



**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA**

MINUTE ORDER

Line 2 Samonte v. Velodyne Lidar, Inc. 20CV366914 Date of Hearing: 05/04/2022	Hearing Start Time: 1:30 PM Hearing Type: Motion: Preliminary Approval Comments:
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Heard By: Lucas, Patricia M
 Courtroom Reporter: - No Court Reporter

Location: Department 3
 Courtroom Clerk: Ann Vizconde
 Court Interpreter:
 Court Investigator:

Parties Present:

Future Hearings:

Exhibits:

- (Continued from 4/20/22) Motion by Plaintiff Lucita Samonte for Preliminary Approval of Class Action/PAGA Settlement. The additional information requested in this tentative ruling shall be filed with the court no later than 4/27/22.

No one called to contest the Tentative Ruling.

No appearance.

Tentative Ruling is not contested.

THE COURT ADOPTS THE TENTATIVE RULING; see below:

I. INTRODUCTION

This is a class and representative action arising out of various alleged wage and hour violations by defendant Velodyne Lidar, Inc. (Defendant). The operative First Amended Complaint (FAC), filed on October 13, 2020, sets forth the following causes of action: (1) Failure to Pay Minimum and Straight Time Wages (Cal. Lab. Code 204, 1194, 1194.2, and 1197); (2) Failure to Pay Overtime Compensation (Cal. Lab. Code 1194 and 1198); (3) Failure to Provide Meal Periods (Cal. Lab. Code 226.7, 512); (4) Failure to Authorize and Permit Rest Breaks (Cal. Lab. Code 226.7); (5) Failure to Timely Pay Final Wages at Termination (Cal. Lab. Code 201-203); (6) Failure to Provide Accurate Itemized Wage Statements (Cal. Lab. Code 226); (7) Unfair Business Practices (Cal. Bus. & Prof. Code 17200, et seq.); and (8) Civil Penalties Under PAGA (Cal. Lab. Code 2699, et seq.).

The parties have reached a settlement. Plaintiff Lucita Samonte (Plaintiff) moved for preliminary approval of the settlement.

On April 20, 2022, this court ordered Plaintiff to explain what consideration the Severance Class Members received in exchange for executing general releases, why it is fair to reduce the participation of the



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Severance Class Members in the proceeds of the settlement, and why it is fair to allocate only \$25,000 to the Severance Class Members. The court also directed Plaintiff to address the fact that the settlement agreement erroneously referred to a second amended complaint, which does not exist, instead of the operative FAC. Finally, the court ordered Plaintiff to submit lodestar information, evidence of actual costs incurred, and to make several modifications to the class notice.

Plaintiff's counsel filed a supplemental declaration on April 25, 2022.

II. LEGAL STANDARD

Generally, questions whether a 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*), citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794 (*Dunk*).)

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, citing *Dunk*, supra, 48 Cal.App.4th at p. 1801; *Officers for Justice v. Civil Service Commission, etc.* (9th Cir. 1982) 688 F.2d 615, 624 (*Officers*).)

The list of factors is not exclusive and the court is free to engage in a balancing and weighing of factors depending on the circumstances of each case. (*Wershba*, supra, 91 Cal.App.4th at p. 245.) The 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.*, quoting *Dunk*, supra, 48 Cal.App.4th at p. 1801 and *Officers*, supra, 688 F.2d at p. 625, internal quotation marks omitted.)

The burden is on the proponent of the settlement to show that it is fair and reasonable. However a presumption of fairness exists where: (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small.

(*Wershba*, supra, 91 Cal.App.4th at p. 245, citing *Dunk*, supra, 48 Cal.App.4th at p. 1802.)

III. DISCUSSION

A. Provisions of the Settlement

The case has been settled on behalf of the following class:

[A]ll current and former hourly-paid or non-exempt employees who have worked for Defendant in the State of California at any time during the Class Period .

(Declaration of Kane Moon in Support of Plaintiff's Motion for Preliminary Approval of Class and PAGA



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Action Settlement (Moon Dec.), 10, Ex. 1 (Settlement Agreement), 6.) The Class Period is defined as June 8, 2016 to the date of the Preliminary Approval Order or sixty (60) days from August 5, 2021, whichever is sooner. (Id. at 8.) The class includes PAGA Members, who are defined as all class members who are employed or have been employed by Defendant in California from June 8, 2019 to the date of the Preliminary Approval Order or sixty (60) days from August 5, 2021, whichever is sooner. (Id. at 25 & 27.)

According to the terms of settlement, Defendant will pay a total amount of \$785,000. (Settlement Agreement, 18.) The total settlement payment includes attorney fees up to \$261,666.67 (33.33 percent of the gross settlement fund), litigation costs not to exceed \$15,000, an incentive award of \$7,500 for the class representative, settlement administration costs not to exceed \$15,000, and a PAGA allocation of \$80,000 (75 percent of which (i.e., \$60,000) will be paid to the LWDA and 25 percent of which (i.e., \$20,000) will be paid to PAGA Members). (Id. at 3, 4, 18, 24, 32, 35, & 52.)

The settlement administrator shall allocate \$25,000 of the net settlement fund to Severance Class Members, who are defined as the former hourly-paid or non-exempt employees with whom Defendant entered into severance agreements as of August 5, 2021. (Settlement Agreement, 41 & 52.) That amount will be apportioned equally among all Severance Class Members, who will not be entitled to any additional amounts (with the exception of any pro rata payments they may receive on account of being PAGA Members). (Id. at 52.) Thereafter, the settlement administrator will determine the total number of workweeks worked by class members, other than Severance Class Members, and distribute pro rata shares of the net settlement fund (less the \$25,000 allocated for Severance Class Members) based on the total number of weeks worked. (Ibid.) The funds from any checks remaining uncashed more than 180 days after mailing will be distributed to the Katherine and George Alexander Community Law Center as a cy pres recipient. (Id. at 60.)

