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8 Attorneys for Plaintiff Daniel Lopez

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
10 **FOR THE COUNTY OF CONTRA COSTA**

11 DANIEL LOPEZ, individually, and on behalf of  
12 other members of the general public similarly  
situated,

13 Plaintiff,

14 vs.

15 LG ELECTRONICS ALABAMA, INC., an  
Alabama corporation; LG ELECTRONICS  
16 U.S.A., INC., a Delaware corporation; and  
DOES 1 through 10, inclusive,

18 Defendants.

Case No.: C22-00686

Assigned to the Hon. Charles S. Treat

19 **[PROPOSED] ORDER GRANTING MOTION**  
**FOR FINAL APPROVAL OF CLASS**  
**ACTION AND PAGA SETTLEMENT AND**  
**MOTION FOR ATTORNEYS' FEES, COSTS**  
**AND EXPENSES, AND A CLASS**  
**REPRESENTATIVE ENHANCEMENT**  
**PAYMENT**

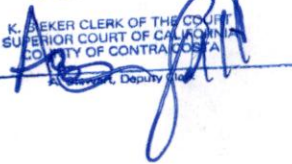
Date: October 26, 2023

Time: 9:00 a.m.

Place: Department 12

Complaint Filed: February 28, 2022

Trial Date: None

**FILED**  
OCT 31 2023  
K. BEKER CLERK OF THE COURT  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF CONTRA COSTA  
By: 

1 Plaintiff Daniel Lopez moves for final approval of his class action and PAGA settlement with  
2 defendants LG Electronics U.S.A., Inc. and LG Electronics Alabama, Inc. He also moves for approval of  
3 his attorney's fees, litigation costs, administration costs, and representative payment. The motions are  
4 **granted**. Attached as Exhibit A is the Court's tentative ruling.

5 Since preliminary approval was granted, the administrator has mailed notices to 152 class  
6 members. 5 packets were returned by the post office. Follow up resulted in 2 new addresses, leaving 3  
7 non-deliverable. No objections or requests to opt out have been received.

8 **A. Background and Settlement Terms**

9 Defendants are in the business of making, selling, and servicing consumer electronics. Plaintiff  
10 was employed from April 2019 to January 2022 as a field service technician.

11 The original complaint was filed on February 28, 2022. It is a class-action and PAGA case.

12 The settlement will create a gross settlement fund of \$725,000. The class representative payment  
13 to the plaintiff will be \$10,000. Attorney's fees will be \$241,667 (one-third of the settlement). Litigation  
14 costs are \$20,413 (below the cap set at preliminary approval). The settlement administrator's costs are  
15 \$7,500. PAGA penalties will be \$25,000, resulting in a payment of \$18,750 to the LWDA. The net amount  
16 paid directly to the class members will be about \$420,420. The fund is non-reversionary. There are 152  
17 class members. Based on the estimated class size, the average net payment for each class member is  
18 approximately \$2,736, not including distribution of PAGA penalties. The individual payments will vary  
19 considerably, however, because of the allocation formula prorating payments according to the number of  
20 weeks worked during the relevant time. The number of aggrieved employees for PAGA purposes is  
21 presumably smaller, because the starting date of the relevant period is later, though no specific figure is  
22 provided.

23 The entire settlement amount will be deposited with the settlement administrator within one day  
24 after the effective date of the settlement.

25 The proposed settlement will certify a class of all current and former non-exempt hourly  
26 employees employed at Defendants' California facilities between February 28, 2018 to July 20, 2023. For  
27 PAGA purposes, the period covered by the settlement is March 11, 2021 to July 20, 2023.

28 The class members will not be required to file a claim. Funds will be apportioned to class members

1 based on the number of workweeks worked during the class period. Settlement checks not cashed within  
2 180 days will be cancelled, and the funds will be directed to the California State Bar Justice Gap Fund as  
3 a *cy pres* beneficiary.

4 The settlement contains release language covering all claims and causes of action, alleged or which  
5 could have reasonably been alleged based on the allegations in the operative pleading, including a number  
6 of specified claims. Under recent appellate authority, the limitation to those claims with the “same factual  
7 predicate” as those alleged in the complaint is critical. (*Amaro v. Anaheim Arena Mgmt., LLC* (2021) 69  
8 Cal.App.5th 521, 537 (“A court cannot release claims that are outside the scope of the allegations of the  
9 complaint.”) “Put another way, a release of claims that goes beyond the scope of the allegations in the  
10 operative complaint’ is impermissible.” (*Id.*, quoting *Marshall v. Northrop Grunman Corp.* (C.D.  
11 Cal.2020) 469 F.Supp.3d 942, 949.)

12 Formal discovery was undertaken, resulting in the production of substantial documents. The  
13 matter settled after arms-length negotiations, which included a session with an experienced mediator.

