

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA

SONYA OCANAS,

Plaintiff,

v.

CATHOLIC CHARITIES OF SANTA CLARA
COUNTY, et al.,

Defendants.

Case No.: 22CV399353

**ORDER CONCERNING PLAINTIFF'S
MOTION FOR PRELIMINARY
APPROVAL**

This is a putative class and Private Attorneys General Act ("PAGA") action. Plaintiff Sonya Ocanas alleges that Defendant Catholic Charities of Santa Clara County failed to provide employees with required meal and rest periods and committed other wage and hour violations.

Now before the Court is Plaintiff's motion for preliminary approval of a settlement, which is unopposed. As discussed below, the Court GRANTS preliminary approval, now that Plaintiff has provided the additional information requested by the Court.

I. BACKGROUND

Defendant employed Plaintiff and other non-exempt employees in California, and continues to do so. (First Amended Consolidated Class Action Complaint ("FAC"), ¶¶ 26–27.) Plaintiff alleges that Defendant failed to pay minimum and overtime wages for all hours worked at the correct rate and within the required time. (*Id.*, ¶ 29.) Plaintiff and other employees did not

1 receive all required meal and rest periods or premiums. (*Id.*, ¶¶ 30–31.) They were not
2 reimbursed for business expenses and were not provided with accurate itemized wage
3 statements. (*Id.*, ¶¶ 32–33.) Employees were not timely paid all wages due upon separation of
4 employment. (*Id.*, ¶ 34.)

5 Based on these allegations, Plaintiff asserts the following putative class claims: (1)
6 failure to pay minimum wages; (2) failure to pay overtime; (3) failure to provide meal periods;
7 (4) failure to permit rest breaks; (5) failure to reimburse business expenses; (6) failure to provide
8 accurate itemized wage statements; (7) failure to timely pay wages during employment; (8)
9 failure to pay all wages due upon separation of employment; and (9) violation of Business &
10 Professions Code section 17200 et seq. Plaintiff also brings (10) a representative claim for
11 PAGA penalties.

12 Plaintiff now moves for an order preliminarily approving the settlement of the class and
13 PAGA claims, provisionally certifying the settlement class, approving the form and method for
14 providing notice to the class, and scheduling a final fairness hearing.

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

16 **A. Class Action**

17 Generally, “questions whether a [class action] settlement was fair and reasonable,
18 whether notice to the class was adequate, whether certification of the class was proper, and
19 whether the attorney fee award was proper are matters addressed to the trial court’s broad
20 discretion.” (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234–235 (*Wershba*),
21 disapproved of on other grounds by *Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal.5th
22 260.)

23
24 In determining whether a class settlement is fair, adequate and reasonable, the trial
25 court should consider relevant factors, such as the strength of plaintiffs’ case, the
26 risk, expense, complexity and likely duration of further litigation, the risk of
27 maintaining class action status through trial, the amount offered in settlement, the
28 extent of discovery completed and the stage of the proceedings, the experience and

1 views of counsel, the presence of a governmental participant, and the reaction of
2 the class members to the proposed settlement.

3
4 (*Wershba, supra*, 91 Cal.App.4th at pp. 244–245, internal citations and quotations omitted.)

5 In general, the most important factor is the strength of the plaintiffs’ case on the merits,
6 balanced against the amount offered in settlement. (See *Kullar v. Foot Locker Retail, Inc.* (2008)
7 168 Cal.App.4th 116, 130 (*Kullar*.) But the trial court is free to engage in a balancing and
8 weighing of relevant factors, depending on the circumstances of each case. (*Wershba, supra*, 91
9 Cal.App.4th at p. 245.) The trial court must examine the “proposed settlement agreement to the
10 extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or
11 overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a
12 whole, is fair, reasonable and adequate to all concerned.” (*Ibid.*, citation and internal quotation
13 marks omitted.) The trial court also must independently confirm that “the consideration being
14 received for the release of the class members’ claims is reasonable in light of the strengths and
15 weaknesses of the claims and the risks of the particular litigation.” (*Kullar, supra*, 168
16 Cal.App.4th at p. 129.) Of course, before performing its analysis the trial court must be
17 “provided with basic information about the nature and magnitude of the claims in question and
18 the basis for concluding that the consideration being paid for the release of those claims
19 represents a reasonable compromise.” (*Id.* at pp. 130, 133.)

