SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

ANA RIVERA, SUSAN MOGHAVEM, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

CLEARPATH FEDERAL CREDIT UNION; and DOES 1 through 10, inclusive,

Defendants.

Case No.: 19STCV33504

[TENTATIVE] ORDER GRANTING PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

Hearing Date: March 4, 2021
Time: 2:00 p.m.
Dept.: 7

Plaintiffs Ana Rivera and Susan Moghavem (collectively "Plaintiffs") move the Court under California Rules of Court, rule 3.764(a) to certify a class of:

> All persons employed by Defendant Clearpath Federal Credit Union in hourly paid or non-exempt positions in California at any time on or after September 20, 2015.

(Motion, 2:1-2; First Amended Complaint ("FAC"), ¶ 25.) Plaintiffs also move the Court to appoint them as class representatives and Kane Moon, Allen Feghali, and Enzo Nabiev of Moon

& Yang, APC as class counsel. (Notice of Motion, 2:7-11.) Defendant Clearpath Federal Credit Union ("Clearpath" or "Defendant") opposes Plaintiffs' motion.

The Court, for the following reasons, GRANTS Plaintiffs' motion for class certification.

I. Background Allegations

Plaintiff Rivera alleges she worked for Clearpath as a financial service representative from April 2018 to August 2019; Plaintiff Moghavem alleges she worked as a loan specialist from March 2014 to August 2018. (FAC, ¶ 15.) They allege causes of action against Clearpath for (1) failure to pay minimum and regular rate wages, (2) failure to pay overtime, (3) failure to provide meal periods, (4) failure to authorize and permit rest breaks, (5) failure to timely pay final wages at termination, (6) failure to provide accurate itemized wage statements, and (7) unfair business practices. They also seek (8) civil penalties under the Private Attorneys General Act ("PAGA") and pray for, among other relief, unpaid wages, premium wages, penalties, and attorney's fees. (FAC, pp. 23-27.)

Plaintiffs advance several factual theories of recovery. They first allege Clearpath had a "policy and practice" of "time rounding" that failed to compensate them for time they worked. (FAC, ¶ 17.) Some of the unpaid work "should have been paid at the overtime rate," and Clearpath's time rounding "practice" resulted in its records being inaccurate. (FAC, ¶ 17.). Second, Plaintiffs allege they and other Clearpath employees earned "non-discretionary bonuses" that were not — but should have been — used to calculate employees' overtime pay rates. (FAC, ¶ 18.)

Third, Clearpath allegedly "required" Plaintiffs to work without required meal breaks. (FAC, ¶ 19.) Clearpath did not inform Plaintiffs they were entitled to meal breaks and lacked "adequate" written meal break "policies and practices" both to ensure Plaintiffs took meal breaks and to verify meal breaks were taken. (FAC, ¶ 19.) Fourth, Clearpath "regularly, but not always" required Plaintiffs to work without taking a required rest break. (FAC, ¶ 20.)

Resultingly, the wage statements Clearpath provided were allegedly inaccurate and Clearpath did not timely pay Plaintiffs all wages owed to them when their employment ended.

(FAC, ¶¶ 21-22.) Lastly, Clearpath's practices and policies, Plaintiffs allege, are unlawful, unfair, or fraudulent business practices. (FAC, ¶¶ 74-92.)

II. Legal Standard: Class Certification

If "the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court, one or more may sue or defend for the benefit of all." (Code Civ. Proc., § 382.) Class certification is "essentially a procedural [question] that does not ask whether an action is legally or factually meritorious." (*Linder v. Thrifty Oil Co.* (2000) 23 Cal. 4th 429, 439-40.) The party moving for certification must show, with "substantial evidence," (1) "a sufficiently numerous, ascertainable class," (2) "a well-defined community of interest," and (3) that "certification will provide substantial benefits to litigants and the courts, i.e., that proceeding as a class is superior to other methods." (*Fireside Bank v. Superior Court* (2007) 40 Cal.4th 1069, 1089 (*Fireside Bank*); *Morgan v. Wet Seal, Inc.* (2012) 210 Cal.App.4th 1341, 1354-55.) Requirement (2), "community of interest," has three sub-factors: (A) "predominant common questions of law or fact," (B) "class representatives with claims or defenses typical of the class," and (C) "class representatives who can adequately represent the class." (*Fireside Bank*, at p. 1089.)

