

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 MOTION FOR
PRELIMINARY APPROVAL OF
CLASS/PAGA SETTLEMENT**

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. Before the Court is Plaintiff's motion for preliminary approval of a settlement, which is unopposed. No one appeared at the May 6, 2021 hearing to contest the Court's tentative ruling. The Court now issues its final order, which GRANTS Plaintiff's motion.

I. BACKGROUND

As alleged in the operative complaint, Plaintiff Mark Ward worked for Seagate as a nonexempt, hourly engineer from January 2015 through May 18, 2020. (Complaint, ¶ 7.) He and other employees routinely earned non-discretionary incentive wages that increased their regular rates of pay, but were incorrectly paid sick pay at their base rates. (*Id.*, ¶ 27.) In

1 addition, Plaintiff and other employees who received Shift OT and Shift Premium wages
2 received wage statements that failed to identify the hours worked and hourly pay rates used to
3 calculate those wages. (*Ibid.*)

4 Based on these allegations, Plaintiff brings claims for: (1) violation of Labor Code
5 section 226, subdivision (a) (on behalf of the Shift OT and Shift Premium Wage Statement
6 Classes), (2) violation of Labor Code sections 201–203 (on behalf of the Sick Pay Class), and (3)
7 violation of PAGA (on behalf of all aggrieved employees).

8 The parties have reached a settlement. Plaintiff now moves for an order preliminarily
9 approving the settlement of the class and PAGA claims, provisionally certifying the settlement
10 class, approving the form and method for providing notice to the class, and scheduling a final
11 fairness hearing.

12 **II. LEGAL STANDARDS FOR SETTLEMENT APPROVAL**

13 **A. Class Action**

14 Generally, “questions whether a [class action] settlement was fair and reasonable,
15 whether notice to the class was adequate, whether certification of the class was proper, and
16 whether the attorney fee award was proper are matters addressed to the trial court’s broad
17 discretion.” (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234–235 (*Wershba*),
18 disapproved of on other grounds by *Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal.5th
19 260.)

20 In determining whether a class settlement is fair, adequate and reasonable, the
21 trial court should consider relevant factors, such as the strength of plaintiffs’ case,
22 the risk, expense, complexity and likely duration of further litigation, the risk of
23 maintaining class action status through trial, the amount offered in settlement, the
24 extent of discovery completed and the stage of the proceedings, the experience
25 and views of counsel, the presence of a governmental participant, and the reaction
26 of the class members to the proposed settlement.
27 (*Wershba, supra*, 91 Cal.App.4th at pp. 244–245, internal citations and quotations omitted.)
28

1 In general, the most important factor is the strength of the plaintiffs’ case on the merits,
2 balanced against the amount offered in settlement. (See *Kullar v. Foot Locker Retail, Inc.* (2008)
3 168 Cal.App.4th 116, 130 (*Kullar*)). But the trial court is free to engage in a balancing and
4 weighing of factors depending on the circumstances of each case. (*Wershba, supra*, 91
5 Cal.App.4th at p. 245.) The trial court must examine the “proposed settlement agreement to the
6 extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or
7 overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a
8 whole, is fair, reasonable and adequate to all concerned.” (*Ibid.*, citation and internal quotation
9 marks omitted.)

10 The burden is on the proponent of the settlement to show that it is fair and
11 reasonable. However “a presumption of fairness exists where: (1) the settlement
12 is reached through arm’s-length bargaining; (2) investigation and discovery are
13 sufficient to allow counsel and the court to act intelligently; (3) counsel is
14 experienced in similar litigation; and (4) the percentage of objectors is small.”
15 (*Wershba, supra*, 91 Cal.App.4th at p. 245, citation omitted.) The presumption does not permit
16 the Court to “give rubber-stamp approval” to a settlement; in all cases, it must “independently
17 and objectively analyze the evidence and circumstances before it in order to determine whether
18 the settlement is in the best interests of those whose claims will be extinguished,” based on a
19 sufficiently developed factual record. (*Kullar, supra*, 168 Cal.App.4th at p. 130.)

