

Adam M. Rose (210880)
adam@frontierlawcenter.com
Theodore R. Tang (313294)
theodore@frontierlawcenter.com
Manny M. Starr (319778)
manny@frontierlawcenter.com
FRONTIER LAW CENTER
23901 Calabasas Road, #2074
Calabasas, CA 91302
Telephone: (818) 914-3433
Facsimile: (818) 914-3433

Attorneys for Plaintiff, German Rodriguez

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

**PLAINTIFF GERMAN RODRIGUEZ'S
NOTICE OF MOTION AND MOTION
TO APPROVE PAGA SETTLEMENT;
MEMORANDUM OF POINTS AND
AUTHORITIES; DECLARATION OF
MANNY STARR; PROPOSED ORDER**

Date: December 18, 2024

Time: 9:00 a.m.

Dept: 16

Res ID: 182924501299

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

Please take notice that on December 18, 2024 at 9:00 a.m. in Department 16 of the Los Angeles Superior Court located at 111 N. Hill St., Los Angeles, CA 90012, plaintiff German Rodriguez will move the court pursuant to Labor Code section 2699(1)(2) to approve the PAGA settlement. The motion is based on this notice, the memorandum of points and authorities, the declaration of Manny Starr with exhibits, pleadings on file, and arguments at the hearing.

///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Date: September 7, 2023

FRONTIER LAW CENTER

Adam Rose

Adam Rose
Attorney for Plaintiff
German Rodriguez

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. ALLEGATIONS AND INVESTIGATION**

3 Plaintiff started working at Modern Parking, Inc. (“MP”) as a nonexempt parking
4 officer on September 24, 2021. Plaintiff’s employment with MP ended on August 25, 2022.

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

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

21 Defendant denies any liability or wrongdoing of any kind whatsoever associated with
22 the lawsuit and the Representative PAGA Claim.

23 According to Defendant’s records, it estimates there are 391 Aggrieved Employees
24 from November 13, 2021 through May 17, 2023, and approximately 8,515 pay periods worked
25 for that same time period.

26 On May 17, 2023, the Parties attended a full day mediation session with experienced
27 wage-and-hour mediator Gig Kyriacou. Beforehand, the Parties engaged in informal discovery
28 regarding Defendant’s policies, practices, operations, time and payroll information. Defendant

1 produced Plaintiff's personnel file, and a 15% sampling of the Aggrieved Employees' time and
2 payroll records.

3 Based on their own independent investigations and evaluations, in light of all known
4 facts and circumstances and the risks inherent in litigation, the Parties and their respective
5 counsel are of the opinion that the Settlement terms are fair, reasonable and adequate.

6 7 **II. FAIRNESS OF THE SETTLEMENT**

8 Since this is a representative PAGA case, the Parties are not obligated to follow the
9 class action procedural rules for obtaining approval of this settlement. (*Arias v. Superior Court*
10 (*Angelo Dairy*) (2009) 46 Cal.4th 969.) Plaintiff contends that the civil penalty statutes
11 applicable to this case are Labor Code §§ 226.3, 558, 1197.1, 2802 and 2699(f)(2).

12 Under the civil penalty formulas applicable under PAGA, Plaintiff estimated a
13 maximum exposure of approximately **\$3,914,390.00** (\$502,109 for meal period violations,
14 \$557,898 for rest period violations, \$50,991 for regular rate violations, \$557,898 for unpaid
15 wages, \$1,115,797 for failure to reimburse, \$1,115,797 for wage statement penalties, and
16 \$13,900 for waiting time violations).

17 Plaintiff's analysis, which Defendant disputes, revealed a 90% violation rate for meal
18 breaks with at least 1 late, short, or interrupted meal periods. Plaintiff extrapolated the same
19 90% violation rate for rest break violations.

20 The regular rate of pay for overtime claim is based on the theory that Defendant failed
21 to include "car allowance" payments into the regular rate of pay for overtime and sick pay.
22 Plaintiff's disputed analysis showed the car allowance payments coincided with overtime
23 and/or sick pay on 9% of the pay periods in the sampling.