14 Counsel also has provided an analysis of the case, and how the settlement compares to the potential  
15 value of the case, after allowing for various risks and contingencies. The risks, factual issues, and  
16 certification problems presented in the case are typical for cases of this kind. For example, much of  
17 plaintiff’s allegations centers on possible off-the-clock work, including missed or skipped meal breaks and  
18 rest breaks. LG, however, pointed out that its formal policies prohibit off-the-clock work, and asserted that  
19 it would have had no knowledge of employees beginning work before punching in or continuing after  
20 punching out. Further, it argued that it was required to make meal and rest breaks available, but not required  
21 to ensure that they be taken, so long as no employer policy prevented or discouraged taking such breaks.  
22 As to unreimbursed employee expenses (such as cell phone use, mileage, and masks), plaintiff would have  
23 been called on to show that such expenses were in fact incurred, were reasonably necessary to job  
24 performance, and were unreimbursed. Furthermore, the fact-intensive character of such claims would have  
25 presented a serious obstacle to class certification.

26 The potential liability needs to be adjusted for various evidence and risk-based contingencies,  
27 including problems of proof. PAGA penalties are difficult to evaluate for a number of reasons: they derive  
28 from other violations, they include “stacking” of violations, the law may only allow application of the

1 “initial violation” penalty amount, and the total amount may be reduced in the discretion of the court. (See  
2 Labor Code § 2699(c)(2) (PAGA penalties may be reduced where “based on the facts and circumstances  
3 of the particular case, to do otherwise would result in an award that is unjust arbitrary and oppressive, or  
4 confiscatory.”)) Moreover, recent decisions may make it difficult for PAGA plaintiffs to recover statutory  
5 penalties, as opposed to actual missed wages. (See, e.g., *Naranjo v. Spectrum Security Services, Inc.* (2023)  
6 88 Cal.App.5th 937; but see *Gola v. University of San Francisco* (2023) 90 Cal.App.5th 548, 566-67.)

7 Counsel attest that notice of the proposed settlement was transmitted to the LWDA concurrently  
8 with the filing of the motion.

### 9 B. Legal Standards

10 The primary determination to be made is whether the proposed settlement is “fair, reasonable, and  
11 adequate,” under *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801, including “the strength of  
12 plaintiffs’ case, the risk, expense, complexity and likely duration of further litigation, the risk of  
13 maintaining class action status through trial, the amount offered in settlement, the extent of discovery  
14 completed and the state of the proceedings, the experience and views of counsel, the presence of a  
15 governmental participant, and the reaction ... to the proposed settlement.” (See also *Amaro v. Anaheim*  
16 *Arena Mgmt., LLC*, 69 Cal.App.5th 521.)

17 Because this matter also proposes to settle PAGA claims, the Court also must consider the criteria  
18 that apply under that statute. Recently, the Court of Appeal’s decision in *Moniz v. Adecco USA, Inc.* (2021)  
19 72 Cal.App.5th 56, provided guidance on this issue. In *Moniz*, the court found that the “fair, reasonable,  
20 and adequate” standard applicable to class actions applies to PAGA settlements. (*Id.*, at 64.) The Court  
21 also held that the trial court must assess “the fairness of the settlement’s allocation of civil penalties  
22 between the affected aggrieved employees.” (*Id.*, at 64-65.)

23 California law provides some general guidance concerning judicial approval of any settlement.  
24 First, public policy generally favors settlement. (*Neary v. Regents of University of California* (1992) 3  
25 Cal.4th 273.) Nonetheless, the court should not approve an agreement contrary to law or public policy.  
26 (*Bechtel Corp. v. Superior Court* (1973) 33 Cal.App.3d 405, 412; *Timney v. Lin* (2003) 106 Cal.App.4th  
27 1121, 1127.) Moreover, “the court cannot surrender its duty to see that the judgment to be entered is a just  
28 one, nor is the court to act as a mere puppet in the matter.” (*California State Auto. Assn. Inter-Ins. Bureau*

1 v. *Superior Court* (1990) 50 Cal.3d 658, 664.) As a result, courts have specifically noted that Neary does  
2 not always apply, because “where the rights of the public are implicated, the additional safeguard of  
3 judicial review, though more cumbersome to the settlement process, serves a salutatory purpose.”  
4 (*Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of America* (2006) 141 Cal.App.4th 48, 63.)

5 **C. Attorney Fees and Other Costs**

6 Plaintiffs seek one-third of the total settlement amount as fees, relying on the “common fund”  
7 theory, or \$241,667. Even a proper common fund-based fee award, however, should be reviewed through  
8 a lodestar cross-check. In *Lafitte v. Robert Half International* (2016) 1 Cal.5th 480, 503, the Supreme  
9 Court endorsed the use of a lodestar cross-check as a way to determine whether the percentage allocated  
10 is reasonable. It stated: “If the multiplier calculated by means of a lodestar cross-check is extraordinarily  
11 high or low, the trial court should consider whether the percentage used should be adjusted so as to bring  
12 the imputed multiplier within a justifiable range, but the court is not necessarily required to make such an  
13 adjustment.” (*Id.*, at 505.)

14 Accordingly, plaintiffs have provided information concerning the lodestar fee amount. They  
15 estimate the lodestar at \$169,603, representing an implied multiplier of 1.42. They based this amount on a  
16 total of 269 hours, at hourly rates ranging from \$425 to \$950. No adjustment from the one-third fee is  
17 necessary. The attorney’s fees are reasonable and are approved.

