

Larry W. Lee (State Bar No. 228175)
Max W. Gavron (State Bar No. 291697)
Kwanporn “Mai” Tulyathan (State Bar No. 316704)
DIVERSITY LAW GROUP, P.C.
515 S. Figueroa Street, Suite 1250
Los Angeles, CA 90071
(213) 488-6555
(213) 488-6554 facsimile
lwlee@diversitylaw.com
mgavron@diversitylaw.com
ktulyathan@diversitylaw.com

Attorneys for Plaintiff and the Aggrieved Employees

**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

**DECLARATION OF MAX W. GAVRON IN
SUPPORT OF PLAINTIFF’S MOTION TO
APPROVE SETTLEMENT AGREEMENT
PURSUANT TO THE PRIVATE ATTORNEYS
GENERAL ACT OF 2004**

Date: September 6, 2024

Time: 9:00 a.m.

Dept.: 1

Complaint Filed: February 17, 2022

Trial Date: None Set

DECLARATION OF MAX W. GAVRON

I, Max W. Gavron, declare as follows:

1. I am an attorney at law, duly licensed to practice before all Courts in the State of California, and am with the law firm Diversity Law Group, counsel of record for Plaintiff Steven Williams (“Plaintiff”). I have personal knowledge of the facts set forth below and if called to testify I could and would do so competently.

PROCEDURAL HISTORY

2. On or about February 1, 2022, Plaintiff submitted his written notice under Labor Code § 2699.3 (the “PAGA Notice”) to the California Labor & Workforce Development Agency (“LWDA”) and Defendant Xanterra Parks & Resorts, Inc. (“Defendant”). As set forth in the PAGA Notice, Plaintiff alleged that Defendant violated Labor Code §§ 226(a) and 2802. Attached hereto as **Exhibit A** is a true and correct copy of Plaintiff’s PAGA Notice.

3. On February 17, 2022, Plaintiff filed a class action complaint against Defendant in the Superior Court of California, County of Inyo, alleging causes of action for (1) violation of Labor Code § 226; (2) violation of Labor Code § 2802; and (3) violation of Business and Professions Code § 17200, *et seq.* (the “Action”).

4. On June 7, 2022, upon entry of the Court’s Order granting the Parties’ stipulation, Plaintiff filed a First Amended Complaint alleging a single cause of action for violation of Labor Code § 2698, *et seq.*, predicated on underlying violations of Labor Code §§ 226 and 2802. The First Amended Complaint is the operative complaint (“Complaint”). No class claims remain in the Action.

5. On or about July 7, 2022, Defendant filed a motion to compel arbitration of Plaintiff's PAGA claim on an individual basis.

6. The Court stayed the Action on September 9, 2022, deferring ruling on Defendant's motion to compel arbitration pending the California Supreme Court's ruling in *Adolph v. Uber Technologies*, Case No. S274671. Plaintiff and Defendant (together, the "Parties") subsequently stipulated to continue the stay of Action and Court's ruling on Defendant's motion to compel arbitration pending private mediation.

1 7. In anticipation of mediation, the Parties exchanged informal discovery, including
2 information regarding the number of employees who were paid overtime wages, number of pay
3 periods, and documents regarding reimbursements and other policies, which allowed Plaintiff to
4 conduct liability and exposure analysis.

5 8. On May 8, 2024, the Parties engaged in an all-day mediation with neutral Todd
6 Smith, Esq. Following arm's length negotiations and discussions between the Parties both during
7 and following mediation, during which the Parties spoke at length about the strengths and
8 weaknesses of each side's claims and defenses, and the scope of Defendant's purported liability,
9 the Parties were able to reach an agreement in principle. The Parties entered into a Memorandum
10 of Understanding, then finalized the settlement terms in the concurrently filed Private Attorneys
11 General Act Settlement Agreement and Release ("Settlement Agreement" or "SA"). Attached
12 hereto as **Exhibit B** is a true and correct copy of the Settlement Agreement.

13 **SUMMARY OF THE PROPOSED SETTLEMENT**

14 9. The Settlement Agreement requires Defendant to pay a total of Four Hundred
15 Fifteen Thousand Dollars (\$415,000.00) (the "Gross Settlement Amount"). SA ¶ 3.a. The
16 balance of the Gross Settlement Amount remaining after deduction of the approved Plaintiff's
17 Counsel's attorneys' fees and costs, Plaintiff's Enhancement Payment, and Settlement
18 Administration Costs, totaling \$235,558.42 ("Net Settlement Fund"), will be available for
19 distribution to the LWDA and Aggrieved Employees. *Id.* ¶¶ 3.a.1, 3.a.2, 3.a.3, 3.a.5.

