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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

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS AND PAGA SETTLEMENT

Date:
Time:
Dept.: 39
Hon. Edward G. Weil

Complaint Filed: August 21, 2024

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I. INTRODUCTION

Plaintiff Joaquin Recinos ("Plaintiff") seek preliminary approval of this $210,000.00 non-reversionary class action and representative action settlement between Plaintiff and Defendants, Amports, Inc. and APS West Coast, Inc. and (collectively "Defendants" or "Amports"). The proposed settlement, if approved, will fully resolve all claims between Plaintiff and Defendants that are pending before this Court.

This proposed settlement covers the claims for business expense reimbursement of Plaintiff and the class defined as all current and former employees of Defendants (except facility managers) in California at any time from August 21, 2020 to July 29, 2025 ("Class Members" or the "Class").[1]

Plaintiff submits that the proposed settlement is fair, reasonable, adequate, and in the best interests of the Class Members and furthers the interests and purpose of PAGA. The proposed settlement provides substantial, immediate recovery for the Class Members while avoiding the delays and uncertainties associated with trial and subsequent appeals.

II. PROCEDURAL STATEMENT

On August 15, 2024, Plaintiff submitted a PAGA notice to the LWDA and had it served on Defendant Amports, Inc. alleging violations of Labor Code § 2802 for failure to reimburse for mobile phone expenses.

On August 21, 2024, Plaintiff filed his class action complaint in the Contra Costa Superior Court alleging two causes of action: one under Labor Code § 2802 and another under Bus. & Prof. Code § 17200. Plaintiff defined the class as follows: All current and former employees of Amports (except facility managers) in California who have not been reimbursed for reasonable and necessary business expenses in violation of Labor Code § 2802. On October 21, 2024, Plaintiff filed his First Amended Complaint adding a third cause of action under PAGA.

Prior to the first case management conference on January 8, 2025, the Parties discussed resolving the case through private mediation. Defendant provided relevant information prior to

[1] Plaintiff excluded "Facility Managers" from the class definition because he is aware that they are provided mobile phones by Defendants.

mediation to allow Plaintiff to adequately analyze the claims and defenses.

On May 29, 2025, the Parties participated in a full-day mediation before mediator Michael J. Loeb. The matter did not settle on that date. After additional post-mediation negotiations, the Parties reached a settlement of the case on September 15, 2025 which is now before the Court for preliminary approval. (Decl. of Wynne, ¶ 13.) On September 15, 2025, as a condition of settlement, Plaintiff filed an amended PAGA charge adding APS West Coast, Inc. as a named defendant. The LWDA has not notified either Party of its intent to investigate the amended charge as of this writing per Labor Code § 2699.3(c). (Decl. of Wynne, ¶ 13.) The statutory 65 days expires on November 19, 2025 at which time Plaintiff will file his Second Amended Complaint if the LWDA has not provided notice of an intent to investigate by that time. (Decl. of Wynne, ¶ 13.) The Second Amended Complaint adds APS West Coast, Inc. as a named defendant.

III. STATEMENT OF FACTS

Amports, a privately owned company, is an automobile processor offering automobile storage for vehicles coming from manufacturers on their way to dealerships, vehicle upkeep and installations, and tracking and inspections. Defendants are headquartered in Florida and do business in California in Benicia and Antioch. They divide their operations into four “facilities” according the manufacturer of the vehicles being imported: VW/Audi, GM, Toyota and Mazda. Employees are assigned to a specific facility. Each facility is very large and spread over considerable distance because of the number of vehicles Amports processes.

Facility managers are provided company issued phones. Employees under the facility managers are not. Such employees include supervisors, leads, maintenance employees, mechanics, installers, auditors, van drivers, and warehouse people.

A. Amports’ Policy Regarding Personal Mobile Phone Use

Defendants have written policies that say that use of personal mobile phones is not permitted. Defendants contend that they have this policy for safety reasons. Plaintiff alleges that the *de facto* policy is that everyone is using their personal mobile phones to communicate via phone and text for work related purposes.

