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County of Santa Clara
23CV417412
By: tduarte

SUPERIOR COURT, STATE OF CALIFORNIA

COUNTY OF SANTA CLARA

LARY MARTIN JAMES, individually and on behalf of all others similarly situated, Plaintiff, v. APPLIED MATERIALS, INC., et al., Defendants.	Case No.: 23CV417412 ORDER GRANTING PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT Dept. 7

This is a putative class and Private Attorneys General Act ("PAGA") action. Plaintiff Lary Martin James alleges that Defendant Applied Materials, Inc. ("Applied" or "Defendant") committed various wage and hour violations. Before the Court is Plaintiff's motion for preliminary approval of settlement, which is unopposed. As discussed below, the Court GRANTS the motion.

I. BACKGROUND

According to the allegations of the operative First Amended Class Action Complaint ("FAC"), Plaintiff was formerly employed by Applied in a non-exempt, hourly-paid position. Plaintiff alleges that Defendant failed to: pay all wages owed (including minimum and overtime); provide lawful meal periods or compensation in lieu thereof; permit lawful rest breaks or provide compensation in lieu thereof; reimburse necessary business-related costs; provide accurate itemized wage statements; timely pay wages during employment; and pay all wages due upon separation of employment.

Based on the foregoing, Plaintiff initiated this action in June 2023 and filed the operative FAC on August 21, 2023, asserting the following causes of action: (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 reimburse business expenses; (6) failure to provide accurate itemized wage statement; (7) failure to pay timely wages during employment; (8) failure to pay all wages due upon separation of employment; (9) violation of Business & Professions Code § 17200; and (10) PAGA penalties.

Plaintiff now seeks an order: preliminarily approving the parties' class action settlement; certifying the Class for settlement purposes only; ordering the proposed Class Notice be sent to the settlement Class; appointing CPT Group as the settlement administrator; conditionally appointing Plaintiff as Class representative; appointing Aegis Law Firm, PC as Class counsel; and scheduling a final approval hearing.

II. LEGAL STANDARDS FOR SETTLEMENT APPROVAL

A. Class Action

Generally, "questions whether a [class action] 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*), disapproved of on other grounds by *Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal.5th 260.)

"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, internal citations and quotations omitted.)

In general, the most important factor is the strength of the plaintiffs' case on the merits, balanced against the amount offered in settlement. (See *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130 (*Kullar*).) But the trial court is free to engage in a balancing and weighing of relevant factors, depending on the circumstances of each case. (*Wershba, supra*, 91 Cal.App.4th at p. 245.) The trial 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 whole, is fair, reasonable and adequate to all concerned." (*Ibid.*, citation and internal quotation marks omitted.) The trial court also must independently confirm that "the consideration being received for the release of the class members' claims is reasonable in light of the strengths and weaknesses of the claims and the risks of the particular litigation." (*Kullar, supra*, 168 Cal.App.4th at p. 129.) Of course, before performing its analysis the trial court must be "provided with basic information about the nature and magnitude of the claims in question and the basis for concluding that the consideration being paid for the release of those claims represents a reasonable compromise." (*Id.* at pp. 130, 133.)

B. PAGA

Labor Code section 2699, subdivision (l)(2) provides that "[t]he superior court shall review and approve any settlement of any civil action filed pursuant to" PAGA. The court's review "ensur[es] that any negotiated resolution is fair to those affected." (*Williams v. Superior Court* (2017) 3 Cal.5th 531, 549.) Seventy-five percent of any penalties recovered under PAGA go to the Labor and Workforce Development Agency (LWDA), leaving the remaining twenty-five percent for the aggrieved employees. (*Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348, 380, overruled on other grounds by *Viking River Cruises, Inc. v. Moriana* (2022) 596 U.S. 639, 2022 U.S. LEXIS 2940.)

Similar to its review of class action settlements, the Court must "determine independently whether a PAGA settlement is fair and reasonable," to protect "the interests of the public and the LWDA in the enforcement of state labor laws." (*Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 76–77.) It must make this assessment "in view of PAGA's purposes to remediate present labor law violations, deter future ones, and to maximize enforcement of state labor laws." (*Id.* at p. 77; see also *Haralson v. U.S. Aviation Servs. Corp*. (N.D. Cal. 2019) 383 F.Supp.3d 959, 971 ["when a PAGA claim is settled, the relief provided for under the PAGA [should] be genuine and meaningful, consistent with the underlying purpose of the statute to benefit the public …."], quoting LWDA guidance discussed in *O'Connor v. Uber Technologies, Inc.* (N.D. Cal. 2016) 201 F.Supp.3d 1110 (*O'Connor*).)

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

III. SETTLEMENT PROCESS

After the initiation of this action, the parties engaged in informal discovery, through which Plaintiff obtained a significant number of documents and information, including Plaintiff's personnel file, timekeeping records and wages statements, Defendant's wage and hour policy documents, dates of employment and final hourly rates for the putative class, and a 20% sampling of time and pay records for the putative class.

