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SUPERIOR COURT OF CALIFORNIA

CONTRA COSTA COUNTY

JOAQUIN RECINOS, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

AMPORTS, INC., and DOES 1 through 10,
inclusive,

Defendant.

Case No. C24-02244

**FIRST AMENDED CLASS ACTION
AND PAGA COMPLAINT**

**(1) FAILURE TO REIMBURSE
BUSINESS EXPENSES (LABOR CODE §
2802);
(2) UCL VIOLATIONS (BUS. & PROF.
CODE§ 17200-04)
(3) PAGA (LABOR CODE § 2699, et seq.)**

JURY TRIAL DEMANDED

Joaquin Recinos (“Plaintiff”), on behalf of himself and all others similarly situated, (hereinafter “Class Members”), complains and alleges as follows:

A. INTRODUCTION

1. This is a class action under Code of Civil Procedure § 382 and a Private Attorney General Act of 2004 (PAGA) action under Labor Code § 2699, *et seq.*, against Defendant Amports, Inc. (“Amports” or “Defendant”) to challenge its policies and/or practices of (1) failing to reimburse Plaintiff and all employees similarly situated for unreimbursed business expenses, and (2) violating California’s Unfair Competition Law (UCL).

2. Plaintiff seeks reimbursement for business expenses and interest thereon, restitution, declaratory and equitable relief, penalties, and reasonable attorneys’ fees and costs under California Labor Code §§ 2802, 2699, *et seq.*, and California Bus. & Prof. Code § 17200 *et seq.* for himself and on behalf of all other individuals who are or have been employed by Defendant Amports, Inc. in California during the four years prior to the filing of this action. Plaintiff and similarly situated and aggrieved employees during statutory time period covered by action incurred reasonable and necessary business expenses in order to carry out the essential functions of their jobs for Amports for which they were not reimbursed. Plaintiff, on behalf of himself and Class Members, seek damages and restitution of all unjust enrichment Amports has enjoyed from its failure to reimburse business expenses incurred by Plaintiff, Class Members and Aggrieved Employees. Plaintiff also seeks declaratory and equitable relief, and reasonable attorneys’ fees and costs under California Labor Code §§ 2802(c), 2699(g) and California Bus. & Prof. Code § 17200 *et seq.* on behalf of Plaintiff, Class Members and Aggrieved Employees.

3. The “Class Period” is designated as the period from the date four years prior to the filing of the Complaint through the date the Court grants class certification. The violations of California’s employee expense reimbursement law have been ongoing during the statutory time period covered by this action and to the present and will continue unless and until enjoined by the Court.

B. JURISDICTION

4. This Court has personal jurisdiction over Amports because Amports does business

1 in California and within this judicial district. Plaintiff is a resident of California, and Plaintiff's
2 claims against Defendant arose in this judicial district.

3 5. This Court has general jurisdiction over Plaintiff's Labor Code claim and claim for
4 unfair business practices under the California Business and Professions Code § 17200, *et seq.*

5 **C. VENUE**

6 6. Venue is proper in this County pursuant to Code of Civil Procedure § 395(a).
7 Amports conducts business in this County. A substantial portion of the events giving rise to the
8 causes of action herein occurred in this County.

9 **D. PARTIES**

10 7. Plaintiff Joaquin Recinos resides in Vallejo, California. Plaintiff was employed by
11 Amports from approximately 2018 until June 2024. During the Class Period, Plaintiff has worked
12 as a Supervisor for Amports at its facility in Contra Costa County. During the Class Period,
13 Plaintiff was subject to Amports' unlawful business expense reimbursement policies and/or
14 practices set forth herein.

15 8. Defendant Amports is a Delaware corporation with its principal place of business in
16 Jacksonville, Florida.

17 9. The true names and capacities of persons or entities, whether individual, corporate,
18 associate, or otherwise are currently unknown to Plaintiff. Plaintiff is informed and believes, and
19 based thereon alleges, that additional defendants may be legally responsible in some manner for the
20 unlawful acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect
21 the true names and capacities of such defendants when such identities become known.

22 10. All of Plaintiff's claims stated herein are asserted against Amports and any of their
23 owners, predecessors, successors, subsidiaries, and/or assigns.

