

Electronically Filed  
by Superior Court of CA,  
County of Santa Clara,  
on 2/8/2019 2:37 PM  
Reviewed By: R. Walker  
Case #18CV323955  
Envelope: 2492001

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
**SUPERIOR COURT OF CALIFORNIA**  
**COUNTY OF SANTA CLARA**

13 DARYL JIMENEZ, JEREMY JIMENEZ, and  
14 ABEL ARRIOLA, as individuals, on behalf of  
themselves, and all persons similarly situated,

15 Plaintiffs,

16 vs.

17 CALIFORNIA WIRELESS SOLUTIONS, INC.,  
18 d.b.a. SPRINT, a California corporation  
authorized to do business in the state of  
California; ZAID HAMED, an individual; ALEA  
19 FERGUSON, an individual; SPRINT  
20 SOLUTIONS, INC., a Virginia corporation  
authorized to do business in the state of  
California; SPRINT COMMUNICATIONS  
21 COMPANY L.P. a Virginia limited partnership;  
and DOES 1 to 10 inclusive,

22 Defendants.  
23

Case No. 2018-1-CV-323955

**ORDER RE: MOTION FOR  
PRELIMINARY APPROVAL OF  
CLASS ACTION SETTLEMENT**

24 The above-entitled matter came on regularly for hearing on Friday, February 8, 2019, at  
25 9:00 a.m. in Department 5 (Complex Civil Litigation), the Honorable Thomas E. Kuhnle  
26 presiding. The Court reviewed and considered the written submissions of all parties and issued a  
27 tentative ruling on Thursday, February 7, 2019. No party contested the tentative ruling;  
28 therefore, the Court orders the tentative ruling be adopted as the Order of the Court, as follows:

1 **I. INTRODUCTION**

2 This is a putative class action arising out of various alleged wage and hour violations.  
3 The Complaint, filed on February 27, 2018, sets forth the following causes of action: (1) Failure  
4 to Pay Minimum Wages and Overtime Compensation; (2) Failure to Provide Written  
5 Commission Agreements; (3) Unlawful Deduction of Wages; (4) Secretly Underpaid Wages;  
6 (5) Failure to Provide Legally Compliant Meal Periods or Compensation in Lieu Thereof;  
7 (6) Failure to Provide Legally Compliant Rest Periods or Compensation in Lieu Thereof;  
8 (7) Failure to Reimburse for Necessary Work Expenses; (8) Failure to Pay Wages Owed;  
9 (9) Failure to Furnish Accurate Wage Statements; (10) Failure to Maintain Accurate Records;  
10 (11) Unfair Business Practices; and (12) Private Attorneys General Act of 2004.

11 The parties have reached a settlement. Plaintiffs Daryl Jimenez, Jeremy Jimenez, and  
12 Abel Arriola (collectively, "Plaintiffs") now move for preliminary approval of the settlement.

13 **II. LEGAL STANDARD**

14 Generally, "questions whether a settlement was fair and reasonable, whether notice to the  
15 class was adequate, whether certification of the class was proper, and whether the attorney fee  
16 award was proper are matters addressed to the trial court's broad discretion." (*Wershba v. Apple*  
17 *Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-235, citing *Dunk v. Ford Motor Co.* (1996) 48  
18 Cal.App.4th 1794.)

19 In determining whether a class settlement is fair, adequate and reasonable, the  
20 trial court should consider relevant factors, such as "the strength of plaintiffs'  
21 case, the risk, expense, complexity and likely duration of further litigation, the  
22 risk of maintaining class action status through 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."

23 (*Wershba v. Apple Computer, Inc.*, *supra*, 91 Cal.App.4th at pp. 244-245, citing *Dunk, supra*, 48  
24 Cal.App.4th at p. 1801 and *Officers for Justice v. Civil Service Com'n, etc.* (9th Cir. 1982) 688  
25 F.2d 615, 624.)

26 "The list of factors is not exclusive and the court is free to engage in a balancing and  
27 weighing of factors depending on the circumstances of each case." (*Wershba v. Apple*  
28 *Computer, Inc.*, *supra*, 91 Cal.App.4th at p. 245.) The court must examine the "proposed

1 settlement agreement to the extent necessary to reach a reasoned judgment that the agreement is  
2 not the product of fraud or overreaching by, or collusion between, the negotiating parties, and  
3 that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.” (*Ibid.*,  
4 quoting *Dunk, supra*, 48 Cal.App.4th at p. 1801 and *Officers for Justice v. Civil Service Com’n*,  
5 *etc., supra*, 688 F.2d at p. 625, internal quotation marks omitted.)

