

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE

Civil Complex Center
751 W. Santa Ana Blvd
Santa Ana, CA 92701

SHORT TITLE: Solomon vs. Micro Electronics, Inc.

**CLERK'S CERTIFICATE OF MAILING/ELECTRONIC
SERVICE**

CASE NUMBER:
30-2022-01262829-CU-OE-CXC

I certify that I am not a party to this cause. I certify that that the following document(s), Minute Order dated 08/16/24, was transmitted electronically by an Orange County Superior Court email server on August 16, 2024, at 3:34:23 PM PDT. The business mailing address is Orange County Superior Court, 700 Civic Center Dr. W, Santa Ana, California 92701. Pursuant to Code of Civil Procedure section 1013b, I electronically served the document(s) on the persons identified at the email addresses listed below:

AEGIS LAW FIRM
FBEKAM@AEGISLAWFIRM.COM

AEGIS LAW FIRM
JCAMPBELL@AEGISLAWFIRM.COM

MORGAN, LEWIS & BOCKIUS LLP
JOSEPH.GOVEA@MORGANLEWIS.COM

MORGAN, LEWIS & BOCKIUS LLP
KATHY.GAO@MORGANLEWIS.COM

Clerk of the Court, by:

A. Piercy

, Deputy

CLERK'S CERTIFICATE OF MAILING/ELECTRONIC SERVICE

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF ORANGE
CIVIL COMPLEX CENTER**

MINUTE ORDER

DATE: 08/16/2024 TIME: 01:30:00 PM DEPT: CX103

JUDICIAL OFFICER PRESIDING: Lon F. Hurwitz

CLERK: A. Piercy

REPORTER/ERM:

BAILIFF/COURT ATTENDANT: A. Condaras

CASE NO: **30-2022-01262829-CU-OE-CXC** CASE INIT.DATE: 06/02/2022

CASE TITLE: **Solomon vs. Micro Electronics, Inc.**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Other employment

EVENT ID/DOCUMENT ID: 74300430

EVENT TYPE: Motion for Approval of Class Settlement

MOVING PARTY: Lee Solomon

CAUSAL DOCUMENT/DATE FILED: Motion - Other For Approval of Class Settlement, 05/17/2024

APPEARANCES

No Appearance by all parties

The Tentative Ruling is posted on the Internet.

Prior to calendar call the parties submit on the tentative ruling.

There are no appearances by any party.

The Court adopts and confirms the tentative ruling as follows:

Motion for Preliminary Approval of Class Action and PAGA Settlement

FACTS/OVERVIEW: This is a putative wage-and-hour class action and PAGA matter. On June 2, 2023, Plaintiff Lee Solomon, individually and on behalf of all others similarly situated ("Plaintiff"), filed a Class Action Complaint against Defendant Micro Electronics, Inc. dba Micro Center – The Ultimate Computer Store. (ROA 2.) The Complaint alleged eight causes of action for:

1. Failure to Pay Minimum Wages;
2. Failure to Pay Overtime Wages;
3. Failure to Provide Meal Periods;
4. Failure to Permit Rest Breaks;
5. Failure to Provide Accurate Itemized Wage Statements;
6. Failure to Pay Wages Timely During Employment;
7. Failure to Pay All Wages Due Upon Separation of Employment; and
8. Violation of Bus. & Prof. Code §§ 17200, et seq.

On December 12, 2022, pursuant to stipulation and order, Plaintiff filed the operative First Amended Complaint ("FAC") adding a PAGA claim. (ROA 36.)

On October 11, 2023, the parties engaged in private mediation. (ROA 49.) During the mediation, the parties reached an agreement to resolve this litigation, and they entered into a long-form settlement

agreement on February 22, 2024. (ROA 61.)

On May 17, 2024, Plaintiff filed the current Motion for Preliminary Approval of Class and Representative Action Settlement. (ROA 74.) Neither party sought to compel arbitration, and there are no outstanding discovery orders in place. The Motion is unopposed. This is the first hearing on this matter.

SUMMARY OF THE SETTLEMENT:

A copy of the fully executed Joint Stipulation of Class and PAGA Representative Action Settlement and Release ("Settlement Agreement") is attached as Exhibit 1 to the Declaration of Alex J. Valle (ROA 75, "Counsel Decl.").

Class Definition: All individuals who were employed by MEI as non-exempt Inventory Specialists in California during the Class Period. (Agmt., ¶ 2.)

Class Period: Period from June 2, 2018 through January 11, 2024. (Id., ¶ 10.)

PAGA Member Definition: All persons employed by MEI in California as a non-exempt Inventory Specialists during the PAGA Period. (Id., ¶ 34.)

PAGA Period: Period from June 2, 2021 through the close of the Class Period. (Id., ¶ 37.)

Estimated Class Size: 70 individuals (Counsel Decl., ¶ 8.)

Gross Settlement Amount ("GSA"): \$225,000.00 Does not include employer's payroll taxes. (¶ 23.)