In exchange for the settlement, class members agree to release Defendants, and related entities and persons, from all claims, charges, complaints, liens, demands, causes of action, obligations, damages, and liabilities arising during the Class Period that were asserted in the Complaint, which is defined as the operative Second Amended Class Action and Representative Action Complaint. (Settlement Agreement, 9, 30, 37, & 49.) Plaintiff also agrees to a general release of her claims. (Id. at 51.)

B. Fairness of the Settlement

Plaintiff contends that the settlement is fair and reasonable in view of Defendant's potential liability exposure and the risks of continued litigation. Plaintiff states that the settlement was reached following investigation, discovery, and arm's-length mediation facilitated by Kelly Knight, Esq. Plaintiff calculates Defendant's overall potential exposure for the 423 class members to be approximately \$6,895,408.47 and the maximum realistic recovery to be approximately \$966,142.07. (Moon Dec., 20-25.) Plaintiff provides a detailed breakdown of this amount by claim. (Ibid.) Plaintiff advises that the net settlement fund is approximately \$408,842 and each class member (other than the 183 Severance Class Members) is eligible to receive an average net payment of \$1,599.34. (Id. at 25.) The Severance Class Members will each receive approximately \$104.16. (Ibid.)

Additionally, Plaintiff has now provided supplemental information regarding the Severance Class Members. Plaintiff's counsel declares that prior to the filing of this action, Defendant entered into severance agreements with the 183 Severance Class Members, who each received severance payments from Defendant when their employment ended. (Declaration of Allen Feghali Regarding Further Briefing in Support of Plaintiff's Motion for Preliminary Approval of Class and PAGA Action (Feghali Dec.), 3.) Each severance agreement included a general release as well as an attestation that the payment received by the former employee constituted all wages owed to the employee. (Ibid.) Thus, the only colorable claim the Severance Class Members could maintain is their claim for civil penalties under PAGA. (Ibid.) Even then, their claim is severely weakened by the fact that they confirmed that they received all wages owed to them. (Ibid.) Plaintiff's counsel concludes that the Severance Class Members were already made whole through the prior payments and, therefore, the allocation of \$25,000 to the Severance Class Members is



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fair. (Ibid.)

The supplemental information provided by Plaintiff generally addresses the court's concerns regarding the Severance Class Members. The court finds that the settlement is fair as it provides for some recovery for each class member and eliminates the risk and expense of further litigation.

Also, Plaintiff has clarified that the settlement agreement erroneously references a second amended complaint, instead of the operative FAC.

C. Incentive Award, Fees, and Costs

Plaintiff requests an incentive award of \$7,500 for the class representative. In its prior order of April 20 2022, the court found that the incentive award was warranted and approved.

The court also has an independent right and responsibility to review the requested attorney fees and only award so much as it determines reasonable. (See *Garabedian v. Los Angeles Cellular Telephone Co.* (2004) 118 Cal.App.4th 123, 127-128.) Plaintiff's counsel requests attorney fees of \$261,666.67 (33.33 percent of the total settlement fund). This percentage is typical for wage and hour cases. (See *Laffitte v. Robert Half Intern. Inc.* (2016) 1 Cal.5th 480, 488, 503-504 (Laffitte).) Plaintiff's counsel provides evidence demonstrating a total lodestar of \$174,770. (Feghali Dec., 5.) This results in a multiplier of 1.49. The attorney fees requested are reasonable as a percentage of the common fund and are approved. (See *Laffitte, supra*, 1 Cal.5th at pp. 488, 503-504 [trial court did not abuse its discretion in approving fee award of 1/3 of the common fund, cross-checked against a lodestar resulting in a multiplier of 2.03 to 2.13].)

Plaintiff's counsel also provides evidence of incurred costs in the amount of \$9,430.28. (Feghali Dec., 6 & Ex. C.) Those costs are approved.

D. Conditional Certification of Class

In its prior order of April 20 2022, the court found that the proposed class should be conditionally certified. The court continues to make that finding for purposes of preliminary approval.

E. Class Notice

The content of a class notice is subject to court approval. If the court has certified the action as a class action, notice of the final approval hearing must be given to the class members in the manner specified by the court. (Cal. Rules of Court, rule 3.769(f).)

Plaintiff now submits an amended class notice for the court's review. (Feghali Dec., Ex. B.) The amended notice makes the changes requested by the court and complies with the requirements for class notice. Thus, the amended notice is approved.

IV. CONCLUSION

The motion for preliminary approval of the class action settlement is GRANTED. The final approval hearing is set for September 6, 2022, at 1:30 p.m. in Department 3.

The court will prepare the final order if this tentative ruling is not contested.

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NOTICE: The court has rescinded, effective June 21, 2021, all prior general orders restricting courthouse access. Remote appearances for complex civil matters are still permitted, but are no longer mandatory. (See General Order Rescinding Portion of May 6, 2020 General Order Concerning Complex Civil Actions, available



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at

https://www.scscourt.org/general_info/news_media/newspdfs/2021/GeneralOrderRescindingPortionof050621GeneralOrderConcerningComplexCivilActions.pdf.) If a party gives notice that a tentative ruling will be contested, any party seeking to participate in the hearing remotely should contact CourtCall.

State and local rules prohibit recording of court proceedings without a court order. These rules apply while in court and also while participating in a telephonic hearing.

The court does not provide court reporters for proceedings in the complex civil litigation departments. Any party wishing to retain a court reporter to report a hearing may do so in compliance with this court's October 13, 2020 Policy Regarding Privately Retained Court Reporters. The court reporter may participate remotely and need not be present in the courtroom.