

1
2
3
4
5
6
7
8 **SUPERIOR COURT OF CALIFORNIA**
9 **COUNTY OF SANTA CLARA**
10

11 JOCELYN TRIGUEROS,

12 Plaintiff,

13 v.
14

15 STANFORD FEDERAL CREDIT UNION, et
16 al.,

17 Defendants.
18

Case No.: 21CV375168

**ORDER CONCERNING PLAINTIFF’S
MOTION FOR PRELIMINARY
APPROVAL OF CLASS/PAGA
SETTLEMENT**

19 This is a putative class and Private Attorneys General Act (“PAGA”) action. Plaintiff
20 alleges that Defendants Stanford Federal Credit Union, Cardtronics USA, Inc., and ATM
21 National, LLC failed to pay non-exempt employees minimum and overtime wages, failed to
22 provide compliant meal and rest breaks or pay associated premiums, and committed other wage
23 and hour violations.

24 Now before the Court is Plaintiff’s motion for preliminary approval of a settlement with
25 Stanford Federal Credit Union (hereinafter “Defendant”), which is unopposed.¹ The Court
26 issued tentative rulings on March 7 and 15, 2023, which no one challenged at the hearing on
27

28 ¹ On March 7, 2023, the Court granted Plaintiff’s dismissal of Cardtronics USA and ATM
National.

1 March 16. The Court now issues its final order, which GRANTS preliminary approval, with one
2 further modification to the class notice.

3 **I. BACKGROUND**

4 Defendants employed Plaintiff in Santa Clara County as an hourly paid, non-exempt
5 employee from April 2019 to February 2020. (Class Action Complaint for Damages, ¶ 20.)
6 Plaintiff alleges that she and other employees did not receive overtime wages and required meal
7 and rest periods or premium pay. (*Id.*, ¶¶ 27–30.) Plaintiff and other employees did not receive
8 minimum wages for all hours worked, and did not receive all wages due upon separation,
9 including overtime and minimum wages and meal and rest period premiums. (*Id.*, ¶¶ 31–32.)
10 Employees did not receive complete and accurate wage statements because their statements
11 failed to include the total number of hours worked, among other deficiencies. (*Id.*, ¶ 33.)
12 Finally, employees were not reimbursed for necessary expenses, and Defendants failed to keep
13 complete and accurate payroll records. (*Id.*, ¶¶ 34–35.)

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 under Labor Code section 226.7 by failing to provide compliant rest
18 periods or premiums; (4) failure to pay minimum wages in violation of Labor Code sections
19 1194 and 1197; (5) failure to timely pay wages upon discharge in violation of Labor Code
20 sections 201 and 202; (6) failure to provide accurate wage statements per Labor Code Section
21 226(a); and (7) failure to reimburse business expenses under Labor Code sections 2800 and
22 2802. Plaintiff also brings (8) a representative claim for PAGA penalties and (9) a claim for
23 unlawful business practices in violation of Business & Professions Code 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.

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

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, both parties engaged in
3 informal discovery. Defendant produced documents relating to its policies, practices, and
4 procedures concerning reimbursement of business expenses, paying non-exempt employees for
5 all hours worked, meal and rest breaks, and payroll and operations. Plaintiff reviewed these
6 documents along with time records, wage statements, information relating to the size and scope
7 of the class, and data concerning the number of workweeks in the class period. Plaintiff also
8 interviewed putative class members concerning their work experience.

9 On March 23, 2022, the parties engaged in mediation with Hon. Carl J. West (Ret.). The
10 matter did not settle that day, and Plaintiff proceeded to serve formal discovery requests. The
11 parties continued to negotiate and ultimately reached the settlement before the Court.

12 **IV. SETTLEMENT PROVISIONS**

13 The non-reversionary gross settlement amount is \$1,125,000. Attorney fees of up to
14 \$375,000 (one-third of the gross settlement), litigation costs of up to \$20,000, and \$7,750 in
15 administration costs will be paid from the gross settlement. \$100,000 will be allocated to PAGA
16 penalties, 75 percent of which (\$75,000) will be paid to the LWDA. The named plaintiff will
17 seek an incentive award of \$10,000. Employer-side payroll taxes will also be deducted from the
18 settlement.

19 By the Court's calculation, the net settlement will be approximately \$637,250 by the
20 Court's calculation (prior to deducting payroll taxes). The net settlement will be allocated to
21 class members proportionally based on their weeks worked during the class and PAGA periods.
22 The average payment (including PAGA payments) will be around \$2,450.96 to each of the 260
23 class members. Class members will not be required to submit a claim to receive their payments.
24 For tax purposes, settlement payments will be allocated 1/3 to wages and 2/3 to penalties and
25 interest. Funds associated with checks uncashed after 180 days will be paid to California State
26 Controller's Unclaimed Property Fund.

