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United States District Court
Central District of California

KEITH HUCKABY, Plaintiff, v. CRST EXPEDITED, INC., et al., Defendants.	Case № 2:21-CV-07766-ODW (PDx) **ORDER GRANTING IN PART AND DENYING IN PART MOTION TO CERTIFY CLASS [41]**

I. INTRODUCTION

Plaintiff Keith Huckaby brings this putative class action seeking relief for alleged violations of the California Labor Code, Industrial Welfare Commission Order No. 9-2001, and the Business and Professions Code by Defendants CRST Expedited, Inc. and CRST International, Inc. (together, "CRST"). (First Amended Complaint ("FAC") ¶ 1, ECF No. 44.) Huckaby now moves for class certification under Federal Rules of Civil Procedure ("Rule") 23(a) and 23(b)(3). (Mot. Class Certification ("Mot."), ECF No. 41-1.) The Motion is fully briefed. (Opp'n, ECF No. 47; Reply, ECF No. 52.) For the following reasons, the Court **GRANTS IN PART** and **DENIES IN PART** Huckaby's Motion.[1] (ECF No. 41.)

[1] Having carefully considered the papers filed in connection with the Motion, the Court deemed the matter appropriate for decision without oral argument. Fed. R. Civ. P. 78; C.D. Cal. L.R. 7-15.

II. BACKGROUND[2]

CRST is an interstate transportation company that employs truck drivers to deliver freight. (Decl. Shadie L. Berenji ISO Mot. ("Berenji Decl.") Ex. C at F465,[3] ECF Nos. 41-3, 41-7.) From approximately April 2019 to August 2020, Huckaby worked for CRST as a truck driver and resided in California. (Decl. Keith Huckaby ISO Mot. ("Huckaby Decl. Mot.") ¶ 5, ECF No. 41-2.) However, Huckaby delivered loads throughout the country and spent the majority of his time working outside of California. (Decl. Charles Andrewscavage ISO Opp'n Mot. ("Andrewscavage Decl.") Ex. A ("Huckaby Dep. Opp'n") 68:5–16, ECF Nos. 47-2, 47-3.) Between August 9, 2017, and September 7, 2021, CRST employed approximately 4,351 truck drivers with a residential address in California ("CA Truck Drivers"). (Berenji Decl. Ex. B ("Defs.' Resp. to Pl.'s Interrogs. (Set One)"), Resp. No. 1, ECF No. 41-7.)

CRST equips its trucks with an onboard communication system ("Qualcomm"). (Huckaby Dep. Opp'n 103:13–25, 123:6–15.) CRST does not reimburse drivers for personal cell phone expenses. (Berenji Decl. Ex. A ("Brueck Dep. Mot.") 219:5–8, ECF No. 41-4.) Huckaby contends that CRST also failed to reimburse its drivers for vehicle citations and fines. (Mot. 22–24.)

A. CRST's Compensation Scheme

CRST compensates its drivers on a piece-rate basis (*i.e.*, employees are paid by the piece, as opposed to by the hour) ("Piece-Rate Pay Plan"). (*See* FAC ¶ 41; *see also* Andrewscavage Decl. Ex. B ("Brueck Dep. Opp'n") 19:20–20:16, ECF No. 47-3.) CRST provides CA Truck Drivers with the CRST Expedited Pay Scale, which sets forth CRST's pay scale on a per mile basis. (Berenji Decl. Exs. G, J, ECF

[2] Huckaby requests that the Court take judicial notice of certain deposition testimony filed by CRST in other legal actions. (Pl.'s Req. Judicial Notice, ECF No. 52-4.) This evidence does not alter the Court's analysis, so the Court need not resolve Huckaby's request. Additionally, the Court sustains CRST's objections to Huckaby's presentation of new evidence on reply and does not consider any new evidence. (Defs.' Obj. Evid. Submitted ISO Reply, ECF No. 55.)

[3] Consistent with Huckaby's Motion, the Court will refer to documents bearing Bates stamps with the prefix "CRSTF" as "F[Bates number, excluding leading zeros]."

No. 41-7.) Drivers are compensated based on a predetermined estimate of miles, rather than actual miles driven. (*See* Brueck Dep. Mot. 77:15–23; *see also* Defs.' Resp. to Pl.'s Interrogs. (Set One), Resp. No. 2.)