III. Plaintiffs Demonstrate the Proposed Class is Sufficiently Numerous and Ascertainable.

"[N]o set number" determines whether a class is "sufficiently numerous"; the test is whether a class is so numerous that "it is impracticable to bring them all before the court." (*Hendershot v. Ready to Roll Transportation, Inc.* (2014) 228 Cal.App.4th 1213, 1223 (*Hendershot*) [citing Code Civ. Proc., § 382].) A class is "ascertainable" if it is defined by "objective characteristics and common transactional facts" that make "the ultimate identification of class members possible when that identification becomes necessary." (*Noel v. Thrifty Payless, Inc.* (2019) 7 Cal.5th 955, 980 (*Noel*).)

Plaintiffs' proposed class has between 84 and 100 members. (Declaration of Kane Moon in Support ("Moon Decl."), ¶ 11.) Defendant's interrogatory responses indicate 34 current

employees and 56 former employees — 90 employees total — and Defendant produced time records for 84 employees. (Moon Decl., ¶ 11, Exhs. 2-3.) Assuming the smallest class, 84 employees is an impracticable number of plaintiffs to bring individually before the Court.

The class definition has two objective characteristics: all persons (a) "employed by Defendant Clearpath Federal Credit Union in hourly paid or non-exempt positions in California" and (b) "at any time on or after September 20, 2015." Both characteristics enable class members to be identified objectively identified without examining their subjective characteristics. Clearpath does not dispute that the class members are sufficiently numerous and ascertainable.

The Court finds the proposed class is sufficiently numerous and ascertainable.

IV. Plaintiffs Demonstrate a "Well-Defined Community of Interest."

The "community of interest" requirement "embodies three factors": (A) "predominant common questions of law or fact"; (B) "class representatives with claims or defenses typical of the class"; and (3) "class representatives who can adequately represent the class." (*Fireside Bank, supra*, 40 Cal.4th at p. 1089.)

A. Plaintiffs' Theories Raise Predominant Common Questions of Law and Fact.

To assess whether common questions predominate, a court "must examine the issues framed by the pleadings and the law applicable to the causes of action alleged. [Citations.] It must determine whether the elements necessary to establish liability are susceptible of common proof, or, if not, whether there are ways to manage effectively proof of any elements that may require individualized evidence." (*Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1024 (*Brinker*).) The question is whether "the operative legal principles, as applied to the facts or the case, render the claims susceptible to resolution on a common basis." (*Ayala v. Antelope Valley Newspapers, Inc.* (2014) 59 Cal.4th 522, 530 (*Ayala*).)

1. Defendant's Operations Are Centralized at Its Main Office.

Clearpath has its main office in Glendale, California and maintains two branch offices, one in Moreno Valley and the other in Compton. (Moon Decl., ¶ 12, Exh. A [Deposition of Clearpath's Person Most Knowledgeable ("PMK"), Javier Hurtado ("Hurtado Depo."), 24:2-4].) It employs five "department heads" who only oversee employees at the Glendale location, while Hurtado oversees the Moreno Valley and Compton employees. (Hurtado Depo., 24:10-18.) Clearpath's payroll "comes through" Hurtado and its Human Resources are "centralized" in Glendale. (Hurtado Depo., 24:19-23.)

2. Common Questions Predominate Plaintiffs' Time Rounding Theory.

Clearpath allegedly "used a system of time rounding." (FAC, ¶ 17.) Consequently, Clearpath "frequently" paid Plaintiffs for less time than they actually worked; some of the time for which they were not compensated was overtime; and Clearpath's time records were inaccurate. (FAC, ¶ 17.) Plaintiffs' time rounding theory supports their causes of action (1) failure to pay minimum and regular rate wages (Labor Code sections 204, 1194, 1194.2, and 1197); (2) failure to pay overtime compensation (Labor Code sections 1194 and 1198); (5) failure to timely pay final wages (Labor Code sections 201-203); and (6) failure to provide accurate itemized wage statements (Labor Code section 226).

An employer's time rounding policy is not per se unlawful; a rounding policy is unlawful if it results, "over a period of time, in a failure to compensate the employees properly for all the time they have actually worked." (*See's Candy Shops, Inc. v. Superior Court* (2012) 210 Cal.App.4th 889, 907.) In contrast, employers may lawfully apply a facially "fair and neutral" rounding policy that, "on average, favors neither overpayment nor underpayment." (*Id.* at pp. 901-902, 907.)

Plaintiffs present evidence of a company-wide time-rounding policy. According to its PMK, Clearpath uses a "seven minute" time rounding policy. (Hurtado Depo., 31:1-10.) For example, an employee who clocks in at 7:53 or 8:07 is "punched in" at 8:00. (Hurtado Depo., 31:1-7.)

