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SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

GERMAN RODRIGUEZ, on behalf of himself
and all aggrieved employees,

Plaintiffs,

v.

MODERN PARKING, INC., and DOES 1 to 100,

Defendants.

Case No.: 23STCV00936

**STIPULATION FOR APPROVAL OF
PAGA SETTLEMENT**

Filing Date: January 17, 2023

Trial Date: Not Set

Dept.: 16

1 **I. INTRODUCTION**

2 1. Plaintiff German Martinez (“Plaintiff”), and Defendant Modern Parking, Inc.,
3 (“MP” or “Defendant(s)”) reached an agreement to settle this PAGA action and have signed a
4 Settlement Agreement. Through this stipulation and pursuant to Labor Code section 2699(l),
5 the parties jointly seek an order approving the settlement.

6 2. It is the desire of the Parties to fully, finally, and forever compromise, and
7 discharge all claims known or unknown related to those alleged in the Action.

8 **II. ALLEGATIONS AND INVESTIGATION**

9 3. Plaintiff started working at MP as a nonexempt parking officer on September
10 24, 2021. Plaintiff’s employment with MP ended on August 25, 2022.

11 4. On November 11, 2022, Plaintiff, on behalf of himself and all Aggrieved
12 Employees, gave written notice by electronic service to the Labor and Workforce Development
13 Agency and via certified mail to Defendant of his claims against Defendant. A copy of the
14 PAGA letter is attached to the concurrently filed supporting declaration.

15 5. Plaintiff filed his initial lawsuit on January 17, 2023 in the Superior Court for
16 the State of California, County of Los Angeles, Case No. 23STCV00936 with one cause of
17 action for penalties under PAGA under the following legal theories: (a) failure to pay all
18 minimum wages owed; (b) failure to pay all overtime and/or double time wages owed; (c)
19 failure to pay all overtime and/or double time wages owed at the correct rate(s) of pay; (d)
20 failure to provide compliant meal periods, or premium pay for non-compliant meal periods; (e)
21 failure to authorize and permit complaint rest periods, or provide premium pay for non-
22 complaint rest periods; (f) failure to provide accurate, itemized wage statements and/or
23 otherwise maintain accurate records; (g) failure to timely pay wages upon separation of
24 employment; (h) failure to indemnify and/or reimburse for all reasonable and necessary
25 business expenses; and (i) failure to pay sick pay at the correct rate.

26 6. Defendant denies any liability or wrongdoing of any kind whatsoever associated
27 with the lawsuit and the Representative PAGA Claim.

28 7. According to Defendant’s records, it estimates there are 391 Aggrieved

1 Employees from November 13, 2021 through May 17, 2023, and approximately 8,515 pay
2 periods worked for that same time period.

3 8. On May 17, 2023, the Parties attended a full day mediation session with
4 experienced wage-and-hour mediator Gig Kyriacou. Beforehand, the Parties engaged in
5 informal discovery regarding Defendant's policies, practices, operations, time and payroll
6 information. Defendant produced Plaintiff's personnel file, and a 15% sampling of the
7 Aggrieved Employees' time and payroll records.

8 9. Based on their own independent investigations and evaluations, in light of all
9 known facts and circumstances and the risks inherent in litigation, the Parties and their
10 respective counsel are of the opinion that the Settlement terms set forth in this Stipulation are
11 fair, reasonable and adequate.

12 **III. FAIRNESS OF THE SETTLEMENT**

13 10. Since this is a representative PAGA case, the Parties are not obligated to follow
14 the class action procedural rules for obtaining approval of this settlement. (*Arias v. Superior*
15 *Court (Angelo Dairy)* (2009) 46 Cal.4th 969.)

16 11. Plaintiff contends that the civil penalty statutes applicable to this case are Labor
17 Code §§ 226.3, 558, 1197.1, 2802 and 2699(f)(2).

