

FINAL RULING RE: MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

Gerald Duncan v. Infineon Technologies Americas Corp. et al.

Case No.: 21STCV16872

Department SSC-9

Hon. Elaine Lu

Hearing: August 20, 2024

FILED

Superior Court of California
County of Los Angeles

08/20/2024

David W. Slayton, Executive Officer / Clerk of Court

By: A. Morales Deputy

The Parties' Motion for Final Approval of Class Action Settlement is **GRANTED** as the settlement is fair, adequate, and reasonable.

The essential terms are:

- A. The Gross Settlement Value ("GSV") is **\$2,500,000**, non-reversionary. (¶11)
- B. The Net Settlement Amount (|Net|) is the GSA minus the following:
 - o **\$833,333.33** (33 1/3%) for attorney fees to Class Counsel, Moon Law Group, PC (¶133);
 - o **\$14,402.94** for litigation costs to Class Counsel (*ibid.*);
 - o **\$7,500** enhancement payment **[reduced]** to Named Plaintiff Gerald Duncan (¶134);
 - o **\$15,550** for settlement administration costs to ILYM Group, Inc. (¶140.c); and
 - **\$112,500** (75% of \$150,000 PAGA penalty) to the LWDA. (¶19).
- C. Employer's share of the payroll taxes on the taxable portion of the settlement payments shall be paid separately from the GSA by Defendant. (¶142e)
- D. Plaintiffs' release of Defendants from claims described herein.

Plaintiff's counsel shall file a [Proposed] Order and Judgment, consistent with this ruling containing all requisite terms, including the class definition, release language, and a statement of the number and identity of class members who requested exclusion.

By **December 9, 2024**, Class Counsel must give notice to the class members pursuant to California Rules of Court, rule 3.771(b) and to the LWDA, if applicable, pursuant to Labor Code §2699 (1)(3).

By **November 18, 2025**, Class Counsel must file a Final Report re: Distribution of the settlement funds.

The Court hereby sets a **Non-Appeal Case Review for November 25, 2025, 8:30 a.m., Department 9.**

BACKGROUND

This is a wage and hour class action. Defendants Infineon Technologies Americas Corp. (“Infineon” or “Defendant”), Infineon Technologies LLC, and International Rectifier HiRel Products, Inc. manufacture and market semiconductors and systems for automotive, industrial, and multimarket sectors, as well as chip card and security products.

On May 4, 2021, Plaintiff Gerald Duncan filed this class action against Defendants, which, in its amended form, alleges that Defendants systematically: (1) failed to pay minimum and straight time wages, (2) failed to pay overtime compensation, (3) failed to provide meal periods, (4) failed to authorize and permit rest periods, (5) failed to timely pay wages at termination, (6) failed to provide accurate itemized wage statements, (7) engaged in unfair business practices, and (8) violated civil penalty provisions recoverable as PAGA penalties pursuant to Labor Code section 2698 et seq.

Counsel represents that prior to the mediation, Defendants produced a sample of time and pay records for class members, as well as policy manuals in effect during the statutory period, and additional documents. Defendants also provided information regarding the total number of current and former employees in its informal discovery responses. Moreover, Class Counsel retained an expert to analyze the records produced. Defendant provided a sampling of time and payroll records, including time and pay records for tens of thousands of shifts, with equal representation in each year for a representative sample within the statutory limitation period. Defendant also produced policy documents and Plaintiff’s personnel record.

Counsel further represents that Defendant provided time and payroll records for 73 putative class members out of an estimated Class size of 760, roughly 10% of the Class. Additionally, the records provided contained 36,343 shifts worked by putative class members, representing approximately 10% of the total estimated 379,361 shifts worked in the putative Class Period. Counsel contends the sample data that was provided allowed Plaintiff’s expert to prepare an analysis with a high degree of certainty.

