

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA

MAGDALENA TORRES,

Plaintiff,

v.

JAN MARINI SKIN RESEARCH, INC., et al.,

Defendants.

Case No.: 22CV401294

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

This is a putative class and Private Attorneys General Act ("PAGA") action. Plaintiff Magdalena Torres alleges that Defendant Jan Marini Skin Research, Inc., a manufacturer and wholesaler of skincare products, failed to pay overtime and minimum wages, failed to provide meal and rest periods or pay associated premiums, and failed to provide code-complaint wage statements, among other Labor Code violations.

Before the Court is Plaintiff's motion for preliminary approval of a settlement, which is unopposed. In addition, no party objected to the settlement at the December 7, 2023 hearing on this matter. As discussed below, the Court GRANTS Plaintiff's motion.

1 **I. BACKGROUND**

2 On July 27, 2022, Plaintiff filed a class action complaint accusing Defendant of failing to:
3 properly pay overtime, provide meal periods, authorize and permit rest breaks, properly pay meal
4 and rest break premiums, pay minimum wages, pay timely pay wages during employment and
5 upon termination, provide accurate wage statements, keep accurate payroll records and
6 reimburse necessary business expenses. Plaintiff also alleged that Defendant's actions violated
7 California Business and Professions Code section 17200. That same day, Plaintiff also filed a
8 separate PAGA representative complaint asserting a single claim under PAGA seeking penalties
9 for the same violations alleged in the class action complaint.

10 On December 8, the Court granted Defendant's unopposed motion to consolidate the
11 class action with the PAGA action. Plaintiff filed the Consolidated Class Action and
12 Representative Action Complaint the following day, asserting the following causes of action: (1)
13 unpaid overtime; (2) unpaid meal period premiums; (3) unpaid rest period premiums; (4) unpaid
14 minimum wages; (5) final wages not timely paid; (6) wages not timely paid during employment;
15 (7) non-compliant wage statements; (8) failure to keep requisite payroll records; (9)
16 unreimbursed business expenses; (10) violation of Bus. & Prof. Code § 17200; and (11) violation
17 of PAGA.

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

19 **A. Class Action**

20 Generally, "questions whether a [class action] settlement was fair and reasonable,
21 whether notice to the class was adequate, whether certification of the class was proper, and
22 whether the attorney fee award was proper are matters addressed to the trial court's broad
23 discretion." (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234–235 (*Wershba*),
24 disapproved of on other grounds by *Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal.5th
25 260.)

26
27 In determining whether a class settlement is fair, adequate and reasonable, the
28 trial court should consider relevant factors, such as the strength of plaintiffs' case,

1 the risk, expense, complexity and likely duration of further litigation, the risk of
2 maintaining class action status through trial, the amount offered in settlement, the
3 extent of discovery completed and the stage of the proceedings, the experience
4 and views of counsel, the presence of a governmental participant, and the reaction
5 of the class members to the proposed settlement.

6
7 (*Wershba, supra*, 91 Cal.App.4th at pp. 244–245, internal citations and quotations omitted.)

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

23 **B. PAGA**

24 Labor Code section 2699, subdivision (1)(2) provides that “[t]he superior court shall
25 review and approve any settlement of any civil action filed pursuant to” PAGA. The court’s
26 review “ensur[es] that any negotiated resolution is fair to those affected.” (*Williams v. Superior*
27 *Court* (2017) 3 Cal.5th 531, 549.) Seventy-five percent of any penalties recovered under PAGA
28 go to the Labor and Workforce Development Agency (“LWDA”), leaving the remaining twenty-

1 five percent for the aggrieved employees. (*Iskanian v. CLS Transportation Los Angeles, LLC*
2 (2014) 59 Cal.4th 348, 380, overruled on other grounds by *Viking River Cruises, Inc. v.*
3 *Moriana* (2022) ____ U.S. ____, 2022 U.S. LEXIS 2940.)

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

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

20 **III. SETTLEMENT PROCESS**

21 After the consolidated complaint was filed, the parties met and conferred and agreed to
22 attend private mediation and informally stay discovery pending the mediation. In advance of the
23 mediation, the parties engaged in informal discovery, with Defendant providing Plaintiff with all
24 relevant policies and handbooks in place during the Class Period, Plaintiff’s personnel file, the
25 complete production of time and payroll data for all direct hires, and figures and information
26 regarding the class size and composition. With this data, Plaintiff’s counsel and their retained
27 expert were able to perform a comprehensive damages analysis and estimate Defendant’s
28 potential liability.

