

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SANTA CLARA

CAROLINE DELGADO,

Plaintiff,

v.

PARAMIT CORPORATION, et al.,

Defendants.

Case Nos.: 21CV383975, 21CV385443

**ORDER CONCERNING PLAINTIFFS'  
MOTION FOR FINAL APPROVAL OF  
CLASS ACTION AND PAGA  
SETTLEMENT**

JOSE GARDUNO, et al.

Plaintiff,

vs.

PARAMIT CORPORATION, et al.,

Defendants.

This is a putative class and Private Attorneys General Act ("PAGA") action. Plaintiff Caroline Delgado, a former employee, alleges that her employers, Defendants Paramit Corporation and R & D Technical Services, Inc., failed to provide employees with compliant meal and rest breaks, failed to pay minimum and overtime wages, issued noncompliant wage

1 statements, and committed other wage and hour violations. In related case no. 21CV3 85443,  
2 Plaintiffs Jose Garduno and Juan Padilla, also former employees of Defendants, make similar  
3 allegations against Defendants but also include a claim for unlawful wage deductions.

4 Before the Court is Plaintiffs' motion for final approval of a settlement, which is  
5 unopposed. As explained below, the Court GRANTS the motion.

## 6 **I. BACKGROUND**

7 Ms. Delgado began employment as a non-exempt employee with Defendants in  
8 November 2020 and ended her employment in March 2021. Mr. Garduno was employed by  
9 Defendants as a non-exempt employee from May 3, 2021 to July 30, 2021. Mr. Padilla was  
10 employed by Defendants as a non-exempt employee from October 2020 to April 2021.

11 According to Ms. Delgado, she was not paid for all hours worked and Defendants failed  
12 to provide her and other class members with uninterrupted meal and rest periods. (First  
13 Amended Complaint ("FAC"), ¶¶ 16, 19, 20.) She alleges that employees were required to work  
14 off the clock and without compensation pre-shift as they were required to wait in line to clock in.  
15 (*Id.*, ¶ 17.) Defendants also required employees to use their personal cellular phones for work  
16 purposes without compensation and to purchase supplies, such as scissors, pens, and hand  
17 sanitizer, without reimbursement. (*Id.*, ¶ 21.) Employees were not paid for all wages, including  
18 overtime wages, meal period premium wages, and rest period premium wages, at the end of their  
19 employment with Defendants. (*Id.*, ¶ 22.) Plaintiffs also allege that Defendant failed to provide  
20 them with accurate wage statements. (*Id.*, ¶ 23.)

21 Based on these allegations, Ms. Delgado's FAC asserted putative class claims for: (1)  
22 failure to pay minimum wages, in violation of Labor Code sections 204, 1194, 1194.2, and 1197;  
23 (2) failure to pay overtime wages, in violation of Labor Code sections 1194 and 1198; (3) failure  
24 to provide meal breaks, in violation of Labor Code sections 226.7 and 512; (4) failure to provide  
25 rest breaks, in violation of Labor Code section 512; (5) failure to reimburse employees for  
26 required expenses under Labor Code section 2802; (6) failure to pay timely wages upon  
27 termination under Labor Code 201 through 203; (7) failure to provide accurate itemized wage  
28 statements under Labor Code section 226; and (8) violation of Business and Professions Code

section 17200, et seq. As mentioned above, in docket 21CV385443, Messrs. Garduno and Padilla raised the same claims plus an additional claim for unlawful wage deductions.

Plaintiffs now move for an order granting final approval of the settlement agreement, certifying the class for settlement purposes only and entering final judgment.

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

### **A. Class Action**

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

In determining whether a class settlement is fair, adequate and reasonable, the trial court should consider relevant factors, such as the strength of plaintiffs’ case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement.

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

In general, the most important factor is the strength of the plaintiffs’ case on the merits, balanced against the amount offered in settlement. (See *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130 (*Kullar*).) But the trial court is free to engage in a balancing and weighing of relevant factors, depending on the circumstances of each case. (*Wershba, supra*, 91 Cal.App.4th at p. 245.) The trial court must examine the “proposed settlement agreement to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or

1 overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a  
2 whole, is fair, reasonable and adequate to all concerned.” (*Ibid.*, citation and internal quotation  
3 marks omitted.) The trial court also must independently confirm that “the consideration being  
4 received for the release of the class members’ claims is reasonable in light of the strengths and  
5 weaknesses of the claims and the risks of the particular litigation.” (*Kullar, supra*, 168  
6 Cal.App.4th at p. 129.) Of course, before performing its analysis the trial court must be  
7 “provided with basic information about the nature and magnitude of the claims in question and  
8 the basis for concluding that the consideration being paid for the release of those claims  
9 represents a reasonable compromise.” (*Id.* at pp. 130, 133.)