CRST's President, Chad Brueck, testified that CRST's Piece-Rate Pay Plan compensates drivers for each load driven, inclusive of all necessary tasks.[4] (*See* Brueck Dep. Opp'n 19:20–20:16.) In addition to driving, CRST drivers also conduct vehicle inspections, complete paperwork, enter data, fuel vehicles, and complete other non-driving tasks. (*See* Huckaby Decl. Mot. ¶ 19; *see also* Brueck Dep. Mot. 34:15–36:23, 45:8–20, 47:18–21, 49:22–50:8, 50:12–51:4, 97:19–98:2.) Huckaby asserts CRST's Piece-Rate Pay Plan compensates drivers for each mile driven and thus fails to compensate drivers for non-driving tasks. (Mot. 3–4.)

B. The *Montoya* Settlement

Although Huckaby did not participate, 812 of the putative class members here opted into a class-wide settlement in a separate suit against CRST challenging labor and wage practices ("*Montoya* Settlement"). (Decl. Chad Brueck ("Brueck Decl.") ¶ 5, ECF No. 47-1; Andrewscavage Decl. Exs. E, F, G, ECF No. 47-3.) On May 27, 2021, the United States District Court for the District of Massachusetts approved the *Montoya* Settlement. (Andrewscavage Decl. Ex. F.) Participants in the *Montoya* Settlement signed a release of "any statutory, regulatory or common law claim or remedy . . . that was or could have been brought on behalf of the [*Montoya*] classes . . . ." (*Id.* Ex. G 13–14.) The parties dispute the effect of the *Montoya* Settlement on class certification here.

[4] CRST presents evidence that at least one putative class member similarly understood the Piece-Rate Pay Plan to compensate drivers for each load, inclusive of all necessary tasks. (Andrewscavage Decl. Ex. C ("Cary Andree Dep.") 40:7–12, 75:28–76:9, ECF No. 47-3.) This evidence does not alter the Court's analysis, so the Court need not resolve Huckaby's objections to it. (Pl.'s Obj. Evid. Submitted ISO Opp'n, ECF No. 52-3.)

1 **C. Procedural History**

2 On March 9, 2022, Huckaby filed a First Amended Complaint in this action,
3 alleging nine causes of action under California and federal law. (*See generally* FAC.)
4 On March 14, 2022, pursuant to the parties' stipulation, the Court dismissed without
5 prejudice Huckaby's sixth, seventh, and eighth causes of action. (*See* Order Stip.
6 Voluntary Dismissal, ECF No. 46.) Accordingly, six of Huckaby's causes of action
7 remain: (1) failure to pay minimum wages; (2) failure to pay statutory/contractual
8 wages; (3) failure to reimburse business expenses; (4) failure to provide itemized
9 wage statements; (5) failure to timely pay wages; and (6) violation of California's
10 Unfair Competition Law ("UCL").

11 Huckaby now moves to certify one class and three subclasses: (1) Piece-Rate
12 Class; (2) Wage Statement Subclass; (3) Final Pay Subclass; and (4) Business
13 Expense Subclass. (Notice of Mot. ("Notice") 2, ECF No. 41.)

14 **III. LEGAL STANDARD**

15 Whether to grant class certification is within the discretion of the court.
16 *Montgomery v. Rumsfeld*, 572 F.2d 250, 255 (9th Cir. 1978). For a cause of action to
17 proceed as a class action, a plaintiff must make two showings. *See, e.g.*, *Olean*
18 *Wholesale Grocery Coop., Inc. v. Bumble Bee Foods LLC*, 31 F.4th 651, 663 (9th Cir.
19 2022). First, a plaintiff must meet the threshold requirements of Rule 23(a):
20 numerosity, commonality, typicality, and adequacy of representation. Fed. R. Civ.
21 P. 23(a); *Mazza v. Am. Honda Motor Co.*, 666 F.3d 581, 588 (9th Cir. 2012). Second,
22 a plaintiff seeking class certification must meet one of the three requirements listed in
23 Rule 23(b). *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 345 (2011). Where a
24 plaintiff moves for class certification under Rule 23(b)(3), as Huckaby does here, a
25 court must find that "the questions of law or fact common to class members
26 predominate over any questions affecting only individual members, and that a class
27 action is superior to other available methods for fairly and efficiently adjudicating the
28 controversy." Fed. R. Civ. P. 23(b)(3).