24 **E. FACTUAL BACKGROUND**

25 11. Amports operates, and at all times during the liability period, has done business in
26 this judicial district and throughout California.

27 12. Since at least four years prior to the filing of this action, Amports has maintained
28 business expense policies and/or practices that deny lawful reimbursement and/or compensation

1 to its employees. Amports is an automotive processor offering, *inter alia*, automobile storage for
2 vehicles coming from manufacturers on their way to dealerships, vehicle upkeep and installations,
3 and tracking and inspections. Amports' facilities are very large – holding thousands of vehicles at
4 any given time.

5 13. Amports employs a number of employees including maintenance employees,
6 mechanics, auditors, van drivers and supervisors. Supervisors, like Joaquin Recinos, are charged
7 with supervision and coordination of all department activities, including customer relations,
8 scheduling, employee relations, budgeting, staffing, safety, and meeting production goals.
9 Supervisors are expected to be good communicators. Supervisors work in the office and out on the
10 lot. Supervisors are frequently in communication with other employees including van drivers.

11 14. In order to communicate with other employees, Supervisors and other employees
12 use their personal mobile phones. Supervisors call and text other employees as well as receive
13 communications from other employees including their supervisors, the facility managers, on their
14 personal mobile phones. However, Amports does not provide mobile phones to supervisors or other
15 employees except for the facility managers. Also, as a company policy and practice, Amports does
16 not reimburse its employees for the costs associated with their use of their personal mobile phones
17 notwithstanding that Amports knows its employees must use their personal mobile phones to carry
18 out their duties and responsibilities.

19 15. Amports has maintained these same business expense policies and/or practices or
20 substantially similar ones throughout the Class Period.

21 16. Amports is aware that its employees regularly incur business expenses in the
22 discharge of their duties as employees. Defendant nevertheless fails and refuses to reimburse its
23 employees for such business expenses incurred by them in their work.

24 17. Plaintiff and Class Members have been harmed by Amports' unlawful business
25 expense policies and/or practices in that they have not been paid for certain business expenses
26 incurred while employed by Amports, as alleged above, thereby diminishing their agreed-upon
27 compensation, in amounts to be proven at trial.

28 18. Plaintiff is informed, believes, and thereon alleges that Amports' unlawful conduct

1 has been widespread, repeated, and consistent as to Class Members and throughout Amports'
2 operations in California. Amports knows or should know that its policies and/or practices have been
3 unlawful and unfair.

4 19. Amports's conduct was willful, carried out in bad faith, and caused significant
5 damages to Plaintiff and Class Members in an amount to be determined at trial.

6 **F. CLASS ACTION ALLEGATIONS**

7 20. Plaintiff brings this action, on behalf of himself and all others similarly situated, as
8 a class action pursuant to Code of Civil Procedure § 382. The Class that Plaintiff seeks to represent
9 is composed of and defined as follows:

10 All current and former employees of Amports (except facility managers) in California
11 who have not been reimbursed for reasonable and necessary business expenses in
12 violation of Labor Code § 2802.

13 21. This action has been brought and may properly be maintained as a class action under
14 Code of Civil Procedure § 382 because there is a well-defined community of interest in the
15 litigation, the proposed class is easily ascertainable, and Plaintiff is a proper representative of the
16 Class:

17 a. Numerosity: The potential members of the Class as defined are numerous
18 and therefore joinder of all the members of the Class is impracticable. While the
19 precise number of Class Members has not been determined at this time, Plaintiff is
20 informed and believes that Defendant has employed less than 100 hundred
21 employees covered by this action. Notwithstanding, joinder of all members of the
22 proposed class is not practicable.

23 b. Commonality: There are questions of law and fact common to the Plaintiff
24 and the Class that predominate over any questions affecting only individual
25 members of the Class. These common questions of law and fact include, without
26 limitation:

27 i. Whether Plaintiff and Class Members have incurred unreimbursed
28 business expenses for the reasonable and necessary use of personal
mobile phones in the discharge of their duties for Defendant.

