

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA

JORDAN MCDONALD,

Plaintiff,

v.

HCL AMERICA, INC., et al.,

Defendants.

Case No.: 20CV371353

**ORDER CONCERNING PLAINTIFF’S
MOTION FOR PRELIMINARY
APPROVAL OF CLASS/PAGA
SETTLEMENT**

This is a putative class and Private Attorneys General Act (“PAGA”) action. Plaintiff alleges that Defendant HCL America, Inc. provided employees with wage statements that omitted required information and failed to pay final wages on time.

Now before the Court is Plaintiff’s motion for preliminary approval of a settlement, which is unopposed. The Court issued a tentative ruling on January 18, 2023, and no one contested it at the hearing on January 19. The Court now issues its final order, which GRANTS preliminary approval, subject to a few modifications to the class notice and notice procedure.

I. BACKGROUND

As alleged in the Complaint, Plaintiff began working for Defendant in October 2018 and was employed as a non-exempt IT Analyst. (Complaint, ¶ 8.) Throughout his employment, Plaintiff received wage statements that showed “86.67” hours, regardless of how many hours he

1 actually worked. (*Ibid.*) The wage statements also showed gross wages earned, without any
2 hourly rates or corresponding number of hours worked. (*Ibid.*) Moreover, when Plaintiff was
3 terminated on September 24, 2020, Defendant did not pay his final wages immediately or within
4 three days. (*Ibid.*) In fact, Plaintiff still has not been paid his final wages (including accrued but
5 unused vacation). (*Ibid.*) While Defendant purportedly paid Plaintiff his final wages late on
6 September 29, 2020, it subsequently reversed the direct deposit, and Plaintiff still has not been
7 paid his final wages. (*Ibid.*)

8 Based on these allegations, Plaintiff asserts putative class claims for (1) violation of
9 Labor Code section 226, subdivision (a) and (2) violation of Labor Code sections 201–203, as
10 well as (3) a representative claim for PAGA penalties.

11 Plaintiff now moves for an order preliminarily approving the settlement of the class and
12 PAGA claims, provisionally certifying the settlement class, approving the form and method for
13 providing notice to the class, and scheduling a final fairness hearing.

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

15 **A. Class Action**

16 Generally, “questions whether a [class action] settlement was fair and reasonable,
17 whether notice to the class was adequate, whether certification of the class was proper, and
18 whether the attorney fee award was proper are matters addressed to the trial court’s broad
19 discretion.” (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234–235 (*Wershba*),
20 disapproved of on other grounds by *Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal.5th
21 260.)

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

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

2 In general, the most important factor is the strength of the plaintiffs’ case on the merits,
3 balanced against the amount offered in settlement. (See *Kullar v. Foot Locker Retail, Inc.* (2008)
4 168 Cal.App.4th 116, 130 (*Kullar*).) But the trial court is free to engage in a balancing and
5 weighing of relevant factors, depending on the circumstances of each case. (*Wershba, supra*, 91
6 Cal.App.4th at p. 245.) The trial court must examine the “proposed settlement agreement to the
7 extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or
8 overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a
9 whole, is fair, reasonable and adequate to all concerned.” (*Ibid.*, citation and internal quotation
10 marks omitted.) The trial court also must independently confirm that “the consideration being
11 received for the release of the class members’ claims is reasonable in light of the strengths and
12 weaknesses of the claims and the risks of the particular litigation.” (*Kullar, supra*, 168
13 Cal.App.4th at p. 129.) Of course, before performing its analysis the trial court must be
14 “provided with basic information about the nature and magnitude of the claims in question and
15 the basis for concluding that the consideration being paid for the release of those claims
16 represents a reasonable compromise.” (*Id.* at pp. 130, 133.)

17 **B. PAGA**

18 Labor Code section 2699, subdivision (1)(2) provides that “[t]he superior court shall
19 review and approve any settlement of any civil action filed pursuant to” PAGA. The court’s
20 review “ensur[es] that any negotiated resolution is fair to those affected.” (*Williams v. Superior*
21 *Court* (2017) 3 Cal.5th 531, 549.) Seventy-five percent of any penalties recovered under PAGA
22 go to the Labor and Workforce Development Agency (LWDA), leaving the remaining twenty-
23 five percent for the aggrieved employees. (*Iskanian v. CLS Transportation Los Angeles, LLC*
24 (2014) 59 Cal.4th 348, 380, overruled on other grounds by *Viking River Cruises, Inc. v.*
25 *Moriana* (2022) ___ U.S. ___, 2022 U.S. LEXIS 2940.)