20 **B. PAGA**

21 Labor Code section 2699, subdivision (l) provides that “[t]he superior court shall review
22 and approve any penalties sought as part of a proposed settlement agreement pursuant to”
23 PAGA. The court’s review “ensur[es] that any negotiated resolution is fair to those affected.”
24 (*Williams v. Superior Court* (2017) 3 Cal.5th 531, 549.) Seventy-five percent of any penalties
25 recovered under PAGA go to the Labor and Workforce Development Agency (“LWDA”),
26 leaving the remaining twenty-five percent for the aggrieved employees. (*Iskanian v. CLS*
27 *Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348, 380.)
28

1 “[W]hen a PAGA claim is settled, the relief provided ... [should] be genuine and
2 meaningful, consistent with the underlying purpose of the statute to benefit the public”
3 (*Villalobos v. Calandri Sonrise Farm LP* (C.D. Cal., July 22, 2015, No. CV122615PSGJEMX)
4 2015 WL 12732709, at *13.) The settlement must be reasonable in light of the potential verdict
5 value. (See *O’Connor v. Uber Technologies, Inc.* (N.D. Cal. 2016) 201 F.Supp.3d 1110, 1135
6 [rejecting settlement of less than one percent of the potential verdict].) But a permissible
7 settlement may be substantially discounted, given that courts often exercise their discretion to
8 award PAGA penalties below the statutory maximum even where a claim succeeds at trial. (See
9 *Viceral v. Mistras Group, Inc.* (N.D. Cal., Oct. 11, 2016, No. 15-CV-02198-EMC) 2016 WL
10 5907869, at *8–9.)

11 **III. SETTLEMENT PROCESS**

12 According to Plaintiff, the parties agreed to attempt mediation shortly after this action
13 was filed. They engaged in informal discovery to allow Plaintiff to assess liability and calculate
14 the maximum damages and penalties. Defendant provided necessary data including the number
15 of putative class members, the number of wage statements at issue, the applicable hourly rates of
16 pay, and information about its sick pay, shift premium pay, and wage statement policies and
17 practices. The parties engaged in a full day of mediation with Michael J. Loeb on January 14,
18 2021, and were able to reach the settlement before the Court.

19 **IV. SETTLEMENT PROVISIONS**

20 The non-reversionary gross settlement amount is \$330,000. Attorney fees of up to
21 \$110,000 (one-third of the gross settlement), litigation costs not to exceed \$15,000, and
22 administration costs of up to \$6,000 will be paid from the gross settlement. \$10,000 will be
23 allocated to PAGA penalties, 75 percent of which will be paid to the LWDA. The named
24 plaintiff will also seek an enhancement award of \$10,000.

25 The net settlement, approximately \$181,500, will be apportioned 80 percent to the Wage
26 Statement Class members and distributed pro rata basis based on their qualifying wage
27 statements. The remaining 20 percent will be distributed to the Sick Pay Class on a per capita
28 basis. The average settlement payment will be approximately \$1,469.91 to each of the 97 Wage

Statement Class members and \$1,067.65 to the 34 Sick Pay Class members. Class members will not be required to submit a claim to receive their payments. Settlement awards will be allocated 100 percent to interest and penalties for tax purposes. Funds associated with checks uncashed after 180 days will be distributed to Child Advocates of Silicon Valley.

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

Sick Pay Class members will similarly release claims “arising from April 6, 2017 through August 7, 2020, arising out of any violation for failure to pay sick pay, including (1) any and all claims for waiting time penalties under Labor Code section 203; (2) all derivative claims for statutory penalties and/or civil penalties under PAGA premised on Labor Code sections 201-203 and 246; (3) pre-judgment interest; and (4) any and all claims for attorneys’ fees and costs.”

V. FAIRNESS OF SETTLEMENT

Plaintiff estimates that the maximum value of the action is \$484,116 for the underlying Labor Code claims and \$717,650 in PAGA penalties, for a total of \$1,201,766. The settlement thus represents over 27 percent of the maximum value of the case, including penalties. Plaintiff submits that the settlement is fair and reasonable to the class given the risks on the merits and the discretionary nature of a PAGA penalty award. The Court agrees, and finds that the class settlement warrants preliminary approval. In addition, the PAGA allocation provided by the settlement is genuine, meaningful, and fair to those impacted.