"Rule 23 does not set forth a mere pleading standard." *Dukes*, 564 U.S. at 350. Rather, a plaintiff "must prove the facts necessary to carry the burden of establishing that the prerequisites of Rule 23 are satisfied by a preponderance of the evidence." *Olean*, 31 F.4th at 665. A court may certify a class only if it is "satisfied, after a rigorous analysis," that the Rule 23 prerequisites have been met. *Gen. Tel. Co. v. Falcon*, 457 U.S. 147, 161 (1982). "Frequently that 'rigorous analysis' will entail some overlap with the merits of the plaintiff's underlying claim," which "cannot be helped." *Dukes*, 564 U.S. at 351. However, examination of the merits is limited to determining whether certification is proper and not "whether class members could actually prevail on the merits of their claims." *Ellis v. Costco Wholesale Corp.*, 657 F.3d 970, 983 n.8 (9th Cir. 2011).

IV. DISCUSSION

"[E]ach subclass must independently meet the requirements of Rule 23." *Betts v. Reliable Collection Agency, Ltd.*, 659 F.2d 1000, 1005 (9th Cir. 1981). Thus, the Court considers whether Huckaby has met these requirements for each proposed class and subclass. *See id.*; Fed. R. Civ. P. 23(c)(5).

A. The Piece-Rate Class

Huckaby defines the Piece-Rate Class as: "All current and former employees that had a residential address in California and performed work as a truck driver for CRST . . . who were compensated by a piece-rate from August 9, 2017 through the date of final disposition of this action . . . ." (Notice 2.)

Huckaby claims that CRST violates California wage and hour laws by (1) failing to separately compensate its drivers for non-driving tasks; (2) compensating its drivers for an estimate of the number of miles driven; and (3) compensating its drivers at a lower rate than promised. (Mot. 4–5, 21.)

The Court considers whether the Piece-Rate Class meets the requirements of Rule 23(a) before turning to the criteria for certification under Rule 23(b)(3).

1. Rule 23(a)

Huckaby establishes that the Piece-Rate Class meets the requirements of Rule 23(a) based on a preponderance of evidence. However, the 812 putative class members who participated in the *Montoya* Settlement must be excluded.

a. Numerosity

A class action may proceed only if "the class is so numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a)(1). Although the numerosity requirement is not tied to any numerical threshold, courts generally "find the numerosity requirement satisfied when a class includes at least 40 members." *Rannis v. Recchia*, 380 F. App'x 646, 650–51 (9th Cir. 2010).

The parties do not dispute that CRST employed more than 4,351 California resident drivers during the relevant time period. (*See* Defs.' Resp. to Pl.'s Interrogs. (Set One), Resp. No. 1.) Accordingly, the Piece-Rate Class meets the numerosity requirement.[5]

b. Commonality

Commonality is satisfied if "there are questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2). "Plaintiffs need not show . . . that every question in the case, or even a preponderance of questions, is capable of class wide resolution. So long as there is even a single common question, a would-be class can satisfy the commonality requirement of Rule 23(a)(2)." *Parsons v. Ryan*, 754 F.3d 657, 675 (9th Cir. 2014) (internal quotation marks omitted). Plaintiff's claims "must depend upon a common contention," and that common contention "must be of such a nature that it is capable of classwide resolution—which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." *Dukes*, 564 U.S. at 350.

[5] The exclusion of the 812 putative class members who participated in the *Montoya* Settlement, *see infra* Part IV.A.1.c, does not change the Court's conclusion. Even excluding the participants in the *Montoya* Settlement, the Court finds that numerosity is met because more than 3,539 putative class members remain.

Here, Huckaby's central claim is that CRST's Piece-Rate Pay Plan, which uniformly compensates drivers on a per mile basis, violates California law by failing to separately compensate drivers for required non-driving tasks. (Mot. 10.) Under California law, employees who are compensated on a piece-rate basis "shall be compensated for rest and recovery periods and other nonproductive time separate from any piece-rate compensation." Cal. Lab. Code § 226.2(a)(1). Here, Huckaby presents evidence that CRST applied the same pay scale to all putative class members. (Berenji Decl. Exs. G, J.) If CRST's pay scale compensated truck drivers on a piece-rate basis for miles driven and failed to separately compensate drivers for required non-driving tasks, then CRST violated California's minimum wage laws. The "determination of [this question's] truth or falsity will resolve an issue that is central to the validity" of the claims of the Piece-Rate Class. *Dukes*, 564 U.S. at 350. The Court finds that the Piece-Rate Class meets the commonality requirement as to Huckaby's causes of action for failure to pay minimum wages, failure to pay statutory/contractual wages, and violation of the UCL.