26 Similar to its review of class action settlements, the Court must “determine independently
27 whether a PAGA settlement is fair and reasonable,” to protect “the interests of the public and the
28 LWDA in the enforcement of state labor laws.” (*Moniz v. Adecco USA, Inc.* (2021) 72

1 Cal.App.5th 56, 76–77.) It must make this assessment “in view of PAGA’s purposes to
2 remediate present labor law violations, deter future ones, and to maximize enforcement of state
3 labor laws.” (*Id.* at p. 77; see also *Haralson v. U.S. Aviation Servs. Corp.* (N.D. Cal. 2019) 383
4 F. Supp. 3d 959, 971 [“when a PAGA claim is settled, the relief provided for under the PAGA
5 [should] be genuine and meaningful, consistent with the underlying purpose of the statute to
6 benefit the public”], quoting LWDA guidance discussed in *O’Connor v. Uber Technologies,*
7 *Inc.* (N.D. Cal. 2016) 201 F.Supp.3d 1110 (*O’Connor*).)

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

14 **III. SETTLEMENT PROCESS**

15 According to Plaintiff’s counsel, the parties began to meet and confer and exchanged
16 informal discover soon after this action was filed. Plaintiff provided Defendant with examples of
17 the wage statements he received, and Defendant provided information about various defenses,
18 including those based on arbitration agreements. Defendant also provided the number of
19 putative class members and the number of wage statements at issue, among other information.
20 Class counsel investigated the claims and defenses.

21 On February 16, 2022, parties mediated with Mike Young. Based on a mediator’s
22 proposal, they were able to reach the settlement now before the Court.

23 **IV. SETTLEMENT PROVISIONS**

24 The non-reversionary gross settlement amount is \$410,000. Attorney fees of up to
25 \$136,666.66 (one-third of the gross settlement), litigation costs of up to \$20,000, and \$10,000 in
26 administration costs will be paid from the gross settlement. \$40,000 will be allocated to PAGA
27 penalties, 75 percent of which (\$30,000) will be paid to the LWDA. The named plaintiff will
28 seek an incentive award of \$10,000.

1 The net settlement, approximately \$203,333.34 by the Court's calculation, will be
2 allocated 20 percent to the 61 Late Pay Class members and 80 percent to the 300 Wage
3 Statement Class members. Late Pay Class members will each receive an equal share of their
4 allocation, while Wage Statement Class members' payments will be allocated proportionally
5 based on the number of relevant wage statements they received. The average payment will be
6 around \$666 to the Late Pay Class members and \$542 to each of the Wage Statement Class
7 members. Class members will not be required to submit a claim to receive their payments. For
8 tax purposes, settlement payments will be allocated 100 percent to penalties and interest. Funds
9 associated with checks uncashed after 180 days will be paid to the California State Controller for
10 deposit in the Unclaimed Property Fund in the name of the appropriate employee.

11 In exchange for the settlement, class members who do not opt out will release "any and
12 all Labor Code section 226(a) claims arising during the Wage Statement Period that were alleged
13 in the Action or that reasonably could have been alleged based on the facts alleged in the Action,
14 and any and all Labor Code section 201-203 claims arising [during] the Class Period that were
15 alleged in the Action or that reasonably could have been alleged based on the facts alleged in the
16 Action." PAGA aggrieved employees will release any such claims for PAGA penalties arising
17 during the PAGA period. The releases are appropriately tailored to the allegations at issue.
18 (See *Amaro v. Anaheim Arena Management, LLC* (2021) 69 Cal.App.5th 521, 537.) Consistent
19 with the statute, aggrieved employees will not be able to opt out of the PAGA portion of the
20 settlement.

21 **V. FAIRNESS OF SETTLEMENT**

22 Plaintiff contends that the wage statement claims asserted in this case would result in a
23 \$50 penalty for the first non-compliant wage statement issued to each class member and a \$100
24 penalty for each additional non-compliant wage statement, up to a maximum of \$4,000 per class
25 member. PAGA penalties could also total up to \$100 per violation for this theory. As to the late
26 payment claims, Plaintiff contends that late paid wages would result in Labor Code 203 penalties
27 of up to 30 days' wages. Thus, Plaintiff estimates that the waiting time penalties in this case
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could be worth up to \$175,961.54, the wage statement penalties could total \$750,000, and the PAGA penalties could be worth up to \$770,000, for a total of \$1,695,961.54.

