

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA

LUCITA SAMONTE, individually, and on behalf
of all others similarly situated,

Plaintiff,

vs.

VELODYNE LIDAR, INC., a Delaware
corporation; and DOES 1 through 10, inclusive,

Defendants.

Case No. 20CV366914

**ORDER RE: MOTION FOR FINAL
APPROVAL OF CLASS AND PAGA
ACTION SETTLEMENT; JUDGMENT**

The above-entitled matter came on for hearing on Wednesday, September 14, 2022, at 1:30 p.m. in Department 3, the Honorable Patricia M. Lucas presiding. The court reviewed and considered the written submissions filed by the parties and issued a tentative ruling on Tuesday, September 13, 2022. No party contested the tentative ruling; therefore, the court orders that the tentative ruling be adopted as the order of the court, and hereby orders, adjudges, and decrees as follows:

I. INTRODUCTION

This is a class and representative action arising out of various alleged wage and hour violations by defendant Velodyne Lidar, Inc. ("Defendant"). The operative First Amended Complaint ("FAC"), filed on October 13, 2020, sets forth the following causes of action:

(1) Failure to Pay Minimum and Straight Time Wages (Cal. Lab. Code §§ 204, 1194, 1194.2, and 1197); (2) Failure to Pay Overtime Compensation (Cal. Lab. Code §§ 1194 and 1198); (3) Failure to Provide Meal Periods (Cal. Lab. Code §§ 226.7, 512); (4) Failure to Authorize and Permit Rest Breaks (Cal. Lab. Code § 226.7); (5) Failure to Timely Pay Final Wages at Termination (Cal. Lab. Code §§ 201-203); (6) Failure to Provide Accurate Itemized Wage Statements (Cal. Lab. Code § 226); (7) Unfair Business Practices (Cal. Bus. & Prof. Code § 17200, et seq.); and (8) Civil Penalties Under PAGA (Cal. Lab. Code § 2699, et seq.).

The parties have reached a settlement. On May 5, 2022, the court granted preliminary approval of the settlement.

Plaintiff Lucita Samonte (“Plaintiff”) now moves for final approval of the settlement.

II. LEGAL STANDARD

Generally, “questions whether a settlement was fair and reasonable, whether notice to the class was adequate, whether certification of the class was proper, and whether the attorney fee award was proper are matters addressed to the trial court’s broad discretion.” (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-235 (*Wershba*), citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794 (*Dunk*).)

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

(*Wershba, supra*, 91 Cal.App.4th at pp. 244-245, citing *Dunk, supra*, 48 Cal.App.4th at p. 1801 and *Officers for Justice v. Civil Service Com’n, etc.* (9th Cir. 1982) 688 F.2d 615, 624 (*Officers*).)

“The list of factors is not exclusive and the court is free to engage in a balancing and weighing of factors depending on the circumstances of each case.” (*Wershba, supra*, 91 Cal.App.4th at p. 245.) The court must examine the “proposed settlement agreement to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a

1 whole, is fair, reasonable and adequate to all concerned.” (*Ibid.*, quoting *Dunk, supra*, 48
2 Cal.App.4th at p. 1801 and *Officers, supra*, 688 F.2d at p. 625, internal quotation marks omitted.)

3 The burden is on the proponent of the settlement to show that it is fair and
4 reasonable. However “a presumption of fairness exists where: (1) the settlement
5 is reached through arm’s-length bargaining; (2) investigation and discovery are
6 sufficient to allow counsel and the court to act intelligently; (3) counsel is
7 experienced in similar litigation; and (4) the percentage of objectors is small.”

8 (*Wershba, supra*, 91 Cal.App.4th at p. 245, citing *Dunk, supra*, 48 Cal.App.4th at p. 1802.)

9 **III. DISCUSSION**

10 The case has been settled on behalf of the following class:

11 [A]ll current and former hourly-paid or non-exempt employees who have worked
12 for Defendant in the State of California at any time during the Class Period

13 The Class Period is defined as “June 8, 2016 to the date of the Preliminary Approval Order ... or
14 sixty (60) days from August 5, 2021, whichever is sooner.” The class includes PAGA Members,
15 who are defined as all class members who are employed or have been employed by Defendant in
16 California from “June 8, 2019 to the date of the Preliminary Approval Order ... or sixty (60)
17 days from August 5, 2021, whichever is sooner.”