c. Typicality and Adequacy

CRST argues that Huckaby is "neither [a] typical nor adequate class representative" because the Piece-Rate Class contains 812 putative class members who previously settled similar claims in the *Montoya* Settlement. (Opp'n 8–9.) Accordingly, the Court addresses typicality and adequacy together.

To satisfy typicality, a representative party must have claims or defenses that are "typical of the claims or defenses of the class." Fed. R. Civ. P. 23(a)(3). 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." *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992).

To satisfy adequacy, the representative party must "fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). "To determine whether the

representation meets this standard, [courts] ask two questions: (1) Do the representative plaintiffs and their counsel have any conflicts of interest with other class members, and (2) will the representative plaintiffs and their counsel prosecute the action vigorously on behalf of the class?" *Staton v. Boeing Co.*, 327 F.3d 938, 957 (9th Cir. 2003).

The Court agrees that Huckaby, who did not opt into the *Montoya* Settlement, cannot serve as a typical or adequate class representative of the putative class members who participated in the *Montoya* Settlement. In *Markson v. CRST International, Inc.*, the court considered the effect of the *Montoya* Settlement on a subsequent putative class action against CRST for wage-related claims. *See Markson*, No. 5:17-cv-01261-SB-SP, 2022 WL 790960, at *4 (C.D. Cal. Feb. 24, 2022). The court in *Markson* observed that the *Montoya* Settlement "included a broad release of claims that were 'brought or could have been brought' on behalf of the class." *Id.* Thus, the court in *Markson* concluded that the three proposed class representatives, who had opted out of the *Montoya* Settlement, would "have no standing and no individual incentive to make any argument whatsoever regarding whether the *Montoya* waiver from which they opted out precludes the claims of absent class members who are bound by the *Montoya* [S]ettlement." *Id.* at *6. The same is true here. Huckaby's claim is unaffected by the *Montoya* Settlement, and he therefore lacks standing and incentive to litigate the effect of the *Montoya* release on the claims of the 812 putative class members who are bound by it. *See id.*; *see also Avilez v. Pinkerton Gov't Servs., Inc.*, 596 F. App'x 579, 579 (9th Cir. 2015) (holding "[t]he district court abused its discretion to the extent it certified classes and subclasses that include employees who signed class action waivers"). Accordingly, because Huckaby is the sole plaintiff here, and he is not a typical or adequate representative of the putative class members who participated in the *Montoya* Settlement, the Piece-Rate Class as presently defined is overbroad.

The Court redefines the Piece-Rate Class to limit it to only the class members who did not participate in the *Montoya* Settlement ("Amended Piece-Rate Class"). *See Olean*, 31 F.4th at 669 n.14 ("[T]he problem of a potentially 'over-inclusive' class 'can and often should be solved by refining the class definition rather than by flatly denying class certification on that basis.'").

As to the remaining members of the Amended Piece-Rate Class, Huckaby is a typical and adequate representative. First, Huckaby's minimum wage claims—that CRST failed to compensate him for required non-driving tasks and for actual miles driven—are typical of the Amended Piece-Rate Class because they stem from CRST's uniform compensation practices. Thus, Huckaby alleges that the putative class members suffered "the same or similar injury" by "the same course of conduct," satisfying typicality. *See Hanon*, 976 F.2d at 508. Second, the Court finds that Huckaby and his counsel will adequately represent the Amended Piece-Rate Class because they do not appear to have any conflicts of interest with the remaining putative class members and they commit to diligently prosecuting this case. *See Staton*, 327 F.3d at 957; (Huckaby Decl. Mot. ¶ 25; Berenji Decl. ¶¶ 31–33). Accordingly, the Amended Piece-Rate Class meets the typicality and adequacy requirements.