1 On May 4, 2023, the parties participated in mediation with Kim Deck, Esq., a mediator
2 with substantial experience handling wage and hour matters, and reached the settlement
3 agreement now before the Court.

4 **IV. SETTLEMENT PROVISIONS**

5 The non-reversionary gross settlement is \$625,000. Attorney fees of up to \$208,333.33
6 (one-third of the gross settlement), litigation costs not to exceed \$25,000 and an estimated
7 \$7,500 in administration costs will be paid from the gross settlement. \$50,000 will be allocated
8 to PAGA penalties, 75% of which (\$37,500) will be paid to the LWDA. Plaintiff will seek an
9 enhancement payment in the amount of \$5,000.

10 The net settlement of approximately \$329,166.67 will be allocated to class members on a
11 pro-rata basis based on the number of weeks worked during the class period. The remaining
12 25% of the PAGA settlement amount will be distributed to Aggrieved Employees on a pro-rata
13 basis. Class members will not be required to submit a claim to receive their payment. For tax
14 purposes, settlement payments will be allocated 20% to wages subject to withholding, 40% to
15 interest and 40% to penalties. 100% of the PAGA payment to Aggrieved Employees will be
16 allocated as penalties. Funds associated with checks uncashed after 180 days will be transmitted
17 to the Controller of the State of California to be held in trust for such class members pursuant to
18 California unclaimed property law.

19 In exchange for settlement, class members who do not opt out will release:

20
21 [C]laims, rights, demands, liabilities and causes of actions that are alleged, or that
22 reasonably could have been alleged, based on the facts asserted in the operative
23 complaint in the Action including the following claims: (i) failure to pay all
24 regular wages, minimum wages and overtime wages due; (ii) failure to provide
25 meal periods or compensation in lieu thereof; (iii) failure to provide rest periods
26 or compensation in lieu thereof; (iv) failure to reimburse necessary business
27 expenses; (v) failure to provide complete, accurate wage statements; (vi) failure to
28 pay wages timely at time of termination or resignation; (vii) failure to provide

1 timely pay wages during employment ; (viii) unfair business practices that could
2 have been premised on the facts pled in the operative complaint; and (ix) failure
3 to maintain required payroll records.

4
5 Aggrieved Employees will also release “all claims for civil penalties under [PAGA] that
6 could have been premised on the facts alleged both in the PAGA Notice provided to the LWDA
7 and in the operative complaint including but not limited to penalties that could have been
8 awarded pursuant to Labor Code sections 210, 226.3, 1197.1, 558 and 2699.” Consistent with
9 the statute, Aggrieved Employees will not be able to opt out of the PAGA portion of the
10 settlement.

11 The foregoing releases are both appropriately tailored to the allegations at issue.
12 (See *Amaro v. Anaheim Arena Management, LLC* (2021) 69 Cal.App.5th 521, 537.)

13 **V. FAIRNESS OF SETTLEMENT**

14 Based on available data, Plaintiff’s counsel estimated Defendant’s maximum exposure at
15 approximately \$2,992,980, with specific claims valued as follows: failure to provide meal
16 breaks at \$396,548.72; failure to provide rest breaks at \$396,548.72; failure to pay all minimum
17 and overtime wages due at \$144,199.54; \$10,250 in unreimbursed business expenses; waiting
18 time penalties totaling \$960,585.60; penalties for inaccurate wage statements at \$205,800; and
19 liability for penalties under PAGA at \$878,958.

20 Plaintiff’s counsel determined an appropriate amount of recovery for settlement purposes
21 by offsetting Defendant’s maximum theoretical liability by the following factors: the risk of class
22 certification being denied (particularly with respect to the meal and rest period claims);
23 Defendant’s arguments on the merits, including, among others, that employees voluntarily took
24 short or late meal breaks and their policies otherwise complied with applicable law; the difficulty
25 of establishing the willfulness of Defendant’s actions; the expense of establishing the amount of
26 wages due to each class member; and the risk of losing at trial or on appeal. That amount was
27 \$583,418.02.

