v. Superior*
28 *Court* (2000) 29 Cal.4th 1096, 1104.) Finally, the court must determine that the class action

1 proceeding is superior to alternate means for a fair and efficient adjudication of the litigation.
2 (*Richmond v. Dart Industries, Inc.* (1981) 29 Cal.3d 462, 470.) Plaintiff contends that the
3 prerequisites for class certification are met here. Corvus does not object to conditional
4 certification of the class for the purpose of the proposed settlement but reserves the right to
5 oppose class certification should this action not be resolved by this settlement.

6 **A. Numerosity and Ascertainability**

7 The proposed class includes approximately 35 individuals, making joinder of all
8 members impractical and meeting the numerosity requirement. (*Rose v. City of Hayward*
9 (1981) 126 Cal.App.3d 926, 934 [no set number is required for the maintenance of a class
10 action; California Courts have held classes consisting of 10, 28 and 35 class members are
11 sufficiently numerous].) “[T]he purpose of the ascertainability requirement is to ensure notice
12 to potential class members.” (*Ghazaryan v. Diva Limousine, Ltd.* (2008) 169 Cal.App.4th
13 1524, 1533.) Here, Corvus’ own records provide the means of identifying every class
14 member.

15 **B. Commonality**

16 Even a single common question can suffice to create commonality. (*Williams v.*
17 *Superior Court* (2013) 221 Cal. App. 4th 1353, 1369.) A company-wide practice can sustain
18 a common question of fact or law that supports commonality for class certification. (*Id.*)
19 Here, Plaintiff contends that Corvus had a common policy of not fully reimbursing
20 employees for all expenses incurred while working remotely. This question is sufficiently
21 common to support conditional certification.

22 **C. Typicality**

23 A class representative’s claims are typical if they are “reasonably coextensive with
24 those of absent class members; they need not be substantially identical.” (*Hanlon v. Chrysler*
25 *Corp.* (9th Cir. 1998) 150 F.3d 1011, 1020.) Plaintiff was employed by Corvus in California
26 from July 2020 to December 2020. He alleges he was not fully reimbursed for reasonable
27 and necessary expenses incurred while working remotely. Therefore, the typicality
28 requirement is satisfied.

1 **D. Adequacy**

2 There are two criteria for determining adequacy of representation. “First, the named
3 representatives must appear able to prosecute the action vigorously through qualified
4 counsel, and second, the representatives must not have antagonistic or conflicting interests
5 with the unnamed members of the class.” (*Lerwill v. Inflight Motion Pictures, Inc.* (9th Cir.
6 1978) 582 F.2d 507, 512.) Plaintiff has no interests that are antagonistic to those of the other
7 Class Members because he has not alleged any individual non-class claims in this case. Also,
8 Plaintiff has retained counsel who are very experienced in class action litigation. (Lauinger
9 Declaration, paras. 7-9.)

10 **E. Predominance**

11 The predominance requirement is met if “the issues which may be jointly tried, when
12 compared with those requiring separate adjudication, are so numerous or substantial that the
13 maintenance of a class action would be advantageous to the judicial process and to the
14 litigants.” (*Duran v. U.S. Bank Nat. Assn.* (2014) 59 Cal.4th 1, 28.) “As a general rule if the
15 defendant's liability can be determined by facts common to all members of the class, a class
16 will be certified even if the members must individually prove their damages.” *Id.* To assess
17 predominance, a court must examine the issues framed by the pleadings and the law
18 applicable to the causes of action alleged. It must determine whether the elements necessary
19 to establish liability are susceptible of common proof or, if not, whether there are ways to
20 manage effectively proof of any elements that may require individualized evidence. (*Brinker*
21 *Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, 1024.) Here, as in *Brinker*,
22 Plaintiff is able to present evidence of a common, uniform expense policy, and uniform
23 treatment of the company’s obligation to reimburse its employees for reasonable and
24 necessary business expenses. (*Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th
25 2004, 1033.)

26 **V. THE STANDARDS FOR PRELIMINARY APPROVAL ARE SATISFIED**

27 **A. The Standard for Preliminary Approval**

28 Court approval of a class action settlement is a two-step process. First, counsel

1 submits the proposed terms of the settlement to the court, and the court makes a preliminary
2 fairness evaluation. If the preliminary evaluation of the settlement does not disclose a basis to
3 doubt its fairness or other obvious deficiencies, the court directs that notice be given to the
4 class and sets a final fairness hearing. (*Manual for Complex Litigation, Fourth*, § 21.632
5 (2004)). Preliminary approval should be granted if the proposed settlement falls “within the
6 range of possible final approval.” (*Gautreaux v. Pierce* (7th Cir. 1982) 690 F.2d at 616, 621,
7 n.3.)