24 This maximum exposure had the following risks: First, it assumed that each pay period
25 in which there was no adjustment for missed meal periods included meal period violations,
26 based on Plaintiff's allegation that Plaintiff and the aggrieved employees were locked out of
27 clocking back in during a portion of the PAGA period. Defendant disputed Plaintiff's "clock
28

1 lockout” allegations and contended that the 30-minute clock lockout was not in place for some
2 or all of the PAGA period. Plaintiff’s revised analysis, which assumes this is true, reduced the
3 maximum exposure to 25% of pay periods. Further, Defendant contended the “car allowance”
4 was an expense reimbursement, which would have been excluded from the regular rate.
5 Defendant also contended the cell phone claim has no merit, as MP provided over 130 cell
6 phones, covering all employees in a position needing cell phones. Even assuming some
7 employees did not receive a company cell phone, only about 10% of the Aggrieved Employees
8 were in positions requiring cell phones. Recalculating penalties based on these new
9 assumptions and rates, the total maximum likely exposure for Defendant, prior to any reduction
10 for being unjust, arbitrary and oppressive, or confiscatory, is about **\$1,305,331**.

11 One of the risks Plaintiff faced with this more realistic maximum liability amount is that
12 the Court could refuse to “stack” civil penalties resulting from multiple violations. In addition,
13 Defendant could argue under *Naranjo v. Spectrum Security Services, Inc.* (2019) 40 Cal. App.
14 5th 444 which at the time of this settlement, held that meal or rest period violations are not a
15 predicate for civil penalties for improper wage statements and untimely final wages under
16 Labor Code sections 201-203, 226, 226.3, and 2699.

17 Further, although class certification is not required for a PAGA claim, Defendant could
18 contend that Plaintiff should show that the PAGA claims are manageable. In *Ortiz v. CVS*
19 *Caremark Corp.*, the court dismissed a PAGA claim because it was unmanageable. 2014 WL
20 1117614, at *3–4 (N.D. Cal. 2014). The Ortiz court cited the “multitude of individualized
21 assessments” that case would have required in ordering dismissal. *Id.* at *4. The risk of an
22 unmanageable trial is heightened in a representative PAGA claim because the burden of proof
23 rests with the plaintiff to establish violations of the Labor Code “with respect to each and every
24 individual on whose behalf [they] seek[] to recover civil penalties.” *Molina v. Dollar Tree*
25 *Stores, Inc.*, 2013 U.S. Dist. LEXIS 138642, at *33-34 (C.D. Cal. Aug. 9, 2013); *Hibbs-Rines*
26 *v. Seagate Techs, LLC*, 2009 WL 513496, at *4 (N.D. Cal. Mar. 2, 2009). Moreover, in a
27 PAGA case the plaintiff must prove liability with respect to “each and every individual”
28

1 through representative evidence – but without sacrificing the defendant’s due process right to
2 present proof of their affirmative defenses. *Elkins v. Superior Court*, 41 Cal. 4th 1337, 1357
3 (2007); *Walmart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2561 (2011); *Duran v. U.S. Bank Nat’l*
4 *Ass’n*, 59 Cal. 4th 1, 33-34 (2014).

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

10 In view of the risks, the Settlement represents a fair, adequate, and reasonable
11 compromise amount for these claims and is in the best interest of Plaintiff and Aggrieved
12 Employees and thus, warrants approval. *See Laguna v. Coverall N. Am., Inc.*, Case No. 12-
13 55479 (9th Cir. June 3, 2014) 2014 WL 2465049, at *3. The PAGA settlement and its terms are
14 fair, just, reasonable, adequate, and equitable to Defendant, Plaintiff, and the State, especially
15 in light of the current economic climate, and are the product of good faith, and informed arms-
16 length negotiations between the Parties consistent with public policy and fully comply with
17 applicable provisions of law.

18 19 20 **III. TERMS AND PROCEDURES OF THE SETTLEMENT**

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

- 23 a. Up to \$52,500.00 (35% of the GSA) in attorneys’ fees to Frontier Law Center
- 24 b. Up to \$10,500.00 in attorney litigation costs to Frontier Law Center;
- 25 c. \$4,750.00 in administration costs to Phoenix Settlement Administrator;
- 26 d. \$7,500.00 enhancement award to Plaintiff German Rodriguez
- 27 e. The remainder, \$72,750.00 (the “Net Settlement Amount”), will be divided
28 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.

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.

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.

IV. THE PROPOSED ATTORNEYS' FEES AND COSTS ARE FAIR, ADEQUATE, AND REASONABLE AND SHOULD BE APPROVED

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 the State while bearing the substantial burdens of contingency representation.

It is an accepted practice in wage and hour class action settlements to award attorneys' fees to based on a percentage of the total settlement value agreed upon by the parties.