\$ 75,000.00 Attorneys' fees (up to 1/3 GSA)

\$ 20,000.00 Litigation costs

\$ 6,500.00 Administration costs (up to)

\$ 5,000.00 Enhancement award (up to)

\$ 20,000.00 PAGA penalties (75% to LWDA, 25% to PAGA Members)

\$ 98,500.00 Net Settlement Amount

Escalator Clause: If total number of workweeks exceeds 2,644 by 10%, GSA will increase by percentage in excess of 10% difference between 2,644 and actual number of workweeks during Class Period. (¶ 24.)

Payments to Class:

How Calculated? Class payment, pro rata based on number of workweeks. PAGA payment, pro rata based on number of pay periods. (Agmt., ¶¶ 25, 26.)

Reversion? No

Claims Made? No

Taxation? Class payments allocated 30% as wages and 70% as penalties/interest. PAGA payments allocated entirely to statutory payments. (Agmt., ¶ 67.)

Uncashed Checks uncashed after 180 days will Checks? be remitted to State Controller's Office. (Agmt., ¶ 89.)

Average Pymt. Avg. class payment, \$1,407.00. (Counsel Decl., ¶ 20.)

Released Class Claims: Any and all claims, action, or causes of action arising during Class Period that are alleged or could have been alleged in Complaint, FAC, or PAGA notice, based on or arising out of facts or claims alleged. Excludes FEHA claims. (¶¶ 43, 90.)

Released PAGA Claims: All claims arising during PAGA Period that are alleged or could have been asserted in Complaint, FAC, or PAGA notice, based upon or arising out of facts or claims alleged therein, as well as all PAGA claims alleged in PAGA notice. (¶ 44.)

Plaintiff's General Release: Any and all claims, actions, or causes of action he has or may have against Defendant, including all claims arising out of or related to his employment, and/or cessation of employment. Includes claims under ADA, NLRA, FLSA, Equal Pay Act, ERISA, Age Discrimination Act, Civil Rights Acts, FMLA, CFRA, FEHA, California whistleblower laws, UCL, and any and all claims related to causes of action alleged in the FAC, failure to reimburse business expenses, any other alleged violations of the Labor Code and Wage Orders, and/or any other federal, state, or local laws, statutes, regulations, contract or tort law. Does not include right to file administrative charge with EEOC or NLRB, workers' comp, unemployment insurance, or any claim that cannot be released by private contract. Includes waiver of right to bring or participate in class, collective, or representative action against Defendant based on claims released herein. Includes Section 1542 waiver. (Agmt., ¶¶ 93-99.)

Opt Outs: Class Members may opt out by sending written request by mail postmarked no later than 60

days after mailing of Class Notice, plus an additional 45 days after remailing. Administrator will notify Class Member if opt out request is deficient. 5 days to cure. Class Member may rescind request by submitting written rescission letter no later than one day prior to Final Approval hearing. Court retains final authority as to validity of opt out requests. (Agmt., ¶ 78.)

Objections: Class Members who do not opt out may submit written objections by mail no later than 60 days after mailing of Class Notice, plus an additional 45 days after remailing. May withdraw objections by submitting written withdrawal statement no later than one day prior to Final Approval hearing. Court retains final authority as to validity of objections. (Agmt., ¶ 80.)

Disputes: Class Members may challenge dates of employment for workweeks determination by sending written dispute by mail postmarked no later than 60 days after mailing of Class Notice, plus an additional 45 days after remailing. Defendant's records presumed to be accurate. Defendant's counsel will investigate dispute and make determination. Court will decide if dispute will be accepted, and Court's decision is final. (Agmt., ¶ 84.)

Valuation of Claims: Parties exchanged information in informal discovery. Class counsel reviewed data, documents, time and pay records, and retained expert to quantify potential exposure and assess risks associated with claims. (Counsel Decl., ¶¶ 12-19.)

Minimum Wage and Overtime Claims: Based on failure to include bonuses in regular rates of pay and failure to pay for off-the-clock screenings. Maximum exposure, \$30,000.00 (15 minutes off-the-clock work per shift x regular rate of pay and overtime rate). Included all recorded bonuses and calculated underpayment based on overtime hours per pay period. Discounted 25% for certification risks and 50% for merits risks. Adjusted exposure, \$11,250.00.

Meal Period Claims: Maximum exposure, \$170,000.00 (2,900 workweeks x 54% violation rate x avg. hourly pay rate x one hour premium per violation). Discounted 25% for certification risks and 25% for merits risk. Adjusted exposure, \$95,625.00.

Rest Break Claims: Maximum exposure, \$185,000.00 (2,900 workweeks x 100% violation rate x avg. hourly pay rate x one hour premium per violation). Discounted 50% for certification risks and 50% for merits risks. Adjusted exposure, \$46,250.00.

