

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA

CALVIN HONG,

Plaintiff,

v.

ANALOG DEVICES, INC., et al.,

Defendants.

Case No.: 20CV369017

**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 Calvin Hong alleges that Defendant Analog Devices, Inc. failed to compensate employees for off-the-clock work, improperly rounded their time, improperly calculated overtime and sick leave pay, and committed other wage and hour violations.¹

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 25, 2023, which no one contested at the hearing on January 26. The Court now issues its final order, which GRANTS preliminary approval, subject to a few modifications to the class notice.

¹ Linear Technology Corporation was also named as a defendant in prior versions of the complaint, and is a party to the settlement agreement before the Court.

1 **I. BACKGROUND**

2 Defendant employed Plaintiff in Santa Clara County on an hourly basis from March 7,
3 2016 to May 19, 2017. (Second Amended Class Action Complaint for Damages (“SAC”), ¶ 18.)
4 Plaintiff alleges that he and other employees worked off-the-clock, including by donning and
5 doffing personal protective equipment (“PPE”) before and after their shifts and working during
6 meal breaks, but were not paid for this time. (*Id.*, ¶ 26.) In addition, Defendant maintained a
7 policy of rounding employees’ hours down, resulting in time shaving. (*Id.*, ¶ 27.) Defendant
8 failed to include non-discretionary bonuses and incentive pay in employees’ regular rates of pay
9 used to calculate overtime. (*Id.*, ¶ 28.) It improperly calculated sick leave pay. (*Id.*, ¶ 29.) And
10 Defendant failed to provide compliant meal and rest periods or pay associated premiums. (*Id.*,
11 ¶¶ 30–32.) Defendant also failed to provide employees with all required PPE or reimburse them
12 for PPE they purchased themselves, and failed to reimburse employees for their use of their
13 personal cell phones and vehicles while working. (*Id.*, ¶¶ 106–107.)

14 Based on these allegations, Plaintiff asserts putative class claims for: (1) violation of
15 Labor Code sections 510 and 1198 by failing to pay overtime; (2) violation of Labor Code
16 sections 226.7 and 512(a) by failing to provide compliant meal periods or associated premiums;
17 (3) rest period violations per Labor Code section 226.7; (4) failure to pay minimum wages in
18 violation of Labor Code sections 1194 and 1197; (5) failure to timely pay wages upon discharge
19 in violation of Labor Code sections 201 and 202; (6) failure to provide accurate wage statements
20 per Labor Code Section 226(a); and (7) failure to reimburse business expenses under Labor Code
21 sections 2800 and 2802. Plaintiff also brings: (8) a representative claim for PAGA penalties;
22 and (9) a claim for unlawful business practices in violation of Business & Professions Code
23 section 17200 et seq.

24 Now, Plaintiff moves for an order preliminarily approving the settlement of the class and
25 PAGA claims, provisionally certifying the settlement class, approving the form and method for
26 providing notice to the class, and scheduling a final fairness hearing.

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

2 **A. Class Action**

3 Generally, “questions whether a [class action] settlement was fair and reasonable,
4 whether notice to the class was adequate, whether certification of the class was proper, and
5 whether the attorney fee award was proper are matters addressed to the trial court’s broad
6 discretion.” (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234–235 (*Wershba*),
7 disapproved of on other grounds by *Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal.5th
8 260.)

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

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

17 In general, the most important factor is the strength of the plaintiffs’ case on the merits,
18 balanced against the amount offered in settlement. (See *Kullar v. Foot Locker Retail, Inc.* (2008)
19 168 Cal.App.4th 116, 130 (*Kullar*.) But the trial court is free to engage in a balancing and
20 weighing of relevant factors, depending on the circumstances of each case. (*Wershba, supra*, 91
21 Cal.App.4th at p. 245.) The trial court must examine the “proposed settlement agreement to the
22 extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or
23 overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a
24 whole, is fair, reasonable and adequate to all concerned.” (*Ibid.*, citation and internal quotation
25 marks omitted.) The trial court also must independently confirm that “the consideration being
26 received for the release of the class members’ claims is reasonable in light of the strengths and
27 weaknesses of the claims and the risks of the particular litigation.” (*Kullar, supra*, 168
28 Cal.App.4th at p. 129.) Of course, before performing its analysis the trial court must be

1 “provided with basic information about the nature and magnitude of the claims in question and
2 the basis for concluding that the consideration being paid for the release of those claims
3 represents a reasonable compromise.” (*Id.* at pp. 130, 133.)