Plaintiff’s allegations are based on the following arguments. First, Plaintiff alleges that facility managers and other higher-end supervisors call and text their subordinates on their personal mobile phone on a regular basis. Naturally, the employees respond to these communications. Plaintiff alleges that Amports has all of its employee's personal contact information and distributes that information amongst the employees – so that they can communicate with each other. Second, Plaintiff alleges that all of the employees are communicating on their personal mobile phones because they are spread-out over many acres. Plaintiff contends that managers can't just walk out of their office and talk to the employee because they have no idea where they are due to the fact that the facilities are so large. Third, Plaintiff alleges that when employees are late or reporting in sick, they use their personal mobile phones. Likewise, when supervisors are checking-in with late or absent employees, they reach out to them on their personal mobile phones. Fourth, Plaintiff alleges that while Amports does provide some walkie-talkies, there are only a few of them – certainly not one for every employee – and the ones they do have are not always working. In addition, Plaintiff argues that walkie-talkies are severely limited in utility and capacity. They do not store contact information. They do not store conversation threads. They have no texting capability. They cannot be taken home and used to call-in late or sick. They cannot communicate in private and have limited channels for all employees to communicate on. Walkie-talkies have limited range and spotty signals. Also, they are simply not a tool that people commonly use. Fifth, Plaintiff alleges that having and using one's personal mobile phone is simply the way of life today. Indeed, Plaintiff contends that Defendant's own written policy acknowledges this reality. Plaintiff alleges that for all of the reasons why walkie-talkies are inadequate, personal mobile phones are reasonable and necessary and the primary tool Amports' employees use to communicate with each other.

B. Amports Written Policy Providing for Mobile Phone Reimbursement

Plaintiff alleges that Amports does not have a policy for the reimbursement of personal mobile phone expenses. The only reimbursement policy it does have relates to expenses incurred related to travel. Defendant did not produce any evidence that anyone has ever asked for reimbursement of personal mobile phone expenses for business purposes or been reimbursed for such use. Plaintiff contends that a logical inference is that Defendant does not reimburse for personal mobile phone use. Plaintiff contends that this allegation as well as the allegation that Amports knew their employees were using their personal mobile phones for business purposes without reimbursement is supported by witness statements.

IV. SETTLEMENT TERMS

The details of the settlement are set forth in the Class Action Settlement Agreement and Release ("Agreement") marked and attached to the Declaration of Edward J. Wynne ("Wynne Decl.") as Exhibit No. 1. Attached as an exhibit to the Agreement are: (1) class notice, (2) Amended PAGA letter, (3) Second Amended Complaint, and (4) reminder letter. A summary of the settlement terms is set forth below.

A. Class Definition

Subject to Court approval, the Parties have stipulated to certification for settlement purposes only of the following class: all current and former employees of Defendants (except facility managers) in California at any time from August 21, 2020 to July 29, 2025 (the "Class Period").

B. Settlement Fund

In return for a release of the claims, Amports shall create a non-reversionary $210,000.00 settlement fund entitled, "Gross Settlement Amount" or "GSA." Because this is not a claims-made settlement, Class Members will not be required to make a submission to participate in the settlement. (Wynne Decl., ¶ 15.) The GSA will be deposited into an interest-bearing account maintained by the Settlement Administrator within seven (7) days of the Effective Date as defined in the Agreement.

After certain deductions identified below, all Class Members will be paid on a pro rata basis based on the number of work weeks they worked for Defendants in California between August 21, 2020 and July 29, 2025. The deductions from the GSA include attorneys' fees and costs, class representative enhancement award, payment to the California Labor Workforce Development Agency and the cost of settlement administration.

C. Release By Class Members

In exchange for the settlement payments, all Class Members who have not opted out of this lawsuit shall release the Released Parties as defined in the Agreement from all claims, rights, damages, liquidated damages, wages, compensation, reimbursement, punitive damages, statutory damages, penalties, liabilities, costs, expenses, attorneys' fees, interest, restitution, equitable relief, injunctive relief, declaratory relief, accounting, losses, or causes of action alleged in the Action and/or that could have been alleged based on the facts alleged in the Action during the Class Period. This shall include, but is not limited to, any claims during the Class Period for the purported payment or nonpayment of all reasonable business expenses under any applicable law including the California Labor Code, applicable wage orders, and California Business and Professions Code.

D. Class Representatives and Class Counsel

Subject to Court approval and for settlement purposes only, the Parties have stipulated that Plaintiff, Joaquin Recinos, will be appointed class representative. Also subject to Court approval, the Parties have stipulated that Edward J. Wynne of Wynne Law Firm shall be appointed class counsel.