- ii. Whether Defendant intended, suffered and permitted, and/or were aware that Plaintiff and Class Members incurred such business expenses in the discharge of their duties as employees;
- iii. Whether Defendant failed and/or refused to reimburse, fully or at all, business expenses incurred by Plaintiff and Class Members in the discharge of their duties;
- iv. Whether Defendant's failure to reimburse business expenses incurred by Plaintiff and Class Members, fully or at all, was the result of, and/or pursuant to, a business policy or regular practice of Defendant;
- v. Whether Defendant violated Labor Code § 2802 and Bus. & Prof. Code § 17200 by denying Plaintiff and other Class Members reimbursement for their business expenses;
- vi. The proper formula(s) for calculating restitution, damages, penalties and interest owed to Plaintiff and the Class Members.

c. Typicality: Plaintiff's claims are typical of the claims of the Class. Both Plaintiff and Class Members sustained injuries and damages, and were deprived of property rightly belonging to them, arising out of and caused by Defendant's course of conduct in violation of law as alleged herein, in similar ways and for the same types of expenses.

d. Adequacy of Representation: Plaintiff is a member of the Class and will fairly and adequately represent and protect the interests of the Class Members. Plaintiff's interests do not conflict with those of Class Members. Counsel who represent Plaintiff are competent and experienced in litigating large wage and hour class actions, including business expense reimbursement cases, and will devote sufficient time and resources to the case and otherwise adequately represent the Class.

e. Superiority of Class Action: A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder

of all Class Members is not practicable, and questions of law and fact common to the Class predominate over any questions affecting only individual members of the Class. Each Class Member has been damaged or may be damaged in the future by reason of Defendant's unlawful policies and/or practices of not reimbursing business expenses. Certification of this case as a class action will allow those similarly situated persons to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system. Certifying this case as a class action is superior because the Plaintiff seeks relief that will affect all Class Members in a common way, and will also allow for efficient and full disgorgement of the ill-gotten gains Defendant has enjoyed by maintaining their unlawful business expense reimbursement, and will thereby effectuate California's strong public policy of protecting employees from deprivation or offsetting of compensation earned in their employment. If this action is not certified as a Class Action, it will be impossible as a practical matter for many or most Class Members to bring individual actions to recover monies unlawfully withheld from their lawful compensation due from Defendant, due to the relatively small amounts of such individual recoveries relative to the costs, burdens, and risks of litigation.

FIRST CAUSE OF ACTION
Failure To Reimburse Business Expenses
(Labor Code § 2802)

22. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth herein.

23. Labor Code § 2802 provides that "[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties."

24. In order to discharge their duties for Defendant, Plaintiff and similarly situated employees were required and/or expected by Defendant to use their own personal mobile phones in order to communicate with other employees. However, Defendant did not fully pay for expenses incurred as a result of Plaintiff and Class Members' use of their personal mobile phones in carrying

1 out their duties for Defendant.

2 25. Plaintiff and similarly situated employees are entitled to reimbursement for these
3 reasonable and necessary expenditures, plus interest and attorneys' fees and costs, under Labor
4 Code § 2802.

5 26. As a result of Defendant's violations of Labor Code § 2802, Defendant is also liable
6 for attorneys' fees and costs under Labor Code § 2802(c).

7 **SECOND CAUSE OF ACTION**
8 **Unfair Competition Law Violations**
9 **(Bus. & Prof. Code § 17200)**

10 27. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set
11 forth herein.

12 28. Business & Professions Code § 17200 (the "UCL") prohibits unfair competition in
13 the form of any unlawful, unfair, or fraudulent business act or practice. Business & Professions
14 Code § 17204 allows "any person who has suffered injury in fact and has lost money or property"
15 to prosecute a civil action for violation of the UCL.

16 29. During the Class Period and continuing to the present, Defendant has committed
17 unlawful, unfair, and/or fraudulent business acts and practices as defined by Business & Professions
18 Code § 17200, by failing to reimburse and indemnify Plaintiff and similarly situated Class Members
19 for employment-related business expenses and losses, in violation of Labor Code § 2802.

20 30. In order to discharge their duties for Defendant, Plaintiff and similarly situated
21 employees were required, expected, and/or permitted by Defendant to use their own personal
22 mobile phone. However, Defendant did not fully pay for expenses incurred as a result of Plaintiff
23 and Class Members' use of their personal mobile phones in carrying out their duties for Defendant.