18 The requested representative payment of \$10,000 for the named plaintiff was deferred until this  
19 final approval motion. Criteria for evaluation of such requests are discussed in *Clark v. American*  
20 *Residential Services LLC* (2009) 175 Cal.App.4th 785, 804-07. Plaintiff has provided a declaration in  
21 support of his request. He points out that he executed a broader release than the class as a whole, but does  
22 not identify any particular claims of value that he may have. He also risks damage to his reputation and  
23 more difficulty in obtaining employment. The representative payment is approved.

24 Litigation costs of \$20,413 (mostly mediation and filing fees) are reasonable and are approved.

25 The settlement administrator’s costs of \$7,500 are reasonable and are approved.

26 **D. Discussion and Conclusion**

27 The moving papers sufficiently establish that the proposed settlement is fair, reasonable, and  
28 adequate to justify final approval. The allocation of PAGA penalties among the aggrieved employees

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(based on pay periods) is reasonable.


The motions are granted.

Counsel are directed to prepare an order reflecting this entire tentative ruling and the other findings in the previously submitted proposed order and a separate judgment.

The ultimate judgment must provide for a compliance hearing after the settlement has been completely implemented, to be determined in consultation with the Department's clerk by phone. Plaintiffs' counsel are to submit a compliance statement one week before the compliance hearing date. Five percent of the attorney's fees are to be withheld by the claims administrator pending satisfactory compliance as found by the Court. Pursuant to Code of Civil Procedure § 384(b), after the settlement is completely implemented, the judgment must be amended to reflect the amount paid to the *cypres* recipient.

**IT IS SO ORDERED.**

Dated:           OCT 30 2023          

  
\_\_\_\_\_  
Hon. Charles S. Treat  
Contra Costa County Superior Court Judge

# **EXHIBIT A**

**9:00 AM**  
**CASE NUMBER: C22-00686**  
**CASE NAME: LOPEZ VS. LG ELECTRONICS ALABAMA, INC.**  
**\*HEARING ON MOTION IN RE: FINAL APPROVAL OF CLASS ACTION SETTLEMENT,**  
**ATTORNEY FEES, COSTS & REPRESENTATIVE ENHANCEMENT PAYMENT**  
**\*TENTATIVE RULING\***

Plaintiff Daniel Lopez moves for final approval of his class action and PAGA settlement with defendants LG Electronics U.S.A., Inc. and LG Electronics Alabama, Inc. He also moves for approval of his attorney's fees, litigation costs, administration costs, and representative payment. The motions are **granted**.

Since preliminary approval was granted, the administrator has mailed notices to 152 class members. 5 packets were returned by the post office. Follow up resulted in 2 new addresses, leaving 3 non-deliverable. No objections or requests to opt out have been received.

**A. Background and Settlement Terms**

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The entire settlement amount will be deposited with the settlement administrator within one day after the effective date of the settlement.

The proposed settlement will certify a class of all current and former non-exempt hourly employees employed at Defendants' California facilities between February 28, 2018 to July 20, 2023. For PAGA purposes, the period covered by the settlement is March 11, 2021 to July 20, 2023.

The class members will not be required to file a claim. Funds will be apportioned to class members based on the number of workweeks worked during the class period. Settlement checks not cashed within 180 days will be cancelled, and the funds will be directed to the California State Bar Justice Gap Fund as a *cypres* beneficiary.



The settlement contains release language covering all claims and causes of action, alleged or which could have reasonably been alleged based on the allegations in the operative pleading, including a number of specified claims. Under recent appellate authority, the limitation to those claims with the “same factual predicate” as those alleged in the complaint is critical. (*Amaro v. Anaheim Arena Mgmt., LLC* (2021) 69 Cal.App.5th 521, 537 (“A court cannot release claims that are outside the scope of the allegations of the complaint.”) ‘Put another way, a release of claims that goes beyond the scope of the allegations in the operative complaint’ is impermissible.” (*Id.*, quoting *Marshall v. Northrop Grumman Corp.* (C.D. Cal.2020) 469 F.Supp.3d 942, 949.)

Formal discovery was undertaken, resulting in the production of substantial documents. The matter settled after arms-length negotiations, which included a session with an experienced mediator.

Counsel also has provided an analysis of the case, and how the settlement compares to the potential value of the case, after allowing for various risks and contingencies. The risks, factual issues, and certification problems presented in the case are typical for cases of this kind. For example, much of plaintiff’s allegations centers on possible off-the-clock work, including missed or skipped meal breaks and rest breaks. LG, however, pointed out that its formal policies prohibit off-the-clock work, and asserted that it would have had no knowledge of employees beginning work before punching in or continuing after punching out. Further, it argued that it was required to make meal and rest breaks available, but not required to ensure that they be taken, so long as no employer policy prevented or discouraged taking such breaks. As to unreimbursed employee expenses (such as cell phone use, mileage, and masks), plaintiff would have been called on to show that such expenses were in fact incurred, were reasonably necessary to job performance, and were unreimbursed. Furthermore, the fact-intensive character of such claims would have presented a serious obstacle to class certification.

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