On May 18, 2022, the Parties participated in private mediation with professional neutral mediator Jeffrey Ross. After further negotiations and discussions, a settlement was reached by the parties, the material terms of which are encompassed within the Joint Stipulation re: Class Action Settlement, a fully executed copy of which is attached to the Declaration of Kane Moon (“Moon Decl.”) as Exhibit 1.

On June 6, 2023, the Court issued a checklist of items for counsel to address. In response, on September 27, 2023, counsel filed a fully executed Amended Settlement Agreement attached to the Supplemental Declaration of Kane Moon (“Moon Supp. Decl.”) ISO Prelim as Exhibit 1.

On October 18, 2023, the Court issued a further checklist of items for counsel to address. In response, on January 31, 2024, counsel filed a fully executed 2nd Amended Settlement Agreement (“Settlement”) attached to the Second Supplemental Declaration of Kane Moon (“Moon 2nd Supp. Decl.”) ISO Prelim as Exhibit 1.

On March 21, 2024, after Counsel complied with the condition to revise the settlement agreement's escalator clause (Settlement Agreement ¶15), by removing the option that allows Defendant at its discretion to revise the Class Period, the Court granted preliminary approval. (See Third Amended Settlement Agreement ("Settlement") attached to the Third Supplemental Declaration of Kane Moon ("Moon 3rd Supp. Decl.") ISO Prelim as Exhibit 1. All references below are to the Third Amended Settlement Agreement.)

Notice was given to the Class Members as ordered (see Declaration of Lesly Rubalcava ("Rubalcava Decl.")).) Now before the Court is the Motion for Final Approval of the proposed class action settlement.

SETTLEMENT CLASS DEFINITION

- A Settlement Class comprised of all persons who were employed by the Settling Defendants within the State of California as hourly, non-exempt employees at any time from May 4, 2017 to May 4, 2020, subject to the provisions set forth in Paragraph 15, below (the "Class Period"). (Settlement, ¶14)
- The Settlement Class includes the "PAGA Group," which consists all persons who were employed by Settling Defendants within the State of California as hourly, non-exempt employees at any time from May 1, 2020 to the date of the Court's order granting preliminary approval of this Settlement, or an alternative date to be selected by Settling Defendants at their sole discretion, and subject to the provisions set forth in Paragraph 15 (the "PAGA Period") (¶18)
- The GSV is based on Settling Defendants' best estimates that as of May 4, 2020 and December 18, 2020, there were a cumulative total of 108,805 workweeks in the Class Period and PAGA Period, respectively. In the event that the actual number of total workweeks in the Class Period and PAGA Period is more than 108,805 workweeks, then Settling Defendants, in their sole discretion, will proportionally increase the GSV by a pro-rata dollar value for the workweeks in excess of 108,805. (¶15)
 - At Final Approval, the Administrator represents that the class list contained 777 Settlement Class Members who worked a cumulative total of 90,588 workweeks in the Class Period. (Rubalcava Decl., ¶5.) Therefore, the escalator was not triggered.
- The parties stipulate to class certification for settlement purposes only. (¶14.)

TERMS OF SETTLEMENT AGREEMENT

The essential terms are as follows:

- The Gross Settlement Value ("GSV") is **\$2,500,000**, non-reversionary. (¶11)
- The Net Settlement Value ("Net" or "NSV") (**\$1,504,166.67**) is the GSA minus the following:
 - Up to **\$833,333.33** (33 1/3%) for attorney fees (¶33);
 - Up to **\$20,000** for litigation costs (*ibid.*);
 - Up to **\$10,000** for a Service Payment to the Named Plaintiff (¶34);
 - Up to **\$20,000** for settlement administration costs (¶40.c); and
 - Payment of **\$112,500** (75% of \$150,000 PAGA penalty) to the LWDA. (¶19)

