

Honorable Tani Gorre Cantil-Sakauye, Chief Justice
and the Honorable Associate Justices
Supreme Court of California
350 McAllister Street
San Francisco, California 94102-4797

Re: Colin Cochran v. Schwan's Home Service, Inc.
Court of Appeal (2nd App. Dist) No. B247160
Amicus Curiae Letter in Support of Petition for Review

Dear Chief Justice Cantil-Sakauye and Associate Justices:

The National Association of Manufacturers (NAM), on behalf of its nation-wide membership and particularly those who do business in California, respectfully submit this letter supporting the Petition for Review of Colin Cochran v. Schwan's Home Service, Inc. The Court of Appeal's (CoA) decision imposed a blanket rule for compensation of employee expenditures which subjects employers to an increased number of frivolous claims. Additionally, any minor failure to comply could open employers up to disproportionately large fines under the Private Attorney Generals Act.

I. The NAM's Interest as *Amicus Curiae*

The NAM is the nation's largest industrial trade association with members in all 50 states, representing more than 12,000 companies of all sizes and in all industrial sectors. Over 1,000 of our members are located in California could be adversely affected by this decision. Manufacturers are a major employer in California, employing as of July 2014 over 1.2 million people.¹ The NAM regularly participates in *amicus* actions in cases such as this that raise issues affecting U.S. manufacturers, their business practices and their ability to remain competitive, promote economic growth and create jobs. We have been involved as *amicus curiae* in over 40 cases in California courts in the last 15 years.

II. Background

The original action arose when Colin Cochran sued his former employer Schwan's for unpaid business expenses. Mr. Cochran would, with his employer's knowledge, occasionally provide his personal cell phone number to customers so that they could contact him with orders. Mr. Cochran was not paying for his own cellular plan, which was owned by his girlfriend. Mr. Cochran sued Schwan's on behalf of himself and other similar employees for the cost of the phone calls under California Labor Code Section 2802. The Code requires that employers reimburse employees "for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties..."² The class certification was defeated when the trial court determined that there was too much variance amongst individual cell phone plans, with some incurring no actual expense or loss due to business related costs.

¹ United States Bureau of Labor Statistics, *Employees on nonfarm payrolls in States and selected areas by major industry*, <http://www.bls.gov/sae/>

² Cal. Lab. Code §2802(a)

On appeal, the CoA held that an employee's work-related use of a personal cell phone, regardless of whether charges were incurred by the employee, constitutes an employee loss or expenditure pursuant to Section 2802.³ The court reasoned that any time an employee used their cell phone with the employer's knowledge, without compensation, represented a "windfall" for the company, even if no additional expenses were incurred under an "unlimited" phone plan.

III. Reason to Grant Review

This decision could have far ranging impacts for California employers. The scope of the decision is not limited to cell phone reimbursement. The ruling has no discernible limitations and is so overly broad as to be completely unworkable. Virtually any personal items that an employee uses for business, with the knowledge of the employer, are reimbursable as detailed by the CoA. The Court's sweeping statement "The answer is that reimbursement is always required," opened the door for any number of mundane personal items to be subject to reimbursement. Should an employee be reimbursed for reading glasses they already own to read files, or work-appropriate clothes that were already in their closet? The CoA in the present case says that the cost to the employee is not relevant. The ruling assumes that employees will be owed compensation even if no actual losses occurred.⁴ This is a flawed analysis that will result in an undue burden on California businesses.

Additionally, while the individual reimbursements may appear to be small, the failure to reimburse can be compounded by claims under the Private Attorney Generals Act (PAGA).⁵ The PAGA provides for civil penalties for any violation of the California Labor Code. An employer could be subject to hundreds of dollars per employee per violation, which would quickly turn what was a small reimbursement into a major civil fine. Thus, a small failure to reimburse can have a cumulative affect that leads to significant consequences for the employer. This will expose them to undue liability and force frivolous and unwarranted penalties on employers for unanticipated failures to reimburse under Section 2802.

IV. Conclusion

For the above reasons, the National Association of Manufacturers believes that review of the Court of Appeals decision should be granted.

³ *Decision at 7.* "It does not matter whether the phone bill is paid for by a third person, or at all."

⁴ *Id. At 8.* "To show liability under section 2802, an employee need only show that he or she was required to use a personal cell phone to make work related calls, and he or she was not reimbursed."

⁵ California Labor Code Section 2698

Respectfully submitted,



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National Association of Manufacturers

Certificate of Service

Schwan's Home Service, Inc. vs. Colin Cochran

Decision by the Court of Appeal, Second Appellate District, No. B247160

Washington, D.C.

I, Michael Robert Asplen, am over eighteen years of age and not a party to this action. My business address is: National Association of Manufacturers, 733 10th Street NW, Suite 700, Washington, DC, 20001.

On September 29, 2014, I served the above document described as Amicus Curiae Letter in Support of Petition for Review on the following interest parties in this action:

Please See Attached Service List

I am sending these copies BY MAIL. I am sending true and correct copies of the above document in an envelope addressed to the attorney(s) of record, addressed as stated on the attached list

I declare under penalty of perjury under the laws of the State of California that the above stated is true and correct.

Executed on September 29, 2014

A handwritten signature in black ink, appearing to read 'Michael Robert Asplen', written over a horizontal line.

Michael Robert Asplen, Esq.

Policy Associate

National Association of Manufacturers

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