E. Notice Procedure

Subject to Court approval, the Parties have agreed on CPT Group, Inc. ("CPT" or "Settlement Administrator") as the Settlement Administrator. The Settlement Administrator will perform a search on the National Change of Address database to update the Settlement Class Members' addresses after receiving the Class Member database from Defendants. The Settlement Administrator shall be responsible for preparing, printing, mailing and emailing the Settlement Notice to all Class Members. The Settlement Administrator shall also create a static website with important information and documents and the ability to update Class Member contact information as well as a toll-free telephone number to field telephone inquiries from Class Members during the notice and settlement administration periods. The Settlement Administrator will be directed to take the call center down after the 90-day check cashing period for Settlement Award Checks. The Settlement Administrator shall also post the Final Judgment on the static website. The Class Notice will include the estimated settlement amount to each Class Member, and instructions on how to opt-out of or object to the settlement.

F. Plan of Allocation

1. Net Settlement Value

After deductions for the Class Counsel Award, the Class Counsel Costs, the Class Representative Service Award, the Settlement Administration Costs, and the PAGA Allocation, the remaining amount for distribution to the Class is estimated to be at approximately $103,500. Payments to individual Class Members will be calculated and apportioned from the remaining amount based on the number of work weeks each Class Members actually worked during the Class Period.

2. Service Award

Pursuant to the Parties' agreement, Plaintiff will seek, and Amports will not oppose, a payment of $5,000.00 to the Plaintiff as a Service Award. (Wynne Decl., ¶ 21.)

3. Class Counsel's Fees and Costs

Pursuant to the Parties' agreement, the Court may award Class Counsel for the services they have rendered and will render to Plaintiff and the Class Members in relation to prosecuting the claims involved in this lawsuit. Class Counsel will seek a fee award not to exceed $70,000.00 or one-third of the GSA. Class Counsel will also seek reimbursement of costs in an amount not to exceed $15,000. Because this is a non-reversionary, common fund settlement, any portion of the requested fees and costs that are not approved by the Court would be distributed to the Class Members.

4. LWDA Payment

Ten Thousand Dollars and Zero Cents ($10,000.00) from the Gross Settlement Amount has been allocated to claims for civil penalties brought under the PAGA. The Parties have agreed to pay the LWDA $6,500.00, or 65%, of the $10,000.00 allocation per Labor Code § 2699(m). The Parties have submitted this settlement to the California Labor Workforce's Development Agency ("LWDA") per California Labor Code section 2699(s)(2). (Wynne Decl., ¶ 23.) The remaining 35% ($3,500.00) will be payable to the Aggrieved Employees as defined in the Agreement. *Id.*

5. Settlement Administrator

The proposed Settlement Administrator, CPT Group, has agreed to cap its fee at $10,000.00. (Ex. 2 to Wynne Decl.) Class Counsel solicited bids from two other well-known settlement administrators and CPT Group was the most competitive. (Wynne Decl., ¶ 24.)

V. CLASS CERTIFICATION FOR PURPOSES OF SETTLEMENT

Plaintiff submits that the proposed settlement meets the requirements for certification in the context of settlement. California Code of Civil Procedure § 382 authorizes class suits 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." To obtain certification a party must establish the existence of both an ascertainable class and a well-defined community of interest among the class members. *Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435. The community of interest requirement involves 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." *Lockheed Martin Corp. v. Superior Court* (2000) 29 Cal.4th 1096, 1104. Finally, the court must determine that the class action proceeding is superior to alternate means for a fair and efficient adjudication of the litigation. *Richmond v. Dart Industries, Inc*. (1981) 29 Cal.3d 462, 470. These prerequisites for class certification are met here. While Defendants dispute that certification within the litigation would be appropriate, they do not object to certification in the context of settlement.

A. Numerosity and Ascertainability

Defendants have represented that there are 299 Class Members. (Decl. of Wynne, ¶¶ 25, 32.) Numerosity is met here as the proposed Class includes approximately 300 individuals making joinder of the respective parties impractical and meeting the numerosity requirement. *Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 934 (class of 42 is sufficiently numerous). "[T]he purpose of the ascertainability requirement is to ensure notice to potential class members." *Ghazaryan v. Diva Limousine, Ltd*. (2008) 169 Cal.App.4th 1524, 1533. Here, Defendants' own records provide the ability to identify each Class Member.