18 12. Under the civil penalty formulas applicable under PAGA, Plaintiff estimated a
19 maximum exposure of approximately **\$3,914,390.00** (\$502,109 for meal period violations,
20 \$557,898 for rest period violations, \$50,991 for regular rate violations, \$557,898 for unpaid
21 wages, \$1,115,797 for failure to reimburse, \$1,115,797 for wage statement penalties, and
22 \$13,900 for waiting time violations).

23 13. Plaintiff's analysis, which Defendant disputes, revealed a 90% violation rate for
24 meal breaks with at least 1 late, short, or interrupted meal periods. Plaintiff extrapolated the
25 same 90% violation rate for rest break violations.

26 14. The regular rate of pay for overtime claim is based on the theory that Defendant
27 failed to include "car allowance" payments into the regular rate of pay for overtime and sick
28 pay. Plaintiff's disputed analysis showed the car allowance payments coincided with overtime

1 and/or sick pay on 9% of the pay periods in the sampling.

2 15. This maximum exposure had the following risks: First, it assumed that each pay
3 period in which there was no adjustment for missed meal periods included meal period
4 violations, based on Plaintiff's allegation that Plaintiff and the aggrieved employees were
5 locked out of clocking back in during a portion of the PAGA period. Defendant disputed
6 Plaintiff's "clock lockout" allegations and contended that the 30-minute clock lockout was not
7 in place for some or all of the PAGA period. Plaintiff's revised analysis, which assumes this is
8 true, reduced the maximum exposure to 25% of pay periods. Further, Defendant contended the
9 "car allowance" was an expense reimbursement, which would have been excluded from the
10 regular rate. Defendant also contended the cell phone claim has no merit, as MP provided over
11 130 cell phones, covering all employees in a position needing cell phones. Even assuming some
12 employees did not receive a company cell phone, only about 10% of the Aggrieved Employees
13 were in positions requiring cell phones. Recalculating penalties based on these new
14 assumptions and rates, the total maximum likely exposure for Defendant, prior to any reduction
15 for being unjust, arbitrary and oppressive, or confiscatory, is about **\$1,305,331**.

16 16. One of the risks Plaintiff faced with this more realistic maximum liability
17 amount is that the Court could refuse to "stack" civil penalties resulting from multiple
18 violations. In addition, Defendant could argue under *Naranjo v. Spectrum Security Services,*
19 *Inc.* (2019) 40 Cal. App. 5th 444 which at the time of this settlement, held that meal or rest
20 period violations are not a predicate for civil penalties for improper wage statements and
21 untimely final wages under Labor Code sections 201-203, 226, 226.3, and 2699.

22 17. Further, although class certification is not required for a PAGA claim,
23 Defendant could contend that Plaintiff should show that the PAGA claims are manageable. In
24 *Ortiz v. CVS Caremark Corp.*, the court dismissed a PAGA claim because it was
25 unmanageable. 2014 WL 1117614, at *3-4 (N.D. Cal. 2014). The Ortiz court cited the
26 "multitude of individualized assessments" that case would have required in ordering dismissal.
27 *Id.* at *4. The risk of an unmanageable trial is heightened in a representative PAGA claim
28 because the burden of proof rests with the plaintiff to establish violations of the Labor Code

1 “with respect to each and every individual on whose behalf [they] seek[] to recover civil
2 penalties.” *Molina v. Dollar Tree Stores, Inc.*, 2013 U.S. Dist. LEXIS 138642, at *33-34 (C.D.
3 Cal. Aug. 9, 2013); *Hibbs-Rines v. Seagate Techs, LLC*, 2009 WL 513496, at *4 (N.D. Cal.
4 Mar. 2, 2009). Moreover, in a PAGA case the plaintiff must prove liability with respect to
5 “each and every individual” through representative evidence – but without sacrificing the
6 defendant’s due process right to present proof of their affirmative defenses. *Elkins v. Superior*
7 *Court*, 41 Cal. 4th 1337, 1357 (2007); *Walmart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2561
8 (2011); *Duran v. U.S. Bank Nat’l Ass’n*, 59 Cal. 4th 1, 33-34 (2014).