8 A proposed settlement is presumed to be fair when: it is reached through arm’s-length
9 negotiations; the putative class is represented by experienced counsel; and the parties have
10 conducted sufficient discovery. (*Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.* (2nd Cir. 2005)
11 396 F.3d 96, 116.) Here, all of the factors giving rise to a presumption of fairness exist. The
12 proposed settlement was the product of arm’s-length, non-collusive negotiations; the class is
13 represented by experienced counsel; and the parties have conducted sufficient discovery.
14 (Lauinger Decl. para. 10.)

15 Courts consider the following factors in evaluating the fairness of a class action
16 settlement: the strength of the plaintiff’s case; the risk, expense, complexity, and likely
17 duration of further litigation; the risk of maintaining class action status throughout the trial;
18 the amount offered in settlement; the extent of discovery completed and the stage of the
19 proceedings; the experience and views of counsel; the presence of a governmental
20 participant; and the reaction of the class members to the proposed settlement. (*Hanlon v.*
21 *Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026.) The relative degree of importance to be
22 attached to any particular factor depends upon the circumstances of each case. (*Torrisi v.*
23 *Tucson Elec. Power Co.* (9th Cir. 1993) 8 F.3d 1370, 1376.) Here, the pertinent factors weigh
24 in favor of granting preliminary approval.

25 **B. Strength of Plaintiff’s Case**

26 As discussed above, the parties disagree about whether Corvus provided the
27 equipment and services (such as internet, utilities and telephone) necessary for Plaintiff and
28 the Settlement Class Members to perform their job duties. The parties also disagree whether

1 Plaintiff and the Settlement Class Members were or should have been reimbursed for certain
2 business expenses incurred in the discharge of their duties for defendant. Corvus contends
3 that all equipment necessary to discharge duties in the course of employment by Corvus was
4 provided and that all reasonable and necessary business expenses were reimbursed via the
5 company's payroll system or charged to a company credit card. The disputed nature of the
6 claims warrants preliminary approval.

7 **C. The Risk, Expense, Complexity and Likely Duration of Further**
8 **Litigation**

9 At the time the parties agreed to try to negotiate a settlement in earnest, they had
10 exchanged sufficient information but both Plaintiff and Defendant had initiated meet and
11 confer efforts regarding the other's discovery responses. Plaintiff had propounded 9 requests
12 for production and 18 special interrogatories. Corvus had propounded 143 discovery
13 requests, including 27 form interrogatories, 44 special interrogatories, 52 requests for
14 production of documents and 20 requests for admissions. In all likelihood, the parties would
15 have needed the Court's involvement to resolve various discovery disputes. Further
16 litigation would have included depositions, expert discovery and trial. If the litigation had
17 continued, Plaintiff believes it would have been expensive, complex and risky. (Lauinger
18 Decl. paras. 4, 11.)

19 **D. The Amount of the Settlement**

20 In this case, the gross settlement amount divided by the total number of months
21 worked by the Settlement Class Members pay periods is approximately \$161.55
22 (\$100,000/619 months = \$161.55). If the proposed amounts are approved by the Court, and
23 no class members opt-out, the anticipated net amount paid to the Participating Class
24 Members will be \$46.77 per month worked, which is intended to reimburse them for internet
25 and utilities incurred while working from home during the pandemic. PAGA Members will
26 receive approximately \$4.44 per pay period worked during the PAGA Settlement Period (34
27 PAGA Members worked 1,111 pay periods during the PAGA period). The LWDA will
28 receive approximately \$13.33 per pay period worked by the PAGA Members. (Lauinger

Decl. para. 12.)

E. Extent of Discovery and Investigation Completed

The Parties engaged in formal discovery with both sides serving and responding to extensive written discovery and producing documents. Defendant Corvus produced nearly 200 pages of documents and responded to two sets of special interrogatories. Plaintiff produced documents and responded to form interrogatories, special interrogatories, and requests for admissions. Plaintiff has more than sufficient information to recommend the fairness of this settlement.

VI. PROPOSED SCHEDULE

The parties suggest the following schedule for the remainder of the case based upon the date the Court grants preliminary approval:

Mailing of class notice: 30 business days after preliminary approval (Agreement p. 11, para. 5(a).)

Deadline to object or opt-out: 45 days after mailing (add 20 days if remailed within 10 days of the original mailing) (Agreement p. 7, para. 38, and p. 12, para. 5(b).)

Deadline for filing final approval motion: approx. 135 days after mailing

Final approval hearing: approx. 156 days after mailing

Final compliance hearing: approx. 7 months after Final Approval.

Dated: May 18, 2023

CLAPP & LAINGER LLP



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