Particularly considering the portion of the case’s value attributable to uncertain PAGA penalties, the settlement achieves a good result for the class. For purposes of preliminary approval, the Court finds that the settlement is fair and reasonable to the class, and the PAGA allocation is genuine, meaningful, and reasonable in light of the statute’s purposes.

Of course, 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.) Counsel shall submit lodestar information before the final approval hearing in this matter so the Court can compare the lodestar information with the requested fees. (See *Laffitte v. Robert Half Intern. Inc.* (2016) 1 Cal.5th 480, 504 [trial courts have discretion to double-check the reasonableness of a percentage fee through a lodestar calculation].)

VI. PROPOSED SETTLEMENT CLASS

Plaintiff requests that the following settlement classes be provisionally certified:

- the “Late Pay Class” of “all former non-exempt employees of Defendant, HCL America, Inc., in the State of California whose employment ended at any time from April 12, 2017, through April 30, 2022 (the ‘Late Pay Period’),” and
- the “Wage Statement Class” of “all current and former non-exempt employees of Defendant in the State of California at any time from April 12, 2019, through February 28, 2021 (the ‘Wage Statement Period’).”

A. Legal Standard for Certifying a Class for Settlement Purposes

Rule 3.769(d) of the California Rules of Court states that “[t]he court may make an order approving or denying certification of a provisional settlement class after [a] preliminary settlement hearing.” California Code of Civil Procedure Section 382 authorizes certification of a

1 class “when the question is one of a common or general interest, of many persons, or when the
2 parties are numerous, and it is impracticable to bring them all before the court”

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

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

20 **B. Ascertainable Class**

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

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

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

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

13 Here, the scores of class members are readily identifiable based on Defendant’s records,
14 and the settlement classes are appropriately defined based on objective characteristics. The
15 Court finds that the settlement class is numerous, ascertainable, and appropriately defined.

16 **C. Community of Interest**

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

21 For the first community of interest factor, “[i]n order to determine whether common
22 questions of fact predominate the trial court must examine the issues framed by the pleadings
23 and the law applicable to the causes of action alleged.” (*Hicks v. Kaufman & Broad Home Corp.*
24 (2001) 89 Cal.App.4th 908, 916 (*Hicks*).) The court must also examine evidence of any conflict
25 of interest among the proposed class members. (See *J.P. Morgan & Co., Inc. v. Superior Court*
26 (2003) 113 Cal.App.4th 195, 215.) The ultimate question is whether the issues which may be
27 jointly tried, when compared with those requiring separate adjudication, are so numerous or
28 substantial that the maintenance of a class action would be good for the judicial process and to

1 the litigants. (*Lockheed Martin Corp. v. Superior Court* (2003) 29 Cal.4th 1096, 1104–1105
2 (*Lockheed Martin*).) “As a general rule if the defendant’s liability can be determined by facts
3 common to all members of the class, a class will be certified even if the members must
4 individually prove their damages.” (*Hicks, supra*, 89 Cal.App.4th at p. 916.)

5 Here, common legal and factual issues predominate. Plaintiff’s claims all arise from
6 Defendant’s pay practices applied to the similarly-situated class members.

7 As to the second factor,

8 The typicality requirement is meant to ensure that the class representative is able
9 to adequately represent the class and focus on common issues. It is only when a
10 defense unique to the class representative will be a major focus of the litigation,
11 or when the class representative’s interests are antagonistic to or in conflict with
12 the objectives of those she purports to represent that denial of class certification is
13 appropriate. But even then, the court should determine if it would be feasible to
14 divide the class into subclasses to eliminate the conflict and allow the class action
15 to be maintained.

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

18 Like other members of the class, Plaintiff was employed by Defendant as a non-exempt
19 employee and alleges that he experienced the violations at issue. The anticipated defenses are
20 not unique to Plaintiff, and there is no indication that Plaintiff’s interests are otherwise in conflict
21 with those of the class.

22 Finally, adequacy of representation “depends on whether the plaintiff’s attorney is
23 qualified to conduct the proposed litigation and the plaintiff’s interests are not antagonistic to the
24 interests of the class.” (*McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 450.) The class
25 representative does not necessarily have to incur all of the damages suffered by each different
26 class member in order to provide adequate representation to the class. (*Wershba, supra*, 91
27 Cal.App.4th at p. 238.) “Differences in individual class members’ proof of damages [are] not
28 fatal to class certification. Only a conflict that goes to the very subject matter of the litigation

1 will defeat a party’s claim of representative status.” (*Ibid.*, internal citations and quotation marks
2 omitted.)