1 Considering the portion of the case’s value attributable to uncertain penalties, claims that
2 could be difficult to certify for class treatment, and the multiple, dependent contingencies that
3 Plaintiff would have had to overcome to prevail on her claims, the settlement achieves a good
4 result for the class. For purposes of preliminary approval, the Court finds that the settlement is
5 fair and reasonable to the class, and the PAGA allocation is genuine, meaningful, and reasonable
6 in light of the statute’s purposes.

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

14 **VI. PROPOSED SETTLEMENT CLASS**

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

16
17 All current and former hourly-paid, non-exempt employees of Defendant or
18 employees of a temporary employment agency who were assigned to work for
19 Defendant in California, at any time between July 27, 2018, and the date of
20 preliminary approval.

21 22 **A. Legal Standard for Certifying a Class for Settlement Purposes**

23 Rule 3.769(d) of the California Rules of Court states that “[t]he court may make an order
24 approving or denying certification of a provisional settlement class after [a] preliminary
25 settlement hearing.” California Code of Civil Procedure Section 382 authorizes certification of a
26 class “when the question is one of a common or general interest, of many persons, or when the
27 parties are numerous, and it is impracticable to bring them all before the court”
28

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

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

18 **B. Ascertainable Class**

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

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

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

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

Here, the estimated 205 class members are readily identifiable based on Defendant’s records, and the settlement class is appropriately defined based on objective characteristics. The Court finds that the settlement class is numerous, ascertainable, and appropriately defined.

C. Community of Interest

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

For the first community of interest factor, “[i]n order to determine whether common questions of fact predominate the trial court must examine the issues framed by the pleadings and the law applicable to the causes of action alleged.” (*Hicks v. Kaufman & Broad Home Corp.* (2001) 89 Cal.App.4th 908, 916 (*Hicks*).) The court must also examine evidence of any conflict of interest among the proposed class members. (See *J.P. Morgan & Co., Inc. v. Superior Court* (2003) 113 Cal.App.4th 195, 215.) The ultimate question is whether the issues which may be jointly tried, when compared with those requiring separate adjudication, are so numerous or substantial that the maintenance of a class action would be good for the judicial process and to the litigants. (*Lockheed Martin Corp. v. Superior Court* (2003) 29 Cal.4th 1096, 1104–1105

1 (*Lockheed Martin*.) “As a general rule if the defendant’s liability can be determined by facts
2 common to all members of the class, a class will be certified even if the members must
3 individually prove their damages.” (*Hicks, supra*, 89 Cal.App.4th at p. 916.)

4 Here, common legal and factual issues predominate. Plaintiff’s claims all arise from
5 Defendant’s wage and hour practices (and others) applied to the similarly-situated class
6 members.

7 As for the second factor,

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

17
18 (*Medraza v. Honda of North Hollywood* (2008) 166 Cal. App. 4th 89, 99, internal citations,
19 brackets, and quotation marks omitted.)

20 Like other members of the class, Plaintiff was employed by Defendants as a non-exempt,
21 hourly-paid employee and alleges that she experienced the violations at issue. The anticipated
22 defenses are not unique to Plaintiff, and there is no indication that Plaintiff’s interests are
23 otherwise in conflict with those of the class.

24 Finally, adequacy of representation “depends on whether the plaintiff’s attorney is
25 qualified to conduct the proposed litigation and the plaintiff’s interests are not antagonistic to the
26 interests of the class.” (*McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 450.) The class
27 representative does not necessarily have to incur all of the damages suffered by each different
28 class member in order to provide adequate representation to the class. (*Wershba, supra*, 91

1 Cal.App.4th at p. 238.) “Differences in individual class members’ proof of damages [are] not
2 fatal to class certification. Only a conflict that goes to the very subject matter of the litigation
3 will defeat a party’s claim of representative status.” (*Ibid.*, internal citations and quotation marks
4 omitted.)