- Defendants will pay their share of taxes separate from the GSA. (¶42.e)
- There is no claim form requirement. (Moon Decl. ISO Prelim, ¶11)
- Individual Settlement Payment Calculation: The Settlement Administrator will divide the NSV by the total number of workweeks of all Settlement Class Members during the Class Period to calculate the “Workweek Class Payment.” The Settlement Administrator will calculate each Settlement Class Member’s “Individual Class Payment” by multiplying the Workweek Class Payment by the number of workweeks the Settlement Class Member worked during the Class Period. (Settlement, ¶45)
 - Tax Allocation: Each settlement payment from the NSV (“Class Member Payment”) shall be classified as follows: (1) one-third to unpaid wages, (2) one-third to penalties, and (3) one-third to interest. (¶42.a)
- PAGA Payments: The Settlement Administrator will divide the PAGA Group Payment by the total number of workweeks of all members of the PAGA Group during the PAGA period to calculate the “Workweek PAGA Payment.” The Settlement Administrator will calculate each member of the PAGA Group’s “Individual PAGA Payment” by multiplying the “Workweek PAGA Payment” by the number of work weeks that the member of the PAGA Group was employed during the PAGA Period. (¶44)
 - Tax Allocation: 100% penalties. (¶42.c)
- Response Deadline: within forty-five (45) calendar days from the date of mailing of the Settlement Notice (the “Response Deadline”). (¶49) This deadline applies to Request for Exclusion (*ibid.*) and objections (¶50). Those Settlement Class Members who receive a re-mailed Settlement Notice shall have an additional ten (10) calendar days from the latter of (i) the postmarked date of re-mailing or (ii) the Response Deadline to postmark a Request for Exclusion from or objection to the Settlement. (¶51) This deadline applies to workweek disputes, too. (¶52)
 - The Settlement Administrator shall provide written notice to Class Counsel and Settling Defendants’ counsel no later than thirty (30) calendar days after the Response Deadline, as defined in Paragraph 49 of this Agreement, with a complete list of the Settlement Class Members who have timely requested exclusion from the class. Settling Defendants, in their sole and independent discretion, shall have the right, but not the obligation, to revoke this Agreement if Requests for Exclusion from the Settlement are filed by Settlement Class Members representing more than five percent (5%) of all Settlement Class Members. If Settling Defendants choose to exercise this option, the effect will be precisely the same as if one of the events specified in Paragraph 29 did not occur. Settling Defendants must exercise this right, if at all, within ten (10) calendar days after receipt of the written notice from the Settlement Administrator discussed in this Paragraph 31. (¶31)
- Funding of Settlement: Infineon shall pay the GSV to the Settlement Administrator not later than fifteen (15) court days after the Effective Date. (¶56)
- Uncashed Settlement Checks: After the Settlement Administrator mails out the Member Payments, Settlement Class Members shall have one hundred and eighty (180) calendar days to cash or deposit the check that was mailed to them. After one hundred and

eighty (180) calendar days from the date of mailing, the checks shall become null and void, and any monies remaining in the distribution account shall be distributed to the State Controller Unclaimed Property Fund in the names of the Settlement Class Members who did not cash their checks. The Settling Parties agree that this disposition results in no unpaid residue, as the entire GSV will be paid out, regardless of whether all Settlement Class Members cash their Settlement Checks. Therefore, Settling Defendants will not be required to pay any interest on said amount. (¶58)