18 As discussed in connection with the motion for preliminary approval, Defendant will pay
19 a total amount of \$785,000. The total settlement payment includes attorney fees up to
20 \$261,666.67 (33.33 percent of the gross settlement fund), litigation costs not to exceed \$15,000,
21 an incentive award of \$7,500 for the class representative, settlement administration costs not to
22 exceed \$15,000, and a PAGA allocation of \$80,000 (75 percent of which (i.e., \$60,000) will be
23 paid to the LWDA and 25 percent of which (i.e., \$20,000) will be paid to PAGA Members).

24 The settlement administrator shall allocate \$25,000 of the net settlement fund to
25 Severance Class Members, who are defined as “the former hourly-paid or non-exempt
26 employees with whom Defendant entered into severance agreements as of August 5, 2021.”
27 That amount will be apportioned equally among all Severance Class Members, who will not be
28 entitled to any additional amounts (with the exception of any *pro rata* payments they may
receive on account of being PAGA Members). Thereafter, the settlement administrator will
determine the total number of workweeks worked by class members, other than Severance Class
Members, and distribute *pro rata* shares of the net settlement fund (less the \$25,000 allocated for

1 Severance Class Members) based on the total number of weeks worked. The funds from any
2 checks remaining uncashed more than 180 days after mailing will be distributed to the Katherine
3 and George Alexander Community Law Center as a *cy pres* recipient.

4 In exchange for the settlement, class members agree to release Defendants, and related
5 entities and persons, from all claims, charges, complaints, liens, demands, causes of action,
6 obligations, damages, and liabilities arising during the Class Period “that were asserted in the
7 Complaint,” which is defined as “the operative Second Amended Class Action and
8 Representative Action Complaint.” Plaintiff also agrees to a general release of her claims.

9 On June 1, 2022, the settlement administrator mailed notice packets to 437 class
10 members. (Declaration of Taylor Mitzner on Behalf of Settlement Administrators Regarding
11 Settlement Notice Administration (“Mitzner Dec.”), ¶ 6 & Ex. A.) Ultimately, two notice
12 packets remained undeliverable. (*Id.* at ¶¶ 7-8.)

13 As of August 10, 2022, there have been no requests for exclusion and no objections to the
14 settlement. (Mitzner Dec., ¶¶ 10-11.) Each Severance Class Member will receive a payment of
15 \$135.14. (*Id.* at ¶ 14.) With respect to class members, other than Severance Class Members, the
16 highest individual settlement payment is approximately \$5,117.79, the lowest individual
17 settlement payment is approximately \$16.83, and the average individual settlement payment is
18 approximately \$1,552.41. (*Id.* at ¶ 15.) The court previously found the proposed settlement is
19 fair and the court continues to make that finding for purposes of final approval.

20 Plaintiff requests an incentive award of \$7,500 for the class representative. The court
21 approved the incentive award in connection with preliminary approval of the settlement and
22 continues to do so for purposes of final approval.

23 Plaintiff’s counsel requests attorney fees of \$261,666.67 (33.33 percent of the total
24 settlement fund). The court previously approved the attorney fees in connection with
25 preliminary approval of the settlement and continues to do so for purposes of final approval.

26 Plaintiff’s counsel provides evidence of incurred costs in the amount of \$9,875.60.
27 (Declaration of Kane Moon in Support of Plaintiff’s Motion for Final Approval of Class Action
28

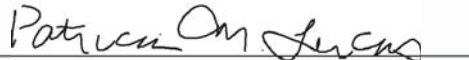
1 Settlement, ¶ 14 & Ex. D.) Those costs are approved. The settlement administration costs of
2 \$9,750 are also approved. (Mitzner Dec., ¶ 18 & Ex. B.)

3 The motion for final approval of the class action settlement is GRANTED.

4 Pursuant to Rule 3.769, subdivision (h), of the California Rules of Court, the court retains
5 jurisdiction over the parties to enforce the terms of the Settlement Agreement, and the final
6 Order and Judgment.

7 The court sets a compliance hearing for May 17, 2023, at 2:30 p.m. in Department 3. At
8 least ten court days before the hearing, class counsel and the settlement administrator shall
9 submit a summary accounting of the net settlement fund identifying distributions made as
10 ordered herein, the number and value of any uncashed checks, amounts remitted to Defendant,
11 the status of any unresolved issues, and any other matters appropriate to bring to the court's
12 attention. Counsel may appear at the compliance hearing remotely.

13
14 Dated: September 14, 2022


Patricia M. Lucas
Judge of the Superior Court