B. Commonality

A single key common question that is capable of class-wide resolution satisfies the commonality requirement. *Abdullah v. U.S. Sec. Assocs., Inc.* (9th Cir. 2013) 731 F.3d 952, 957; *Wit v. United Behavioral Health* (N.D. Cal. 2016) 317 F.R.D. 106, 121. "District courts throughout this circuit have found that commonality is met when, as here, the proposed class of plaintiffs asserts that an employer adopted a policy of not reimbursing its employees' necessary business expenses in violation of Cal. [Labor] Code § 2802." *Hopkins v. Stryker Sales Corp.* (N.D. Cal. May 14, 2012) 2012 WL 1715091, *5.

Plaintiff alleges that Defendants require Class Members to use their personal mobile phones to perform work-related tasks, but did not reimburse them for the use of their personal mobile phones. These is a class-wide policy and practice common to the Class which unite all Class Members. Accordingly, the commonality requirement is satisfied.

C. Typicality

A class representative's claims are typical if they are "reasonably coextensive with those of absent class members; they need not be substantially identical." *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1020. The typicality requirement's purpose "is to assure that the interest of the named representative aligns with the interests of the class. Typicality refers to the nature of the claim or defense of the class representative, and not to the specific facts from which it arose or the relief sought. The test of typicality is whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class members have been injured by the same course of conduct." *Martinez v. Joe's Crab Shack Holdings* (2014) 231 Cal. App. 4th 362, 375.

Plaintiff was employed by Amports during the Class Period. Plaintiff alleges that he was not provided a mobile phone by Defendants and therefore had to rely on his personal mobile device to carry out the reasonable and necessary functions of his job. Plaintiff alleges that Defendants knew or should have known that he was using his personal mobile phone for work related functions. Plaintiff alleges the he was not reimbursed for these expenses. These are the identical claims that he brings on behalf of the Class. Accordingly, typicality is therefore satisfied.

D. Adequacy

"[T]wo criteria for determining the adequacy of representation have been recognized. First, the named representatives must appear able to prosecute the action vigorously through qualified counsel, and second, the representatives must not have antagonistic or conflicting interests with the unnamed members of the class." *Lerwill v. Inflight Motion Pictures, Inc.* (9th Cir. 1978) 582 F.2d 507, 512. Plaintiff has no interest that is antagonistic to those of the Class Members because he has not brought any individual non-class claims in this case. Also, Plaintiff has retained counsel who are experienced in employment class actions, and specifically, claims alleging unreimbursed business expenses. (Wynne Decl., ¶ 28.)

E. Predominance

In examining the predominance requirement, the "ultimate question" is whether "the issues which may be jointly tried, when compared with those requiring separate adjudication, are so numerous or substantial that the maintenance of a class action would be advantageous to the judicial process and to the litigants." *Duran v. U.S. Bank Nat. Assn.* (2014) 59 Cal.4th 1, 28. "The answer hinges on 'whether the theory of recovery advanced by the proponents of certification is, as an analytical matter, likely to prove amenable to class treatment.' 'As a general rule if the defendant's liability can be determined by facts common to all members of the class, a class will be certified even if the members must individually prove their damages.'" *Id.*

Plaintiff alleges that predominant common questions exist as to the Plaintiff's claim for unreimbursed business expenses related to the use of personal mobile phones. Defendant's alleged lack of a policy providing for business expense reimbursement is common to all employees. Stated another way, Defendant's alleged policy of failing to reimburse for business expenses, in this case, personal mobile phones, is common to all employees. The employees customarily and regularly use their personal phones to carry out all aspects of their job, including communicating with their supervisors. There is no employer-provided practical alternative device for texting and walkie-talkies are severely limited and impractical. Personal phone use for work is pervasive and the default method of communication. Plaintiff alleges that Defendants know that employees use their personal phones for work and have paid nothing for personal mobile phone use. These facts support a finding of predominance.

Courts certify claims under Labor Code § 2802 under facts similar to those presented here. For instance, in *McLeod v. Bank of Am., N.A.* (N.D. Cal. Dec. 13, 2017) 2017 WL 6373020 the court certified a class of employees seeking reimbursement of business expenses under Labor Code § 2802. While that case was for mileage, the same principles apply. The defendant in *McLeod* had a reimbursement "policy, [] an expense protocol [for reimbursement], and dissemination of the policy upon hire." *Id.* at *3. Bank of America relied upon self-reported expenses. *Ibid*. The court found "substantial evidence of a common, class-wide practice of non-reimbursement" for the business expense incurred." *Id*. at *7. Likewise present here, the court found that the expenses incurred were "intrinsic" to the position and that defendant was aware of the expense. *Id.* at *8. Here, Plaintiff alleges that Amports doesn't ignore a reimbursement policy – it does not have one.