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

10 The litigation costs expended include the following: Certified Mail costs of \$7.82 for
11 the PAGA notice to Defendant, \$75 filing fee for filing the PAGA notice with the LWDA,
12 \$465.03 filing fee for filing the complaint with the court, a mediation fee of \$9,750.00 (for
13 Plaintiff's portion of the mediation); and other filing fees of \$35.32. All these costs are
14 documented and reasonably incurred.

15 16 **V. NO ADMISSION OF LIABILITY OR WRONGDOING**

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

22 23 **VI. PAGA SETTLEMENT ADMINISTRATION**

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

26 Funding of Settlement. Defendant shall fund the Gross Settlement Amount by way of
27 electronic transfer to the account to be established by the Settlement Administrator for purposes
28 of administration of the Settlement within thirty (30) calendar days after the Court has signed

1 and entered the Approval Order. Defendant's obligations for funding the settlement are
2 satisfied upon electronic transfer of the Gross Settlement Amount to the Settlement
3 Administrator pursuant to the Settlement Administrator's instructions.

4 Payments to LWDA, Plaintiff's Counsel, Plaintiff, and Settlement Administrator.

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

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

22 Expiration of Settlement Checks. All Individual Settlement Checks will expire one
23 hundred and eighty (180) calendar days after the initial mailing of the original Payment Packets
24 to the PAGA Employees, and thereafter, shall be cancelled. If any funds remain in the
25 Settlement Administration Account as a result of cancelled Individual Settlement Checks, such
26 funds shall be transmitted to the State Controller's Office Unclaimed Property Fund in the
27 name of each PAGA Employee whose check is voided. All duties set forth herein shall be
28 included in the Settlement Administration Costs and paid from the Gross Settlement Amount.

1 Irrespective of whether a PAGA Employee's Individual Settlement Check has been actually
2 received and/or cashed, he or she will be deemed to be bound to this Settlement, the release
3 provided herein, and the Court's Approval Order.

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

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

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

17 18 **VII. RELEASED CLAIMS**

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

26 Further, upon the approval by the Court of this Settlement, and effective on the date the
27 Gross Settlement Amount is fully funded, Plaintiff, for himself, his former and present spouses,
28 representatives, agents, attorneys, heirs, administrators, successors, and assigns only, generally,

1 releases and discharges Released Parties from all claims, transactions, or occurrences that
2 occurred during the PAGA Period, including, but not limited to: (a) all claims that were, or
3 reasonably could have been, alleged, based on the facts contained in the Operative Complaint
4 and the PAGA Notice (“Plaintiff’s Release”). Plaintiff’s Release does not extend to any claims
5 or actions to enforce this Agreement, or to any claims for vested benefits, unemployment
6 benefits, disability benefits, social security benefits, workers’ compensation benefits that arose
7 at any time, or based on occurrences outside the PAGA Period. Plaintiff acknowledges that
8 Plaintiff may discover facts or law different from, or in addition to, the facts or law that
9 Plaintiff now knows or believes to be true but agrees, nonetheless, that Plaintiff’s Release shall
10 be and remain effective in all respects, notwithstanding such different or additional facts or
11 Plaintiff’s discovery of them.

12
13 **VIII. CONCLUSION**

14 Plaintiff respectfully requests the court to grant the motion.

15
16 Dated: September 7, 2023

FRONTIER LAW CENTER

17
18 By Adam Rose
19 Adam Rose
20 Attorneys for Plaintiff
21 German Rodriguez
22
23
24
25
26
27
28



Court Reservation Receipt

Reservation

Reservation ID: 182924501299	Status: RESERVED
Reservation Type: Motion for Order (to Approve PAGA Settlement)	Number of Motions: 1
Case Number: 23STCV00936	Case Title: GERMAN RODRIGUEZ vs MODERN PARKING, INC.
Filing Party: German Rodriguez (Plaintiff)	Location: Stanley Mosk Courthouse - Department 16
Date/Time: December 18th 2024, 9:00AM	Confirmation Code: CR-R26USJTZVUKBU75DN

Fees

Description	Fee	Qty	Amount
Motion for Order (name extension)	60.00	1	60.00
Credit Card Percentage Fee (2.75%)	1.65	1	1.65
TOTAL			\$61.65

Payment

Amount: \$61.65	Type: Visa
Account Number: XXXX5145	Authorization: 070839
Payment Date: 2023-09-05	

[◀ Back to Main](#)

Print Page