9 18. The Parties further recognize that the issues presented in the Representative
10 PAGA Claim are likely only to be resolved with extensive and costly pretrial and trial
11 proceedings, and that further litigation will cause inconvenience, distraction, disruption, delay,
12 and expense disproportionate to the maximum potential benefits to the Aggrieved Employees,
13 Plaintiff, and ultimately the State from continued litigation.

14 19. In view of the risks, the Settlement represents a fair, adequate, and reasonable
15 compromise amount for these claims and is in the best interest of Plaintiff and Aggrieved
16 Employees and thus, warrants approval. *See Laguna v. Coverall N. Am., Inc.*, Case No. 12-
17 55479 (9th Cir. June 3, 2014) 2014 WL 2465049, at *3. The PAGA settlement and its terms are
18 fair, just, reasonable, adequate, and equitable to Defendant, Plaintiff, and the State, especially
19 in light of the current economic climate, and are the product of good faith, and informed arms-
20 length negotiations between the Parties consistent with public policy and fully comply with
21 applicable provisions of law.

22 ///

23 ///

24 **IV. TERMS AND PROCEDURES OF THE SETTLEMENT**

25 20. Defendant agrees to pay \$150,000 (the “Gross Settlement Amount”) which will
26 be distributed by the Settlement Administrator as follows:

- 27 a. Up to \$52,500.00 (35% of the GSA) in attorneys’ fees to Frontier Law Center
- 28 b. Up to \$10,500.00 in attorney litigation costs to Frontier Law Center;

- c. \$4,750.00 in administration costs to Phoenix Settlement Administrator;
- d. \$7,500.00 enhancement award to Plaintiff German Rodriguez
- e. The remainder, \$72,750.00 (the “Net Settlement Amount”), will be divided as follows:
 - i. \$54,562.50 (75% of the Net Settlement Amount) to the LWDA; and
 - ii. \$18,187.50 (25% of Net Settlement Amount) to the Aggrieved Employees on a pro rata basis.

21. The pro rata basis is the ratio of (i) the number of pay periods worked by the Aggrieved Employee during the release period and (ii) the total number of pay periods worked by all Aggrieved Employees during the release period.

22. For purposes of computing taxes, one-hundred percent (100%) of the Aggrieved Employee Settlement Award shall be considered to be a civil penalty and shall not be subject to withholding, unless otherwise required by law.

V. THE PROPOSED ATTORNEYS’ FEES AND COSTS ARE FAIR, ADEQUATE, AND REASONABLE AND SHOULD BE APPROVED

23. Plaintiff’s counsel has represented Plaintiff on a straight contingency basis. Plaintiff counsel’s request for \$52,500.00 in attorney fees and \$10,500.00 in litigation costs is fair and reasonable.¹ “Empirical studies show that, regardless of whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery. *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 47 fn. 11 (quoting *Shaw v. Toshiba America Information Systems, Inc.* (E.D. Tex. 2000) 91 F.Supp.2d 942, 972; *See also Lafitte v. Robert Half Int’l Inc.* (Cal. Aug. 11, 2016) 1 Cal.5th 480, 503, 376 P.3d 672, 686 (holding that courts can use the percentage method for the calculation of attorneys’ fees). This is also consistent with Plaintiff’s Counsel’s experience in cases involving PAGA. This award is justified because Plaintiff’s counsel achieved a strong result for the Aggrieved Employees and

¹ The settlement agreement allows for up to \$12,500 for costs. However, Plaintiff requests only \$10,500, which represents counsel’s actual litigation costs plus expected costs to finalize the settlement.

1 the State while bearing the substantial burdens of contingency representation.