The court in *McLeod* found that whether defendant knew or had reason to know that its employees were incurring business expenses presented a predominant common question suitable for class-wide adjudication. "The answer to the question of what constructive knowledge may be imputed based on those common job duties and class-wide reimbursement data will be the same for every class member; a common question that drives the litigation obtains whether or not Defendant had actual knowledge of each and every employee's expenses." *Id*. at *9. The same is true here: whether Defendants exercised due diligence to reimburse employees despite having actual knowledge (and certainly constructive knowledge) presents a predominant common question.

Likewise in *Sinohui v. CEC Ent., Inc.* (C.D. Cal. Mar. 16, 2016) 2016 WL 3475321, the district court certified a mobile phone expense reimbursement class of general managers over a defendant's claim that the employees were not "required … to use their personal cell phones through a company-wide policy." *Id.* at *11. "The relevant question … it is whether it was necessary under the circumstances for General Managers to use their personal cell phones when discharging their duties." *Id.*, citing *Grissom v. Vons Companies, Inc.* (1991) 1 Cal.App.4th 52, 58. The court noted that the employer expected the employees would: "(1) track the real time sales and labor hours of their restaurants and (2) directly communicate with the District Managers supervising them." *Id*. "Thus, whether it is 'necessary' for General Managers to use their personal cell phones when discharging the above duties is a common contention that is very 'capable of classwide resolution.'" *Id*. (citation omitted). As here, the court also found whether the employer knew or should have known employees incurred expenses when their supervisors and other corporate employees contacted them is a common question amenable to a singular determination. *Id., see also, Hopkins v. Stryker Sales Corp.,* 2012 WL 1715091, at *10 (N.D. Cal. May 14, 2012) (question of whether a business expense is "necessary" under Section 2802 satisfies predominance requirement where "there is a commonly applicable expense reimbursement policy, common duties among putative class members, and expenses common to the class…"); *Santillan v. Verizon Connect, Inc.* (S.D. Cal. June 13, 2022) 2022 WL 4596574, at *4 (certifying cell phone reimbursement class on grounds similar to *Sinohui*). Plaintiffs' theory – like in *Sinohui* and *Santillan* – is that the trier of fact can determine whether the circumstances of employment make the employees' decision to use their cell phones "reasonable under the circumstances."

The facts here raise the same common question, namely, whether it was reasonable for Amports employees to use their personal mobile phones to carry-out of their job duties. For the reasons set forth above comparing personal mobile phones to walkie-talkies, Plaintiff contends the answer is in the affirmative. Therefore, predominance is satisfied.

VI. THE STANDARDS FOR PRELIMINARY APPROVAL ARE SATISFIED

A. The Standard for Preliminary Approval

The "universal standard" for evaluating the fairness of a settlement is whether the settlement is "fundamentally fair, adequate and reasonable." *Officers for Justice v. Civil Service Comm'n* (9th Cir. 1982) 688 F.2d 615, 625. "[T]he court's intrusion upon what is otherwise a private consensual agreement negotiated between the parties to a lawsuit must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." *Id*.

"[T]he very essence of a settlement is compromise." *Id*. at 624. "[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." *Linney v. Cellular Alaska Partnership* (9th Cir. 1998) 151 F.3d 1234, 1242. Even if the amount of a proposed monetary settlement is a fraction of the potential recovery, that does not necessarily mean the settlement is inadequate. *Id.*

Court approval of a class action settlement is a two-step process. First, counsel submits the proposed terms of the settlement to the court, and the court makes a preliminary fairness evaluation. If the preliminary evaluation of the settlement does not disclose a basis to doubt its fairness or other obvious deficiencies, the court directs that notice be given to the class and sets a final fairness hearing. Herr, *Manual for Complex Litigation, Fourth*, § 21.632 (2004).

Preliminary approval should be granted if the proposed settlement falls "within the range of possible final approval." *Gautreaux v. Pierce* (7th Cir. 1982) 690 F.2d 616, 621, n.3. Preliminary approval is "a determination that there is what might be termed 'probable cause' to submit the proposal to class members and hold a full-scale hearing as to its fairness." *In re Traffic Executive Association-Eastern Railroads* (2d Cir. 1980) 627 F.2d 631, 634.