6 The burden is on the proponent of the settlement to show that it is fair and  
7 reasonable. However “a presumption of fairness exists where: (1) the settlement  
8 is reached through arm’s-length bargaining; (2) investigation and discovery are  
sufficient to allow counsel and the court to act intelligently; (3) counsel is  
experienced in similar litigation; and (4) the percentage of objectors is small.”

9 (*Wershba v. Apple Computer, Inc., supra*, 91 Cal.App.4th at p. 245, citing *Dunk, supra*, 48  
10 Cal.App.4th at p. 1802.)

### 11 III. DISCUSSION

#### 12 A. Provisions of the Settlement

13 The case has been settled on behalf of the following class:

14 [A]ll current or former non-exempt retail employees employed by Defendant  
15 California Wireless Solutions, Inc., who held titles including but not limited to  
16 sales representative, sales lead, and store manager in the state of California at any  
time during the Class Period.

17 (Declaration of R. Craig Clark in Support of Plaintiffs’ Notice of Motion and Motion for  
18 preliminary Approval of Class Action Settlement, Ex. 1 (“Settlement Stipulation”), ¶ 14.)

19 Pursuant to the settlement, defendants California Wireless Solutions, Inc., Zaid Hamed,  
20 and Alea Ferguson (collectively, “Defendants”) will pay a non-reversionary total of \$900,000.  
21 (Settlement Stipulation, ¶ 18.) The settlement payment includes up to \$300,000 in attorneys’  
22 fees, up to \$11,000 in costs, \$7,500 as an incentive award for each of the named class  
23 representatives, and \$17,275 for settlement administrator costs. (Settlement Stipulation, ¶¶ 46-  
24 49.) The parties have agreed to allocate \$25,000 to PAGA, with \$18,750 of that amount to be  
25 paid to the California Labor and Workforce Development Agency. (Settlement Stipulation,  
26 ¶ 50.)

27 For checks that are not cashed within 120 days after mailing, the settlement administrator  
28 will send the class member a letter notifying him or her that they must cash the check in the next

1 60 days or it will expire. (Settlement Stipulation, ¶ 69.) Funds from checks that remain  
2 uncashed after the 60-day period will be tendered to Child Advocates of Silicon Valley as *cy*  
3 *pres* beneficiary. (Settlement Stipulation, ¶ 69.)

4 **B. Fairness of the Settlement**

5 Plaintiff states the proposed settlement is the result of arms'-length negotiations by  
6 experienced counsel, with the assistance of a mediator, after the exchange of information and  
7 documents prior to the mediation. Plaintiff contends Defendants' total exposure was estimated at  
8 around \$10,000,000, including approximately \$4,500,000 in PAGA penalties. Overall, the Court  
9 finds the settlement is fair. It provides for some recovery for each class member and eliminates  
10 the risk and expense of further litigation.

11 **C. Incentive Award, Fees, and Costs**

12 Plaintiffs request class representative incentive awards of \$7,500 for each of the three  
13 class representatives – Daryl Jimenez, Jeremy Jimenez, and Abel Arriola.

14 The rationale for making enhancement or incentive awards to named plaintiffs is  
15 that they should be compensated for the expense or risk they have incurred in  
16 conferring a benefit on other members of the class. An incentive award is  
17 appropriate if it is necessary to induce an individual to participate in the suit.  
18 Criteria courts may consider in determining whether to make an incentive award  
19 include: 1) the risk to the class representative in commencing suit, both financial  
20 and otherwise; 2) the notoriety and personal difficulties encountered by the class  
21 representative; 3) the amount of time and effort spent by the class representative;  
22 4) the duration of the litigation and; 5) the personal benefit (or lack thereof)  
23 enjoyed by the class representative as a result of the litigation. These "incentive  
24 awards" to class representatives must not be disproportionate to the amount of  
25 time and energy expended in pursuit of the lawsuit.

26 (*Cellphone Termination Fee Cases* (2010) 186 Cal. App. 4th 1380, 1394-1395, quotation marks,  
27 brackets, ellipses, and citations omitted.)

28 Prior to final approval of the settlement, the class representatives must submit  
29 declarations specifically detailing their participation in this action. The Court will make a  
30 determination regarding the incentive awards at that time.