- The settlement administrator will be ILYM Group. (¶21)
- Class members will be mailed a copy of the Final Judgment with each Settlement distribution to Settlement Class Members and members of the PAGA Group. (¶21.)
- The proposed settlement was submitted to the LWDA on January 30, 2023. (Moon Decl. ISO Prelim, Exhibit 2.) The amended settlement was submitted to the LWDA on September 27, 2023. (Moon Supp. Decl. ISO Prelim, Exhibit 4.) The third amended settlement was submitted to the LWDA on March 14, 2024. (Moon 3rd Supp. Decl. ISO Prelim, Exhibit 3.)
- **Scope of the release:** Upon occurrence of the Effective Date and payment of payments due under the terms of the Settlement, and in exchange for the consideration, undertakings, and covenants agreed to by Settling Defendants in this Agreement, and to the fullest extent permitted by applicable law, the Settlement Class will release, discharge, and covenant not to sue Settling Defendants, and all of their respective past and present employees, directors, officers, attorneys, representatives, insurers, agents, parents, subsidiaries, affiliates, related companies, predecessors, successors, lessees, and assigns, and any entity that could be jointly liable with any of these (individually and collectively “Defendant Releasees”) from and with respect to all actions, causes of action, suits, liabilities, claims, and demands whatsoever, and each of them, whether known or unknown, which the Settlement Class or individual members thereof, has, had, or hereafter may claim to have, against Defendant Releasees, or any of them, which arose during the Class Period and are based on or arise from any and all claims and allegations in this Action and/or the Complaints, as well as any and all claims and allegations that could have been raised in this Action and/or the Complaint based on the allegations asserted therein, which include, by way of description, but not by way of limitation, claims on behalf of the Settlement Class alleging that Settling Defendants failed to provide Settlement Class Members with legally compliant meal periods, failed to provide Settlement Class Members with legally compliant rest breaks, failed to provide Settlement Class Members with all wages due, including minimum wages, regular wages, wages at the regular rate of pay, and overtime wages, failed to provide Settlement Class Members with compliant wage statements, failed to timely pay Settlement Class Members all wages due upon termination, and engaged in Unfair Business Practices as well as any other claims under constitutional, statutory, and/or common law any way related to any of the claims described in this Paragraph 59 (“Released Class Claims”). For the avoidance of doubt, Released Class Claims shall include claims under the Fair Labor Standards Act (“FLSA”), and the settlement check provided to each Settlement Class Member shall include a notation indicating that by

cashing or depositing the settlement check the Settlement Class Member shall opt in to a settlement of FLSA claims. (¶159)

- Upon occurrence of the Effective Date and payment of payments due under the terms of the settlement, and in exchange for the for the consideration, undertakings, and covenants agreed to by Settling Defendants in this Agreement, and to the fullest extent permitted by applicable law, the PAGA Group will release, discharge, and covenant not to sue the Defendant Releasees from and with respect to all actions, causes of action, suits, liabilities, claims, and demands under the California Labor Code Private Attorneys' General Act (i.e., PAGA), whether known or unknown, which the PAGA Group or individual members thereof, has, had, or hereafter may claim to have, against Defendant Releasees, or any of them, which arose during the PAGA Period and are based on or arise from any and all claims and allegations in this Action and/or the Complaints and/or the Second PAGA Notice, as well as any and all claims and allegations that could have been raised in this Action and/or the Complaints and/or the Second PAGA Notice, which include, by way of description, but not by way of limitation, claims under PAGA on behalf of PAGA Group alleging that Settling Defendants failed to provide members of the PAGA Group with legally compliant meal periods, failed to provide members of the PAGA Group with legally compliant rest breaks, failed to provide members of the PAGA Group with all wages due, including minimum wages, regular wages, wages at the regular rate of pay, and overtime wages, failed to provide members of the PAGA Group with compliant wage statements, and failed to timely pay members of the PAGA Group all wages due upon termination, as well as any other claims under constitutional, statutory, and/or common law any way related to any of the claims described in this Paragraph 60. (¶160)
- Named Plaintiff will also provide a general release and CC § 1542 waiver. (¶161-62)

ANALYSIS OF SETTLEMENT AGREEMENT

A. Does a presumption of fairness exist?

The Court preliminarily found in its Order of March 21, 2024 that the presumption of fairness should be applied. No facts have come to the Court's attention that would alter that preliminary conclusion. Accordingly, the settlement is entitled to a presumption of fairness as set forth in the preliminary approval order.

B. Is the settlement fair, adequate, and reasonable?

The settlement was preliminarily found to be fair, adequate and reasonable. Notice has now been given to the Class and the LWDA.