Plaintiffs also present evidence the time-rounding policy is susceptible to common proof. "[A]ll Clearpath employees use the same system to keep track of their time." (Hurtado Depo., 31:18-20.) Employees log in to a computerized "timekeeping interface" and "punch in" their time. (Hurtado Depo., 33:17-21.) They do not enter the time they start work; instead, their punch-in time is "automatically" recorded. (Hurtado Depo., 33:18-22.) Clearpath pays wages based on the "automatically" recorded, rounded time. (Hurtado Depo., 31:24-25, 32:1.)

Plaintiffs also present evidence the effects of the time rounding policy are susceptible to common proof. The actual time Clearpath employees punch in — not the automatically rounded time — is recorded on time sheets. (Moon Decl., ¶ 18, Exh. 7[1] [time records exemplar].) One entry, for example, lists "Time In – Out" as "08:27 AM – 11:30 AM" and the "Hours" paid for this time as "3.00," and another lists "08:28 AM – 11:35 AM" as 3.00 Hours. (Moon Decl., Exh. 7.) Plaintiffs employed a consultant who analyzed the payroll records Defendant produced — and specifically, the difference between the hours paid and actual hours worked — and whose testimony Plaintiffs propose to proffer at trial. (Declaration of Jarrett Gorlick ("Gorlick Decl."), ¶¶ 5, 8-10; Trial Plan, 2-3.)

In opposition, Clearpath contends the rounding policy did not have a common effect on the class because it benefitted some employees — an employee who, for example, clocked in at 8:35 would be paid for her labor starting at 8:30. (Opposition, 5:2-4.) Naturally, some individual employees will benefit from a time rounding policy; the key inquiry, however, in determining whether the policy is lawful is whether the policy "systemically undercompensate[s]," that is, the policy's effect over time on employees as a group. (*AHMC Healthcare, Inc. v. Superior Court* (2018) 24 Cal.App.5th 1014, 1027-1028.) A policy is not lawful because some employees benefit, nor is it unlawful because other employees do not. (*Ibid.* [slight majority of employees at one facility "lost time," but overall were compensated for more 3,875 more hours than they worked].) Importantly here, Plaintiffs' evidence establishes Clearpath had a common rounding policy and

[1] Misnumbered as Exhibit 9 at Moon Decl., ¶ 18.

the effects of the policy are susceptible to common proof — namely the timesheets and expert evidence.

Clearpath also contends the time rounding policies were not uniform but instead varied by department. Clearpath has five different departments: Financial Services, Lending, Collections, Member Business Lending, and Accounting. (Declaration of Javier Hurtado in Opposition ("Hurtado Decl."), ¶ 3.) Clearpath cites, for example, an "oral policy" granting a "grace period" for "clocking in, whereby employees are not written up for clocking in 2 minutes late." (Hurtado Decl., ¶ 4; Declaration of Keven Steinberg in Opposition ("Steinberg Decl."), ¶ 2, Exh. A [Hurtado Depo., 53:2-25].)[2] Plaintiffs, however, do not challenge Clearpath's grace period policy relating to employee discipline; instead, they challenge Clearpath's time rounding policy as it relates to employee compensation. Conceivably, a policy of disciplining or not discipling employees who clock in late might affect whether the rounding policy systemically undercompensates them. If employees are systemically disciplined for clocking in late, for example, they might be incentivized to clock in early and consequently be systemically undercompensated by the rounding policy. But as discussed above, statistical evidence reveals the policy's effects, and the companywide policy raises common questions — the crucial inquiry here.

3. Common Questions Predominate Plaintiffs' Bonus/Incentive Program Theory.

Plaintiffs allege Clearpath awards employees "non-discretionary bonuses" but does not factor the bonuses into employees' "regular rate of pay" when calculating overtime pay. (FAC, ¶ 18.)

Overtime compensation is a function of an employee's "regular rate of pay." (Lab. Code § 510, subd. (a).) To define "regular rate of pay," California courts refer to the federal Fair Labor Standards Act ("FLSA"), "its supporting federal regulations, and case law interpreting federal law." (*Advanced-Tech Security Services, Inc. v. Superior Court* (2008) 163 Cal.App.4th 700, 707-

[2] Clearpath's PMK could not recall any other "oral policies" regarding "anything else that's alleged in the lawsuit." (Hurtado Depo., 53:23-25.)