The Court retains an independent right and responsibility to review the requested attorney fees and award only so much as it determines to be reasonable. (See *Garabedian v. Los Angeles Cellular Telephone Co.* (2004) 118 Cal.App.4th 123, 127-128.) While 1/3 of the common fund for attorney fees is generally considered reasonable, counsel shall submit lodestar information before the final approval hearing in this matter so the Court can compare the lodestar information

1 with the requested fees. (See *Laffitte v. Robert Half Intern. Inc.* (2016) 1 Cal.5th 480, 504 [trial
2 courts have discretion to double-check the reasonableness of a percentage fee through a lodestar
3 calculation].)

4 **VI. PROPOSED SETTLEMENT CLASS**

5 Plaintiff requests that the following settlement classes be provisionally certified:

- 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 **A. Legal Standard for Certifying a Class for Settlement Purposes**

14 Rule 3.769(d) of the California Rules of Court states that “[t]he court may make an order
15 approving or denying certification of a provisional settlement class after [a] preliminary
16 settlement hearing.” California Code of Civil Procedure Section 382 authorizes certification of a
17 class “when the question is one of a common or general interest, of many persons, or when the
18 parties are numerous, and it is impracticable to bring them all before the court”

19 Section 382 requires the plaintiff to demonstrate by a preponderance of the evidence:
20 (1) an ascertainable class and (2) a well-defined community of interest among the class
21 members. (*Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326, 332 (*Sav-On*
22 *Drug Stores*).) “Other relevant considerations include the probability that each class member
23 will come forward ultimately to prove his or her separate claim to a portion of the total recovery
24 and whether the class approach would actually serve to deter and redress alleged wrongdoing.”
25 (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.) The plaintiff has the burden of
26 establishing that class treatment will yield “substantial benefits” to both “the litigants and to the
27 court.” (*Blue Chip Stamps v. Superior Court* (1976) 18 Cal.3d 381, 385.)
28

1 In the settlement context, “the court’s evaluation of the certification issues is somewhat
2 different from its consideration of certification issues when the class action has not yet settled.”
3 (*Luckey v. Superior Court* (2014) 228 Cal.App.4th 81, 93.) As no trial is anticipated in the
4 settlement-only context, the case management issues inherent in the ascertainable class
5 determination need not be confronted, and the court’s review is more lenient in this respect. (*Id.*
6 at pp. 93–94.) But considerations designed to protect absentees by blocking unwarranted or
7 overbroad class definitions require heightened scrutiny in the settlement-only class context, since
8 the court will lack the usual opportunity to adjust the class as proceedings unfold. (*Id.* at p. 94.)

9 **B. Ascertainable Class**

10 A class is ascertainable “when it is defined in terms of objective characteristics and
11 common transactional facts that make the ultimate identification of class members possible when
12 that identification becomes necessary.” (*Noel v. Thrifty Payless, Inc.* (2019) 7 Cal.5th 955, 980
13 (*Noel*.) A class definition satisfying these requirements

14 puts members of the class on notice that their rights may be adjudicated in the
15 proceeding, so they must decide whether to intervene, opt out, or do nothing and
16 live with the consequences. This kind of class definition also advances due
17 process by supplying a concrete basis for determining who will and will not be
18 bound by (or benefit from) any judgment.

19 (*Noel, supra*, 7 Cal.5th at p. 980, citation omitted.)

20 “As a rule, a representative plaintiff in a class action need not introduce evidence
21 establishing how notice of the action will be communicated to individual class members in order
22 to show an ascertainable class.” (*Noel, supra*, 7 Cal.5th at p. 984.) Still, it has long been held
23 that “[c]lass members are ‘ascertainable’ where they may be readily identified ... by reference to
24 official records.” (*Rose v. City of Hayward* (1981) 126 Cal. App. 3d 926, 932, disapproved of on
25 another ground by *Noel, supra*, 7 Cal.5th 955; see also *Cohen v. DIRECTV, Inc.* (2009) 178
26 Cal.App.4th 966, 975-976 [“The defined class of all HD Package subscribers is precise, with
27 objective characteristics and transactional parameters, and can be determined by DIRECTV’s
28 own account records. No more is needed.”].)