Reaction of the class members to the proposed settlement.

Number of class members: 777 (803 counting both class and PAGA) (Rubalcava Decl. ¶5.)

Number of notice packets mailed: 803 (*Id.* at ¶7.)

Number of undeliverable notices: 16 (*Id.* at ¶10.)

Number of opt-outs: 2 (*Id.* at ¶11.) [John Gerk and Alvin Rojas.]

Number of objections: 0 (*Id.* at ¶12.)

Number of participating class members: 775 (*Id.* at ¶14.)

Average individual payment: \$1,905.44 (*Id.* at ¶15.)

Highest individual payment: \$2,568.23 (*Ibid.*)

Lowest individual payment: \$16.36 (*Ibid.*)

Number of PAGA members: 588 (*Id.* at ¶16.)

Average PAGA payment: \$63.78 (*Ibid.*)

Highest PAGA payment: \$67.46 (*Ibid.*)

Lowest PAGA payment: \$2.04 (*Ibid.*)

The Court finds that the notice was given as directed and conforms to due process requirements. Given the reactions of the Class Members and the LWDA to the proposed settlement and for the reasons set forth in the Preliminary Approval order, the settlement is found to be fair, adequate, and reasonable.

C. Attorney Fees and Costs

Class Counsel requests an award of **\$833,333.33 (33.33%)** in fees and **\$14,402.94** in costs. (MFA at 1:16-18.) The Settlement Agreement provides for up to \$833,333.33 (33 1/3%) of the settlement amount in fees and \$20,000 in costs (¶33).

“Courts recognize two methods for calculating attorney fees in civil class actions: the lodestar/multiplier method and the percentage of recovery method.” (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 254.) Here, class counsel request attorney fees using the percentage method, as crosschecked by lodestar. (MFA at pp. 15-19.)

In common fund cases, the Court may employ a percentage of the benefit method, as cross-checked against the lodestar. (*Laffitte v. Robert Half Int’l, Inc.* (2016) 1 Cal.5th 480, 503.) The fee request represents approximately one-third of the gross settlement amount, which is the average generally awarded in class actions. (See *In re Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 558, fn. 13 [“Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery.”].)

Class Counsel has provided information, summarized below, from which the lodestar may be calculated:

Attorney	Rate	Hours	Totals
Kane Moon	\$900.00	70.4	\$63,360.00
Allen Feghali	\$850.00	150.6	\$128,010.00
Edwin Kamarzarian	\$600.00	32.8	\$19,680.00
Charlotte Mikat-Stevens	\$575.00	42.4	\$24,380.00
Totals		296.2	\$235,430.00

(Decl. of Kane Moon ISO Final ¶¶54-62.)

Counsel's percentage-based fee request is higher than the unadjusted lodestar, and would represent application of a multiplier of approximately 3.54.

Here, the **\$833,333.33** fee request represents a reasonable percentage of the total funds paid by Defendant. Notice of the fee request was provided to class members in the Notice, and no one objected. (Rubalcava Decl. ¶12, Exhibit A thereto.)

As for costs, Class Counsel is requesting a cost amount of **\$14,402.94**. This is less than the \$20,000 cap estimated at preliminary approval, which was disclosed to Class Members and not objected to. (Rubalcava Decl. ¶12, Exhibit A thereto.) Costs include, but are not limited to: Mediation (\$9,000), Filing Fees (\$1,435), Case Anywhere (\$1,108.53), and Expert Fees [Berger Consulting] (\$1,687.50). (Moon Decl. ISO Final ¶62; Exhibit .) The Court notes that Counsel voluntarily withdrew its request for reimbursement of the \$750 "Admin Fee" from their costs. (Moon Decl. ISO Final, pg. 5, n.2). The remaining costs appear to be reasonable in amount and reasonably necessary to this litigation.