20 **B. PAGA**

21 Labor Code section 2699, subdivision (l)(2) provides that “[t]he superior court shall
22 review and approve any settlement of any civil action filed pursuant to” PAGA. The court’s
23 review “ensur[es] that any negotiated resolution is fair to those affected.” (*Williams v. Superior*
24 *Court* (2017) 3 Cal.5th 531, 549.) Seventy-five percent of any penalties recovered under PAGA
25 go to the Labor and Workforce Development Agency (“LWDA”), leaving the remaining twenty-
26 five percent for the aggrieved employees. (*Iskanian v. CLS Transportation Los Angeles, LLC*
27 (2014) 59 Cal.4th 348, 380, overruled on other grounds by *Viking River Cruises, Inc. v.*
28 *Moriana* (2022) ___ U.S. ___, 2022 U.S. LEXIS 2940.)

1
2 Similar to its review of class action settlements, the Court must “determine independently
3 whether a PAGA settlement is fair and reasonable,” to protect “the interests of the public and the
4 LWDA in the enforcement of state labor laws.” (*Moniz v. Adecco USA, Inc.* (2021) 72
5 Cal.App.5th 56, 76–77.) It must make this assessment “in view of PAGA’s purposes to
6 remediate present labor law violations, deter future ones, and to maximize enforcement of state
7 labor laws.” (*Id.* at p. 77; see also *Haralson v. U.S. Aviation Servs. Corp.* (N.D. Cal. 2019) 383
8 F. Supp. 3d 959, 971 [“when a PAGA claim is settled, the relief provided for under the PAGA
9 [should] be genuine and meaningful, consistent with the underlying purpose of the statute to
10 benefit the public”], quoting LWDA guidance discussed in *O’Connor v. Uber Technologies,*
11 *Inc.* (N.D. Cal. 2016) 201 F.Supp.3d 1110 (*O’Connor*).)

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

18 **III. SETTLEMENT PROCESS**

19 According to Plaintiff’s counsel, Defendant produced a significant number of documents
20 and a significant amount of information, including Plaintiff’s personnel files, policy documents,
21 wage statements, and a ten-percent sampling of class members’ timekeeping and pay records.

22 On January 23, 2023, the parties attended a mediation session with John Adler. After a
23 full day of negotiating, they agreed to a settlement amount and executed a Memorandum of
24 Understanding with the material terms. The parties spent the next few months negotiating the
25 full terms of the settlement, which was finalized in April 2023.

26 **IV. SETTLEMENT PROVISIONS**

27 The non-reversionary gross settlement amount is \$1,200,000. Attorney fees of up to
28 \$400,000 (one-third of the gross settlement), litigation costs of up to \$10,000, and \$11,150 in

administration costs will be paid from the gross settlement. \$50,000 will be allocated to PAGA penalties, 75 percent of which (\$37,500) will be paid to the LWDA. The named plaintiff will seek an incentive award of \$10,000.¹

The net settlement, approximately \$731,000, will be allocated to class members proportionally based on their pay periods during the class and PAGA periods. By the Court's calculation, the average payment (including PAGA payments) will be around \$777.66 to each of the 940 class members. Class members will not be required to submit a claim to receive their payments. For tax purposes, settlement payments will be allocated 33.33 percent to wages and 66.67 percent to penalties and interest. The employer's share of payroll taxes will be paid in addition to the gross settlement. Funds associated with checks uncashed after 180 days will be paid to the Katherine & George Alexander Community Law Center.

In exchange for the settlement, class members who do not opt out will release all claims, charges, etc. "whether known or unknown, that were alleged, or reasonably could have been alleged, during the Class Period based on facts stated in the Operative Complaint ...," including the wage and hour claims asserted in the FAC and some that are not ("failure to pay reporting time pay" and "failure to provide required days of rest in violation of Labor Code sections 551 and/or 552"). Similarly, the PAGA release is limited to "claims for civil penalties that were alleged, or reasonably could have been alleged during the PAGA Period, based on the facts stated in the Operative Complaint, and the PAGA Notice," including the same causes of action. Consistent with the statute, aggrieved employees will not be able to opt out of the PAGA portion of the settlement.

V. FAIRNESS OF SETTLEMENT

Plaintiff estimates that the meal period claims in this action could be worth up to \$4.7 million and the rest period claims could be worth \$6.8 million. The derivative waiting time and wage statement penalties were valued at \$1.28 million, and the PAGA penalties at \$1.1 million.

¹ These are the numbers provided by the settlement agreement: the Court assumes the different ones reflected in parts of Plaintiff's moving papers are in error.

1 The settlement thus represents about 10.4 percent of the maximum value of the core
2 claims (\$11.5 million), and about 8.6 percent of the maximum value of the entire case with
3 penalties (\$13.88 million). Particularly considering the portion of the case’s value attributable to
4 uncertain penalties and claims that could be difficult to certify for class treatment, the settlement
5 achieves a good result for the class. So the Court is inclined to find that the settlement is fair and
6 reasonable to the class for purposes of preliminary approval, and the PAGA allocation is
7 genuine, meaningful, and reasonable in light of the statute’s purposes.

