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ELECTRONICALLY
FILED
Superior Court of California, County of San Francisco
12/10/2025
Clerk of the Court
BY: JUDITH NUNEZ
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN FRANCISCO

ISIN AL OTAT, an individual and on behalf of similarly aggrieved employees,

Plaintiff,

vs.

CYCLE GEAR, INC., a California corporation; COMOTO HOLDINGS, INC., a Delaware corporation; COMOTO HOLDINGS, LLC, a Delaware limited liability company; and DOES 1 – 50, inclusive;

Defendants.

Case No.: CGC-23-606243
Assigned to: Dept 613
Honorable Jeffrey Ross

PLAINTIFF'S SUPPLEMENTAL BRIEF IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF THE CLASS ACTION SETTLEMENT AND APPROVE THE PAGA SETTLEMENT

Date: December 17, 2025
Time: 2:00 p.m.

Complaint Filed: May 1, 2023

Plaintiff hereby submits this supplemental motion addressing the Court's request for additional information concerning the Motion for Preliminary Approval. Plaintiff incorporates by reference the entirety of her prior motion as if fully set forth herein.

MEMORANDA OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Isin–al Otat ("Plaintiff ") respectfully requests that this Court conditionally certify the below-defined Class for settlement purposes only pursuant to Code of Civil Procedure section 382; preliminarily approve the class action Settlement; direct that notice be disseminated to the Class; and schedule a final approval hearing. Plaintiff hereby submits further briefing for preliminary approval.

A. Plaintiff is an Adequate Representative and her Injuries are Common and Typical of the Class.

Plaintiff Isin al-Otat satisfies the adequacy requirement because she has demonstrated a firm commitment to representing the interests of the Class and PAGA Group, possesses no conflicts of interest, and has actively participated in the prosecution and resolution of this action.

Plaintiff's claims are Typical and Aligned With the Class. Plaintiff held the exact same job titles as the putative class members and personally experienced the same Labor Code violations alleged on behalf of the class, including missed meal and rest breaks, incorrect regular-rate calculations for premiums and overtime, reporting-time violations, wage-statement deficiencies, waiting time penalties, and other unfair business practices. (Plaintiff Decl. ¶¶ 3–5)

Plaintiff expressly declares she has no conflicts with the Class or PAGA Group and that her individual wrongful-termination settlement did not release any PAGA claims or class claims in this action. (Plaintiff Decl. ¶ 9, ¶ 14) Her interests are therefore not antagonistic to those of the aggrieved employees.

Plaintiff has invested substantial time and effort to advance the litigation, demonstrating her willingness and ability to vigorously represent the class. Her participation includes: Providing documents and pay records; Preparing extensively for deposition and sitting for two deposition sessions totaling more than eight hours; Attending depositions of Defendant's witnesses; Communicating regularly with her counsel; Assisting in discovery and identifying witnesses;

Traveling to and attending a full-day mediation in person at her own expense; Reviewing and approving the terms of the class/PAGA settlement. (Plaintiff Decl. ¶10(a)–(k))

This level of engagement far exceeds what courts typically require of an adequate class representative. Plaintiff confirms she understands her responsibilities as a PAGA and class representative and is prepared to continue fulfilling those duties, including testifying if needed. (Plaintiff Decl. ¶¶ 11, 14–15). Further, Plaintiff reviewed the settlement terms with counsel and supports the resolution as fair, reasonable, and in the best interests of aggrieved employees, given the litigation risks and complexities of proving regular-rate violations. (Plaintiff Decl. ¶12–13)

B. The Class Period Extends to the Full Length of the 4-Year Statute of Limitations

In a wage-and-hour class action, the damages period is three years prior to the filing of the lawsuit to the present. See Code Civ. Proc. § 338. However, California's Unfair Competition Law can be used to extend the class action recovery period to four years for claims seeking restitution, including claims for unpaid wages, unpaid overtime, meal and rest break premiums, and reimbursement of necessary business expenses. *See* Bus. & Prof. Code § 17200, et seq.; *Pineda v. Bank of America* (2010) 50 Cal.4th 1389, 1401.

Plaintiff initially filed her class claims on May 1, 2019, including a claim pursuant to Business and Professions Code section 17200. She then filed a First Amended Complaint in December 2023. Plaintiff was employed by Cycle Gear, Inc. from September 2021 to June 2022. *See* Declaration of Isin al-Otat. Plaintiff alleges in her complaint that Defendants had policies and engaged in practices consistent throughout the entire four-year statute of limitations period that resulted in purported violations of the California Labor Code. *See* First Amended Complaint at ¶¶ 37, 42. Accordingly, the applicable class period begins on May 1, 2019.