708.) "Under the FLSA, the 'regular rate' of pay 'at which an employee is employed shall be deemed to include all remuneration for employment paid to, or on behalf of, the employee,' subject to certain enumerated exceptions." (*Alonzo v. Maximus, Inc.* (C.D. Cal. 2011) 832 F.Supp.2d 1122, 1129 (*Alonzo*) [citing 29 U.S.C. § 207, subd. (e)].)

One exception is "discretionary" bonuses, defined as "[s]ums paid in recognition of services performed during a given period if … both the fact that payment is to be made and the amount of the payment are determined at the sole discretion of the employer at or near the end of the period and not pursuant to any prior contract, agreement, or promise causing the employee to expect such payments regularly…." (29 U.S.C. § 207, subd. (e)(3)(a); *Alonzo,* at p. 1130.) "The burden is on Defendant to establish that its bonus payments fall within one of the exceptions in [section] 207(e)." (*Alonzo*, at p. 1130.)

Conversely, "regular rate of pay" does include, for example, a "flat sum" attendance bonuses that an employer pays as "incentive" for "completing a full work shift on a day that is unpopular for working…." (*Alvarado v. Dart Container Corp. of California* (2018) 4 Cal.5th 542, 554.)

Plaintiffs proffer an "exemplar" of Clearpath's written "Staff Rewards Program." (Moon Decl., ¶ 15, Exh. 6.) By its terms, "[a]ll full-time and part-time employees, below Supervisor level of the Credit Union [sic]" are "eligible to participate in the incentive program." (Moon Decl., Exh. 6, 2.) The exemplar is dated April 1, 2019, but Clearpath's PMK confirmed the company had a "similar incentive program" in effective for "the past five years." (Hurtado Depo., 43:12-14.) According to the PMK, employees who "have contact" with Cleapath's clients are eligible to participate in the program. (Hurtado Depo., 39:13-23, 40:2.) Employees in four job titles interact with members: financial service representatives, lending specialists, commercial lending, and collections. (Hurtado Depo., 39:20-25, 40:1-2.) The incentive is "directly tied" to the number of sales made or accounts opened. (Hurtado Depo., 40:14-17.) Clearpath's PMK also testified that if an employee meets the sales incentive requirements, HR does not have discretion to deny the incentive. (Hurtado Depo., 43:7-11.)

Plaintiffs contend bonuses, if awarded, were recorded in Clearpath's payroll records. (Motion, 6:11-14.)[3] Plaintiffs' Trial Plan contemplates using the payroll records and expert testimony to prove that if a bonus was awarded, it was not factored into an employee's "regular rate of pay." (Trial Plan, 3:3-8.)

In opposition, Clearpath contends the bonuses are discretionary and thus "an individualized analysis of each employee's entitlement to his or her incentive for each month" will be required. (Opposition, 6:3-4.) Clearpath's PMK declares the bonuses "are discretionary in that various criteria have to be met in order to receive the incentive. Even if such criteria are met, an employee is ineligible for the incentive if he or she is written up. Where an employee is written up, Clearpath's process is for the manager to advise the executive assistant of the write up and for the executive assistant to remove the employee from the discretionary incentive payout list for the month." (Hurtado Decl., ¶ 7.) Clearpath's PMK further testified the bonuses are "discretionary" because an employee does not receive the bonus if she is "written up," and an employee can be "written up" for not meeting Clearpath's attendance policies, for example. (Hurtado Depo., 49:9-25.) He further testified the bonus is in no "other way" discretionary. (Hurtado Depo., 49:22-25.)

Clearpath's argument that the bonuses are "discretionary" is largely a merits issue — namely, whether the bonuses are considered an employee's "regular rate of compensation." (*Alonzo*, *supra*, 832 F.Supp.2d at pp. 1129-1130.) For class certification, whether "common questions predominate" is "evaluated under the prism of the plaintiff's theory of recovery." (*Department of Fish & Game v. Superior Court* (2011) 197 Cal.App.4th 1323, 1349.) Here Plaintiffs theorize that the bonus, if an employee received it, should have been used to calculate the employee's "regular rate of pay" for overtime purposes. The employees who received the bonus are identifiable by common proof: Clearpath's payroll statements. The bonus policy, including the allegedly "discretionary" element, is established in writing. (Hurtado Depo., 49:17-

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[3] Plaintiffs cite to Moon Decl., ¶ 14, but ¶ 14 does not expressly state whether Clearpath's payroll records show bonuses given. The exemplar proffered as Moon Decl., Exh. 7 does not show a bonus received. However, Plaintiffs' counsel declares he provided payroll records produced in discovery to Plaintiffs' expert, who was able to determine if a bonus was awarded. (Moon Decl., ¶ 14; Gorlick Decl., ¶ 11.)