24 31. As a direct and proximate result of Defendant's unlawful, unfair, and/or fraudulent
25 acts and practices described herein, Defendant has received and continues to hold ill-gotten gains
26 belonging to Plaintiff and Class Members in the form of unreimbursed employee business expenses.
27 As a direct and proximate result of Defendant's unlawful business practices, Plaintiff and Class
28 Members have suffered economic injuries in the form of unreimbursed business expenses.
Defendant has profited from its unlawful, unfair, and/or fraudulent acts and practices in the amount

1 of those business expenses.

2 32. Plaintiff and similarly situated Class Members are entitled to restitution pursuant to
3 Business & Professions Code §§ 17203 and 17208 for all unpaid business expenses as well as
4 interest thereon accruing, from four years prior to the filing of this action to the date of such
5 restitution, and Defendant should be required to disgorge all the profits and gains it has reaped and
6 restore such profits and gains to Plaintiff and similarly situated Class Members from whom they
7 were unlawfully taken.

8 33. Plaintiff has assumed the responsibility of enforcement of the laws and public
9 policies specified herein by suing on behalf of himself and other similarly situated members of the
10 public previously and presently employed by Defendant in California. Plaintiff's success in this
11 action will enforce important rights affecting the public interest. Plaintiff will incur a financial
12 burden in pursuing this action in the public interest. Therefore, an award of reasonable attorneys'
13 fees to Plaintiff is appropriate pursuant to Code of Civil Procedure § 1021.5.

14 **THIRD CAUSE OF ACTION**
15 **The Labor Code Private Attorneys General Act of 2004**
16 **(Labor Code §§ 2699, *et seq.*)**

17 34. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth
18 herein.

19 35. As alleged above, Defendant failed to comply with the California Labor Code. As
20 such, Plaintiff is an "aggrieved employee" as defined in Labor Code § 2699(a). Pursuant to Labor
21 Code § 2699, the Labor Code Private Attorneys General Act of 2004, Plaintiff brings this action on
22 behalf of himself and other current and former Aggrieved Employees against Defendants, and seek
23 recovery of applicable civil penalties as follows:

- 24 a. where civil penalties are specifically provided in the Labor code for each of the
25 violations alleged herein, Plaintiffs seek recovery of such penalties;
26 b. where civil penalties are not established in the Labor Code for each of the violations
27 alleged herein, Plaintiffs seek recovery of the penalties established in § 2699(e) of the
28 Labor Code Private Attorneys General Act of 2004, and in accordance with § 200.5 of
the Labor Code.

1 36. On August 15, 2024, Plaintiff Joaquin Recinos caused to be served written notice,
2 via certified mail, to the Labor and Workforce Development Agency and to Defendant, Amports,
3 Inc., of Plaintiff's intent to amend the complaint to add a cause of action pursuant to Labor Code §§
4 2699, *et seq.*

5 37. The Labor and Workforce Development Agency declined to issue notice of its
6 intention to pursue civil penalties in response to the notice. Labor Code § 2699.3 authorizes Plaintiff
7 to file a claim arising under PAGA after 60 days of the specified time periods. Accordingly, Plaintiff
8 commenced this PAGA claim for civil remedies as provided for under Labor Code § 2699.3.

9 38. Plaintiff, on behalf of themselves and similarly situated Aggrieved Employees,
10 request relief as described below.

11
12 **JURY DEMAND**

13 Plaintiff hereby requests a trial by jury.

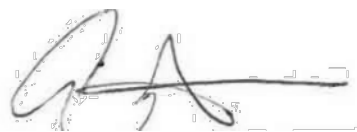
14 **PRAYER FOR RELIEF**

15 WHEREFORE, Plaintiff requests the following relief:

- 16 A. That the Court determine that this action may be maintained as a class action under
17 Code of Civil Procedure § 382, and define the Class as requested herein;
- 18 B. For compensatory damages and interest thereon according to proof;
- 19 C. For restitution and interest thereon according to proof;
- 20 D. For civil and statutory penalties according to proof;
- 21 E. For an injunction and declaratory relief;
- 22 F. For reasonable attorneys' fees and costs according to proof; and,
- 23 G. For such other and further relief as this Court may deem appropriate.
- 24

25 DATED: October 21, 2024

WYNNE LAW FIRM

26
27 

28 By: Edward J. Wynne