2. *Rule 23(b)(3)*

Huckaby seeks class certification under Rule 23(b)(3). (Mot. 13–24.) Rule 23(b)(3) applies where "the court finds that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3).

a. Predominance

"The Rule 23(b)(3) predominance inquiry tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation." *Amchem Prod., Inc. v. Windsor*, 521 U.S. 591, 623 (1997). "Common issues predominate over individual

issues when the common issues 'represent a significant aspect of the case and they can be resolved for all members of the class in a single adjudication.'" *Edwards v. First Am. Corp.*, 798 F.3d 1172, 1182 (9th Cir. 2015).

The most significant aspect of Huckaby's case is the question of whether CRST's Piece-Rate Pay Plan violates California law by failing to compensate drivers for non-driving tasks. Huckaby also presents the common question of whether CRST's failure to compensate its drivers for actual miles driven violates California law. These questions both stem from CRST's uniform compensation practices and can be resolved on a class-wide basis with common proof. The record reflects that (1) CA Truck Drivers' required duties included non-driving tasks, and (2) CRST provided putative class members with the same written wage information, which reflects CRST's pay scale on a per mile basis. Accordingly, the Court finds that the Amended Piece-Rate Class is "sufficiently cohesive to warrant adjudication by representation" and satisfies predominance.[6] *Amchem*, 521 U.S. at 623.

CRST's arguments to the contrary are unpersuasive. First, CRST argues that Huckaby cannot satisfy predominance because the scope of CRST's Piece-Rate Pay Plan must be determined by considering what each driver understood the Piece-Rate Plan to cover. (Opp'n 10–13.) Although an employee's testimony can be relevant in interpreting a piece-rate pay plan, *see Ayala v. U.S. Xpress Enters., Inc.*, 851 F. App'x 53, 54 (9th Cir. 2021), this does not mean that each employee is subject to an individualized piece-rate plan, the scope of which differs from employee to employee based on their subjective understanding. In determining the scope of any contract, including CRST's Piece-Rate Pay Plan, "the relevant intent is . . . the objective intent

[6] In his Motion, Huckaby briefly addresses his claim that CRST paid drivers at a lower rate than CRST promised. (Mot. 10, 21; Reply 8.) The Court finds that the Amended Piece-Rate Class fails predominance as to this claim because, although Huckaby states that he was paid at "a lower rate than [CRST] promised in the pay plan" for a period of about four months, (Huckaby Decl. Mot. ¶ 17), Huckaby has not presented evidence that this was a uniform practice. Accordingly, questions regarding whether this practice injured individual class members would predominate. Huckaby may not pursue this claim on a class-wide basis for his second cause of action for failure to pay statutory/contractual wages.

1 as evidenced by the words of the instrument, not a party's subjective intent." *See*
2 *Shaw v. Regents of Univ. of Cal.*, 58 Cal. App. 4th 44, 54–55 (1997). Here, Huckaby
3 presents evidence that CRST's Piece-Rate Pay Plan applies uniformly to all putative
4 class members. (Berenji Decl. Exs. G, J.) The Court finds that interpreting CRST's
5 uniform Piece-Rate Pay Plan is a common issue driven by the parties' objective intent
6 and that individual issues will not predominate.

7 Next, CRST argues that individualized questions regarding "when, for how
8 long, and even *if* drivers spent time performing non-driving tasks" would
9 predominate. (Opp'n 13.) But the record reflects that CA Truck Drivers' job duties
10 include non-driving tasks, and there is no question that drivers were required to
11 complete those tasks. (*See* Huckaby Decl. Mot. ¶ 19; *see also* Brueck Dep.
12 Mot. 34:15–36:23, 45:8–20, 47:18–21, 49:22–50:8, 50:12–51:4, 97:19–98:2.) The
13 questions of when and for how long each driver performed these tasks are damages
14 questions, and the Ninth Circuit has repeatedly held that "the need for individual
15 damages calculations does not, alone, defeat class certification" where the defendant's
16 actions caused the class members' injury. *Vaquero v. Ashley Furniture Indus., Inc.*,
17 824 F.3d 1150, 1154–55 (9th Cir. 2016) (collecting cases). "In a wage and hour
18 case, . . . the employer-defendant's actions necessarily caused the class members'
19 injury. Defendants either paid or did not pay their [employees] for work performed."
20 *Id.* (upholding class certification in wage and hour case despite the need for individual
21 damages calculations). Thus, the Court finds individualized damages calculations will
22 not defeat class certification here because any damages stem from CRST's uniform
23 compensation practices.