8 In its original moving papers, Plaintiff did not address the value of the following claims
9 alleged in the FAC: (1) failure to pay minimum wages; (2) failure to pay overtime; (3) failure to
10 reimburse business expenses; (4) any non-derivative wage statement claims; and (5) failure to
11 timely pay wages during employment. In addition, the original release encompassed claims that
12 were not originally alleged in this case, like for reporting time violations and failure to provide
13 days of rest. The Court asked the parties to meet and confer about whether they can amend the
14 release to make it clear that it encompasses only those claims “tied to the *factual allegations* in
15 the complaint, not the claims or theories of liability asserted.” (*Amaro v. Anaheim Arena*
16 *Management, LLC* (2021) 69 Cal.App.5th 521, 538, italics original.)

17 Plaintiff submitted a supplemental declaration on May 18, explaining the value (or lack
18 thereof) of the above-listed claims. The Court is satisfied with that explanation. Plaintiff also
19 explained that the operative complaint (and most recent LDWA notice) alleged the “new
20 claims,” which is why the release was so broad. The Court understands and accepts that account.

21 In addition, two related matters, *Cawley v. Catholic Charities of Santa Clara County*
22 (Super. Ct. Santa Clara County, No. 22CV404814) and *Cawley v. Catholic Charities of Santa*
23 *Clara County* (Super. Ct. Santa Clara County, No. 22CV404794) (collectively, “*Cawley*”) are
24 pending in this Department. The Court asked Plaintiff to explain whether there has been
25 discussion between Plaintiff’s counsel in this matter and in *Cawley* regarding the settlement here
26 and its impact on the claims alleged in *Cawley*.

27 Plaintiff’s May 18 declaration explained there have been no such discussions. The
28 declaration also stated that because *Ocanas* was filed before the *Cawley* cases, the *Cawley*

1 plaintiff “will have the same options [as] other class members to collect her individual settlement
2 share from the settlement in *Ocanas* or to opt-out of the settlement and continue to pursue a
3 separate action against Defendant.” (5/18/23 C. Bell Supp. Decl., ¶ 11.) That explanation makes
4 sense.

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

12 **VI. PROPOSED SETTLEMENT CLASS**

13 Plaintiff requests that the following settlement class be provisionally certified:

14
15 all current and former non-exempt employees who are and/or were employed by
16 Defendant in California at any time from June 20, 2018 through preliminary
17 approval.

18 19 **A. Legal Standard for Certifying a Class for Settlement Purposes**

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

25 Section 382 requires the plaintiff to demonstrate by a preponderance of the evidence:
26 (1) an ascertainable class and (2) a well-defined community of interest among the class
27 members. (*Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326, 332 (*Sav-On*
28 *Drug Stores*).) “Other relevant considerations include the probability that each class member

1 will come forward ultimately to prove his or her separate claim to a portion of the total recovery
2 and whether the class approach would actually serve to deter and redress alleged
3 wrongdoing.” (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.) The plaintiff has the
4 burden of establishing that class treatment will yield “substantial benefits” to both “the litigants
5 and to the court.” (*Blue Chip Stamps v. Superior Court* (1976) 18 Cal.3d 381, 385.)

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

14 **B. Ascertainable Class**

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

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

25
26 (*Noel, supra*, 7 Cal.5th at p. 980, citation omitted.)

27 “As a rule, a representative plaintiff in a class action need not introduce evidence
28 establishing how notice of the action will be communicated to individual class members in order

1 to show an ascertainable class.” (*Noel, supra*, 7 Cal.5th at p. 984.) Still, it has long been held
2 that “[c]lass members are ‘ascertainable’ where they may be readily identified ... by reference to
3 official records.” (*Rose v. City of Hayward* (1981) 126 Cal. App. 3d 926, 932, disapproved of on
4 another ground by *Noel, supra*, 7 Cal.5th 955; see also *Cohen v. DIRECTV, Inc.* (2009) 178
5 Cal.App.4th 966, 975-976 [“The defined class of all HD Package subscribers is precise, with
6 objective characteristics and transactional parameters, and can be determined by DIRECTV’s
7 own account records. No more is needed.”].)

8 Here, the 940 class members are readily identifiable based on Defendant’s records, and
9 the settlement class is defined based on objective characteristics. The Court finds that the
10 settlement class is numerous, ascertainable, and appropriately defined.