27 As provided by the amended settlement filed on March 10, 2023, class members who do
28 not opt out will release all claims, demands, etc. "based on direct or vicarious liability, that are

1 based on, relate to, concern, or arise out of any of the allegations that were asserted or which
2 could have been asserted in the Complaint against the Released Parties based on the factual
3 allegations in the Complaint, whether or not specifically delineated as a claim or cause of action
4 in the Complaint.” As amended, the release is appropriately tailored to the allegations at issue.
5 (See *Amaro v. Anaheim Arena Management, LLC* (2021) 69 Cal.App.5th 521, 537.) The PAGA
6 release is similarly tailored.

7 **V. FAIRNESS OF SETTLEMENT**

8 Plaintiff estimates that the maximum value of the rest break claims is \$974,907.04 and
9 the maximum value of the meal period claims is \$86,313.20. The overtime/minimum wage
10 claims for off-the-clock work could be worth up to \$1,662,000. The claims for unreimbursed
11 business expenses were valued at \$780,000. The wage statement penalties are estimated at
12 \$924,000 and the waiting time penalties at \$1,163,400. PAGA penalties could total \$152,600.

13 The settlement thus represents over 32 percent of the maximum value of the core claims
14 (\$3,503,220.24), and over 19 percent of the maximum value of the entire case with penalties
15 (\$5,743,220.24). Particularly considering the portion of the case’s value attributable to uncertain
16 penalties and claims that could be difficult to certify for class treatment, the settlement achieves a
17 good result for the class. The Court is further persuaded by the detailed discussion of the merits
18 and risks that is provided in the Declaration of Douglas Han supporting Plaintiff’s motion. For
19 purposes of preliminary approval, the Court finds that the settlement is fair and reasonable to the
20 class, and the PAGA allocation is genuine, meaningful, and reasonable in light of the statute’s
21 purposes.

22 Of course, the Court retains an independent right and responsibility to review the
23 requested attorney fees and award only so much as it determines to be reasonable. (See
24 *Garabedian v. Los Angeles Cellular Telephone Co.* (2004) 118 Cal.App.4th 123, 127–128.)
25 Counsel shall submit lodestar information prior to the final approval hearing in this matter so the
26 Court can compare the lodestar information with the requested fees. (See *Laffitte v. Robert Half*
27 *Intern. Inc.* (2016) 1 Cal.5th 480, 504 [trial courts have discretion to double-check the
28 reasonableness of a percentage fee through a lodestar calculation].)

1 **VI. PROPOSED SETTLEMENT CLASS**

2 Plaintiff requests that the following settlement class be provisionally certified:
3 all Stanford Federal Credit Union's ("Defendant") current and former non-exempt
4 employees in California beginning July 17, 2016 through November 23, 2022,
5 unless shortened at Defendant's option pursuant to section III(C)(5) of the
6 Settlement Agreement, excluding those former employees who signed separate
7 individual severance and release agreements covering the claims alleged in this
8 matter.

9 **A. Legal Standard for Certifying a Class for Settlement Purposes**

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

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

24 In the settlement context, "the court's evaluation of the certification issues is somewhat
25 different from its consideration of certification issues when the class action has not yet settled."
26 (*Luckey v. Superior Court* (2014) 228 Cal.App.4th 81, 93.) As no trial is anticipated in the
27 settlement-only context, the case management issues inherent in the ascertainable class
28 determination need not be confronted, and the court's review is more lenient in this respect. (*Id.*

1 at pp. 93–94.) But considerations designed to protect absentees by blocking unwarranted or
2 overbroad class definitions require heightened scrutiny in the settlement-only class context, since
3 the court will lack the usual opportunity to adjust the class as proceedings unfold. (*Id.* at p. 94.)

4 **B. Ascertainable Class**

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

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

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

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

24 Here, the 260 class members are readily identifiable based on Defendant’s records, and
25 the settlement class is appropriately defined based on objective characteristics. The Court finds
26 that the settlement class is numerous, ascertainable, and appropriately defined.

1 **C. Community of Interest**

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

6 For the first community of interest factor, “[i]n order to determine whether common
7 questions of fact predominate the trial court must examine the issues framed by the pleadings
8 and the law applicable to the causes of action alleged.” (*Hicks v. Kaufman & Broad Home Corp.*
9 (2001) 89 Cal.App.4th 908, 916 (*Hicks*).) The court must also examine evidence of any conflict
10 of interest among the proposed class members. (See *J.P. Morgan & Co., Inc. v. Superior Court*
11 (2003) 113 Cal.App.4th 195, 215.) The ultimate question is whether the issues which may be
12 jointly tried, when compared with those requiring separate adjudication, are so numerous or
13 substantial that the maintenance of a class action would be good for the judicial process and to
14 the litigants. (*Lockheed Martin Corp. v. Superior Court* (2003) 29 Cal.4th 1096, 1104–1105
15 (*Lockheed Martin*).) “As a general rule if the defendant’s liability can be determined by facts
16 common to all members of the class, a class will be certified even if the members must
17 individually prove their damages.” (*Hicks, supra*, 89 Cal.App.4th at p. 916.)

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

20 As to the second factor,

21 The typicality requirement is meant to ensure that the class representative is able
22 to adequately represent the class and focus on common issues. It is only when a
23 defense unique to the class representative will be a major focus of the litigation,
24 or when the class representative’s interests are antagonistic to or in conflict with
25 the objectives of those she purports to represent that denial of class certification is
26 appropriate. But even then, the court should determine if it would be feasible to
27 divide the class into subclasses to eliminate the conflict and allow the class action
28 to be maintained.