19; Moon Decl., Exh. 6, 644 ["In order to earn rewards staff members must..."].) If each class member brought his or her claims separately, every case would likely refer to the payroll statements and Clearpath's written incentive policy.

Accordingly, the Court concludes common questions predominate Plaintiffs' theory the bonuses should have been used to calculate overtime pay.

4. Common Questions Predominate Plaintiffs' Meal and Rest Break Claims.

Plaintiffs allege Clearpath "regularly, but not always" required them to work over five consecutive hours per day without a meal break. (FAC, ¶ 19.) Clearpath did not inform Plaintiffs of their right to a meal break or have "adequate written policies or practices" for the provision, timing, documentation, or verification of meal breaks. (FAC, ¶ 19.) Clearpath also allegedly "failed to authorize and permit" Plaintiffs and the class to "take timely and duty-free rest periods." (FAC, ¶ 20.)

Meal and rest break requirements are established by the appliable Industrial Welfare Commission wage order and are enforceable under the Labor Code. (*Brinker, supra*, 53 Cal.4th at p. 1026.) "An employer is required to authorize and permit the amount of rest break time called for under the wage order for its industry. If it does not — if, for example, it adopts a uniform policy authorizing and permitting only one rest break for employees working a seven-hour shift when two are required — it has violated the wage order and its liable." (*Id.* at p. 1033.) Similarly, under most of the wage orders, "[E]mployers must afford employees uninterrupted half-hour [meal] periods in which they are relieved of any duty or employer control and are free to come and go as they please." (*Id.* at p. 1037.) "Claims alleging that a uniform policy consistently applied to a group of employees is in violation of the wage and hour laws are of the sort routinely, and properly, found suitable for class treatment." (*Id.* at p. 1033.)

Plaintiffs present evidence Clearpath, during the class period, issued three versions of its employee handbook: 2015, 2016, and 2019 versions. (Moon Decl., ¶¶ 16-17, Hurtado Depo., 60:16-19.) Clearpath's PMK testified Clearpath "doesn't let its employees deviate" from its written rest break policies. (Hurtado Depo., 59:19-21.) Plaintiffs highlight a provision in the 2015

and 2016 handbooks prohibiting employees from leaving the "credit union premises during break periods, excluding meal periods...." (Moon Decl., Exhs. 8-9.) Most importantly, the employee handbooks establish Clearpath's meal and rest break policies. (Hurtado Depo., 55:17-25; 56:12-20; 57:12-15, 25-25; 58:1-4.) Clearpath does not present evidence showing the policies varied by location, department, supervisor, or employee.

In opposition, Clearpath contends the written policy merely "set[s] an expectation" and no employee was ever disciplined for violating it. (Opposition, 5:9.) Thus, contends Clearpath, "[t]here is no common proof as to whether the policy caused damage to employees because any single employee could have left the premises without consequence for each and every single break taken every day, sometimes multiples times a day." (Opposition, 5:13-16.) Whether employees were harmed by Clearpath's alleged company-wide policy, that is, "[w]hether or not the employee was able to take the required break goes to damages, and '[t]he fact that individual [employees] may have different damages does not require denial of the class certification motion.'" (*Faulkinbury v. Boyd & Associates, Inc.* (2013) 216 Cal.App.4th 220, 235, disapproved on another ground in *Noel, supra,* 7 Cal.5th at p. 974, fn. 8.) If Clearpath "had a policy or practice that violates labor laws, then class treatment is appropriate. [Citation.] Individualized inquiries into whether an employee had a required rest break on a specific day is relevant to damages, and '[t]he fact that individual [employees] may have different *damages* does not require denial of the class certification motion.'" (*Lubin v. The Wackenhut Corp.* (2016) 5 Cal.App.5th 926, 955-956 (*Lubin*) (italics original) (page number omitted).)

5. Common Questions Predominate Plaintiffs' "Derivative" Claims.

Plaintiffs cast their remaining causes of action for failure to timely pay final wages, unfair business practices, and failure to provide accurate wage statements as "derivative" of their other claims. (Motion, 13.) Clearpath does not contend individual issues predominate Plaintiffs' three derivative claims.