11 **C. Community of Interest**

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

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

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

3 As to the second factor,
4

5 The typicality requirement is meant to ensure that the class representative is able to
6 adequately represent the class and focus on common issues. It is only when a
7 defense unique to the class representative will be a major focus of the litigation, or
8 when the class representative's interests are antagonistic to or in conflict with the
9 objectives of those she purports to represent that denial of class certification is
10 appropriate. But even then, the court should determine if it would be feasible to
11 divide the class into subclasses to eliminate the conflict and allow the class action
12 to be maintained.
13

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

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

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

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

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

5 “[A] class action should not be certified unless substantial benefits accrue both to
6 litigants and the courts. . . .” (*Basurco v. 21st Century Ins.* (2003) 108 Cal.App.4th 110, 120,
7 internal quotation marks omitted.) The question is whether a class action would be superior to
8 individual lawsuits. (*Ibid.*) “Thus, even if questions of law or fact predominate, the lack of
9 superiority provides an alternative ground to deny class certification.” (*Ibid.*) Generally, “a
10 class action is proper where it provides small claimants with a method of obtaining redress and
11 when numerous parties suffer injury of insufficient size to warrant individual action.” (*Id.* at pp.
12 120–121, internal quotation marks omitted.)

13 Here, there are an estimated 940 class members. It would be inefficient for the Court to
14 hear and decide the same issues separately and repeatedly for each class member. Further, it
15 would be cost prohibitive for each class member to file suit individually, as each member would
16 have the potential for little to no monetary recovery. It is clear that a class action provides
17 substantial benefits to both the litigants and the Court in this case.

18 **VII. NOTICE**

19 The content of a class notice is subject to court approval. (Cal. Rules of Court, rule
20 3.769(f).) “The notice must contain an explanation of the proposed settlement and procedures
21 for class members to follow in filing written objections to it and in arranging to appear at the
22 settlement hearing and state any objections to the proposed settlement.” (*Ibid.*) In determining
23 the manner of the notice, the court must consider: “(1) The interests of the class; (2) The type of
24 relief requested; (3) The stake of the individual class members; (4) The cost of notifying class
25 members; (5) The resources of the parties; (6) The possible prejudice to class members who do
26 not receive notice; and (7) The res judicata effect on class members.” (Cal. Rules of Court, rule
27 3.766(e).)

1 Here, the notice describes the lawsuit, explains the settlement, and instructs class
2 members that they may opt out of the settlement (except the PAGA component) or object. The
3 gross settlement amount and estimated deductions are provided. Class members are informed of
4 their qualifying pay periods as reflected in Defendant's records and are instructed how to dispute
5 this information. They are given 60 days to request exclusion from the class or submit a written
6 objection to the settlement. Class members are instructed that they may appear at the final
7 fairness hearing to make an oral objection without submitting a written objection. Notice will be
8 provided in Spanish, Vietnamese, and Chinese (and of course, English).

9 The form of notice is generally adequate, but must be modified to instruct class members
10 that they may opt out of or object to the settlement simply by providing their name, without the
11 need to provide their Social Security Number, phone number, or other personal information.
12 And the notice must inform class members of how notice of final judgment will be provided
13 (e.g., on the administrator's web site).

14 With regard to appearances at the final fairness hearing, the notice shall be further
15 modified to instruct class members as follows:

16
17 The judge overseeing this case encourages remote appearances. (As of August 15,
18 2022, the Court's remote platform is Microsoft Teams.) Class members who wish
19 to appear remotely should contact class counsel at least three days before the
20 hearing if possible. Instructions for appearing remotely are provided
21 at https://www.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml
22 and should be reviewed in advance. Class members may appear remotely using the
23 Microsoft Teams link for Department 1 (Afternoon Session) or by calling the toll-
24 free conference call number for Department 1. Any class member who wishes to
25 appear in person should check in at Court Services (1st floor, Downtown Superior
26 Courthouse, 191 N. 1st St., San Jose) and wait for a sheriff's deputy to escort him
27 or her to the courtroom for the hearing.
28

1 Turning to the notice procedure, the parties have selected ILYM Group, Inc. as the
2 settlement administrator. The administrator will mail the notice packet within 14 days of
3 receiving the class data. Any returned notices will be re-mailed to any forwarding address
4 provided or better address located through a search. Class members who receive a re-mailed
5 notice will have an additional 14 days to respond.

6 These notice procedures are appropriate and are approved, with the modification that the
7 administrator shall update class members' addresses using the National Change of Address
8 Database prior to the initial mailing.

9 The Court notes that Plaintiff already has modified the class notice to conform with the
10 above requests. (5/18/23 C. Bell Supp. Decl., ¶ 13, Ex. 2.)

11 **VIII. CONCLUSION**

12 The Court GRANTS Plaintiff's motion for preliminary approval. The final approval
13 hearing shall take place on **October 5, 2023** at 1:30 p.m. in Dept. 1.

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

16 The August 24 case management conference is VACATED.

17 **IT IS SO ORDERED.**

18
19 Date: May 20, 2023

20 

The Honorable Sunil R. Kulkarni
Judge of the Superior Court