24 Finally, CRST argues that choice of law questions would predominate because
25 determining whether California law applies to the putative class members' minimum
26 wage claims would require individualized analyses. (Opp'n 22–25.) In determining
27 whether California Labor Code section 226 applies to interstate employees, courts
28 should consider (1) "whether the employee works the majority of the time in

1 California, or in another state," and (2) for employees "who do not work principally in
2 any one state . . . whether the employee has a definite base of operations in California,
3 in addition to performing at least some work in the state for the employer." *Ward v.*
4 *United Airlines, Inc.*, 9 Cal. 5th 732, 760 (2020). An employee is based in California
5 if "California serves as the physical location where the worker presents himself or
6 herself to begin work." *Id.* at 755.

7 Huckaby and the putative class members are interstate truck drivers who reside
8 in California and "do not work principally in any one state." *See id.* at 760; (Huckaby
9 Decl. Mot. ¶ 5; Huckaby Dep. Opp'n 68:5–16). CRST defines a driver's "[h]ome" to
10 be a "company terminal or dispatch-approved parking location." (Berenji Decl. Ex. C
11 at F489.) Truck drivers residing in California store their trucks at the CRST terminal
12 in Riverside, California or another local location approved by CRST. (Brueck Dep.
13 Mot. 31:17–32:6; Berenji Decl. Ex. C at F631.) This is akin to having a "designated
14 home-base" in California. *See Ward*, 9 Cal. 5th at 760 (holding section 226
15 protections apply to pilots and flight attendants with designated home-base airport in
16 California). Accordingly, the record reflects that California-resident drivers present
17 themselves for work in California, where the drivers store their trucks and necessarily
18 begin each trip. The Court concludes that California law applies to the putative class
19 members' minimum wage claims, so choice of law questions will not predominate.

20 The Court finds that the Amended Piece-Rate Class meets the predominance
21 requirement.

22 b. <u>Superiority</u>

23 To determine whether "a class action is superior to other available methods for
24 fairly and efficiently adjudicating the controversy," Rule 23(b)(3) provides the
25 following four factors for a Court's consideration: (1) "the class members' interests in
26 individually controlling the prosecution or defense of separate actions;" (2) "the extent
27 and nature of any litigation concerning the controversy already begun by or against
28 class members;" (3) "the desirability or undesirability of concentrating the litigation of

the claims in the particular forum;" and (4) "the likely difficulties in managing a class action." Fed. R. Civ. P. 23(b)(3).

Here, Huckaby's claims present liability questions that can be determined on a class-wide basis. It would be more efficient for the Court to make these determinations in one fell swoop than to do so in separate, duplicative actions brought by thousands of individual class members. Moreover, having excluded the participants in the *Montoya* Settlement from the Amended Piece-Rate Class, the Court is unaware of other litigation concerning the controversy begun by or against the putative class members. The Court is likewise unaware of any class members interested in individually prosecuting this case or class members who would benefit from doing so. Although the Court notes that managing individualized damages calculations presents certain difficulties, it is mindful of the Ninth Circuit's guidance that "[t]he amount of damages is invariably an individual question and does not defeat class action treatment." *Yokoyama v. Midland Nat'l Life Ins. Co.*, 594 F.3d 1087, 1094 (9th Cir. 2010).

Finding that the Amended Piece-Rate Class meets the superiority requirement, the Court **GRANTS** class certification for the Amended Piece-Rate Class.[7]

B. Wage Statement and Final Pay Subclasses

Huckaby defines the Wage Statement Subclass as: "All CA Truck Drivers who received an itemized wage statement . . . from August 9, 2019, through the date of final disposition of this action." (Notice 2.) Huckaby alleges that CRST provides its drivers with deficient wage statements that omit required information, including "the true wages earned and actual miles driven for which a piece-rate is due." (Mot. 22.)

[7] The Court finds that Huckaby's causes of action for failure to pay minimum wages and failure to pay statutory/contractual wages can be resolved on a class-wide basis for the Amended Piece-Rate Class. Huckaby also satisfies the Rule 23 requirements as to his derivative cause of action for violation of the UCL. However, as discussed below, Huckaby fails to satisfy the Rule 23 requirements as to his causes of action for failure to provide itemized wage statements, failure to timely pay wages, and failure to reimburse business expenses.