2 24. It is an accepted practice in wage and hour class action settlements to award
3 attorneys' fees to Plaintiff's Counsel based on a percentage of the total settlement value agreed
4 upon by the parties. California courts have long recognized that an appropriate method for
5 awarding attorneys' fees in class actions is to award a percentage of the common fund. *See*
6 *Serrano v. Priest* (1977), 20 Cal.3d. 25, 48-49 ["when a number of persons are entitled in
7 common to a specific fund, and an action brought by a plaintiff or plaintiffs for the benefit of
8 all results in the creation or preservation of that fund, such plaintiff or plaintiffs may be
9 awarded attorney's fees out of the fund"]; *Wershba v. Apple Computer, Inc.* (2001), 91
10 Cal.App.4th, 230, 254; *Lealao v. Beneficial California, Inc.* (2000) 82 Cal.App.4th 19, 26-30.)
11 While PAGA actions are not class actions, the same logic holds true as PAGA actions are also
12 representative actions. Further, Plaintiff's Counsel's lodestar amount is very close to the actual
13 fee requested.

14 25. The litigation costs expended include the following: Certified Mail costs of
15 \$7.82 for the PAGA notice to Defendant, \$75 filing fee for filing the PAGA notice with the
16 LWDA, \$465.03 filing fee for filing the complaint with the court, a mediation fee of \$9,750.00
17 (for Plaintiff's portion of the mediation); and other filing fees of \$35.32. All these costs are
18 documented and reasonably incurred.

19 **VI. NO ADMISSION OF LIABILITY OR WRONGDOING**

20 26. The payment of consideration is not an admission of wrongdoing or liability on
21 the part of Defendant, or any other person or business entity. Defendant adamantly denies all
22 allegations of wrongdoing arising out of the employment relationship between the Parties,
23 including the Aggrieved Employees. Defendant intends merely to avoid the expense, delay,
24 uncertainty and burden of continued litigation.

25 **VII. PAGA SETTLEMENT ADMINISTRATION**

26 27. The Parties agree to use Phoenix Class Action Administration Solutions to
27 handle the administration of this Settlement.

28 28. Funding of Settlement. Defendant shall fund the Gross Settlement Amount by

1 way of electronic transfer to the account to be established by the Settlement Administrator for
2 purposes of administration of the Settlement within thirty (30) calendar days after the Court has
3 signed and entered the Approval Order. Defendant's obligations for funding the settlement are
4 satisfied upon electronic transfer of the Gross Settlement Amount to the Settlement
5 Administrator pursuant to the Settlement Administrator's instructions.

6 29. Payments to LWDA, Plaintiff's Counsel, Plaintiff, and Settlement
7 Administrator. Within fourteen (14) calendar days after Defendant funds the Gross Settlement
8 Amount, the Settlement Administrator shall pay the Court-approved LWDA Payment,
9 Attorneys' Fees and Costs to Plaintiff's Counsel, and Settlement Administration Costs to itself.

10 30. Employee Notices and Payments to PAGA Employees. Within fourteen (14)
11 calendar days after Defendant funds the Gross Settlement Amount, the Settlement
12 Administrator shall mail via U.S. First Class mail to each PAGA Aggrieved Employee their
13 Individual Settlement Checks at the last known address in the PAGA Employee List or a more
14 updated address from the National Change of Address Database. A notice letter explaining
15 why the check is being sent ("Employee Notice"), in a mutually-agreed upon form that has
16 been approved by the Court will be included in the mailing of each Individual Settlement
17 Check. Together, an Individual Settlement Check that is mailed to a PAGA Employee with the
18 Employee Notice is referred to as a "Payment Packet." Prior to mailing the Payment Packets,
19 the Settlement Administrator shall check the addresses provided using the National Change of
20 Address database. Should any of the Employee Notices be returned as undeliverable, the
21 Settlement Administrator will have seven (7) calendar days after it receives the returned
22 undeliverable mail to search for a more current address for the PAGA Employee (via a skip
23 trace or other reasonable method) and to re-mail Employee Notices to the traced address.