On January 26, 2024, the parties engaged in private mediation with David Rotman, a respected mediator, and reached a settlement. The parties subsequently negotiated the terms of the related agreement, which was finalized on April 22, 2024 and is now before the Court for approval.

IV. SETTLEMENT PROVISIONS

The non-reversionary gross settlement amount is $2,500,000. Attorney's fees of up to $833,333.33 (or one-third of the gross settlement), litigation costs not to exceed $25,000 and administration costs of $15,500 will be paid from the gross settlement. $100,000 will be allocated to PAGA penalties, 75% of which ($75,000) will be paid to the LWDA, with the remaining 25% distributed, on a pro-rata basis, to "PAGA Group Members," who are defined as "all Class Members who worked for Applied in a nonexempt position in California at any time from June 13, 2022 through the date of which the Court grants preliminary approval of the Settlement." The "Class," in turn, is defined as "all current and former employees who were directly hired and worked for Applied in a non-exempt position in California at any time from December 17, 2018 through February 29, 2024."

The net settlement will be distributed to Class Members on a pro rata basis. For tax purposes, settlement payments will be allocated 33.33% to wages and 66.66% to penalties and interest. PAGA payments will be allocated 100% to penalties. Defendant is responsible for employer-side payroll taxes. Plaintiff will seek an incentive award of $10,000. Funds associated with checks uncashed after 180 days will be transmitted to the Controller of the State of California to be held in trust for such Class Members pursuant to California unclaimed property law.

In exchange for settlement, Class Members who do not opt out will release:

[A]ny and all known and unknown claims against Applied and the other Released Parties that are asserted in the First Amended Complaint or arise out of or reasonably relate to the facts alleged in the First Amended Complaint that, during the Class Period, Applied failed to pay all minimum wages, paid sick leave, and overtime; provide meal and rest periods; pay meal and rest period premiums at the regular rate of pay; properly include shift differentials, bonuses, and other incentive compensation in the regular rate of pay for purposes of calculating overtime wages, paid sick leave, and meal and rest period premiums; maintain accurate records; furnish accurate itemized wage statements; reimburse necessary business expenses; timely pay all wages due during employment; and pay all wages due upon separation of employment (the "Released Class Claims"). The Released Class Claims, as defined above, include but are not limited to all such claims brought under California Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 246, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2698 et seq., 2800, and 2802, California Business and Professions Code sections 17200- 17208, and the Industrial Welfare Commission Wage Order. The Released Class Claims, as defined above, include all such claims for wages, statutory penalties, civil penalties, or other relief under the California Labor Code, PAGA, any other related federal, state or municipal law, relief from unfair competition under California Business and Professions Code section 17200 et seq., attorneys' fees and costs, and interest.

PAGA Group Members, who consistent with the statute will not be able to opt out of the PAGA portion of the settlement, will release:

[A]ny and all claims under PAGA for civil penalties against Applied and the other Released Parties that arise out of or reasonably relate to the allegations asserted in the First Amended Complaint and notice submitted by Plaintiff to the LWDA pursuant to PAGA that, during the PAGA Period, Applied failed to pay all wages due, including minimum wages, paid sick leave, and overtime; provide meal and rest periods; pay meal and rest period premiums at the regular rate of pay; properly include shift differentials, bonuses, and other incentive compensation in the regular rate of pay for purposes of calculating overtime wages, paid sick leave, and meal and rest period premiums; maintain accurate records; furnish accurate itemized wage statements; reimburse necessary business expenses; timely pay all wages due during employment; and pay all wages due upon separation of employment (the "Released PAGA Claims"). The Released PAGA Claims, as defined above, include but are not limited to all such PAGA claims brought under California Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 246, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2698 et seq., 2800, and 2802, and the Industrial Welfare Commission Wage Order. All PAGA Group Members will release the Released PAGA Claims and receive a PAGA Group Payment, regardless of whether they elect not to participate in the Settlement.

The foregoing releases are appropriately tailored to the allegations at issue. (See *Amaro v. Anaheim Arena Management, LLC* (2021) 69 Cal.App.5th 521, 537.)

V. FAIRNESS OF SETTLEMENT

Based on available data, Plaintiff's counsel and his expert calculated Applied's maximum exposure for each claim to be as follows: $125,000 (overtime claims); $532,000 (minimum wage claim); $470,000 (meal period claim); $2.1 million (rest break claim); $320,000 (reimbursement claim); $1.28 million (derivative waiting time and wage statement penalties); and $3,155,200 (PAGA penalties). Plaintiff's counsel and his expert than adjusted the foregoing, which total more than $3 million, to arrive at the following *realistic* exposure amounts for each claim for the purpose of settlement negotiations: $7,954 (overtime claim); $47,880 (minimum wage claim); $42,300 (meal period claim); $189,000 (rest break claim); $28,800 (reimbursement claim); $42,386 (waiting time penalties); $73,622 (wage statement penalties); $100,000 (PAGA penalties). Plaintiff's counsel arrived at the aforementioned amounts by offsetting Defendant's maximum exposure by, among other things: the risk of class certification being denied (mostly due to the presence of individualized issues); Defendant's arguments on the merits, including that bonuses were discretionary, shift differential payments were excluded from the regular rate of pay, that it maintained lawful overtime and other relevant policies and Class Members executed meal break waivers; a lack of willfulness on Defendant's part with regard to various claimed violations; and the risk of not prevailing at trial or on appeal.