1 Here, the estimated 97 Wage Statement Class members and 34 Sick Pay Class members
2 are readily identifiable based on Defendant's records, and the settlement classes are
3 appropriately defined based on objective characteristics. The Court finds the settlement classes
4 are numerous and ascertainable.

5 **C. Community of Interest**

6 The "community-of-interest" requirement encompasses three factors: (1) predominant
7 questions of law or fact, (2) class representatives with claims or defenses typical of the class, and
8 (3) class representatives who can adequately represent the class. (*Sav-On Drug Stores, supra*, 34
9 Cal.4th at pp. 326, 332.)

10 For the first community of interest factor, "[i]n order to determine whether common
11 questions of fact predominate the trial court must examine the issues framed by the pleadings
12 and the law applicable to the causes of action alleged." (*Hicks v. Kaufman & Broad Home Corp.*
13 (2001) 89 Cal.App.4th 908, 916 (*Hicks*)). The court must also examine evidence of any conflict
14 of interest among the proposed class members. (See *J.P. Morgan & Co., Inc. v. Superior Court*
15 (2003) 113 Cal.App.4th 195, 215.) The ultimate question is whether the issues which may be
16 jointly tried, when compared with those requiring separate adjudication, are so numerous or
17 substantial that the maintenance of a class action would be good for the judicial process and to
18 the litigants. (*Lockheed Martin Corp. v. Superior Court* (2003) 29 Cal.4th 1096, 1104–1105
19 (*Lockheed Martin*)). "As a general rule if the defendant's liability can be determined by facts
20 common to all members of the class, a class will be certified even if the members must
21 individually prove their damages." (*Hicks, supra*, 89 Cal.App.4th at p. 916.)

22 Here, common legal and factual issues predominate. Plaintiff's claims all arise from
23 Defendant's wage and hour practices applied to the similarly-situated class members.

24 As to the second factor,

25 The typicality requirement is meant to ensure that the class representative is able
26 to adequately represent the class and focus on common issues. It is only when a
27 defense unique to the class representative will be a major focus of the litigation,
28 or when the class representative's interests are antagonistic to or in conflict with

1 the objectives of those she purports to represent that denial of class certification is
2 appropriate. But even then, the court should determine if it would be feasible to
3 divide the class into subclasses to eliminate the conflict and allow the class action
4 to be maintained.

5 (*Medrazo v. Honda of North Hollywood* (2008) 166 Cal. App. 4th 89, 99, internal citations,
6 brackets, and quotation marks omitted.)

7 Like other members of the class, Plaintiff was employed by Defendant as an hourly
8 employee and alleges that he experienced the violations at issue. The anticipated defenses are
9 not unique to Plaintiff, and there is no indication that Plaintiff's interests are otherwise in conflict
10 with those of the class.

11 Finally, adequacy of representation "depends on whether the plaintiff's attorney is
12 qualified to conduct the proposed litigation and the plaintiff's interests are not antagonistic to the
13 interests of the class." (*McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 450.) The class
14 representative does not necessarily have to incur all of the damages suffered by each different
15 class member in order to provide adequate representation to the class. (*Wershba, supra*, 91
16 Cal.App.4th at p. 238.) "Differences in individual class members' proof of damages [are] not
17 fatal to class certification. Only a conflict that goes to the very subject matter of the litigation
18 will defeat a party's claim of representative status." (*Ibid.*, internal citations and quotation marks
19 omitted.)

20 Plaintiff has the same interest in maintaining this action as any class member would
21 have. Further, he has hired experienced counsel. Plaintiff has sufficiently demonstrated
22 adequacy of representation.

23 **D. Substantial Benefits of Class Certification**

24 "[A] class action should not be certified unless substantial benefits accrue both to
25 litigants and the courts. . . ." (*Basurco v. 21st Century Ins.* (2003) 108 Cal.App.4th 110, 120,
26 internal quotation marks omitted.) The question is whether a class action would be superior to
27 individual lawsuits. (*Ibid.*) "Thus, even if questions of law or fact predominate, the lack of
28 superiority provides an alternative ground to deny class certification." (*Ibid.*) Generally, "a

1 class action is proper where it provides small claimants with a method of obtaining redress and
2 when numerous parties suffer injury of insufficient size to warrant individual action.” (*Id.* at pp.
3 120–121, internal quotation marks omitted.)