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

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

9 “[A] class action should not be certified unless substantial benefits accrue both to
10 litigants and the courts. . . .” (*Basurco v. 21st Century Ins.* (2003) 108 Cal.App.4th 110, 120,
11 internal quotation marks omitted.) The question is whether a class action would be superior to
12 individual lawsuits. (*Ibid.*) “Thus, even if questions of law or fact predominate, the lack of
13 superiority provides an alternative ground to deny class certification.” (*Ibid.*) Generally, “a
14 class action is proper where it provides small claimants with a method of obtaining redress and
15 when numerous parties suffer injury of insufficient size to warrant individual action.” (*Id.* at pp.
16 120–121, internal quotation marks omitted.)

17 Here, there are an estimated 205 class members. It would be inefficient for the Court to
18 hear and decide the same issues separately and repeatedly for each class member. Further, it
19 would be cost-prohibitive for each class member to file suit individually, as each member would
20 have the potential for little to no monetary recovery. It is clear that a class action provides
21 substantial benefits to both the litigants and the Court in this case.

22 **VII. NOTICE**

23 The content of a class notice is subject to court approval. (Cal. Rules of Court, rule
24 3.769(f).) “The notice must contain an explanation of the proposed settlement and procedures
25 for class members to follow in filing written objections to it and in arranging to appear at the
26 settlement hearing and state any objections to the proposed settlement.” (*Ibid.*) In determining
27 the manner of the notice, the court must consider: “(1) The interests of the class; (2) The type of
28 relief requested; (3) The stake of the individual class members; (4) The cost of notifying class

1 members; (5) The resources of the parties; (6) The possible prejudice to class members who do
2 not receive notice; and (7) The res judicata effect on class members.” (Cal. Rules of Court, rule
3 3.766(e).)

4 Here, the notice, which will be delivered to class members in both English and Spanish,
5 describes the lawsuit, explains the settlement, and instructs class members that they may opt out
6 of the settlement (except the PAGA component) or object. The gross settlement amount and
7 estimated deductions are provided, and class members are informed of their qualifying
8 workweeks as reflected in Defendant’s records and are instructed how to dispute this
9 information. Class members are given 60 days to request exclusion from the class or submit a
10 written objection to the settlement.

11 The notice is generally adequate. Class members’ workweek information must be
12 displayed in bold within a box set off from the rest of the text on the first page of the notice.

13 And class members must be informed of how notice of final judgment will be provided (for
14 example, by posting the judgment to a settlement web site).

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

17
18 The judge overseeing this case encourages remote appearances. (As of August
19 15, 2022, the Court’s remote platform is Microsoft Teams.) Class members who
20 wish to appear remotely should contact class counsel at least three days before the
21 hearing if possible. Instructions for appearing remotely are provided
22 at https://www.scsccourt.org/general_info/ra_teams/video_hearings_teams.shtml
23 and should be reviewed in advance. Class members may appear remotely using
24 the Microsoft Teams link for Department 1 (Afternoon Session) or by calling the
25 toll free conference call number for Department 1. Any class member who
26 wishes to appear in person can do so, however.

1 Turning to the notice procedure, the parties have selected Apex Class Action as the
2 settlement administrator. The administrator will mail the notice packet within 52 days of
3 preliminary approval, after updating class members' addresses using the National Change of
4 Address Database. Any returned notices will be re-mailed to any forwarding address provided or
5 better address located through a skip trace or other search. Class members who receive a re-
6 mailed notice will have at least 15 days to respond. These notice procedures are appropriate and
7 are approved.

8 **VIII. CONCLUSION**

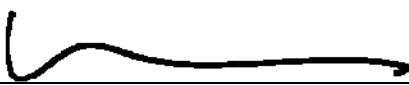
9 Plaintiff's motion for preliminary approval is GRANTED. The final approval hearing
10 shall take place on **June 6, 2024** at 1:30 in Dept. 1. The following class is preliminarily certified
11 for settlement purposes:

12
13 All current and former hourly-paid, non-exempt employees of Defendant or
14 employees of a temporary employment agency who were assigned to work for
15 Defendant in California, at any time between July 27, 2018, and the date of
16 preliminary approval.

17
18 Counsel shall submit lodestar information before the final approval hearing in this matter
19 so the Court can compare the lodestar information with the requested fees.

20 **IT IS SO ORDERED.**

21
22 Date: 12/12/2023

23 
24 _____
25 The Honorable Sunil R. Kulkarni
26 Judge of the Superior Court
27
28