24 31. Expiration of Settlement Checks. All Individual Settlement Checks will expire
25 one hundred and eighty (180) calendar days after the initial mailing of the original Payment
26 Packets to the PAGA Employees, and thereafter, shall be cancelled. If any funds remain in the
27 Settlement Administration Account as a result of cancelled Individual Settlement Checks, such
28 funds shall be transmitted to the State Controller's Office Unclaimed Property Fund in the

1 name of each PAGA Employee whose check is voided. All duties set forth herein shall be
2 included in the Settlement Administration Costs and paid from the Gross Settlement Amount.
3 Irrespective of whether a PAGA Employee's Individual Settlement Check has been actually
4 received and/or cashed, he or she will be deemed to be bound to this Settlement, the release
5 provided herein, and the Court's Approval Order.

6 32. Settlement Administrator's Tax Reporting. The Settlement Administrator shall
7 be responsible for providing the requisite Form 1099s as required, and the completion of any
8 other steps necessary for compliance with any tax obligations of the Settlement under federal,
9 state, and/or local law, as applicable.

10 33. Confirmation of Administration of Settlement. Within twenty-one (21) calendar
11 days of distributing the Gross Settlement Fund, the Settlement Administrator shall provide to
12 Plaintiff's Counsel and Counsel for Defendant a written declaration verifying that it effected
13 disbursement of the Gross Settlement Fund pursuant to the terms of the Agreement.

14 34. Notice Regarding Settlement Compliance. Within fourteen (14) calendar days
15 of receipt of the Settlement Administrator's declaration confirming Defendant's funding of the
16 Settlement and the Settlement Administrator's disbursement of the Gross Settlement Fund,
17 Plaintiff shall file a notice informing the court of compliance with the terms of the Settlement
18 and satisfaction of the Judgment, and requesting formal closure of the Action.

19 **VIII. RELEASED CLAIMS**

20 35. Upon the approval by the Court of this Settlement, and effective on the date the
21 Gross Settlement Amount is fully funded, Plaintiff, the State of California and each Aggrieved
22 Employee are deemed to release, on behalf of themselves and their respective former and
23 present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the
24 Released Parties from all claims for PAGA penalties that were alleged, or reasonably could
25 have been alleged, based on the PAGA Period facts stated in the Operative Complaint and the
26 PAGA Notice.

27 36. Further, upon the approval by the Court of this Settlement, and effective on the
28 date the Gross Settlement Amount is fully funded, Plaintiff, for himself, his former and present

1 spouses, representatives, agents, attorneys (including PAGA Counsel), heirs, administrators,
2 successors, and assigns, generally releases and discharges Released Parties from all claims,
3 transactions, or occurrences of any nature whatsoever, whether known or unknown, from the
4 beginning of time through Plaintiff's date of execution of the Agreement, including, but not
5 limited to: (a) all claims that were, or reasonably could have been, alleged, based on the facts
6 contained in the Operative Complaint and the PAGA Notice ("Plaintiff's Release"). Plaintiff's
7 Release does not extend to any claims or actions to enforce the Agreement, or to those rights
8 that as a matter of law cannot be waived, including, but not limited to any claims for vested
9 benefits, unemployment benefits, disability benefits, social security benefits, workers'
10 compensation benefits that arose at any time, or based on occurrences after Plaintiff's date of
11 execution of the Agreement. Plaintiff acknowledges that Plaintiff may discover facts or law
12 different from, or in addition to, the facts or law that Plaintiff now knows or believes to be true
13 but agrees, nonetheless, that Plaintiff's Release shall be and remain effective in all respects,
14 notwithstanding such different or additional facts or Plaintiff's discovery of them.

15 **X. CONCLUSION**

16 37. The Parties respectfully request the Court to grant this Stipulation.

17
18 Dated: August 11, 2023

FRONTIER LAW CENTER

19
20 By Adam Rose
Adam Rose
Attorneys for Plaintiff
German Rodriguez

21
22
23
24 Dated: August 11, 2023

LANDEGGER VERANO & DAVIS, ALC

25
26 By Evelyn Zarraga
Evelyn Zarraga
Attorneys for Defendant
Modern Parking, Inc.