#### 10 **B. PAGA**

11 Labor Code section 2699, subdivision (l)(2) provides that “[t]he superior court shall  
12 review and approve any settlement of any civil action filed pursuant to” PAGA. The court’s  
13 review “ensur[es] that any negotiated resolution is fair to those affected.” (*Williams v. Superior*  
14 *Court* (2017) 3 Cal.5th 531, 549.) Seventy-five percent of any penalties recovered under PAGA  
15 go to the Labor and Workforce Development Agency (“LWDA”), leaving the remaining twenty-  
16 five percent for the aggrieved employees. (*Iskanian v. CLS Transportation Los Angeles, LLC*  
17 (2014) 59 Cal.4th 348, 380, overruled on other grounds by *Viking River Cruises, Inc. v.*  
18 *Moriana* (2022) \_\_\_U.S.\_\_\_, 2022 U.S. LEXIS 2940.)

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

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

### 7 **III. SETTLEMENT CLASS**

8 For settlement purposes only, Plaintiffs request the following class be certified: “All  
9 current and former non-exempt employees who worked for Defendants in California from July 2,  
10 2017 until January 31, 2023.”

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

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

25 In the settlement context, “the court’s evaluation of the certification issues is somewhat  
26 different from its consideration of certification issues when the class action has not yet settled.”  
27 (*Luckey v. Superior Court* (2014) 228 Cal.App.4th 81, 93.) As no trial is anticipated in the  
28 settlement-only context, the case management issues inherent in the ascertainable class

determination need not be confronted, and the court's review is more lenient in this respect. (*Id.* at pp. 93–94.) But considerations designed to protect absentees by blocking unwarranted or overbroad class definitions require heightened scrutiny in the settlement-only class context, since the court will lack the usual opportunity to adjust the class as proceedings unfold. (*Id.* at p. 94.)

At preliminary approval, the Court provisionally certified the above-described class, determining that Plaintiffs had demonstrated by a preponderance of the evidence: (1) an ascertainable class, (2) a well-defined community of interest among the class members and (3) that a class action provides substantial benefits to both litigants and the Court. Nothing relevant has changed between that time and now. Consequently, the Court will certify the class for settlement purposes as requested.

#### **IV. TERMS AND ADMINISTRATION OF SETTLEMENT**

The non-revisionary gross settlement amount is \$1,200,000. Attorney fees of up to \$400,000 (one-third of the gross settlement), litigation costs of up to \$30,000, and \$14,095 in administration costs will be paid from the gross settlement. One hundred twenty thousand dollars of the gross settlement amount will be allocated to PAGA penalties, 75 percent of which (\$90,000) will be paid to the LWDA. The named Plaintiffs will seek incentive awards of \$7,500 each for a total of \$22,500. The escalator clause discussed in the Court's order on preliminary approval of the settlement was not triggered.

The net settlement of approximately \$613,405 will be allocated to 394 class members proportionally based on their pay periods worked during the class period of July 2, 2017 until January 31, 2023. The PAGA payment will be allocated to approximately 262 aggrieved employees on a pro rata basis based on their number of pay periods worked during the PAGA period of July 1, 2020 until January 31, 2023. Class members will not be required to submit a claim to receive their payments. For tax purposes, settlement payments will be allocated 30 percent to wages and 70 percent to penalties and interest. The PAGA payments will be treated as 100 percent penalties. 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 State Bar Justice Gap Fund.

1 In exchange for the settlement, class members who do not opt out will release “all claims  
2 that were alleged, or reasonably could have been alleged, based on the same factual predicate as  
3 the claims stated in the Action and the Operative Complaint, including, but not limited to all  
4 wage and hour claims that could have been raised by Plaintiffs such as all claims and causes of  
5 action related to or arising out of meal periods, rest breaks, unpaid wages, unpaid overtime, shift  
6 premiums, bonuses/commissions, unreimbursed expenses, unlawful deductions, inaccurate wage  
7 statements, waiting time penalties, failure to maintain payroll records, failure to timely pay  
8 wages during employment, vacation pay, and sick leaves” for the class period.<sup>1</sup>

9 As the Court determined in its order preliminarily approving the settlement, the release  
10 is appropriately tailored to the factual allegations at issue. (See *Amaro v. Anaheim Arena*  
11 *Management, LLC* (2021) 69 Cal.App.5th 521, 537.) Further, the PAGA release is appropriately  
12 limited to claims that “were alleged or reasonably could have been alleged, based on the same  
13 factual predicate as the claims stated in the Action and Plaintiffs’ LWDA Notice Letter ....”  
14 Consistent with the statute, aggrieved employees will not be able to opt out of the PAGA portion  
15 of the settlement.