Based on the above, the Court hereby awards **\$833,333.33** in fees and **\$14,402.94** in costs.

D. Incentive Award

The class representative, Gerald Duncan, seeks an enhancement payment of **\$10,000** for his/her contributions to the action. (MFA at 21:2-3.)

In connection with the final fairness hearing, named Plaintiffs must submit declarations attesting to why they should be entitled to an enhancement award in the proposed amount. The named Plaintiffs must explain why they "should be compensated for the expense or risk he has incurred in conferring a benefit on other members of the class." (*Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 806.) Trial courts should not sanction enhancement awards of thousands of dollars with "nothing more than *pro forma* claims as to 'countless' hours expended, 'potential stigma' and 'potential risk.' Significantly more specificity, in the form of quantification of time and effort expended on the litigation, and in the form of reasoned explanation of financial or other risks incurred by the named plaintiffs, is required in order for the trial court to conclude that an enhancement was 'necessary to induce [the named plaintiff] to participate in the suit . . .'" (*Id.* at 806-807, italics and ellipsis in original.)

Plaintiff represents that his contributions to this litigation include: engaging in communications with his attorneys, gathering and providing documents, providing witnesses to his attorneys to interview, helping prepare his attorneys for the mediation, remaining available for the mediation, and reviewing the settlement. He estimates spending 80 hours on the case. (Declaration of Gerald Duncan, ¶¶18-25.)

Plaintiff's efforts are commendable but not exceptional. Based on the above, as well as the benefits obtained on behalf of the class, the Court hereby grants the enhancement payment in the **reduced amount of \$7,500** to Plaintiff.

E. Settlement Administration Costs

The settlement administrator, ILYM Group, Inc., is requesting **\$15,550** for the costs of settlement administration. (Rubalcava Decl. ¶17.) This is less than the cost of \$20,000 provided for in the Settlement Agreement (¶34) and disclosed to class members in the Notice, to which there were no objections. (Rubalcava Decl. ¶12, Exhibit A thereto.) Based on the above, the Court hereby awards costs in the requested amount of **\$15,550**.

CONCLUSION

Based on the foregoing, the Court orders that:

The Parties' Motion for Final Approval of Class Action Settlement is **GRANTED** as the settlement is fair, adequate, and reasonable.

The essential terms are:

- A. The Gross Settlement Value ("GSV") is **\$2,500,000**, non-reversionary. (¶11)
- B. The Net Settlement Amount (|Net|) is the GSA minus the following:
 - o **\$833,333.33** (33 1/3%) for attorney fees to Class Counsel, Moon Law Group, PC (¶33);
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 - **\$112,500** (75% of \$150,000 PAGA penalty) to the LWDA. (¶19).
- C. Employer's share of the payroll taxes on the taxable portion of the settlement payments shall be paid separately from the GSA by Defendant. (¶42e)
- D. Plaintiffs' release of Defendants from claims described herein.

Plaintiff's counsel shall file a proposed Order and Judgment, consistent with this ruling containing all requisite terms, including the class definition, release language, and a statement of the number and identity of class members who requested exclusion.

By **December 9, 2024**, Class Counsel must give notice to the class members pursuant to California Rules of Court, rule 3.771(b) and to the LWDA, if applicable, pursuant to Labor Code §2699 (1)(3).

By **November 18, 2025**, Class Counsel must file a Final Report re: Distribution of the settlement funds.

The Court hereby sets a **Non-Appearence Case Review for November 25, 2025, 8:30 a.m., Department 9.**

THE MOVING PARTY IS ORDERED TO DOWNLOAD THE INSTANT **SIGNED** ORDER FROM THE COURT'S WEBSITE AND TO GIVE NOTICE TO ALL OTHER PARTIES.

IT IS SO ORDERED.

DATED: August 20, 2024

A handwritten signature in cursive script, appearing to read "Elaine Lu", written in dark ink.

Elaine Lu
Judge of the Superior Court