Plaintiffs first allege a cause of action for waiting time penalties under Labor Code section 203. If an employer "willfully" fails to pay "any wages of an employee who is discharged or

quits," then "the wages of the employee shall continue as a penalty...." (Lab. Code, § 203, subd. (a).) Plaintiffs' theory presupposes their rounding, bonus, and meal and rest break claims will yield them "wages" due, and Clearpath's failure to timely pay these "wages" exposes Clearpath to penalties.[4] Section 203's "willful" element focuses on Clearpath's conduct, not the individual class members, and is thus a common question.

Unfair competition under the UCL means "any unlawful, unfair, or fraudulent business practice." (*Kizer v. Tristar Risk Management* (2017) 13 Cal.App.5th 830, 848 (*Kizer*).) The UCL focuses "on the defendant's conduct, rather than the plaintiff's damages, in service of the statute's larger purpose of protecting the general public against unscrupulous business practices." (*Ibid.*) Clearpath's conduct — its company-wide time rounding, overtime calculation, and meal and rest break policies — are questions common to the class.

Lastly, section 226, subdivision (a) requires an employer "furnish" its employee a wage statement with certain elements, among them "gross wages earned," "total hours worked by the employee," and "net wages earned." Plaintiffs allege Clearpath's wage statements did not "correctly identify the gross wages earned by Plaintiffs and the Class" or list the "total hours worked by the employee" or "net wages earned." (FAC, ¶ 68.) Plaintiffs' section 226 theory also presupposes they are due "wages" under their time rounding and meal and rest break claims. Assuming their underlying claims are successful, all of the class's wage statements will theoretically be deficient; this question, at least, is common to the class, and the wage statements themselves are a source of common proof.

B. Plaintiffs' Claims Are Typical of the Class.

Class representatives must have "claims or defenses typical of the class." (*Fireside Bank, supra*, 40 Cal.4th at p. 1089.) Claims are "typical" if "other members have the same or similar injury," the action is based on conduct "which is not unique to the named plaintiffs," and "other

[4] The Court does not decide whether Plaintiffs' underlying minimum and overtime wage and meal and rest break claims will yield "wages" due under section 203 or items required to be included in wage statements under section 226.

class members have been injured by the same course of conduct." (*Seastrom v. Neways, Inc.* (2007) 149 Cal.App.4th 1496, 1502 (*Seastrom*).) Typicality does not concern the "specific facts" from which claims arise or "relief sought," and its purpose as a requirement is to "assure that the interest of the named representative aligns with the interests of the class." (*Ibid.*)

Both Plaintiffs worked for Clearpath. Rivera worked as a financial services representative from 2018 to 2019. (Moon Decl., Exh. 10, ¶ 2.) Moghavem worked from 2014 until 2018; she was hired as a financial services representative, transferred to support services, then accounting, and finally lending, where she worked as a loan specialist. (Moon Decl., Exh. 11, ¶ 2.) Together, Plaintiffs' tenures span most of the 2015-to-present class period. Both declare they were subject to the policies described in the "policy manuals" and were required to "clock in and out" using a computer program. (Moon Decl., Exh. 10, ¶ 3-4; Exh. 11, ¶ 3-4.) Both participated in Clearpath's incentive program. (Moon Decl., Exh. 10, ¶ 5; Exh. 11, ¶ 5 [Moghavem participated when she worked as a financial service representative and loan specialist].)

Clearpath contends Plaintiffs' claims are not typical because "their employment duties and schedules while working for Clearpath were not the same as all other employees." (Opposition, 6:17-19.) Clearpath cites Plaintiffs' admissions that they "did not have identical duties to other employees" and did not "work identical schedules." (Steinberg Decl., Exhs. B-C [responses to Requests for Admissions Nos. 3-4].) Despite their different schedules and duties, Plaintiffs meet the key test of typicality: Clearpath's alleged company-wide conduct is "not unique" to Plaintiffs. (*Seastrom*, *supra*, 149 Cal.App.4th at p. 1502.)

Clearpath's PMK also declares Moghavem "exploited" her role in the Accounting Department, where she processed payroll, by making "unauthorized" edits to her own timecards. (Hurtado Decl., ¶ 6.) She made the edits "without approval" to "increase the minutes works [sic]." (Hurtado Decl., ¶ 6.) Clearpath proffers examples of 25 entries Moghavem "edited without approval." (Hurtado Decl., ¶ 6, Exh. B.) One entry, for example, has an "Old Value" "Time In" as 8:07 AM and a "New Value" as 8:00 AM, which increased the "Hours" from 4.88 to 5.00. (Hurtado Decl., Exh. B, 1311.) Other entry "edits" highlighted by Clearpath, however, appear to have decreased the "Hours," for example, from 5.00 to 4.97, from 3.55 to 3.50, and from 3.87 to

3.83. (Hurtado Decl., Exh. B, 1313-1314.) Plaintiffs, for their part, do not address the timecard edits in their reply brief.

