

IMAGED

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Attorneys for Plaintiff and the Class

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF INYO**

STEVEN WILLIAMS, as an individual and
on behalf of all others similarly situated,

Plaintiff,

vs.

XANTERRA PARKS & RESORTS, INC.,
a Delaware corporation, doing business as
The Oasis at Death Valley; and DOES 1
through 50, inclusive,

Defendants.

Case No.: ICSI-CVCV-2022-67661

**JOINT STIPULATION AND REQUEST FOR
LEAVE TO FILE FIRST AMENDED
COMPLAINT; DECLARATION OF MAX W.
GAVRON; [PROPOSED] ORDER**

Complaint Filed: February 17, 2022

FILED

JUN 07 2022

INYO CO. SUPERIOR COURT
PAMELA M. FOSTER, CLERK
BY DEPUTY

H. Buch

1 Plaintiff Steven Williams ("Plaintiff") and Defendant Xanterra Parks & Resorts, Inc.,
2 ("Defendant") (collectively, "Parties"), by and through their respective counsel of record, herein
3 stipulate as follows:

4 WHEREAS, on February 1, 2022, Plaintiff sent written notice to the California Labor &
5 Workforce Development Agency of Defendant's alleged violation of Labor Code §§ 226 and
6 2802, pursuant to Labor Code section 2698, *et seq.*, the Private Attorneys General Act
7 ("PAGA");

8 WHEREAS, on February 17, 2022, Plaintiff filed a Class Action Complaint for: (1)
9 violation of Labor Code § 226; (2) violation of Labor Code § 2802; and (3) violation of Business
10 and Professions Code § 17200, *et seq.*;

11 WHEREAS, Defendant's counsel informed Plaintiff's counsel of the existence of an
12 arbitration agreement containing a class action waiver signed by Plaintiff;

13 WHEREAS, Defendant contends the arbitration agreement is applicable to Plaintiff's
14 employment;

15 WHEREAS, after reviewing the arbitration agreement and class action waiver, Plaintiff
16 wishes to dismiss his individual claims and putative class action claims without prejudice;

17 WHEREAS, concurrent with this Request, Plaintiff's counsel provides the declaration
18 required by California Rule of Court 3.770(a) detailing the facts leading to the request for
19 dismissal of the putative class claims;

20 WHEREAS, the dismissal of the class action allegations without prejudice will not
21 prejudice the rights and remedies of any of the putative class members because no class has been
22 certified, and no notice has been sent to the putative class;

23 WHEREAS, pursuant to California Rules of Court, Rule 3.770(c), "if the court has not
24 ruled on class certification, or if notice of the pendency of the action has not been provided to
25 class members in a case in which such notice was required...the action may be dismissed
26 without notice to the class members if the court finds that the dismissal will not prejudice them;"

27 WHEREAS, the putative class members have not yet been provided any notice, there has
28 been no determination on the merits of the class action, and no class has been certified;

1 WHEREAS, the Parties agreed to the filing of a First Amended Representative PAGA
2 Action Complaint ("First Amended Complaint") to allege a single cause of action for violation of
3 Labor Code §2698, *et seq.*, the Private Attorney Attorneys General Act ("PAGA");

4 WHEREAS, the Parties, through their counsel of record, have met and conferred
5 regarding the filing of a First Amended Complaint, a copy of which is attached hereto as Exhibit
6 A; and

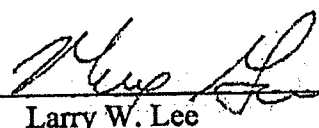
7 WHEREAS, Defendant does not object to the filing of the First Amended Complaint,
8 without prejudice to and without waiving any defenses thereto.

9 NOW THEREFORE, the Parties STIPULATE and REQUEST as follows:

- 10 1. That Plaintiff's individual claims and allegations be dismissed without prejudice;
11 2. That the class claims and allegations be dismissed without prejudice;
12 3. That Plaintiff be granted leave to file the First Amended Complaint, a true and
13 correct copy of which is attached hereto as Exhibit A;
14 4. That the First Amended Complaint be deemed filed as of the date of execution of
15 the [Proposed] Order filed herewith; and
16 5. That Defendant shall have thirty (30) days from the date the executed Order is
17 served on Defendant to file a pleading that is responsive to the First Amended Complaint.

18 DATED: May 3, 2022

DIVERSITY LAW GROUP, P.C.