Huckaby defines the Final Pay Subclass as: "All CA Truck Drivers that are no longer employed with CRST and who were not provided with final wages at the time of separation of employment from August 9, 2017 through the date of final disposition of this action . . . ." (Notice 2.) Huckaby claims that CRST failed to timely pay him after his last day of employment with CRST. (Mot. 24.)

The Court finds that the Wage Statement and Final Pay Subclasses each fail to meet the numerosity requirement. The Court does not reach the remaining Rule 23 requirements. "A party seeking class certification must affirmatively demonstrate . . . that there are *in fact* sufficiently numerous parties . . . ." *Dukes*, 564 U.S. at 350. The failure to present evidence of numerosity precludes class certification. *Black Fac. Ass'n of Mesa Coll. v. San Diego Cmty. Coll. Dist.*, 664 F.2d 1153, 1157 (9th Cir. 1981) (holding class certification improper where there was no evidence of numerosity and other Rule 23(a) requirements).

Huckaby has not met his burden of satisfying numerosity with regard to the Wage Statement or Final Pay Subclasses. Huckaby merely argues that "[t]he [p]roposed [c]lass is [n]umerous" because CRST "employed more than 4,351 class members." (Mot. 8.) In support, Huckaby presents CRST's Responses to Plaintiff's Interrogatories (Set One), in which CRST states that it "employed approximated 4,351 California resident drivers between August 9, 2017 and September 7, 2021." (Defs.' Resp. to Pl.'s Interrogs. (Set One), Resp. No. 1.) However, Huckaby offers no argument or evidence regarding how many employees come within the Wage Statement Class, which is limited to a shorter time period than the Amended Piece-Rate Class. Huckaby likewise offers no argument or evidence regarding how many former employees come within the Final Pay Subclass. Accordingly, because Huckaby fails to meet his burden of establishing numerosity, the Court **DENIES** class certification for the Wage Statement and Final Pay Subclasses.

1 **C. Business Expense Subclass**

2 Huckaby defines the Business Expense Subclass as: "All CA Truck Drivers
3 who were required to purchase and maintain their own tools for work and pay for
4 vehicle citations and fines they incurred during the performance of their job duties
5 from August 9, 2017 through the date of final disposition of this action." (Notice 2.)

6 Huckaby claims that CRST violates California Labor Code section 2802 by
7 failing to reimburse putative class members for business expenses, including (1) "the
8 reasonably necessary and constant use of their mobile phones for work," and
9 (2) "safety citations that related to the trucks that were owned by CRST and driven by
10 the truck drivers to perform their job duties (i.e., missing permits and license)."
11 (Mot. 6.) After reviewing the parties' submissions and evidence, the Court is not
12 persuaded that either of these reimbursement claims can be resolved on a class-wide
13 basis for the Business Expense Subclass. Because the Court finds that the Business
14 Expense Subclass fails to meet the predominance requirement, the Court does not
15 reach the remaining Rule 23 requirements.

16 *1. Failure to Reimburse for Cell Phones*

17 The Court finds that individual questions would predominate over common
18 questions related to Huckaby's cell phone reimbursement claim. Under California
19 law, an employer is required to indemnify its employees for "necessary" business
20 expenses. *See* Cal. Lab. Code § 2802. Whether an expense is "necessary" depends in
21 part on "the reasonableness of the employee's choices." *Gattuso v. Harte-Hanks*
22 *Shoppers, Inc.*, 42 Cal. 4th 554, 568 (2007). "In other words, employers must
23 reimburse employees for work-related cell phone use only if such use was required or
24 reasonably necessary under the circumstances." *Williams v. J.B. Hunt Transp., Inc.*,
25 No. SA CV 20-1701-PSG (JDEx), 2021 WL 5816287, at *8 (C.D. Cal. Dec. 7, 2021)
26 (citing *Gattuso*, 42 Cal. 4th at 568). "[A]scertaining what was a necessary
27 expenditure will require an inquiry into what was reasonable under the
28 circumstances." *Grissom v. Vons Cos.*, 1 Cal. App. 4th 52, 58 (1991).