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

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

7 “[A] class action should not be certified unless substantial benefits accrue both to
8 litigants and the courts. . . .” (*Basurco v. 21st Century Ins.* (2003) 108 Cal.App.4th 110, 120,
9 internal quotation marks omitted.) The question is whether a class action would be superior to
10 individual lawsuits. (*Ibid.*) “Thus, even if questions of law or fact predominate, the lack of
11 superiority provides an alternative ground to deny class certification.” (*Ibid.*) Generally, “a
12 class action is proper where it provides small claimants with a method of obtaining redress and
13 when numerous parties suffer injury of insufficient size to warrant individual action.” (*Id.* at pp.
14 120–121, internal quotation marks omitted.)

15 Here, there are an estimated 300 or more class members. It would be inefficient for the
16 Court to hear and decide the same issues separately and repeatedly for each class member.
17 Further, it would be cost prohibitive for each class member to file suit individually, as each
18 member would have the potential for little to no monetary recovery. It is clear that a class action
19 provides substantial benefits to both the litigants and the Court in this case.

20 **VII. NOTICE**

21 The content of a class notice is subject to court approval. (Cal. Rules of Court, rule
22 3.769(f).) “The notice must contain an explanation of the proposed settlement and procedures
23 for class members to follow in filing written objections to it and in arranging to appear at the
24 settlement hearing and state any objections to the proposed settlement.” (*Ibid.*) In determining
25 the manner of the notice, the court must consider: “(1) The interests of the class; (2) The type of
26 relief requested; (3) The stake of the individual class members; (4) The cost of notifying class
27 members; (5) The resources of the parties; (6) The possible prejudice to class members who do
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1 not receive notice; and (7) The res judicata effect on class members.” (Cal. Rules of Court, rule
2 3.766(e).)

3 Here, the notice describes the lawsuit, explains the settlement, and instructs class
4 members that they may opt out of the settlement (except the PAGA component) or object. The
5 gross settlement amount and estimated deductions are provided. Class members’ estimated
6 payments and wage statement information is displayed on the first page of the notice. Class
7 members are informed of their qualifying wage statements as reflected in Defendant’s records
8 and are instructed how to dispute this information. They are given 45 days to request exclusion
9 from the class or submit a written objection to the settlement. The notice instructs class
10 members how to appear at the final fairness hearing remotely via Microsoft Teams. Class
11 members are instructed that they may opt out of or object to the settlement by simply providing
12 their name, and that they may appear at the final fairness hearing to make an oral objection
13 without submitting a written objection. Finally, the notice informs class members that notice of
14 final judgment will be posted on the administrator’s web site.

15 The notice is generally adequate, but must be modified to state the amount of the PAGA
16 allocation.

17 Turning to the notice procedure, the parties have selected Phoenix Settlement
18 Administrators as the settlement administrator. The administrator will mail the notice packet
19 within 14 days of preliminary approval. Any returned notices will be re-mailed to any
20 forwarding address provided or better address located through a skip trace. These notice
21 procedures are generally appropriate and are approved, with the modification that the
22 administrator shall update class members’ addresses using the National Change of Address
23 Database before the initial mailing.

24 **VIII. CONCLUSION**

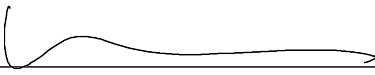
25 Plaintiff’s motion for preliminary approval is GRANTED, subject to the modifications to
26 the class notice and notice procedure directed above. The final approval hearing shall take place
27 on **April 20, 2023** at 1:30 p.m. in Dept. 1. The following classes are preliminarily certified for
28 settlement purposes:

- the “Late Pay Class” of “all former non-exempt employees of Defendant, HCL America, Inc., in the State of California whose employment ended at any time from April 12, 2017, through April 30, 2022 (the ‘Late Pay Period’),” and
- the “Wage Statement Class” of “all current and former non-exempt employees of Defendant in the State of California at any time from April 12, 2019, through February 28, 2021 (the ‘Wage Statement Period’).”

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

IT IS SO ORDERED.

Date: January 22, 2023



The Honorable Sunil R. Kulkarni
Judge of the Superior Court