Considering the portion of the case's value attributable to uncertain penalties, claims that could be difficult to certify for class treatment, and the multiple, dependent contingencies that Plaintiff would have had to overcome to prevail on his claims, 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 prior to 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 class be provisionally certified:

All current and former employees who were directly hired and worked for Applied in a non-exempt position in California at any time from December 17, 2018 through February 29, 2024.

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 class "when the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court …."

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

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

B. Ascertainable Class

A class is ascertainable "when it is defined in terms of objective characteristics and common transactional facts that make the ultimate identification of class members possible when that identification becomes necessary." (*Noel v. Thrifty Payless, Inc.* (2019) 7 Cal.5th 955, 980 (*Noel*).) A class definition satisfying these requirements "puts members of the class on notice that their rights may be adjudicated in the proceeding, so they must decide whether to intervene, opt out, or do nothing and live with the consequences. This kind of class definition also advances due process by supplying a concrete basis for determining who will and will not be bound by (or benefit from) any judgment." (*Noel*, *supra,* 7 Cal.5th at p. 980, citation omitted.)

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

Here, the estimated 988 class members are readily identifiable based on Defendant's records, and the settlement class is appropriately defined based on objective characteristics. The Court finds that the settlement class is numerous, ascertainable, and appropriately defined.

C. Community of Interest

The "community-of-interest" requirement encompasses three factors: (1) predominant questions of law or fact, (2) class representatives with claims or defenses typical of the class, and

(3) class representatives who can adequately represent the class. (*Sav-On Drug Stores*, *supra*, 34 Cal.4th at pp. 326, 332.)

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

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

As for the second factor, "[t]he typicality requirement is meant to ensure that the class representative is able to adequately represent the class and focus on common issues. It is only when a defense unique to the class representative will be a major focus of the litigation, or when the class representative's interests are antagonistic to or in conflict with the objectives of those she purports to represent that denial of class certification is appropriate. But even then, the court should determine if it would be feasible to divide the class into subclasses to eliminate the conflict and allow the class action to be maintained. (*Medrazo v. Honda of North Hollywood* (2008) 166 Cal. App. 4th 89, 99, internal citations, brackets, and quotation marks omitted.)

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

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

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

D. Substantial Benefits of Class Certification

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

Here, there are an estimated 988 Class Members. It would be inefficient for the Court to hear and decide the same issues separately and repeatedly for each class member. Further, it would be cost prohibitive for each class member to file suit individually, as each member would have the potential for little to no monetary recovery. It is clear that a class action provides substantial benefits to both the litigants and the Court in this case.

VII. NOTICE

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

Here, the notice describes the lawsuit, explains the settlement, and instructs Class Members that they may opt out of the settlement (except for the PAGA component) or object. The gross settlement amount and estimated deductions are provided, and Class Members are informed of their qualifying workweeks as reflected in Defendant's records and are instructed how to dispute this information. Class Members are given 45 days to request exclusion from the class, submit a written objection to the settlement, or challenge the information used to calculate their share of the settlement.

The notice is generally adequate. Regarding appearances at the final fairness hearing, the notice shall be further modified to instruct class members as follows:

Although class members may appear in person, the judge overseeing this case encourages remote appearances. (As of August 15, 2022, the Court's remote platform is Microsoft Teams.) Class members who wish to appear remotely should contact class counsel at least three days before the hearing if possible. Instructions for appearing remotely are provided at https://www.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml and should be reviewed in advance. Class members may appear remotely using the Microsoft Teams link for Department 7 (Afternoon Session) or by calling the toll free conference call number for Department 7.

Turning to the notice procedure, as articulated above, the parties have selected CPT Group as the settlement administrator. The administrator will mail the notice packet within 44 days of preliminary approval of the settlement, after updating Class Members' addresses using the National Change of Address Database. Any returned notices will be re-mailed to any forwarding address provided or a better address located through a skip trace or other search. Class Members who receive a re-mailed notice will have an additional 14 days to respond. These notice procedures are appropriate and are approved.

VIII. CONCLUSION

Plaintiff's motion for preliminary approval is GRANTED. The final approval hearing shall take place on **April 17, 2025** at 1:30 in Dept. 7. The following class is preliminarily certified for settlement purposes:

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All current and former employees who were directly hired and worked for Applied in a non-exempt position in California at any time from December 17, 2018 through February 29, 2024.

DATED: October 18, 2024

CHARLES F. ADAMS
Judge of the Superior Court