19
20 By: 

Larry W. Lee

Max W. Gavron

21 Attorneys for Plaintiff and the Aggrieved
22 Employees

23
24 DATED: May 3, 2022

SNELL & WILMER

25 By: 

Anne E. Dwyer

26 Attorneys for Defendant Xanterra Parks & Resorts,
27 Inc.
28

DECLARATION OF MAX W. GAVRON

I, Max W. Gavron, based on my personal knowledge, declare and state as follows:

1. I am an attorney at law, duly licensed to practice before all Courts in the State of California, and an attorney with the law firm Diversity Law Group, P.C., attorneys of record for Plaintiff Steven Williams ("Plaintiff") in the instant action ("Action"). All the matters stated within this declaration are made of my own personal knowledge.

2. On February 1, 2022, Plaintiff sent written notice to the California Labor & Workforce Development Agency of Defendant's alleged violation of Labor Code §§ 226 and 2802, pursuant to Labor Code section 2698, et seq., the Private Attorneys General Act ("PAGA").

3. On February 17, 2022, Plaintiff filed a Class Action Complaint for: (1) violation of Labor Code § 226; (2) violation of Labor Code § 2802; and (3) violation of Business and Professions Code § 17200, et seq.

4. Defendant's counsel informed my office of the existence of an arbitration agreement containing a class action waiver signed by Plaintiff.

5. Defendant contends the arbitration agreement is applicable to Plaintiff's employment.

6. After reviewing the arbitration agreement and class action waiver, Plaintiff wishes to dismiss his individual claims and putative class action claims without prejudice.

9. The dismissal of the class action allegations without prejudice will not prejudice the rights and remedies of any of the putative class members because no class has been certified, and no notice has been sent to the putative class.

10. California Rules of Court, Rule 3.770(c) states, "if the court has not ruled on class certification, or if notice of the pendency of the action has not been provided to class members in a case in which such notice was required...the action may be dismissed without notice to the class members if the court finds that the dismissal will not prejudice them." Here, no class certification motion has been filed, no class has been certified, notice of the pendency of this

1 Action has not been provided to any putative class member, and there has been no determination
2 on the merits of the class action.

3 11. No consideration has been received in exchange for Plaintiff dismissing his
4 individual and putative class claims without prejudice.

5 12. The Parties agreed to the filing of a First Amended Representative PAGA Action
6 Complaint ("First Amended Complaint") to allege a single cause of action for violation of Labor
7 Code §2698, *et seq.*, the Private Attorney Attorneys General Act ("PAGA").

8 13. The Parties, through their counsel of record, have met and conferred regarding the
9 filing of a First Amended Complaint, a copy of which is attached hereto as **Exhibit A**.

10 I declare under penalty of perjury under the laws of the State of California that the
11 foregoing is true and correct.

12 Executed this on May 3, 2022, at Los Angeles, California.

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14 Max W. Gavron
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EXHIBIT A

1 Larry W. Lee (State Bar No. 228175)
2 Max W. Gavron (State Bar No. 291697)
3 Kwanporn "Mai" Tulyathan (State Bar No. 316704)
4 **DIVERSITY LAW GROUP, P.C.**
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12 Attorneys for Plaintiff and the Class

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **FOR THE COUNTY OF INYO**

15 STEVEN WILLIAMS, as an individual and
16 on behalf of all others similarly situated,

17 Plaintiff,

18 vs.

19 XANTERRA PARKS & RESORTS, INC.,
20 a Delaware corporation, doing business as
21 The Oasis at Death Valley; and DOES 1
22 through 50, inclusive,

23 Defendants.

Case No.: ICSI-CVCV-2022-67661

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR DAMAGES FOR:**

**(1) VIOLATION OF LABOR CODE § 2698,
ET SEQ;**

DEMAND OVER \$25,000.00

24 Plaintiff Steven Williams ("Plaintiff") hereby submits this first amended class action
25 complaint ("Complaint") against Defendant Xanterra Parks & Resorts, Inc., doing business as
26 The Oasis at Death Valley, and Does 1 through 50 (collectively, "Defendants"), on behalf of
27 himself and a all other similarly situated current and former employees of Defendants for
28 penalties and/or damages for failure to provide accurate itemized wage statements and failure to
reimburse business expenses, in violation of the California Labor Code, as follows:

INTRODUCTION

1
2 1. This class action is within the Court's jurisdiction under California Labor Code §§
3 226, 2698, 2802, and the applicable Wage Orders of the California Industrial Welfare
4 Commission ("IWC").