4 Here, there are an estimated 97 Wage Statement Class members and 34 Sick Pay Class
5 members. It would be inefficient for the Court to hear and decide the same issues separately and
6 repeatedly for each class member. Further, it would be cost prohibitive for each class member to
7 file suit individually, as each member would have the potential for little to no monetary recovery.
8 It is clear that a class action provides substantial benefits to both the litigants and the Court in
9 this case.

10 **VII. NOTICE**

11 The content of a class notice is subject to court approval. (Cal. Rules of Court, rule
12 3.769(f).) “The notice must contain an explanation of the proposed settlement and procedures
13 for class members to follow in filing written objections to it and in arranging to appear at the
14 settlement hearing and state any objections to the proposed settlement.” (*Ibid.*) In determining
15 the manner of the notice, the court must consider: “(1) The interests of the class; (2) The type of
16 relief requested; (3) The stake of the individual class members; (4) The cost of notifying class
17 members; (5) The resources of the parties; (6) The possible prejudice to class members who do
18 not receive notice; and (7) The res judicata effect on class members.” (Cal. Rules of Court, rule
19 3.766(e).)

20 Here, the notice describes the lawsuit, explains the settlement, and instructs class
21 members that they may opt out of the settlement or object. The gross settlement amount and
22 estimated deductions are provided. Class members’ estimated payments are provided, and they
23 are informed of their qualifying wage statements as reflected in Defendant’s records and
24 instructed how to dispute this information. Class members are given 45 days to request
25 exclusion from the class or submit a written objection to the settlement.

26 The form of notice is generally adequate, but it must be modified to instruct class
27 members that they may object or opt out of the class by simply providing their name, without the
28 need to provide their address or other identifying information. In addition, the notice must be

1 modified to display class members' estimated payments and wage statement information in bold
2 within a box set off from the rest of the text on the first page of the notice.

3 With regard to appearances at the final fairness hearing, the notice shall be further
4 modified to instruct class members as follows:

5 Due to the COVID-19 pandemic, hearings before the judge overseeing this case
6 are currently being conducted remotely with the assistance of a third-party service
7 provider, CourtCall. If that remains the case at the time of the final fairness
8 hearing, class members who wish to appear at the final fairness hearing should
9 contact class counsel to arrange a remote appearance through CourtCall, at least
10 three days before the hearing if possible. Any CourtCall fees for an appearance
11 by an objecting class member shall be paid by class counsel.

12 Turning to the notice procedure, the parties have selected Phoenix Settlement
13 Administrators as the settlement administrator. The administrator will mail the notice packet
14 within 10 calendar days of receiving the class information from Defendant, after updating
15 addresses using the National Change of Address Database. Any notice packets returned as
16 undeliverable will be re-mailed to any forwarding address provided or located using a skip trace
17 or comparable search. Class members who receive a re-mailed notice shall have their response
18 deadline extended by up to 15 days. These notice procedures are appropriate and are approved.

19 **VIII. CONCLUSION AND ORDER**

20 Subject to the modifications to the class notice directed above, the Court GRANTS
21 Plaintiff's motion for preliminary approval. The final approval hearing shall take place on
22 **September 9, 2021** at 1:30 p.m. in Dept. 1. The following classes are preliminarily certified for
23 settlement purposes:

- 24 • The Wage Statement Class of "all current and former non-exempt employees employed
25 by Defendant in California who were paid Shift Premium wages and/or Shift OT wages
26 between April 6, 2019 and August 7, 2020."
- 27 • The Sick Pay Class of "all non-exempt employees employed by Defendant in California
28 who received Shift Premium and sick pay in the same workweek, and whose employment

1 ended (either voluntarily or involuntarily) at any time from April 6, 2017 through August
2 7, 2020.”

3 Before final approval, Plaintiff shall lodge any individual settlement agreement he may
4 have executed with Defendant in connection with his employment for the Court’s review.

5 **IT IS SO ORDERED.**

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7 Date: May 7, 2021

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10 The Honorable Sunil R. Kulkarni
11 Judge of the Superior Court
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