Here, the record reflects that CRST does not have a uniform policy requiring its drivers to have personal cell phones. Although CRST requires drivers operating a vehicle in California to "have a functional two-way communication device," it equips each truck with an onboard Qualcomm communication system to serve that purpose. (Brueck Dep. Mot. Ex. 3 at F541, ECF No. 41-5; Huckaby Dep. Opp'n 103:13–25, 123:6–15.) Moreover, although Huckaby argues that the putative class members use their cell phones to submit required paperwork through a cell phone app, the record reflects that CRST drivers are not required to use the app and have multiple ways to submit paperwork. (Brueck Dep. Opp'n 83:22–84:33 (testifying the TRANSFLO scanning system was available at truck stops, CRST terminals, as well as in CRST's new onboard system); Berenji Decl. Ex. N at F404, ECF No. 41-7 (stating drivers may "elect[] to use TRANSFLO Mobile + on their smartphone").) Thus, to resolve the question of whether CRST must reimburse the Business Expense Subclass for cell phone expenses, the Court would be required to determine whether drivers incurred phone-related expenses that were "reasonably necessary under the circumstances." *Williams*, 2021 WL 5816287 at *8. Determining when and why each individual driver used a cell phone, and the reasonableness of that decision under the circumstances, would require an individualized and fact-intensive analysis that would predominate over any common questions.[8]

2. *Failure to Reimburse for Vehicle Citations and Fines*

The Court finds that individual issues would likewise predominate over common issues with regard to the business reimbursement claim for vehicle citations and fines. Without evidence of "a uniform policy that was consistently applied during

[8] The Court acknowledges that Huckaby presents testimony in which Brueck appears to agree that CRST requires drivers to have cell phones when they are hauling high value loads. (Brueck Dep. Mot. 211:17–21 (Q: "So is it a requirement in the event there's a high value load that the driver has to have a cell phone with him?" A: "I would say, yes, we would like the driver to have a cell phone with him hauling high value loads.").) Regardless, determining whether an individual driver was hauling a high value load at the time when they used a personal cell phone would require an individualized assessment.

1 the class period . . . individual, rather than common, questions would predominate."
2 *In re AutoZone, Inc., Wage & Hour Emp. Pracs. Litig.*, 789 F. App'x 9, 11 (9th Cir.
3 2019).
4 CRST presents evidence that CRST reimbursed Huckaby for the only safety
5 citation that Huckaby received while working for CRST. (Huckaby Dep.
6 Opp'n 117:5–118:14, 150:16–152:8.) This evidence demonstrates that CRST did not
7 uniformly fail to reimburse drivers for citations. Thus, even if CRST's failure to
8 reimburse drivers for citations and fines presents a common question, "the record
9 demonstrates that individual questions would predominate as to the application of
10 such a practice." *Williams*, 2021 WL 5816287, at *6.
11 Accordingly, the Court **DENIES** class certification for the Business Expense
12 Subclass.
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1 **V. CONCLUSION**

2 For the reasons discussed above, the Court **GRANTS IN PART AND**
3 **DENIES IN PART** Plaintiff's Motion for Class Certification. (ECF No. 41.)

4 The Court **GRANTS** certification of the Amended Piece-Rate Class, defined
5 below, as to Huckaby's first cause of action for failure to pay minimum wages, second
6 cause of action for failure to pay statutory/contractual wages, and ninth cause of action
7 for violation of California's Unfair Competition Law.

8 The Amended Piece-Rate Class is defined as follows: All current and former
9 employees that had a residential address in California and performed work as a truck
10 driver for CRST ("CA Truck Driver") who were compensated by a piece-rate from
11 August 9, 2017, through the date of final disposition of this action, excluding the
12 participants in the settlement in *Montoya v. CRST Expedited, Inc.*, Case No. 16-cv-
13 10095-PBS (D. Mass.).

14 Plaintiff's Motion is **DENIED** as to all other classes and issues.

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16 **IT IS SO ORDERED.**

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18 October 3, 2022

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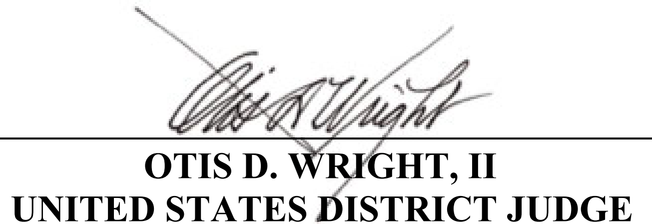

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21 **OTIS D. WRIGHT, II**
22 **UNITED STATES DISTRICT JUDGE**

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