By contrast, the applicable statute of limitations period for a claim pursuant to the California Private Attorneys General Act of 2004 ("PAGA") is one-year. This is calculated as one year prior to the date of filing, plus 65 days for the PAGA notice period. *See* Code Civ. Proc. § 340; Lab. Code § 2669.3, subd. (d). Plaintiff sent her PAGA notice to the California Labor and Workforce Development Agency on March 2, 2023 (*see* First Amended Complaint at ¶ 95). For purposes of this settlement, the parties have stipulated that the applicable time period for determining potential aggrieved employees under PAGA extends from March 2, 2022 through October 9, 2025

(Settlement Agreement at Section 2.25). Accordingly, there is some overlap between the class period and the PAGA period from March 2, 2022 through October 9, 2025. However, class members who were employed by Cycle Gear between May 1, 2019 to March 1, 2022 are not eligible to participate in recovery under PAGA and are excluded from such claims.

B. The 50 Person Blow Out Provision Protects Both the Class and Defendants

As the Court notes, this settlement contains a provision whereby Defendants may choose not to go forward with the settlement if at least 50 people opt-out from participating in the class. Such provisions are common as part of a negotiated settlement and benefit both the class members and defendants.

Generally, so called "blow" provisions are approved. *See Medina v. NYC Harlem Foods Inc.*, No. 21-CV-1321 (VSB), 2022 WL 1184260, at *6 (S.D.N.Y. Apr. 21, 2022). According to the *Medina* decision, a policy reason favoring blow up provisions includes: "Blow-up provisions also give plaintiff's counsel leverage to negotiate the strongest possible settlement to discourage opt outs." *Id*. In other words, because the reasoning favoring members to opt-out is to do better than the settlement, and thus, having a blow-up provision encourages plaintiffs to negotiate the best deal possible to reduce people opting out. *See also Jones v. Tirehub LLC*, No. 2:21-cv-00564-DB, 2023 WL 3687391, at *4 (E.D. Cal. May 26, 2023) (granting preliminary approval of settlement agreement that included a blow up clause with a 5% opt-out threshold); *del Toro Lopez v. Uber Techs., Inc.*, No. 17-cv-06255-YGR, 2018 WL 5982506, at *25 (N.D. Cal. Nov. 14, 2018) (granting final approval of settlement agreement involving a blow up clause with a 5% opt-out threshold); *Turner v. LTF Club Mgmt. Co, LLC*, No. 2:20-CV-00046-DAD-JDP, 2025 WL 2533476, at *20 (E.D. Cal. Sept. 3, 2025) (same).

The issue most commonly reviewed by courts when considering blow provisions is when the parties blow threshold is hidden from the class and provided only to the court under seal (or more concerning, not at all). The reason parties may hide the threshold is to make it less likely class members will seek opt-outs to cause a settlement to fail. Here, the blow provision is disclosed, so this concern is a non-issue.

In this case, the 50-person threshold is approximately 4.55% of the class, keeping it in line with other approved provisions. Moreover, the threshold is not automatic; Defendants can waive their option to terminate if that threshold is met. If the option is exercised, the cost of administration will be charged to Defendants (Settlement Agreement at Section 6.4.6). The primary cost to the class is the cost of delay. The parties do not anticipate that 50 class members opt out of the settlement, but the parties have agreed that this change in circumstances would be significant enough to allow Defendants to rescind the settlement if they so choose. Such a rescission would not impact the rights of the class members, because they would not be bound by the settlement. The provision is only intended to address the situation where there is a widespread and coordinated opt-out campaign in which Defendants pay the class settlement amount but are still forced to deal with an unanticipated multiplicity of additional lawsuits covering the same claims. The threshold was agreed upon because it is well above what normally occurs in a typical settlement such as this.

C. Gift Cards to Class Members is an Appropriate Form of Recovery and is in Addition to Monetary Compensation

Cycle Gear is a retailer specializing in provision of motorcycle parts and accessories. The class members in this action are all current or former sales personnel who received commissions on the sale of motorcycle parts, accessories, and clothing items associated with riding. The class members are knowledgeable about such items because they are overwhelmingly motorcycle riders themselves.

Courts have approved the use of gift cards or coupons in lieu of monetary compensation in the class action context. See *Young v. Polo Retail, LLC*, No. C-02-4546 VRW, 2007 WL 951821 at *4 (N.D. Cal. March 28, 2007) (approving the use of gift cards in large part because they are transferrable; "this enables class members to obtain cash – something all class members will find useful"); *States of New York and Maryland v. Nintendo of America, Inc.*, 775 F.Supp. 676, 681 (S.D.N.Y. 1991) (approving a settlement awarding each class member a five dollar coupon and noting that the coupons were fully transferrable and that "[c]ompensation in the form of coupons has been approved by other courts"); *see also Fernandez v. Victoria Secret Stores, Inc.*, Case 2:06-cv-04149-MMM-SH, 2008 WL 8150856 at *6-7 (C.D. Cal. July 21, 2008); *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1802 (Ct. App. 1996), as modified (Sept. 30, 1996) (trial court did not abuse discretion in approving settlement where class members received only a coupon worth $400 toward repair). Although "[c]onsumers obviously would prefer a check or cash," *Nintendo of America*, 775 F.Supp. at 681, the gift cards at issue have real value and constitute compensation. In the event a class member prefers cash, they may sell the gift card. *See also Barr v. SelectBlinds LLC*, No. 2:22-CV-08326-SPG-PD, 2024 WL 5162609, at *8 (C.D. Cal. Mar. 4, 2024) (approving class action settlement with nonresponding class members automatically receiving a store credit that will not expire).