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

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

B. Strength of Plaintiffs' Case

The settlement ultimately takes into account the risks associated with the Plaintiff being able to prove liability, and to obtain class certification. Liability is not guaranteed. First, Defendants would argue that they have a written policy prohibiting the use of personal mobile phones. Therefore, to the extent there was such use, it was not with the knowledge or consent of Defendants. Second, Defendants would argue that use of personal mobile phones is neither reasonable nor necessary because Defendant provides walkie-talkies to its employees to communicate. Third, Defendants would argue that to the extent any employees did have occasion to use their personal mobile devices in order to carry out their duties and responsibilities, it was infrequent and sporadic. Fourth, Defendants would argue that to the extent any employees did use their personal mobile devices, it was up to them to affirmatively seek reimbursement from Defendants. Fifth, Defendants would argue that the claims are subject to arbitration because most all of the employees are subject to a Collective Bargaining Agreement that calls for arbitration of work-related disputes. Sixth, Defendants would argue that class certification is not appropriate because of the vast disparity in the types and locations of employees covered by the Class who have different duties and responsibilities that do not call for them to use any kind of communication device let alone a personal mobile phone. Last, on the merits, Plaintiff may not have surmounted summary judgment, trial, and appellate challenges to any trial victory.

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

To assess the fairness, adequacy and reasonableness of a class action settlement, the Court must weigh the immediacy and certainty of substantial settlement proceeds against the risks inherent in continued litigation. *In re General Motors Corp.* (3rd Cir.1995) 55 F.3d 768, 806 ("The present value of the damages plaintiffs would likely recover if successful, appropriately discounted for the risk of not prevailing, should be compared with the amount of the proposed settlement."); *Boyd v. Bechtel Corp.* (N.D. Cal.1979) 485 F. Supp. 610, 616-17.

This was complex litigation involving claims for expenses under California Labor Code. The Parties dispute the merits of the claims and whether class certification is appropriate. It is very likely that, absent this settlement, the Parties would have invested significant time and resources in discovery and law and motion practice. Class certification posed a risk to both sides. Moreover, even if Plaintiff was able to defeat a summary judgment motion, Plaintiffs still faced the uncertainty of a jury trial and then the appeals to follow.

If this case did not settle, the parties would undoubtedly face years of litigation, a likely trial, and appeals. Despite these challenges, Plaintiff's Counsel took this matter on a contingency basis with no guarantee of repayment and was able to obtain this strong settlement for the Class Members.

Counsel's experience in *Duran v. U.S. Bank N.A.* (2014) 59 Cal.4th 1 perhaps best exemplifies the risk, expense, complexity and duration of further litigation. Counsel herein was successful in obtaining certification for that case and subsequently prevailed at trial after eight years of litigation only to have the entire judgment and certification ultimately reversed by the California Supreme Court after an additional five years of litigation. (Wynne Decl., ¶ 31.) The case was remanded back to the Superior Court where class certification was denied, and Plaintiff's subsequent appeal was denied. (*Id.*) In essence, the risk in continued litigation is extremely high. Thus, it is Counsel's informed opinion that benefits of this settlement outweigh the risk and that settlement at this juncture is in the best interests of the class.

D. The Amount Offered in Settlement

Prior to mediation, Defendants provided summary data for the Class. (Wynne Decl., ¶ 32.) The data indicated that there are 299 employees covered by the case who worked 30,546 work weeks through April, 3 2025.[2] (Decl. of Wynne, ¶ 32.)

Extrapolating this data out from April 4, 2025 (i.e., the end of the data) to approximately 6 months from the time of mediation (estimated time for preliminary approval post-mediation)

[2] This means that Defendants generate 126.76 workweeks per week. Aug 21, 2020 to April 3, 2025 = 241 weeks. 30,546 workweeks / 241 weeks = 126.74 workweeks per week.

results in an additional 4,453 workweeks.[3] This results in a total of 34,999 workweeks or 8,749 work months at issue.

1. Labor Code § 2802 Claim

District courts in California, based on expert evidence, have found that $76 per month is a reasonable amount for the cost of personal mobile phones. *Gurzenski v. Delta Air Lines, Inc.* (C.D. Cal. Nov. 12, 2021) No. 221CV05959ABJEMX, 2021 WL 5299240, at *4 ("The Court finds that these numbers are reasonable and are based on reliable market-based evidence filed with the opposition.") Also, courts have found that 50% usage for work is reasonable. *Ibid.* Thus, a reasonable damages figure for unreimbursed mobile phone use is $38 per month.

