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**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA**

ROBIN QUIUSKY,

Plaintiff,

v.

INTEVAC, INC., et al.,

Defendants.

Case No.: 20CV368343

**ORDER CONCERNING PLAINTIFF'S
MOTION FOR FINAL APPROVAL OF
CLASS/PAGA SETTLEMENT AND
JUDGMENT**

This is a putative class and Private Attorneys General Act ("PAGA") action. Plaintiff alleges that Defendants Intevac, Inc. and Intevac Photonics, Inc. committed meal and rest break violations, failed to pay minimum and overtime wages, and committed other wage and hour violations.

The parties reached a settlement, which the Court preliminarily approved in an order filed on July 14, 2022. The factual and procedural background of the action and the Court's analysis of the settlement and settlement class are set forth in that order.

Before the Court is Plaintiff's motion for final approval of the settlement and for approval of his attorney fees, costs, and service award. Plaintiff's motion is unopposed. The Court issued a tentative ruling on November 16, 2022, and no one contested it at the hearing on November 17. It now issues its final order, which GRANTS final approval.

1 **I. LEGAL STANDARDS FOR SETTLEMENT APPROVAL**

2 **A. Class Action**

3 Generally, “questions whether a [class action] settlement was fair and reasonable,
4 whether notice to the class was adequate, whether certification of the class was proper, and
5 whether the attorney fee award was proper are matters addressed to the trial court’s broad
6 discretion.” (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234–235 (*Wershba*),
7 disapproved of on other grounds by *Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal.5th
8 260.)

9 In determining whether a class settlement is fair, adequate and reasonable, the
10 trial court should consider relevant factors, such as the strength of plaintiffs’ case,
11 the risk, expense, complexity and likely duration of further litigation, the risk of
12 maintaining class action status through trial, the amount offered in settlement, the
13 extent of discovery completed and the stage of the proceedings, the experience
14 and views of counsel, the presence of a governmental participant, and the reaction
15 of the class members to the proposed settlement.
16 (*Wershba, supra*, 91 Cal.App.4th at pp. 244–245, internal citations and quotations omitted.)

17 In general, the most important factor is the strength of the plaintiffs’ case on the merits,
18 balanced against the amount offered in settlement. (See *Kullar v. Foot Locker Retail, Inc.* (2008)
19 168 Cal.App.4th 116, 130 (*Kullar*).) But the trial court is free to engage in a balancing and
20 weighing of relevant factors, depending on the circumstances of each case. (*Wershba, supra*, 91
21 Cal.App.4th at p. 245.) The trial court must examine the “proposed settlement agreement to the
22 extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or
23 overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a
24 whole, is fair, reasonable and adequate to all concerned.” (*Ibid.*, citation and internal quotation
25 marks omitted.) The trial court also must independently confirm that “the consideration being
26 received for the release of the class members’ claims is reasonable in light of the strengths and
27 weaknesses of the claims and the risks of the particular litigation.” (*Kullar, supra*, 168
28 Cal.App.4th at p. 129.) Of course, before performing its analysis the trial court must be

1 “provided with basic information about the nature and magnitude of the claims in question and
2 the basis for concluding that the consideration being paid for the release of those claims
3 represents a reasonable compromise.” (*Id.* at pp. 130, 133.)

4 **B. PAGA**

5 Labor Code section 2699, subdivision (1)(2) provides that “[t]he superior court shall
6 review and approve any settlement of any civil action filed pursuant to” PAGA. The court’s
7 review “ensur[es] that any negotiated resolution is fair to those affected.” (*Williams v. Superior*
8 *Court* (2017) 3 Cal.5th 531, 549.) Seventy-five percent of any penalties recovered under PAGA
9 go to the Labor and Workforce Development Agency (LWDA), leaving the remaining twenty-
10 five percent for the aggrieved employees. (*Iskanian v. CLS Transportation Los Angeles, LLC*
11 (2014) 59 Cal.4th 348, 380, overruled on other grounds by *Viking River Cruises, Inc. v.*
12 *Moriana* (2022) ___ U.S. ___, 2022 U.S. LEXIS 2940.)