4 **B. PAGA**

5 Labor Code section 2699, subdivision (1)(2) provides that “[t]he superior court shall
6 review and approve any settlement of any civil action filed pursuant to” PAGA. The court’s
7 review “ensur[es] that any negotiated resolution is fair to those affected.” (*Williams v. Superior*
8 *Court* (2017) 3 Cal.5th 531, 549.) Seventy-five percent of any penalties recovered under PAGA
9 go to the Labor and Workforce Development Agency (LWDA), leaving the remaining twenty-
10 five percent for the aggrieved employees. (*Iskanian v. CLS Transportation Los Angeles, LLC*
11 (2014) 59 Cal.4th 348, 380, overruled on other grounds by *Viking River Cruises, Inc. v.*
12 *Moriana* (2022) ___ U.S. ___, 2022 U.S. LEXIS 2940.)

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

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

1 **III. SETTLEMENT PROCESS**

2 According to Plaintiff's counsel, after this action was filed, Plaintiff propounded formal
3 discovery requests. The parties met and conferred and agreed to exchange informal discovery
4 and attempt mediation. Defendant produced documents relating to its policies, practices, and
5 procedures, and Plaintiff also reviewed time records, wage statements, and information relating
6 to the size and scope of the putative class. Plaintiff also interviewed impacted employees.

7 On August 13, 2022, the parties engaged in mediation with Marc Feder, Esq. With his
8 assistance, they reached the settlement now before the Court.

9 **IV. SETTLEMENT PROVISIONS**

10 The non-reversionary gross settlement amount is \$2,500,000. Attorney fees of up to
11 \$833,333.33 (one-third of the gross settlement), litigation costs of up to \$35,000, and \$12,000 in
12 administration costs will be paid from the gross settlement. \$100,000 will be allocated to PAGA
13 penalties, 75 percent of which (\$75,000) will be paid to the LWDA. The named plaintiff will
14 seek an incentive award of \$7,500. Employer-side payroll taxes will also be deducted from the
15 settlement.

16 The net settlement, approximately \$1,537,166.67 by the Court's calculation (before
17 deducting payroll taxes), will be allocated to class members proportionally based on their weeks
18 worked during the class and PAGA periods. The average payment (including PAGA payments)
19 will be around \$2,754.78 to each of the 558 class members. Class members will not be required
20 to submit a claim to receive their payments. For tax purposes, settlement payments will be
21 allocated 33.4 percent to wages and 66.6 penalties and interest. Funds associated with checks
22 uncashed after 180 days will be paid to Legal Aid at Work.

23 In exchange for the settlement, class members who do not opt out will release "any and
24 all claims that were alleged in the Action or which could have been alleged based on the factual
25 allegations asserted in the Action that occurred during the Class Period." Similarly, the PAGA
26 release encompasses "the claims for civil penalties that could have been sought by the Labor
27 Commissioner for the violations of [PAGA] identified in the Action and/or Plaintiff's letter to
28 the LWDA, and those based upon the facts alleged in the Action and/or letter to the LWDA

1 during the PAGA Period.” The releases are appropriately tailored to the allegations at issue.
2 (See *Amaro v. Anaheim Arena Management, LLC* (2021) 69 Cal.App.5th 521, 537.) Consistent
3 with the statute, aggrieved employees will not be able to opt out of the PAGA portion of the
4 settlement.

5 **V. FAIRNESS OF SETTLEMENT**

6 Assuming a 30 percent violation rate, Plaintiff estimated that the rest break claims in this
7 action could be worth \$3,248,406.11. Plaintiff valued the meal period claims at \$3,387,775.66,
8 assuming a fifty percent violation rate. Using an overtime rate, the off-the-clock claims could be
9 worth up to \$3,750,726.30. The regular rate of pay theories (miscalculated overtime and sick
10 leave and underpaid premium wages) were valued at \$1,131,714 and the unreimbursed expense
11 theories (steel-toed boots and personal cell phone and vehicle use) were estimated at \$712,814.
12 Wage statement penalties were estimated at \$1,612,000 and waiting time penalties at
13 \$2,162,954.40. The maximum PAGA penalties were estimated to be \$4,271,800. Thus, the core
14 claims have a maximum potential value of \$12,231,436.10, and the maximum value of the entire
15 action including penalties is around \$20,278,190.50.²

16 The settlement thus represents over 20 percent of the maximum value of the core claims,
17 and over 12 percent of the maximum value of the entire case with penalties. Particularly
18 considering the portion of the case’s value attributable to uncertain penalties and claims that
19 could be difficult to certify for class treatment, the settlement achieves a good result for the class.
20 The Court is further persuaded by the detailed discussion of the merits and risks that is provided
21 in the Declaration of Douglas Han supporting Plaintiff’s motion. For purposes of preliminary
22 approval, the Court finds that the settlement is fair and reasonable to the class, and the PAGA
23 allocation is genuine, meaningful, and reasonable in light of the statute’s purposes.