Ultimately, without additional evidence the Court cannot conclude Moghavem's claims are not typical or she is not credible (an adequacy of representation argument). Both Moghavem herself and Clearpath testify that she worked in accounting, and Clearpath establishes she was responsible for payroll. It is unclear from the evidence proffered whether the "edits" were routine payroll adjustments — as noted, some of the edits appear to have actually decreased Moghavem's hours worked — or something more nefarious that would impugn Moghavem's credibility and ability to adequately represent the class (discussed more fully below).

C. Plaintiffs Can Adequately Represent the Class.

The third "community of interest" factor is plaintiffs who can "adequately represent the class." (*Fireside Bank, supra*, 40 Cal.4th at p. 1089.) Plaintiffs "adequately represent the class" by "vigorously and tenaciously protecting the class members' interests." (*Espejo v. The Copley Press, Inc.* (2017) 13 Cal.App.5th 329, 352 (*Espejo*).) "Typically, '[t]he adequacy of representation component of the community of interest requirement for class certification comes into play when the party opposing certification brings forth evidence indicating widespread antagonism to the class suit.'" (*Ibid.*) A putative representative cannot adequately represent the class if "his interests are antagonistic to or in conflict with the objectives of those he purports to represent. But only a conflict that goes to the very subject matter of the litigation will defeat a party's claim of representative status." (*Ibid.*) Conflicts that "merely reflect variances in view as to the proper outcome of a suit, do not provide reason for a court to refuse to hear a class suit." (*Capitol People First v. State Dept. of Developmental Services* (2007) 155 Cal.App.4th 676, 697 (*Capitol*).)

Both Plaintiffs declare they understand their obligations to the class and they have agreed to "prosecute this case to its conclusion." (Moon Decl., Exh. 10, ¶ 7; Exh. 11, ¶ 7.) They have not been promised compensation, beyond their share of recovery, for representing the class.

(Moon Decl., Exh. 10, ¶ 7; Exh. 11, ¶ 7.) No evidence suggests Plaintiffs are "professional plaintiffs." (*Espejo*, *supra*, 13 Cal.App.5th at p. 354.)

Clearpath contends Plaintiffs will not adequately represent the class because they are former employees "with no regard for the current state of Clearpath as a company.... The proposed class includes current employees of Clearpath, who do not want to see any adverse action taken against that company that could deplete its resources, which are used to pay current and ongoing wages." (Opposition, 7:10-14.) The Court cannot conclude Clearpath's contention shows the "vast majority" of the class "perceives its interest as diametrically opposed" to Plaintiffs. (*Richmond v. Dart Industries, Inc.* (1981) 29 Cal.3d 462, 471.) Certain employees predictably might prefer not to participate in the suit, but their individual preferences neither bear on whether Clearpath's alleged companywide policies are lawful nor impugn "the very legitimacy of the class action process" as Plaintiffs plan to use it. (*Capitol*, *supra*, 155 Cal.App.4th at p. 697.) The current Clearpath employees who do not wish to participate in the suit or be bound by its outcome can choose to opt-out.

VI. Proceeding as a Class Is Superior to Individual Adjudication.

Lastly, the proposed class action must confer "substantial benefits" that "render proceeding as a class superior to the alternatives." (*Fireside Bank*, *supra*, 40 Cal.4th at p. 1089.)

Class-wide adjudication is the superior method of adjudicating this case. The common and ultimate issues involve Clearpath's centralized, companywide practices of time rounding, overtime calculation, and meal and rest breaks. These issues are best adjudicated once rather than multiple times via individual actions. The alternative — multiple actions by individual employees — would likely implicate the same or similar evidence of Clearpath's centralized policies and practices and the same questions in every case. Examining the common evidence and resolving the common questions once as a class proceeding is thus the efficient and superior method.

VII. Evidentiary Objections

Clearpath raises objections to Plaintiffs' evidence.