13 Similar to its review of class action settlements, the Court must “determine independently
14 whether a PAGA settlement is fair and reasonable,” to protect “the interests of the public and the
15 LWDA in the enforcement of state labor laws.” (*Moniz v. Adecco USA, Inc.* (2021) 72
16 Cal.App.5th 56, 76–77.) It must make this assessment “in view of PAGA’s purposes to
17 remediate present labor law violations, deter future ones, and to maximize enforcement of state
18 labor laws.” (*Id.* at p. 77; see also *Haralson v. U.S. Aviation Servs. Corp.* (N.D. Cal. 2019) 383
19 F. Supp. 3d 959, 971 [“when a PAGA claim is settled, the relief provided for under the PAGA
20 [should] be genuine and meaningful, consistent with the underlying purpose of the statute to
21 benefit the public”], quoting LWDA guidance discussed in *O’Connor v. Uber Technologies,*
22 *Inc.* (N.D. Cal. 2016) 201 F.Supp.3d 1110 (*O’Connor*).)

23 The settlement must be reasonable in light of the potential verdict value. (See *O’Connor,*
24 *supra*, 201 F.Supp.3d at p. 1135 [rejecting settlement of less than one percent of the potential
25 verdict].) But a permissible settlement may be substantially discounted, given that courts often
26 exercise their discretion to award PAGA penalties below the statutory maximum even where a
27 claim succeeds at trial. (See *Viceral v. Mistras Group, Inc.* (N.D. Cal., Oct. 11, 2016, No. 15-
28 CV-02198-EMC) 2016 WL 5907869, at *8–9.)

1 **II. TERMS AND ADMINISTRATION OF SETTLEMENT**

2 The non-reversionary gross settlement amount is \$975,000. Attorney fees of up to
3 \$341,250 (thirty-five percent of the gross settlement),¹ litigation costs not to exceed \$20,000, and
4 administration costs of up to \$5,000 will be paid from the gross settlement. \$50,000 will be
5 allocated to PAGA penalties, 75 percent of which will be paid to the LWDA. The named
6 plaintiff will seek an incentive award of \$10,000.

7 The net settlement will be allocated to settlement class members proportionally based on
8 their weeks/pay periods worked during the class and PAGA periods. Class members will not be
9 required to submit a claim to receive their payments. For tax purposes, settlement payments will
10 be allocated 1/3 to wages and 2/3 to penalties and interest (and PAGA payments all to non-
11 wages). The employer's share of taxes will be paid separately from the settlement. Funds
12 associated with checks uncashed after 180 days will be paid to the "California State Controller
13 Unpaid Wages Fund."²

14 Per the amended stipulation of settlement filed on July 11, 2022, class members who do
15 not opt out will release all claims, injuries, etc. "that relate to, are based on, concern, or arise out
16 of any of the allegations that were asserted or could have been asserted based on the facts set
17 forth or referred to in the Complaint and on a class-wide or representative basis against the
18 Released Parties. The Released Claims include all causes of action that were delineated in the
19 Complaint as well as all causes of action arising out of or that could have been pled based on the
20 facts set forth or referred to in the Complaint, but which were not specifically delineated as a
21 cause of action in the Complaint," including specific Labor Code and PAGA claims. Consistent
22 with the statute, aggrieved employees will not be able to opt out of the PAGA portion of the
23 settlement.

24
25 ¹ Counsel has ultimately reduced their requested attorney fees to the standard thirty-three percent
26 of the settlement, or \$325,000.

27 ² The parties confirm that this is a reference to the Unclaimed Property Division of the State
28 Controller's Office, and they have corrected references to this fund in the class notice
accordingly.

1 The notice process has now been completed. There were no objections to the settlement
2 and only 4 requests for exclusion from the class. Of the 131 notices mailed by the administrator,
3 3 were re-mailed to updated addresses and 3 were ultimately undeliverable. The administrator
4 estimates that the average payment to class members will be \$4,318.70, with a high payment of
5 \$14,062.50.³

6 At preliminary approval, the Court found that the settlement is a fair and reasonable
7 compromise of the class claims and that the PAGA allocation is genuine, meaningful, and
8 reasonable in light of the statute's purposes. It finds no reason to deviate from these findings
9 now, especially considering that there are no objections. The Court thus finds that the settlement
10 is fair and reasonable for purposes of final approval.