20 10. Seventy-five percent (75%) of the Net Settlement Fund, or approximately
21 \$176,668.82, will be paid to the LWDA for PAGA penalties ("LWDA Payment"). SA ¶ 3.a.5.
22 The remaining twenty-five percent (25%), or approximately \$58,889.61, will be distributed to
23 the Aggrieved Employees ("Employees' Portion"). SA ¶ 3.a.5.

24 11. The portion of the Net Settlement Fund (or Employees' Portion) distributed to
25 Aggrieved Employees will be distributed on a *pro rata* basis, based on the number of pay periods
26 each Aggrieved Employee worked in a non-exempt position during the Covered Time Frame. SA
27 ¶ 7.a.1.

28 12. Defendant represents that there are approximately 1,300 Aggrieved Employees

1 who worked approximately 18,325 pay periods during the Covered Time Frame. *Id.* ¶ 3.a.5.

2 13. Based thereon, each Aggrieved Employee will be entitled to recover, on average,
3 approximately \$45.30 each. The amount any particular Aggrieved Employee will be entitled to
4 recover will be greater or lower than this average depending on the number of pay periods he or
5 she worked during the same pay period. This is fair, as it directly allocates greater penalties to
6 individual Aggrieved Employees who have allegedly suffered greater harm.

7 14. Funds from uncashed Individual Settlement Payment checks will be transmitted to
8 the California State Controller's Office Unclaimed Property Division in the name of the
9 individual to whom the funds relate. SA ¶ 7.b.4.

10 15. As part of the Settlement Agreement, Defendant does not object to Plaintiff's
11 Counsel's request for attorneys' fees of \$145,250.00, which is approximately thirty-five percent
12 (35%) of the Gross Settlement Amount. SA ¶ 3.a.1. While the Settlement Agreement provides
13 for reimbursement of documented litigation costs of up to \$20,000.00, Plaintiff's Counsel is only
14 requesting for reimbursement of \$14,196.58 in actual litigation costs. *Id.* ¶ 3.a.1.

15 16. Also, as part of the Settlement Agreement, Defendant does not object to
16 Plaintiff's request for an Enhancement Payment of \$10,000.00, in recognition for Plaintiff's
17 efforts in obtaining the benefits of the settlement on behalf of other purported aggrieved
18 employees and for Plaintiff's general release of his claims against Defendant. SA ¶¶ 3.a, 3.a.2.

19 17. Finally, the Settlement Agreement provides for the payment of the fees and
20 expenses reasonably incurred by the Settlement Administrator. *Id.* ¶ 3.a.5. The Parties have
21 agreed to utilize Phoenix Settlement Administrators to administer the settlement, with the
22 administration costs estimated to be \$9,995.00. *Id.* ¶ 3.a.5.

23 18. The scope of the Released Claims by the Aggrieved Employees is appropriately
24 tailored as it only releases claims for civil penalties under PAGA arising out of the facts alleged
25 or that could have been alleged in this lawsuit and PAGA Notice and does not release any other
26 claims. Further, other than Plaintiff, none of the Allegedly Aggrieved Employees are bound by
27 any general release or waiver of the protections of Code of Civil Procedure § 1542 as part of this
28 settlement. SA ¶ 8.a.

1 **POTENTIAL CIVIL PENALTIES**

2 19. Here, Defendant produced data for each of Plaintiff's claims, which permitted
3 Plaintiff to analyze Defendant's potential exposure and liability. Defendant's potential exposure
4 could be as high as \$1,832,500 if the Court were to award a \$100 penalty for each pay period
5 encompassed by the proposed settlement (18,325 allegedly violative pay periods x \$100 per paid
6 period). Although Plaintiff is reasonably confident that he would prevail at trial, proceeding in
7 litigation entails significant risk on the underlying merits of Plaintiff's theory, in addition to the
8 still-developing law under PAGA. Here, Defendant has denied violation of any applicable laws
9 and liability for any claims asserted in the Action and produced documents demonstrating it
10 instituted largely compliant wage and hour policies and procedures. Defendant argued the
11 penalties assessed, if any, would be significantly less than Plaintiff contends. For one, Defendant
12 argued that Plaintiff would not prevail on his wage statement theory of liability for several
13 reasons. First, Defendant would have argued that penalties under Section 226 are subject to a
14 "good faith" defense. *See, e.g., Apodaca v. Costco Wholesale Corp.*, 2014 WL 2533427, at *3
15 (C.D. Cal. June 5, 2014) ("Where an employer has a good faith belief that it is not in violation of
16 Section 226, any violation is not knowing and intentional."). The California Supreme Court also
17 recently approved a good faith defense to the imposition of Section 226 penalties, which further
18 undermines the certainty of recovering these damages even if Plaintiff prevailed on liability.
19 *Naranjo v. Spectrum Sec. Servs., Inc.*, No. S279397, 2024 WL 1979980, at *1 (Cal. May 6,
20 2024). Defendant also argued that it did not require employees to use personal cell phones for
21 any purposes. Instead, it maintained that it provided its employees with radios to use to
22 communicate with other staff members while on duty.