24 Of course, the Court retains an independent right and responsibility to review the
25 requested attorney fees and award only so much as it determines to be reasonable. (See
26 *Garabedian v. Los Angeles Cellular Telephone Co.* (2004) 118 Cal.App.4th 123, 127–128.)

27
28 ² The Court notes that Plaintiff assigned no additional value to his rounding theory, and assumes that theory is subsumed in the estimates stated above or was found to lack merit.

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

5 **VI. PROPOSED SETTLEMENT CLASS**

6 Plaintiff requests that the following settlement classes be provisionally certified:

7
8 all Analog Devices, Inc.’s (“Defendant”) current and former non-exempt
9 employees in California beginning April 6, 2016 through December 31, 2022,
10 unless shortened at Defendant’s option pursuant to section III(C)(5) of the
11 Settlement Agreement, excluding those former employees who signed separate
12 individual severance and release agreements covering the claims alleged in this
13 matter.

14
15 **A. Legal Standard for Certifying a Class for Settlement Purposes**

16 Rule 3.769(d) of the California Rules of Court states that “[t]he court may make an order
17 approving or denying certification of a provisional settlement class after [a] preliminary
18 settlement hearing.” California Code of Civil Procedure Section 382 authorizes certification of a
19 class “when the question is one of a common or general interest, of many persons, or when the
20 parties are numerous, and it is impracticable to bring them all before the court”

21 Section 382 requires the plaintiff to demonstrate by a preponderance of the evidence:
22 (1) an ascertainable class and (2) a well-defined community of interest among the class
23 members. (*Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326, 332 (*Sav-On*
24 *Drug Stores*)). “Other relevant considerations include the probability that each class member
25 will come forward ultimately to prove his or her separate claim to a portion of the total recovery
26 and whether the class approach would actually serve to deter and redress alleged wrongdoing.”
27 (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.) The plaintiff has the burden of
28

1 establishing that class treatment will yield “substantial benefits” to both “the litigants and to the
2 court.” (*Blue Chip Stamps v. Superior Court* (1976) 18 Cal.3d 381, 385.)

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

11 **B. Ascertainable Class**

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

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

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

22 “As a rule, a representative plaintiff in a class action need not introduce evidence
23 establishing how notice of the action will be communicated to individual class members in order
24 to show an ascertainable class.” (*Noel, supra*, 7 Cal.5th at p. 984.) Still, it has long been held
25 that “[c]lass members are ‘ascertainable’ where they may be readily identified ... by reference to
26 official records.” (*Rose v. City of Hayward* (1981) 126 Cal. App. 3d 926, 932, disapproved of on
27 another ground by *Noel, supra*, 7 Cal.5th 955; see also *Cohen v. DIRECTV, Inc.* (2009) 178
28 Cal.App.4th 966, 975-976 [“The defined class of all HD Package subscribers is precise, with

1 objective characteristics and transactional parameters, and can be determined by DIRECTV’s
2 own account records. No more is needed.”].)

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

6 C. Community of Interest

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

11 For the first community of interest factor, “[i]n order to determine whether common
12 questions of fact predominate the trial court must examine the issues framed by the pleadings
13 and the law applicable to the causes of action alleged.” (*Hicks v. Kaufman & Broad Home Corp.*
14 (2001) 89 Cal.App.4th 908, 916 (*Hicks*)). The court must also examine evidence of any conflict
15 of interest among the proposed class members. (See *J.P. Morgan & Co., Inc. v. Superior Court*
16 (2003) 113 Cal.App.4th 195, 215.) The ultimate question is whether the issues which may be
17 jointly tried, when compared with those requiring separate adjudication, are so numerous or
18 substantial that the maintenance of a class action would be good for the judicial process and to
19 the litigants. (*Lockheed Martin Corp. v. Superior Court* (2003) 29 Cal.4th 1096, 1104–1105
20 (*Lockheed Martin*)). “As a general rule if the defendant’s liability can be determined by facts
21 common to all members of the class, a class will be certified even if the members must
22 individually prove their damages.” (*Hicks, supra*, 89 Cal.App.4th at p. 916.)

23 Here, common legal and factual issues predominate. Plaintiff’s claims all arise from
24 Defendant’s wage and hour practices applied to the similarly-situated class members.