Accordingly, damages for the unreimbursed mobile phone expenses are $332,462.[4]

2. PAGA Claim

Because this case was filed in August 2024, PAGA's newly amended rules apply. For purposes here, the amendments that affect this litigation are: (1) a penalty of $100 per pay period (Section 2699(f)), and (2) a 35/65 split between employees and the State (Section 2699(m).

Mobile phone bills are due on a monthly basis and most employers reimburse their employees for business expenses on a monthly basis. Thus, it is reasonable to use a month to calculate pay periods for purposes of PAGA penalties. As stated above, there are 8,749 work months at issue. At $100 per pay period, the PAGA penalties are $874,900. However, in the context of settlement, PAGA penalties are typically steeply discounted taking into account, *inter alia*, the Court's discretion to reduce PAGA penalties per Labor Code § 2699(i). (Decl. of Wynne, ¶ 34.)

3. Summary of Damages

A summary of Defendants' exposure is as follows:

Claim	Amount
Section 2802	$332,462.00

[3] April 4, 2025 to December 5, 2025 = 35.14 weeks. 35.14 weeks x 126.74 = 4,453.64 workweeks.
[4] 8,749 work months x $38 = $332,446.

PAGA penalties	$874,900.00
Total:	$1,207,362.00

As indicated above, the PAGA penalties were significantly discounted. Notwithstanding, even if the full amount of PAGA penalties are considered, the proposed settlement represents approximately 17% of Defendants' total exposure (not including attorney fees and interest).

While it is always true that a larger settlement amount was theoretically possible, "the very essence of a settlement is compromise, a yielding of absolutes and an abandoning of highest hopes." *Linney v. Cellular Alaska P'ship* (9th Cir. 1998) 151 F.3d 1234, 1242 (citations and internal quotation marks omitted). Given the estimated total exposure and the risks that Plaintiff would face in attempting to win on all arguments, the $210,000.00 settlement amount is a strong recovery.

E. Extent of Discovery Completed

Although the Parties did not complete formal discovery, the informal discovery outlined above is significant and meaningful, and allowed Plaintiffs to make a reasoned and informed decision about the potential exposure and the litigation risks going forward. (Wynne Decl., ¶ 35.) Courts do not substitute their judgment for that of the proponents, particularly when settlement has been reached by experienced counsel familiar with the litigation. *Hammon v. Barry* (DDC 1990) 752 F.Supp. 1087; *Steinberg v. Carey* (NY 1979) 470 F.Supp. 471; *In re Armored Car Anti - Trust Litigation* (ND GA 1979) 472 F. Supp. 1357; *Sommers v. Abraham Lincoln Federal Savings & Loan Association* (ED PA 1978) 79 F.R.D. 571.

While the recommendations of counsel proposing the settlement are not conclusive, the court can properly take them into account, particularly if they have been involved in litigation for some period of time, appear to be competent, have experience with this type of litigation, and significant discovery has been completed. In this case, Plaintiffs and the Class Members are represented by competent and experienced counsel. Plaintiff's counsel recommends the proposed settlement as fair, adequate and reasonable to the class members and in their best interests. (Wynne Decl., ¶ 36.)

VII. THE PROPOSED CLASS NOTICES ARE THE BEST NOTICES PRACTICABLE

The Class Notices for each class will contain an estimated individual settlement payment for each Class Member, the number of weeks during which they were employed as a Class Member during the Class Period, and information as to how to opt-out of, or object to, the settlement. The Parties have agreed, subject to Court approval, to have the Settlement Administrator email and mail notice *via* first class mail, postage prepaid, to the last-known addresses of the class members as updated through the U.S. Postal Service's NCOA database. This method meets the requirements of due process. *Overton v. Hat World, Inc.* (E.D. Cal. 2012) 2012 U.S. Dist. LEXIS 144116 at *5 (noting that individual notice to class members' last known address meets the requirements of due process). Returned mail with forwarding addresses will be re-mailed, while returned mail without forwarding addresses will be skip traced to get an updated address and then re-mailed. Accordingly, the proposed notice plan satisfies due process.

VIII. CONCLUSION

In light of the foregoing, Plaintiff respectfully requests that the Court grant the motion for preliminary approval of the class action settlement and certify the proposed classes.

Dated: October 22, 2025

WYNNE LAW FIRM

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