5 2. This complaint challenges systemic illegal employment practices resulting in
6 violations of the California Labor Code against individuals who worked for Defendants.

7 3. Plaintiff is informed and believes, and based thereon alleges, that Defendants,
8 jointly and severally, have acted intentionally and with deliberate indifference and conscious
9 disregard to the rights of all employees by failing to provide accurate itemized wage statements
10 and failing to reimburse business expenses to its employees.

11 4. Plaintiff is informed and believes, and based thereon alleges, that Defendants
12 have engaged in, among other things a system of willful violations of the California Labor Code
13 and the applicable IWC Wage Orders by creating and maintaining policies, practices, and
14 customs that knowingly deny employees the above stated rights and benefits.

15 5. The policies, practices, and customs of Defendants described above and below
16 have resulted in unjust enrichment of Defendants and an unfair business advantage over
17 businesses that routinely adhere to the strictures of the California Labor Code.

JURISDICTION AND VENUE

18
19 6. The Court has jurisdiction over the violations of the California Labor Code
20 §§ 226, 2802, and 2698, and the applicable Wage Orders.

21 7. Venue is proper in Inyo County because Plaintiff worked for Defendants in Inyo
22 County.

PARTIES

23
24 8. Plaintiff was employed by Defendants as a Food and Beverage Manager from
25 about April 2019, until on or about November 13, 2021. Plaintiff worked as an hourly, non-
26 exempt employee throughout his employment.

27 9. Plaintiff was and is the victim of the policies, practices, and customs of
28 Defendants complained of in this action in ways that have deprived him of the rights guaranteed

1 by California Labor Code §§ 226 and 2802, the applicable IWC Wage Orders.

2 10. Plaintiff is informed and believes, and based thereon alleges, that Defendant
3 Xanterra Parks & Resorts, Inc. was and is a Delaware corporation doing business in the State of
4 California, and in the County of Inyo. Plaintiff is informed and believes, and based thereon
5 alleges, that Defendant Xanterra Parks & Resorts, Inc. does business in Inyo County as The
6 Oasis at Death Valley. Plaintiff is informed and believes, and based thereon alleges, that
7 Defendant Xanterra Parks & Resorts, Inc. provides lodging and other hospitality services in the
8 State of California.

9 11. Plaintiff is informed and believes, and based thereon alleges, that at all times
10 herein mentioned Defendant Xanterra Parks & Resorts, Inc. and Does 1 through 50, are and were
11 corporations, business entities, individuals, and partnerships, licensed to do business and actually
12 doing business in the State of California. As such and based upon all the facts and circumstances
13 incident to Defendants' business, Defendants are subject to the California Labor Code.

14 12. Plaintiff does not know the true names or capacities, whether individual, partner
15 or corporate, of the defendants sued herein as Does 1 through 50, inclusive, and for that reason,
16 said defendants are sued under such fictitious names, and Plaintiff prays for leave to amend this
17 complaint when the true names and capacities are known. Plaintiff is informed and believes and
18 based thereon alleges that each of said fictitious defendants was responsible in some way for the
19 matters alleged herein and proximately caused Plaintiff and members of the general public and
20 class to be subject to the illegal employment practices, wrongs and injuries complained of herein.

21 13. At all times herein mentioned, each defendant participated in the doing of the acts
22 hereinafter alleged to have been done by the named Defendants; and furthermore, Defendants,
23 and each of them, were the agents, servants, and employees of each of the other defendants, as
24 well as the agents of all Defendants, and at all times herein mentioned, were acting within the
25 course and scope of said agency and employment.

26 14. Plaintiff is informed and believes, and based thereon alleges, that at all times
27 material hereto, each of the Defendants named herein was the agent, employee, alter ego and/or
28 joint venturer of, or working in concert with each of the other co-Defendants and was acting

1 within the course and scope of such agency, employment, joint venture, or concerted activity. To
2 the extent said acts, conduct, and omissions were perpetrated by certain Defendants, each of the
3 remaining Defendants confirmed and ratified said acts, conduct, and omissions of the acting
4 Defendants.

5 15. At all times herein mentioned, Defendants, and each of them, were members of,
6 and engaged in, a joint venture, partnership, and common enterprise, and acting within the course
7 and scope of, and in pursuance of, said joint venture, partnership, and common enterprise.

