

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA

MARK WARD,

Plaintiff,

v.

SEAGATE US LLC, ET AL.,

Defendants.

Case No. 20CV368917

**ORDER CONCERNING
PLAINTIFF'S
FINAL APPROVAL OF THE
SETTLEMENT AND FOR
APPROVAL OF ATTORNEY FEES,
COSTS, AND SERVICE AWARD**

This is a putative class and Private Attorneys General Act ("PAGA") action on behalf of employees of defendant Seagate US LLC, alleging underpayment of sick pay and wage statement violations. The parties reached a settlement, which the Court preliminarily approved in an order filed on May 7, 2021. 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, and no one appeared at the September 9 hearing to contest the motion. As discussed below, the Court 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.)

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10 In determining whether a class settlement is fair, adequate and reasonable, the
11 trial court should consider relevant factors, such as the strength of plaintiffs’ case,
12 the risk, expense, complexity and likely duration of further litigation, the risk of
13 maintaining class action status through trial, the amount offered in settlement, the
14 extent of discovery completed and the stage of the proceedings, the experience
15 and views of counsel, the presence of a governmental participant, and the reaction
16 of the class members to the proposed settlement.

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18 (*Wershba, supra*, 91 Cal.App.4th at pp. 244–245, internal citations and quotations omitted.)

19 In general, the most important factor is the strength of the plaintiffs’ case on the merits,
20 balanced against the amount offered in settlement. (See *Kullar v. Foot Locker Retail, Inc.* (2008)
21 168 Cal.App.4th 116, 130 (*Kullar*).) But the trial court is free to engage in a balancing and
22 weighing of factors depending on the circumstances of each case. (*Wershba, supra*, 91
23 Cal.App.4th at p. 245.) The trial court must examine the “proposed settlement agreement to the
24 extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or
25 overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a
26 whole, is fair, reasonable and adequate to all concerned.” (*Ibid.*, citation and internal quotation
27 marks omitted.)
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1 The burden is on the proponent of the settlement to show that it is fair and
2 reasonable. However “a presumption of fairness exists where: (1) the settlement
3 is reached through arm’s-length bargaining; (2) investigation and discovery are
4 sufficient to allow counsel and the court to act intelligently; (3) counsel is
5 experienced in similar litigation; and (4) the percentage of objectors is small.”

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7 (*Wershba, supra*, 91 Cal.App.4th at p. 245, citation omitted.) The presumption does not permit
8 the Court to “give rubber-stamp approval” to a settlement; in all cases, it must “independently
9 and objectively analyze the evidence and circumstances before it in order to determine whether
10 the settlement is in the best interests of those whose claims will be extinguished,” based on a
11 sufficiently developed factual record. (*Kullar, supra*, 168 Cal.App.4th at p. 130.)

12 **B. PAGA**

13 Labor Code section 2699, subdivision (l) provides that “[t]he superior court shall review
14 and approve any penalties sought as part of a proposed settlement agreement pursuant to”
15 PAGA. The court’s review “ensur[es] that any negotiated resolution is fair to those affected.”

16 (*Williams v. Superior Court* (2017) 3 Cal.5th 531, 549.) Seventy-five percent of any penalties
17 recovered under PAGA go to the Labor and Workforce Development Agency (LWDA), leaving
18 the remaining twenty-five percent for the aggrieved employees. (*Iskanian v. CLS Transportation*
19 *Los Angeles, LLC* (2014) 59 Cal.4th 348, 380.)

20 “[W]hen a PAGA claim is settled, the relief provided ... [should] be genuine and
21 meaningful, consistent with the underlying purpose of the statute to benefit the public”
22 (*Villalobos v. Calandri Sonrise Farm LP* (C.D. Cal., July 22, 2015, No. CV122615PSGJEMX)
23 2015 WL 12732709, at *13.) The settlement must be reasonable in light of the potential verdict
24 value. (See *O’Connor v. Uber Technologies, Inc.* (N.D. Cal. 2016) 201 F.Supp.3d 1110, 1135
25 [rejecting settlement of less than one percent of the potential verdict].) But a permissible
26 settlement may be substantially discounted, given that courts often exercise their discretion to
27 award PAGA penalties below the statutory maximum even where a claim succeeds at trial. (See
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1 *Viceral v. Mistras Group, Inc.* (N.D. Cal., Oct. 11, 2016, No. 15-CV-02198-EMC) 2016 WL
2 5907869, at *8–9.)

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

4 The non-reversionary gross settlement amount is \$330,000. Attorney fees of up to
5 \$110,000 (one-third of the gross settlement), litigation costs not to exceed \$15,000, and
6 administration costs of up to \$6,000 will be paid from the gross settlement. \$10,000 will be
7 allocated to PAGA penalties, 75 percent of which will be paid to the LWDA. The named
8 plaintiff will also seek an enhancement award of \$10,000.