11 **III. ATTORNEY FEES, COSTS, AND INCENTIVE AWARD**

12 Plaintiff seeks a fee award of \$325,000, one-third of the gross settlement, which is not an
13 uncommon contingency fee allocation in a wage and hour class action. This award is facially
14 reasonable under the "common fund" doctrine, which allows a party recovering a fund for the
15 benefit of others to recover attorney fees from the fund itself. Plaintiff also provides a lodestar
16 figure of \$432,445, based on 673.7 hours spent on the case by counsel billing at \$350–800 per
17 hour. Plaintiff's request results in a negative multiplier. The lodestar cross-check supports the
18 percentage fee requested, particularly given the lack of objections to the attorney fee request.
19 (See *Laffitte v. Robert Half Intern. Inc.* (2016) 1 Cal.5th 480, 488, 503–504 [trial court did not
20 abuse its discretion in approving fee award of 1/3 of the common fund, cross-checked against a
21 lodestar resulting in a multiplier of 2.03 to 2.13].)

22 Plaintiff's counsel also request \$20,000 in litigation costs (slightly less than their actual
23 costs). Plaintiff's costs appear reasonable based on the summary provided and are approved.
24 The \$4,250.95 in administrative costs are also approved.

25 Finally, the named plaintiff seeks an incentive award of \$10,000. To support his request,
26 he submits a declaration describing his efforts on the case, which included a long day of travel to

27 ³ The administrator notes that 22 of the individuals notified did not have relevant workweeks or
28 pay periods during the class period and did not dispute their employment data during the
response period. Consequently, these 22 individuals were removed from the class.

1 provide a deposition. The Court finds that the class representative is entitled to an enhancement
2 award and the amount requested is reasonable.

3 **IV. ORDER AND JUDGMENT**

4 In accordance with the above, IT IS HEREBY ORDERED, ADJUDGED, AND
5 DECREED THAT:

6 The motion for final approval is GRANTED. The following class is certified for
7 settlement purposes:

8 all employee[s] who are or previously [were] employed by Intevac, Inc. and
9 Intevac Photonics, Inc. (“Defendants”) within the State of California and who
10 were classified as non-exempt employees during the period of July 14, 2016 to
11 February 1, 2022, [] and/or were employed by any third-party staffing company
12 that assigned any individuals to provide service to Defendants during the Class
13 Period.

14 Excluded from the class are the 4 individuals who submitted timely requests for
15 exclusion, as well as the 22 individuals notified who did not have relevant workweeks or pay
16 periods during the class period.

17 Judgment shall be entered through the filing of this order and judgment. (Code Civ.
18 Proc., § 668.5.) Plaintiff and the members of the class shall take from their complaint only the
19 relief set forth in the settlement agreement and this order and judgment. Pursuant to Rule
20 3.769(h) of the California Rules of Court, the Court retains jurisdiction over the parties to
21 enforce the terms of the settlement agreement and the final order and judgment.

22 The Court sets a compliance hearing for **June 22, 2023 at 2:30 P.M.** in Department 1.
23 At least ten court days before the hearing, class counsel and the settlement administrator shall
24 submit a summary accounting of the net settlement fund identifying distributions made as
25 ordered herein; the number and value of any uncashed checks; amounts remitted to Controller’s
26 office; the status of any unresolved issues; and any other matters appropriate to bring to the
27 Court’s attention. Counsel shall also submit an amended judgment as described in Code of Civil
28

1 Procedure section 384, subdivision (b). Counsel may appear at the compliance hearing remotely.

2 **IT IS SO ORDERED.**

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4 Date: November 19, 2022

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6 _____
7 The Honorable Sunil R. Kulkarni
8 Judge of the Superior Court
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PROOF OF SERVICE
1013A(3) CCP

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 751 N. Fair Oaks Avenue, Suite 101, Pasadena, CA 91103 and my electronic service address is manderson@justicelawcorp.com

On November 22, 2022, I served the foregoing document described as

ORDER CONCERNING PLAINTIFF'S MOTION FOR FINAL APPROVAL OF CLASS/PAGA SETTLEMENT AND JUDGEMENT

for the following case: **Quiusky v. Intevac, Inc., et al.**
LWDA/Court Case No.: **LWDA Case No.: CM-783987-20**
Court Case No.: 20CV368343
Santa Clara County Superior Court

on interested parties in this action by electronically submitting as follows:

State of California
Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, California 95814

[X] BY ELECTRONIC SUBMISSION

Pursuant to California Senate Bill No. 836, I caused the documents described above to be electronically submitted by and through the procedure stated on the website of the State of California Labor and Workforce Development Agency.

[X] STATE

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

Executed on November 22, 2022, at Pasadena, California.



Mariah Anderson