8 16. At all times herein mentioned, the acts and omissions of various Defendants, and
9 each of them, concurred and contributed to the various acts and omissions of each and all of the
10 other Defendants in proximately causing the injuries and damages as herein alleged. At all times
11 herein mentioned, Defendants, and each of them, ratified each and every act or omission
12 complained of herein. At all times herein mentioned, Defendants, and each of them, aided and
13 abetted the acts and omissions of each and all of the other Defendants in proximately causing the
14 damages as herein alleged.

15 **FIRST CAUSE OF ACTION**

16 **VIOLATION OF LABOR CODE § 2698 ET SEQ.**

17 **(BY PLAINTIFF AND AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS)**

18 17. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
19 though fully set forth herein.

20 18. Plaintiff brings this cause of action for violation of the PAGA as a proxy for the
21 State of California, and in this capacity, seeks penalties on behalf of all similarly situated
22 Aggrieved Employees of Defendants from February 1, 2021, through the present, for
23 Defendants' violations of Labor Code § 226(a).

24 19. More specifically, Labor Code § 226(a) requires employers to provide itemized
25 wage statements to its employees that identify accurate information, including without limitation,
26 all applicable hourly rates in effect during the pay period and the corresponding number of hours
27 worked at each hourly rate by the employee. Here, Defendants failed in their affirmative
28

1 obligation to provide accurate itemized wage statements to Plaintiff and the Aggrieved
2 Employees whenever overtime wages were paid, in violation of Labor Code § 226(a).

3 20. In this regard, whenever Plaintiff and the Aggrieved Employees worked overtime
4 and were paid overtime wages, Defendants failed to provide accurate itemized wage statements
5 to Plaintiff and the Aggrieved Employees. Specifically, Defendants failed to identify the
6 applicable rate of overtime pay whenever overtime wages were paid on the corresponding wage
7 statements in violation of Labor Code § 226(a). Instead, the wage statements issued to Plaintiff
8 and the Aggrieved Employees only showed the base rate and a separate line item showing
9 premium rate of half of the base rate. Further, the wage statements did not accurately show the
10 total number of hours worked per pay period because whenever the applicable hours are added
11 up in each wage statement, they do not correlate to the correct number of total hours worked
12 during the pay period. This policy and practice is a direct violation of Labor Code § 226(a).

13 21. Plaintiff alleges that Defendant also violated Labor Code § 2802 by failing to
14 reimburse Plaintiff and aggrieved employees for work-related expenses. Employees were
15 required to use personal cell phones for communication purposes but were not reimbursed for
16 costs associated with using them. Accordingly, Defendant violated Labor Code § 2802.

17 22. On or about February 1, 2022, Plaintiff sent written notice to the California Labor
18 & Workforce Development Agency ("LWDA") of Defendants' violations of Labor Code §§ 226,
19 2802, pursuant to the PAGA. Plaintiff also provided notice of said Labor Code violations to
20 Defendant via certified mail pursuant to the PAGA.

21 23. As of the date of the filing of this Complaint, the LWDA has not responded nor
22 informed Plaintiff that it intends to investigate the Labor Code violations provided for in the
23 written notice. As such, pursuant to Labor Code § 2699(a), Plaintiff and the Aggrieved
24 Employees may seek recovery of any and all applicable civil penalties on behalf of the State of
25 California and Aggrieved Employees for Defendants' violations of Labor Code § 226.

26 **PRAYER FOR RELIEF**

27 WHEREFORE, Plaintiff prays for judgment for himself and all aggrieved current and former
28 employees against Defendants, jointly and severally, as follows:

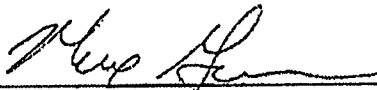
1 1. Upon the First Cause of Action, for the full amount of penalties pursuant to
2 California Labor Code §§ 226.3 and 2698 *et seq.*, and for costs and attorneys' fees; and

3 2. On all causes of action for attorneys' fees and costs as provided by California
4 Code of Civil Procedure § 1021.5

5 3. For such other and further relief the Court may deem just and proper.
6

7 DATED: May 3, 2022

DIVERSITY LAW GROUP, P.C.