In this action, contrary to those cited above where the only recovery was a voucher, the vouchers are in addition to monetary compensation, thereby adding to the total recovery for class members. It is also important to note that the gift cards are expected to be for a large sum (approximately $300 each). Class members are therefore not only receiving the vouchers but also receiving a cash payment commensurate with their number of pay periods while employed by Cycle Gear.

D. Defendants' Maximum Potential Exposure and Reasonableness of the Settlement

Plaintiff estimated Defendants' maximum PAGA exposure to be $1,087,200 based on stacked penalties. Plaintiff also estimated Defendants' maximum exposure to the class as $36,835 for regular rate payments. The maximum penalty is $2,910,609.00 for the penalties under §§ 203 and 206 utilizing Plaintiff's numbers. At mediation, the parties exchanged differing numbers, with Defendants estimating any potential exposure at less than $1 million. Plaintiff's did consider the strength and weaknesses of Plaintiff's claims including whether class certification was possible for meal and rest claims as a whole and failure to pay reporting time pay. To that extent, Plaintidd did discount the total claims given that the gravamen of Plaintiff's claim is the regular rate payment. The maximum valuation is $36,835.00. Stacked PAGA penalties are $1,087,200 and would likely be given a significant reduction. Given the difference of the waiting time penalties Plaintiff believes that the 1,350,000 is fair and reasonable settlement. (*See Gomez Decl* 7-11).

F. Opt out/Request for Exclusion

The parties have revised the request for exclusion/opt out and objection in the notice section. If a class member timely opts out, they will be excluded from the settlement. If a class member objects but does not opt out, they are still bound to the settlement and will still receive payment if final approval is granted. (Gomez Decl. 13)

G. Average Pay Periods

With the assistance of Defense counsel, the average number of pay periods per class member is 29.62. The recovery per pay period is expected to be approximately $10.92, depending on award of fees and costs, administrative costs, and incentive awards. The range of pay periods extends from 20 people with only 1 pay period ($10.92 each plus the gift card) to 30 people with 169-171 pay periods ($1,845.48-$1,867.32 plus gift card). Each member will also receive a $300.00 gift card. (Gomez Decl. 14)

H. The Requested Litigation Costs are reasonable, Necessary and Consistent with Approved Costs in Complex Wage and Hour Class Actions

Courts routinely recognize that wage-and-hour class actions—particularly those involving commission calculations, regular-rate violations, and PAGA exposure—require significant litigation expenditures, including payroll analysis, expert consultation, multiple depositions, and mediation. The costs incurred in this matter were reasonable and necessary to secure a favorable result for the Class and PAGA Group. *See Wershba v. Apple Computer, Inc., 91 Cal.App.4th 224, 244 (2001); Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794, 1808 (1996).

Wage-and-hour class actions frequently involve large data sets, complex payroll structures, expert analysis, and numerous witnesses—conditions that inherently raise litigation costs. In *Chavez v. Netflix, Inc.*, the Court of Appeal recognized that labor and employment class cases often require extensive discovery, expert review, and motion practice, all of which drive up costs but remain fully compensable when reasonably necessary.162 Cal.App.4th 43, 66 (2008).

The Ninth Circuit has repeatedly upheld significant cost awards where the litigation was complex or data-intensive. In *Staton v. Boeing Co.*, the court explained: "Large litigation expenses are reasonable in light of the magnitude and complexity of the case." 327 F.3d 938, 975 (9th Cir. 2003).

The costs sought in this matter were driven by the same factors courts have repeatedly recognized as legitimate and necessary in complex class actions. These expenditures were not duplicative, unnecessary, or inflated; they reflect the real cost of prosecuting a commission-based regular-rate class and PAGA action and were essential to obtaining the substantial recovery now before the Court. Plaintiff's counsel has described in detail the high expense stemming from expert costs ($21,328); (mediation $8,900) and depositions ($9,896.45).

Plaintiff and her counsel have disclosed their fee splitting as well as fee splitting with any other firm. (*See* Supplemental Gomez Decl. ¶ 2, 3, 6). All costs were necessary or reasonably necessary to litigate this claim.

II. CONCLUSION

Based on the foregoing Plaintiff respectfully requests that this Court grant preliminary approval on this matter, permit notices to be sent, and set this matter for final hearing approval.

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DATED: December 10, 2025

Law Office of Jessica Gomez

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Isin al-Otat