9 The net settlement will be apportioned 80 percent to the Wage Statement Class members
10 and distributed pro rata basis based on their qualifying wage statements. The remaining 20
11 percent will be distributed to the Sick Pay Class on a per capita basis. At preliminary approval,
12 Plaintiff estimated that the average settlement payment will be approximately \$1,469.91 to each
13 of the 97 Wage Statement Class members and \$1,067.65 to the 34 Sick Pay Class members.
14 Class members will not be required to submit a claim to receive their payments. Settlement
15 awards will be allocated 100 percent to interest and penalties for tax purposes. Funds associated
16 with checks uncashed after 180 days will be distributed to Child Advocates of Silicon Valley.

17 Wage Statement Class members who do not opt out of the settlement will release all
18 claims, rights, etc. “arising from April 6, 2019 through August 7, 2020, arising out of any
19 violation of Labor Code section 226, including (1) any and all claims for failure to furnish
20 accurate itemized wage statements; (2) all derivative claims for statutory penalties and/or civil
21 penalties under [PAGA] premised on Labor Code section 226; (3) pre-judgment interest; and (4)
22 any and all claims for attorneys’ fees and costs.”

23 Sick Pay Class members will similarly release claims “arising from April 6, 2017 through
24 August 7, 2020, arising out of any violation for failure to pay sick pay, including (1) any and all
25 claims for waiting time penalties under Labor Code section 203; (2) all derivative claims for
26 statutory penalties and/or civil penalties under PAGA premised on Labor Code sections 201-203
27 and 246; (3) pre-judgment interest; and (4) any and all claims for attorneys’ fees and costs.”
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1 The notice process has now been completed. There were no objections to the settlement
2 or requests for exclusion from the class. Of 117 notice packets, three were re-mailed to updated
3 addresses and none were ultimately undeliverable. The administrator estimates that the average
4 payment to class members will be \$1,605.64, the minimum payment will be \$52.79, and the
5 maximum payment will be \$2,952.65.

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

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

12 Plaintiff seeks a fee award of \$110,000, or one-third of the gross settlement, which is not
13 an 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 \$93,225, based on 162.1 hours spent on the case by counsel billing at \$500 and \$750
17 per hour. Plaintiff's request results in a modest multiplier of 1.18. As a cross-check, the lodestar
18 supports the percentage fee requested, particularly given the lack of objections to the attorney fee
19 request. (See *Laffitte v. Robert Half Intern. Inc.* (2016) 1 Cal.5th 480, 488, 503–504 [trial court
20 did not abuse its discretion in approving fee award of 1/3 of the common fund, cross-checked
21 against a lodestar resulting in a multiplier of 2.03 to 2.13].)

22 Plaintiff's counsel also requests \$8,639.62 in costs. Plaintiff's costs appear reasonable
23 based on the summary provided and are approved. The \$6,000 in administrative costs are also
24 approved.

25 Finally, Plaintiff requests a service award of \$10,000. To support his request, he submits
26 a declaration describing his efforts on the case. The Court finds that the class representative is
27 entitled to an enhancement award and the amount requested is reasonable.
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1 **IV. ORDER AND JUDGMENT**

2 In accordance with the above, IT IS HEREBY ORDERED, ADJUDGED, AND
3 DECREED THAT:

4 Plaintiff's motion for final approval is GRANTED. The following classes are certified
5 for settlement purposes:

- 6 • The Wage Statement Class of "all current and former non-exempt employees employed
7 by Defendant in California who were paid Shift Premium wages and/or Shift OT wages
8 between April 6, 2019 and August 7, 2020."
- 9 • The Sick Pay Class of "all non-exempt employees employed by Defendant in California
10 who received Shift Premium and sick pay in the same workweek, and whose employment
11 ended (either voluntarily or involuntarily) at any time from April 6, 2017 through August
12 7, 2020."

13 No one is excluded from the class.

14 Judgment shall be entered through the filing of this order and judgment. (Code Civ.
15 Proc., § 668.5.) Plaintiff and the members of the class shall take from their complaint only the
16 relief set forth in the settlement agreement and this order and judgment. Pursuant to Rule
17 3.769(h) of the California Rules of Court, the Court retains jurisdiction over the parties to
18 enforce the terms of the settlement agreement and the final order and judgment.
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1 The Court sets a compliance hearing for May 19, 2022 at 2:30 P.M. in Department 1. At
2 least ten court days before the hearing, class counsel and the settlement administrator shall
3 submit a summary accounting of the net settlement fund identifying distributions made as
4 ordered herein; the number and value of any uncashed checks; amounts remitted to the *cy pres*
5 beneficiary; the status of any unresolved issues; and any other matters appropriate to bring to the
6 Court's attention. Counsel shall also submit an amended judgment as described in Code of Civil
7 Procedure section 384, subdivision (b). Counsel may appear at the compliance hearing
8 remotely.

9 **IT IS SO ORDERED.**

10 Date: September 9, 2021

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13 The Honorable Sunil R. Kulkarni
14 Judge of the Superior Court
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