23 20. Furthermore, Defendant argued that the Court has discretion under PAGA to
24 reduce the maximum allowable PAGA penalties at its discretion. *See* Labor Code § 2699(e)(2)
25 ("if, based on the facts and circumstances of the particular case, to do otherwise would result in
26 an award that is unjust, arbitrary and oppressive, or confiscatory."). Should Defendant have
27 prevailed on its defenses whether at summary judgment or at trial, the State of California and
28 purported aggrieved employees would have been left with zero or minimal recovery.

1 21. Although Plaintiff is reasonably confident that he would prevail at trial,
2 proceeding in litigation entails significant risk on the underlying merits of Plaintiff's theory, in
3 addition to the still-developing law under PAGA. Here, Defendant has denied violation of any
4 applicable laws and liability for any claims asserted in the Action.

5 22. Under the circumstances of this case, the payment of \$415,000.00 in civil
6 penalties is fair, adequate, and reasonable. The payment of \$415,000.00 in exchange for a release
7 of only those claims for civil penalties that are pleaded in the Action or that could have been
8 pleaded based on the facts alleged in the PAGA Notice and the PAGA cause of action pleaded in
9 the Action will have a substantial deterrent effect on Defendant and other California employers
10 and will confer benefits on the Aggrieved Employees, who will each receive a portion of the
11 settlement.

12 23. In the present case, the Gross Settlement Amount is approximately 22.6% of the
13 maximum exposure ($\$415,000.00 \div \$1,832,500$), which is a very reasonable settlement amount.
14 In sum, this settlement is fair, reasonable, and consistent with PAGA's policies and purposes
15 under these circumstance.

16 24. I strongly believe that Plaintiff can prevail at trial. However, after taking into
17 account sharply disputed factual and legal issues involved in this litigation, the risks attending
18 further prosecution, and the substantial benefits to be received pursuant to the compromise and
19 settlement of the litigation, I have concluded that settlement on the terms set forth in the
20 Settlement Agreement is appropriate and in the best interests of Plaintiff and the Aggrieved
21 Employees.

22 **ATTORNEY EXPERIENCE AND LODESTAR INFORMATION**

23 25. From the inception of the case, Plaintiff's Counsel have zealously represented the
24 interests of Plaintiff and the aggrieved employees. The settlement was obtained for the benefit of
25 the aggrieved employees, as opposed to the individual Plaintiff.

26 26. I am one of the primary attorneys on this matter. My qualifications are as follows:
27 I received a full-tuition scholarship, and graduated from Southwestern Law School in 2013,
28 magna cum laude. I was in the top 5% of my class. During my time at Southwestern, I was a

1 Notes and Comments Editor on the Southwestern Law Review. I also received awards for
2 achieving the highest grade in my class in several courses. In 2012, I was a full-time extern, at
3 the United States District Court for the Central District. Immediately after law school, I taught
4 several courses at Southwestern, including Principles of Legal Analysis and Legal Methods. I
5 taught those courses for approximately four years.

6 27. I practiced civil litigation at Haight Brown & Bonesteel LLP from approximately
7 September 2013, through January 2016. I was third-chair in a federal court jury trial that resulted
8 in a defense verdict in our client's favor on a \$21 million commercial breach of contract dispute.
9 I also regularly litigated cases across the civil litigation spectrum, including employment matters.

10 28. From February 2016, through Fall 2017, I practiced at the international law firm
11 of Arnold & Porter, which had recently merged with Kaye Scholer, LLP. I defended Fortune 50
12 companies in Multi-District Litigation primarily in the product liability sphere. I also
13 successfully drafted an appellate brief in the Ninth Circuit resulting in the reversal of a summary
14 judgment decision regarding trade secret issues, in addition to working in several other practice
15 groups. During this time, the firm routinely charged \$500 per hour for my services to clients.

16 29. From September 2017, through September 2018, I served as a law clerk to a
17 Judge sitting on the United States District Court, Central District of California. I regularly
18 prepared bench memoranda, on cases involving all types of civil litigation, including regularly
19 working on wage and hour class actions.