31 The Court also has an independent right and responsibility to review the requested  
32 attorneys' fees and only award so much as it determines reasonable. (See *Garabedian v. Los*  
33 *Angeles Cellular Telephone Co.* (2004) 118 Cal.App.4th 123, 127-128.) Plaintiffs' counsel

1 requests attorneys' fees in the amount of \$300,000 (one-third of the total settlement) and costs of  
2 up to \$11,000. Plaintiffs' counsel should submit lodestar information (including hourly rates and  
3 hours worked) prior to the final approval hearing so the Court can compare the lodestar  
4 information with the requested fees. Plaintiffs' counsel should also submit information  
5 regarding actual costs incurred.

6 **D. Conditional Certification of Class**

7 Plaintiffs request the putative class be conditionally certified for purposes of the  
8 settlement. Rule 3.769(d) of the California Rules of Court states that "[t]he court may make an  
9 order approving or denying certification of a provisional settlement class after [a] preliminary  
10 settlement hearing." California Code of Civil Procedure Section 382 authorizes certification of a  
11 class "when the question is one of a common or general interest, of many persons, or when the  
12 parties are numerous, and it is impracticable to bring them all before the court . . . ." As  
13 interpreted by the California Supreme Court, Section 382 requires: (1) an ascertainable class; and  
14 (2) a well-defined community of interest among the class members. (*Sav-On Drug Stores, Inc. v.*  
15 *Superior Court* (2004) 34 Cal.4th 319, 326.)

16 The "community-of-interest" requirement encompasses three factors: (1) predominant  
17 questions of law or fact; (2) class representatives with claims or defenses typical of the class;  
18 and, (3) class representatives who can adequately represent the class. (*Sav-On Drug Stores, Inc.*  
19 *v. Superior Court, supra*, 34 Cal.4th at p. 326.) "Other relevant considerations include the  
20 probability that each class member will come forward ultimately to prove his or her separate  
21 claim to a portion of the total recovery and whether the class approach would actually serve to  
22 deter and redress alleged wrongdoing." (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.)  
23 The plaintiff has the burden of establishing that class treatment will yield "substantial benefits"  
24 to both "the litigants and to the court." (*Blue Chip Stamps v. Superior Court* (1976) 18 Cal.3d  
25 381, 385.)

26 As explained by the California Supreme Court:

27 The certification question is essentially a procedural one that does not ask whether  
28 an action is legally or factually meritorious. A trial court ruling on a certification  
motion determines whether the issues which may be jointly tried, when compared  
with those requiring separate adjudication, are so numerous or substantial that the

1 maintenance of a class action would be advantageous to the judicial process and  
2 to the litigants.

3 (*Sav-On Drug Stores, Inc. v. Superior Court, supra*, 34 Cal.4th at p. 326, internal quotation  
4 marks, ellipses, and citations omitted.)

5 There are approximately 820 class members. Class members can be ascertained from  
6 defendant California Wireless Solutions, Inc.'s records. There are common issues in this case  
7 regarding whether Defendant had certain policies or practices that resulted in wage and hour  
8 violations, such as a failure to provide legally compliant meal and rest breaks and whether there  
9 is a practice of pressuring retail employees to work off the clock to make or complete a sale.  
10 No issue has been raised regarding the typicality or adequacy of Plaintiffs as class  
11 representatives. In sum, the Court finds the proposed class should be conditionally certified.


12 **E. Class Notice**

13 The content of a class notice is subject to court approval. (Cal. Rules of Court, rule  
14 3.769(f).) The notice generally complies with the requirements for class notice. (See Settlement  
15 Stipulation, Ex. A.) It provides basic information about the settlement, including the settlement  
16 terms, and procedures to object or request exclusion. However, the notice states objections must  
17 be written and served on the claims administrator prior to a certain date. The notice must be  
18 changed to make clear that class members may appear at the final approval hearing to object  
19 without filing or serving any papers and without providing any advance notice. The amended  
20 notice shall be provided to the Court for approval prior to its mailing.

21 **F. Conclusion**

22 The motion for preliminary approval of class settlement is GRANTED, subject to the  
23 modification to the notice. The final approval hearing is set for June 14, 2019, at 9:00 a.m. in  
24 Department 5.

25  
26 Dated: February 8, 2019

27   
28 Thomas E. Kuhnle  
Judge of the Superior Court