8
9 By: 

Larry W. Lee

Max W. Gavron

Kwanporn "Mai" Tulyathan

Attorneys for Plaintiff and the Class
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3 **PROOF OF SERVICE**

4 (Code of Civil Procedure Sections 1013a, 2015.5)

5 STATE OF CALIFORNIA]
6]ss.
7 COUNTY OF LOS ANGELES]

8 I am employed in the County of Los Angeles, State of California. I am over the age of 18
9 and not a party to the within action; my business address is 515 S. Figueroa Street, Suite 1250,
10 Los Angeles, California 90071.

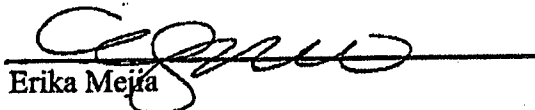
11 On May 4, 2022, I served the following document(s) described as: **JOINT STIPULATION**
12 **AND REQUEST FOR LEAVE TO FILE FIRST AMENDED COMPLAINT;**
13 **DECLARATION OF MAX W. GAVRON; [PROPOSED] ORDER** on the interested parties
14 in this action as follows:

15 Anne E. Dwyer
16 Snell & Wilmer
17 600 Anton Blvd., Suite 1400
18 Costa Mesa, CA 92626
19 adwyer@swlaw.com
20 *Attorneys for Defendant Xanterra Parks & Resorts, Inc.*

21 X BY MAIL: by placing _____ the original or X a true and correct copy
22 thereof enclosed, in (a) sealed envelope(s) addressed to the party(ies) listed above or on the
23 attached mailing list. I am readily familiar with the firm's practice for collection and processing
24 of correspondence and other materials for mailing with the United States Postal Service. On this
25 date, I sealed the envelope(s) containing the above materials and placed the envelope(s) for
26 collection and mailing on this date at the address above following our office's ordinary business
27 practices. The envelope(s) will be deposited with the United States Postal Service on this date,
28 in the ordinary course of business.

 X BY ELECTRONIC MAIL: by personally sending a true and correct copy of
the above-described document(s) to the party(ies) listed above or on the attached mailing list
from the e-mail server diversitylaw.com, to the electronic transmission address of the recipient(s)
indicated above or on the attached mailing list. I certify that said electronic transmission was
completed and that all pages were received by the party(ies) identified herein or on the attached
mailing list.

I declare under penalty of perjury under the laws of the State of California that the above
is true and correct. Executed on May 4, 2022, at Los Angeles, California.

27
28 
Erika Mejia

[PROPOSED] ORDER

THE COURT, having received and reviewed the Joint Stipulation for Leave to File First Amended Complaint ("Stipulation"), and GOOD CAUSE appearing, herein orders as follows:

1. Plaintiff Steven Williams' ("Plaintiff") individual claims and allegations in the First Amended Complaint are DISMISSED WITHOUT PREJUDICE;

2. The class claims and allegations in the Complaint are DISMISSED WITHOUT PREJUDICE;

3. Plaintiff is granted leave to file the First Amended Complaint, attached as Exhibit A to the Stipulation;

4. The First Amended Complaint shall be deemed filed as of the date of execution of this Order;

5. Defendant shall have thirty (30) days from the date this Order is served to answer the First Amended Complaint.

IT IS SO ORDERED.

DATED: June 7, 2022


JUDGE OF THE SUPERIOR COURT

DECLARATION OF SERVICE

CASE NUMBER: DIVERSITY LAW GROUP, P.C.

I, Linda S. Burton the undersigned, say: I am a citizen of the United States, a resident or employed in the County of Inyo, over the age of eighteen years, and not a party to the within action; that my business address is 301 WEST LINE STREET, BISHOP, CA 93514 that on 6-7-2022 I served a copy of the foregoing document(s) described as:

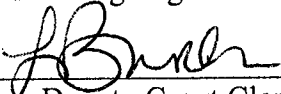
JOINT STIPULATION AND REQUEST FOR LEAVE TO FILE FIRST AMENDED COMPLAINT, ORDER

(X) BY MAIL/ INTER-OFFICE MAIL: I am readily familiar with the practice of Inyo County in the collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. Postal Service on that same day with postage thereon fully prepaid at, Independence, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit. Said copy was mailed as indicated below:

**DIVERSITY LAW GROUP, P.C.
515 S FIGUEROA ST., SUITE 1250
LOS ANGELES CA 90071**

I certify (or declare) under penalty of perjury that the foregoing is true and correct.

Dated: 6-7-2022



Deputy Court Clerk,