16 The notice period has now been completed. There were no objections to the settlement  
17 and one request for exclusion from the class. According to the declaration of the case manager  
18 for the administrator, of the 395<sup>2</sup> notice packets sent, 22 were returned to the administrator, two  
19 of which included forwarding addresses; these two were promptly re-mailed. A skip trace  
20 performed on the 20 packets returned without a forwarding address produced 11 updated  
21 addresses, to which the notice packets were re-mailed. Ultimately, nine notices remain  
22 undeliverable. The administrator estimates that the average payment will be \$1,556.87, with a  
23 maximum payment of \$6,388.27.

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26 <sup>1</sup> The term “Action” refers to both *Delgado, et al. v. Paramit Corporation, et al.* (21CV383975)  
27 and *Garduno, et al. v. Paramit Corporation, et al.* (21CV385443).

28 <sup>2</sup> At the November 9 hearing, Plaintiff’s counsel clarified that there were actually 394 members  
in the class, as one person sought exclusion.

At preliminary approval, the Court found that the proposed settlement provides a fair and reasonable compromise to Plaintiffs' claims, and that the PAGA settlement is genuine, meaningful, and fair to those affected. It finds no reason to depart from these findings now, especially considering that there are no objections. The Court finds that the settlement is fair and reasonable for the purposes of final approval.

#### **IV. ATTORNEYS FEES, COSTS AND INCENTIVE AWARD**

Plaintiffs seek a fee award of \$400,000, or one-third of the gross settlement, which is not an uncommon contingency fee allocation in a wage and hour action. This award is facially reasonable under the "common fund" doctrine, which allows a party recovering a fund for the benefit of others to recover attorney fees from the fund itself. Plaintiffs also provide a lodestar figure of \$207,236.50, based on 241.3 hours spent on the case by counsel with a billing rate of \$375-\$795 per hour, resulting in a reasonable multiplier of 1.85. As a cross-check, the lodestar supports the percentage fee requested, particularly given the lack of objections to the attorney fee request. (See *Laffitte v. Robert Half Intern. Inc.* (2016) 1 Cal.5th 480, 488, 503-504 [trial court did not abuse its discretion in approving fee award of 1/3 of the common fund, cross-checked against a lodestar resulting in a multiplier of 2.03 to 2.13].)

Plaintiffs also request \$23,192.99 in litigation costs, which appear reasonable based on the summaries provided, and are approved. The \$14,095 in administrative costs are also approved.

Finally, Plaintiffs request service payments of \$7,500 each. To support their requests, they submit declarations describing their efforts on the case. The Court finds that the class representatives are entitled to enhancement awards and the amount requested is reasonable.

#### **V. CONCLUSION**

For the foregoing reasons, the Court GRANTS Plaintiffs' motion for final approval and will certify the following class for settlement purposes:

All current and former non-exempt employees who worked for Defendants in California from July 2, 2017 until January 31, 2023.

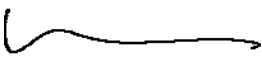
1 Excluded from the class will be the one individual who submitted a timely request for  
2 exclusion.

3 Judgment will be entered through the filing of this order and judgment. (Code Civ. Proc.,  
4 § 668.5.) Plaintiffs and the members of the class will take from their complaint only the relief  
5 set forth in the settlement agreement and this order and judgment. Under Rule 3.769(h) of the  
6 California Rules of Court, the Court will retain jurisdiction over the parties to enforce the terms  
7 of the settlement agreement and the final order and judgment.

8 The Court sets a compliance hearing for **June 27, 2024 at 2:30 P.M.** in Department 1.  
9 At least ten court days before the hearing, class counsel and the settlement administrator shall  
10 submit a summary accounting of the net settlement fund identifying distributions made as  
11 ordered herein; the number and value of any uncashed checks; amounts remitted pursuant to  
12 Code of Civil Procedure section 384, subdivision (b); the status of any unresolved issues; and  
13 any other matters appropriate to bring to the Court's attention. Counsel shall also submit an  
14 amended judgment as described in Code of Civil Procedure section 384, subdivision (b).  
15 Counsel may appear at the compliance hearing remotely.

16 **IT IS SO ORDERED.**

17 Date: 11/12/2023

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19 The Honorable Sunil R. Kulkarni  
20 Judge of the Superior Court  
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