Objection	Material	Ruling
1.	"In the 18,382 shifts analyzed, I found 185.9 fewer rounded hours than actual hours recorded, for an average of 0.6 minutes per shift. This difference can be further broken down as follows: 2017 – 8.5 hours, 2018 – 59.6 hours, and 2019 – 117.8 hours." (Gorlick Decl., ¶ 9.)	OVERRULED. In paragraphs 6-8, Gorlick describes the data he relied upon. An expert's opinion is not inadmissible if it relies on "the opinion or statement of another person." (Evid. Code, § 804, subd. (c).)
2.	"I found 71 out of 75 employees (94.6%) had at least one shift with fewer rounded hours than actual hours recorded (i.e., number of hours between time punches in and out was greater than the number of rounded hours), and 54 out of 75 employees (72.0%) had fewe r rounded hours than actual hours recorded overall. 16 out of 75 employees (21.3%) had more rounded hours than actual hours recorded overall, and 5 employees (6.7%) had the same number of rounded hours as actual hours recorded overall." (Gorlick Decl., ¶ 10.)	OVERRULED. See Objection No. 1.
3.	"In my review of the provided payroll data for Plaintiffs Rivera and Moghavem, I found that 12 Staff Incentive payments were made to Plaintiff Rivera and 4 were made to Plaintiff Moghavem. It is my understanding that employees in certain job positions were entitle d to monthly incentives based on multiple criteria, and were not incorporated into the regular rate of pay for the purposes of paying overtime. In my review of the provided payroll data, the Staff Incentive compensation was not incorporated into the regular rate of pay for the purposes of paying overtime (i.e., overtime was paid at 1.5 times the straight time rate, regardless of Staff Incentive compensation)." (Gorlick Decl., ¶ 11.)	OVERRULED. See Objection No. 1.
4.	"It is my understanding that Plaintiffs allege a claim for failure to pay all wages. Should liability be determined in Plaintiffs' favor, class-wide damages can be assessed by multiplying the under paid wages by each employee's hourly or overtime rate, when applicable." (Gorlick Decl., ¶ 12.)	OVERRULED. See Objection No. 1.
5.	"It is my understanding that Plaintiffs allege a claim for failure to provide rest breaks, based on a theory that Defendant had a policy of failing to relieve employees of all duties during their rest breaks. Should liability be determined in Plaintiffs' favor, class-wide damages can be assessed by multiplying the number of shifts greater than 3.5 hours by the statutory penalty equal to one hour at the employee's regular rate of pay." (Gorlick Decl., ¶ 13.)	OVERRULED. See Objection No. 1.
6.	"It is my understanding that Plaintiffs allege a claim for failure to provide itemized wage statements. Should liability be determined in Plaintiffs' favor, class-wide damages can be assessed by multiplying the number of wage statements where a violation exists by the applicable statutory penalty." (Gorlick Decl., ¶ 14.)	OVERRULED. See Objection No. 1.
7.	"It is my understanding that Plaintiffs allege a claim for failure to timely pay wages at termination or discharge. Should liability be determined in Plaintiffs' favor, class-wide damages can be	OVERRULED. See Objection No. 1.

	assessed. It is my understanding that Defendants maintain employee data that includes information related to hiring, termination of employment, and pay. If Plaintiffs prevail on this claim, damages can be assessed by calculating the statutorily authorized penalty amounts associated with each former class member's separation from the company." (Gorlick Decl., ¶ 15.)	
8.	"When I worked as a financial services representative, I was entitled to bonuses if I met certain goals that were detailed in Clearpath's written rewards program." (Moon Decl., Exh. 10, ¶ 5 [Rivera Decl.].)	OVERRULED. Rivera establishes her personal knowledge of what she was entitled to while working at Clearpath. Her statement is not hearsay, nor is the bonus policy; instead, the policy is a corporate act.
9.	"When I worked as a financial services representative and as a loan specialist, I was entitled to bonuses if I met certain goals that were detailed in Clearpath's written rewards program." (Moon Decl., Exh. 11, ¶ 5 [Moghavem Decl.].)	OVERRULED. Moghavem establishes her personal knowledge of what she was entitled to while working at Clearpath. Her statement is not hearsay, nor is the bonus policy; instead, the policy is a corporate act.

VIII. Conclusion

The Court GRANTS Plaintiffs' motion for class certification. Pursuant to California Rules of Court, rule 3.765(a), the Court adopts Plaintiffs' proposed class definition as:

> All persons employed by Defendant Clearpath Federal Credit Union in hourly paid or non-exempt positions in California at any time on or after September 20, 2015.

The Court APPOINTS Plaintiffs Ana Rivera and Susan Moghavem as class representatives. Counsel for Plaintiffs is appointed as class counsel.

Pursuant to California Rules of Court, rule 3.766(c), the Court shall as soon after issuing this Order as practicable issue a subsequent order concerning notice to class members.

Dated: 3/4/21

AMY D. HOGUE
JUDGE OF THE SUPERIOR COURT