25 As to the second factor,

26 The typicality requirement is meant to ensure that the class representative is able
27 to adequately represent the class and focus on common issues. It is only when a
28 defense unique to the class representative will be a major focus of the litigation,

1 or when the class representative’s interests are antagonistic to or in conflict with
2 the objectives of those she purports to represent that denial of class certification is
3 appropriate. But even then, the court should determine if it would be feasible to
4 divide the class into subclasses to eliminate the conflict and allow the class action
5 to be maintained.

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

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

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

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

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

25 “[A] class action should not be certified unless substantial benefits accrue both to
26 litigants and the courts. . . .” (*Basurco v. 21st Century Ins.* (2003) 108 Cal.App.4th 110, 120,
27 internal quotation marks omitted.) The question is whether a class action would be superior to
28 individual lawsuits. (*Ibid.*) “Thus, even if questions of law or fact predominate, the lack of

1 superiority provides an alternative ground to deny class certification.” (*Ibid.*) Generally, “a
2 class action is proper where it provides small claimants with a method of obtaining redress and
3 when numerous parties suffer injury of insufficient size to warrant individual action.” (*Id.* at pp.
4 120–121, internal quotation marks omitted.)

5 Here, there are an estimated 558 class members. It would be inefficient for the Court to
6 hear and decide the same issues separately and repeatedly for each class member. Further, it
7 would be cost prohibitive for each class member to file suit individually, as each member would
8 have the potential for little to no monetary recovery. It is clear that a class action provides
9 substantial benefits to both the litigants and the Court in this case.

10 **VII. NOTICE**

11 The content of a class notice is subject to court approval. (Cal. Rules of Court, rule
12 3.769(f).) “The notice must contain an explanation of the proposed settlement and procedures
13 for class members to follow in filing written objections to it and in arranging to appear at the
14 settlement hearing and state any objections to the proposed settlement.” (*Ibid.*) In determining
15 the manner of the notice, the court must consider: “(1) The interests of the class; (2) The type of
16 relief requested; (3) The stake of the individual class members; (4) The cost of notifying class
17 members; (5) The resources of the parties; (6) The possible prejudice to class members who do
18 not receive notice; and (7) The res judicata effect on class members.” (Cal. Rules of Court, rule
19 3.766(e).)

20 Here, the notice describes the lawsuit, explains the settlement, and instructs class
21 members that they may opt out of the settlement (except the PAGA component) or object. The
22 gross settlement amount and estimated deductions are provided. Class members’ estimated
23 payments and workweek information is displayed on the first page of the notice. Class members
24 are informed of their qualifying workweeks as reflected in Defendant’s records and are
25 instructed how to dispute this information. They are given 60 days to request exclusion from the
26 class or submit a written objection to the settlement. The notice instructs class members how to
27 appear at the final fairness hearing remotely via Microsoft Teams. Class members are instructed
28 that they may appear at the final fairness hearing to make an oral objection without submitting a

1 written objection. Finally, the notice informs class members that notice of final judgment will be
2 posted on the administrator's web site.

3 The notice is generally adequate, but must be modified to make it clear that class
4 members may opt out of or object to the settlement by simply providing their name, without the
5 need to provide their phone number, Social Security number, or other personal information.

6 Turning to the notice procedure, the parties have selected CPT Group, Inc. as the
7 settlement administrator. The administrator will mail the notice packet within 14 days of
8 receiving the class data from Defendant, after updating class members' addresses using the
9 National Change of Address Database. Any returned notices will be re-mailed to any forwarding
10 address provided or better address located through a search. Class members who receive a re-
11 mailed notice will have an additional 10 days to respond. These notice procedures are
12 appropriate and are approved.

13 **VIII. CONCLUSION**

14 Plaintiff's motion for preliminary approval is GRANTED, subject to the modifications to
15 the class notice directed above. The final approval hearing shall take place on July 27, 2023 at
16 1:30 p.m. in Dept. 1. The following class is preliminarily certified for settlement purposes:

17
18 all Analog Devices, Inc.'s ("Defendant") current and former non-exempt
19 employees in California beginning April 6, 2016 through December 31, 2022,
20 unless shortened at Defendant's option pursuant to section III(C)(5) of the
21 Settlement Agreement, excluding those former employees who signed separate
22 individual severance and release agreements covering the claims alleged in this
23 matter.

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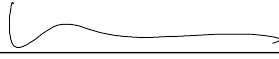
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1 Before final approval, Plaintiff shall lodge any individual settlement agreement he may
2 have executed in connection with his employment with Defendant for the Court's review.

3 **IT IS SO ORDERED.**

4 Date: January 27, 2023

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6 _____
7 The Honorable Sunil R. Kulkarni
8 Judge of the Superior Court

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