Waiting Time Penalties/Wage Statement Claims: Maximum exposure \$180,000 for waiting time penalties (30 days x 50 employees x 7.9 hrs/day x \$15.23 avg. pay rate). Maximum exposure \$70,000 for wage statement penalties (43 employees x \$50/\$100 with \$4,000 per employee max.) Both discounted 50% for certification risks and 50% for merits risks. Adjusted exposure for waiting time penalties, \$45,000.00. Adjusted exposure for wage statement penalties, \$17,500.00.

PAGA Claim: Maximum exposure, \$87,000.00. Assumes initial penalty rate of \$100 per pay period.

Total maximum exposure = \$799,000.00. Total risk-adjusted exposure - between \$215,625.00 and \$302,625.00. GSA of \$225,000.00 is approx. 28.2% of total maximum exposure, and between 74% to 104% of total risk-adjusted exposure. This result falls within acceptable range of reasonable recovery.

Attorneys' Fees and Costs: Attorneys' fees of up to 1/3 of GSA, i.e., \$75,000.00. Also to receive up to \$20,000.00 in litigation costs. (Agmt., ¶¶ 5, 6.) If Court approves lesser amounts, difference will be allocated to Net Settlement Amount. Counsel will brief merits of attorneys' fees and costs award at final approval. (Counsel Decl., ¶ 39.)

Administration Costs: Parties selected Phoenix Settlement Administrators. Administrator to be paid up to \$6,500.00 for administration costs. (Agmt., ¶¶ 49, 50.) Class Notice to be provided in English and Spanish.

Enhancement Award: Plaintiff to receive up to \$5,000.00 enhancement. Counsel attests Plaintiff assisted in gathering evidence, regularly consulted with counsel, was available on day of mediation and communicated with counsel to answer questions, reviewed Settlement Agreement, and otherwise assisted the litigation. (Counsel Decl., ¶ 21.) Further support for enhancement to be provided at final approval. (Id., ¶ 23.)

Concurrent Pending Cases: Counsel does not provide information.

LWDA Notice: Counsel provides copy of Plaintiff's PAGA notice to the LWDA. (Counsel Decl., Exh. 2.)

Continuing Jurisdiction: Settlement Agreement generally provides for Court's continuing jurisdiction. (Agmt., ¶¶ 66, 109(e).)

ISSUES TO BE ADDRESSED:**Settlement Agreement:**

1. Settlement Agreement must state that the settlement administrator will post the operative Complaint, Settlement Agreement, Class Notice, and preliminary and final approval orders on administrator's website for at least 90 days.
2. Counsel must attest as to whether there are any concurrent pending matters involving similar claims against Defendant.
3. Settlement Agreement must state that the Court has continuing jurisdiction over the matter pursuant to CCP § 664.6 and CRC rule 3.769(h).

Class Notice:

1. Class Notice must be revised consistent with the issues identified above.
2. Second introductory paragraph should refer to class action and PAGA settlement and define the "PAGA Period".
3. Third introductory paragraph should also refer to "PAGA Member" and/or "Aggrieved Employee", as well as PAGA payments.
4. Section 2 must also state that lawsuit pertains to minimum and overtime wage claims.
5. Section 5 must also explain allocation of Individual PAGA Payments to Aggrieved Employees.
6. Section 6 must also explain PAGA Members Group / Aggrieved Employees group.
7. Section 8 must also explain approximate Individual PAGA Payment.
8. Section 15 should refer to "Class Representative Service Payment" instead of "enhancement", so as to be consistent with language in the Settlement Agreement.

Proposed Order: (ROA 68)

1. Proposed Order must be revised consistent with the issues identified above.
2. Caption must refer to Class Action and PAGA Settlement.
3. Preliminary approval hearing date must be revised in caption.
4. Settlement Agreement must be identified by the ROA number of the declaration to which it is attached.
5. Paragraph 19 should state that Court's continuing jurisdiction is pursuant to CCP § 664.6 and CRC rule 3.769(h).
6. Should add paragraph stating that settlement administration will post copies of the operative Complaint, Settlement Agreement, Class Notice, and preliminary and final approval orders on its website.

Other Issues:

1. Counsel must provide estimated high and low class payments, as well as estimated high, low, and average PAGA payments.
2. Counsel must disclose fee-splitting arrangement, if any, with other counsel.

RULING:

The hearing on the Motion for Preliminary Approval is CONTINUED to November 1, 2024, at 1:30 p.m. in Department CX103 so that counsel may address the issues identified above.

Counsel must file supplemental papers addressing the Court's concerns no later than fourteen (14) calendar days prior to the continued hearing date. Counsel must also provide red-lined versions of all revised papers. Counsel must also provide an explanation of how the pending issues were resolved, with precise citation to any corrections or revisions. A supplemental declaration or brief that simply asserts the issues have been resolved is insufficient and will result in a continuance.

Plaintiff to give notice of this ruling, including to the LWDA, within five (5) calendar days

The Status Conference re: ADR continued to 11/01/2024 at 01:30 PM in this department CX103.

Clerk to give notice.