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

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

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

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

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

20 "[A] class action should not be certified unless substantial benefits accrue both to
21 litigants and the courts. . . ." (*Basurco v. 21st Century Ins.* (2003) 108 Cal.App.4th 110, 120,
22 internal quotation marks omitted.) The question is whether a class action would be superior to
23 individual lawsuits. (*Ibid.*) "Thus, even if questions of law or fact predominate, the lack of
24 superiority provides an alternative ground to deny class certification." (*Ibid.*) Generally, "a
25 class action is proper where it provides small claimants with a method of obtaining redress and
26 when numerous parties suffer injury of insufficient size to warrant individual action." (*Id.* at pp.
27 120–121, internal quotation marks omitted.)
28

1 Here, there are an estimated 260 class members. It would be inefficient for the Court to
2 hear and decide the same issues separately and repeatedly for each class member. Further, it
3 would be cost prohibitive for each class member to file suit individually, as each member would
4 have the potential for little to no monetary recovery. It is clear that a class action provides
5 substantial benefits to both the litigants and the Court in this case.

6 **VII. NOTICE**

7 The content of a class notice is subject to court approval. (Cal. Rules of Court, rule
8 3.769(f).) “The notice must contain an explanation of the proposed settlement and procedures
9 for class members to follow in filing written objections to it and in arranging to appear at the
10 settlement hearing and state any objections to the proposed settlement.” (*Ibid.*) In determining
11 the manner of the notice, the court must consider: “(1) The interests of the class; (2) The type of
12 relief requested; (3) The stake of the individual class members; (4) The cost of notifying class
13 members; (5) The resources of the parties; (6) The possible prejudice to class members who do
14 not receive notice; and (7) The res judicata effect on class members.” (Cal. Rules of Court, rule
15 3.766(e).)

16 Here, the notice describes the lawsuit, explains the settlement, and instructs class
17 members that they may opt out of the settlement (except the PAGA component) or object. The
18 gross settlement amount and estimated deductions are provided. Class members’ estimated
19 payments and workweek information is displayed on the first page of the notice. Class members
20 are informed of their qualifying workweeks as reflected in Defendant’s records and are
21 instructed how to dispute this information. They are given 60 days to request exclusion from the
22 class or submit a written objection to the settlement, and the notice makes it clear that providing
23 personal information in connection with these submissions is optional. Class members are
24 instructed that they may appear at the final fairness hearing to make an oral objection without
25 submitting a written objection. Finally, the notice informs class members that notice of final
26 judgment will be posted on the administrator’s web site.

27 At the Court’s direction, the notice was modified to make it clear that the Court will hear
28 and consider any objections to the PAGA portion of the settlement. Regarding appearances at

1 the final fairness hearing, the notice shall be further modified to instruct class members as
2 follows:

3 The judge overseeing this case encourages remote appearances. (As of August
4 15, 2022, the Court's remote platform is Microsoft Teams.) Class members who
5 wish to appear remotely should contact class counsel at least three days before the
6 hearing if possible. Instructions for appearing remotely are provided
7 at https://www.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml
8 and should be reviewed in advance. Class members may appear remotely using
9 the Microsoft Teams link for Department 1 (Afternoon Session) or by calling the
10 toll free conference call number for Department 1. Any class member who
11 wishes to appear in person should check in at Court Services (1st floor, Downtown
12 Superior Courthouse, 191 N. 1st St., San Jose) and wait for a sheriff's deputy to
13 escort him or her to the courtroom for the hearing.

14 Turning to the notice procedure, the parties have selected Phoenix Class Action
15 Administration Solutions as the settlement administrator. The administrator will mail the notice
16 packet within 14 days of receiving the class data from Defendant, after updating class members'
17 addresses using the National Change of Address Database. Any returned notices will be re-
18 mailed to any forwarding address provided or better address located through a search. Class
19 members who receive a re-mailed notice will have an additional 10 days to respond. These
20 notice procedures are appropriate and are approved.

21 **VIII. CONCLUSION**

22 With the additional modification to the class notice directed above, Plaintiff's motion for
23 preliminary approval is GRANTED. The final approval hearing shall take place on **August 17,**
24 **2023** at 1:30 p.m. in Dept. 1. The following class is preliminarily certified for settlement
25 purposes:


26 all Stanford Federal Credit Union's ("Defendant") current and former non-exempt
27 employees in California beginning July 17, 2016 through November 23, 2022,
28 unless shortened at Defendant's option pursuant to section III(C)(5) of the

1 Settlement Agreement, excluding those former employees who signed separate
2 individual severance and release agreements covering the claims alleged in this
3 matter.

4 Before final approval, Plaintiff shall lodge any individual settlement agreement she may
5 have executed in connection with her employment with Defendant for the Court's review.

6 **IT IS SO ORDERED.**

7
8 Date: March 21, 2023

9 
10 _____
11 The Honorable Sunil R. Kulkarni
12 Judge of the Superior Court
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28