20 30. I am currently an associate at the law firm Diversity Law Group, P.C., an
21 employment law firm that has handled numerous wage and hour class and individual actions, on
22 both plaintiff and defense sides. My current practice focuses on employment matters involving
23 both class actions, and single plaintiffs. The firm currently has cases in the Los Angeles Superior
24 Courts, the Orange County Superior Courts, the San Diego County Superior Courts, and the
25 United States District Courts for the Central, Northern, and Eastern Districts of California. I am
26 currently or have handled numerous wage and hour class action lawsuits with the firm, including,
27 but not limited to: *Agar v. Sensient Natural Ingredients, LLC* (Case No. CV-19-001906,
28 Stanislaus County Superior Court); *Cunningham, et al. v. Diverse Business Solutions* (Case No.

1 CIVDS1817095, San Bernardino County Superior Court); *Heredia v. Eddie Bauer LLC* (Case
2 No. 16CV300475, United States District Court, Northern District of California); *Parsons v.*
3 *Estenson Logistics, LLC* (Case No. 34-2019-00252929, Sacramento County Superior Court); and
4 *Coronel v. Pinnacle Agriculture* (Case No. 18CV004287, Monterey County Superior Court).

5 31. On June 14, 2019, I argued two related cases in front of the Ninth Circuit Court of
6 Appeals. One of them was *Rodriguez v Nike Retail Service Inc.*, Case No. 17-16866. On June 28,
7 2019, the Ninth Circuit issued a published decision, reversing and remanding in favor of our
8 clients. *Rodriguez v. Nike Retail Servs., Inc.*, 928 F.3d 810 (9th Cir. 2019).

9 32. I have also assisted the firm in numerous wage and hour class action mediations.
10 To date, I have expended many hours litigating this case and achieving the proposed settlement
11 on behalf of the State of California, Plaintiff, and Aggrieved Employees.

12 33. My office has incurred costs in the amount of \$14,196.58 The costs are all
13 litigation related costs, including filing fees, service of process costs, mediation costs, and other
14 costs. Attached hereto as **Exhibit C** is copy of my firm's record of costs incurred in connection
15 with prosecution of this lawsuit.

16 **NOTICE TO THE LWDA**

17 34. Concurrent with the filing of the Motion to Approve Settlement Agreement
18 Pursuant to PAGA, my office uploaded the Motion, Settlement Agreement, and proposed order
19 to the LWDA's website. Attached hereto as **Exhibit D** is a true and correct copy of the
20 confirmation of submission to the LWDA on August 14, 2024.

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

23 Executed on this 14th day of August 2024, at Los Angeles, California.

24 
25 _____
26 Max W. Gavron
27
28

EXHIBIT A

STEVEN WILLIAMS

c/o DIVERSITY LAW GROUP, P.C.
515 S. FIGUEROA STREET, SUITE 1250
LOS ANGELES, CALIFORNIA 90071
TELEPHONE (213) 488-6555
FACSIMILE (213) 488-6554

January 31, 2022

VIA ONLINE FILING

California Labor & Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Suite 801
Oakland, CA 94612

Re: Williams v. Xanterra Parks & Resorts, Inc./The Oasis at Death Valley

To Whom It May Concern:

This correspondence shall constitute written notice under Labor Code § 2699.3 of my claims against my former employer, Xanterra Parks & Resorts, Inc./The Oasis at Death Valley (collectively the “Company”). On behalf of other similarly situated aggrieved employees, I allege that the Company:

1. Violated Labor Code § 226(a). Specifically, the wage statements issued by the Company to its employees do not show the accurate rate of overtime pay whenever overtime wages were paid. Instead, the overtime rate was identified as a base rate and a separate line item showing premium rate of half of my base rate. Further, the wage statements do not accurately show the total number of hours worked per pay period. Moreover, whenever the applicable hours are added up in each wage statement, it does not correlate to the correct number of total hours worked during each pay period.
2. Violated Labor Code § 2802 as it failed to reimburse for the costs I and other aggrieved employees incurred for work related expenses. Specifically, we are required to use our personal cell phones for communication purposes. However, we were not reimbursed for any such costs related to the usage of our personal cell phones for work related purposes.

The address for the Company is as follows:

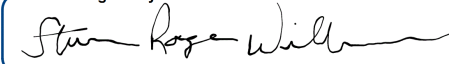
Xanterra Parks & Resorts, Inc./The Oasis at Death Valley
Highway 190
Death Valley, CA 92328

Please contact my attorney Larry W. Lee at the above address/phone number if you have any questions regarding this matter.

January 31, 2022

Page 2

Sincerely,

DocuSigned by:

CA96697E925444E...
Steven Williams

cc: Xanterra Parks & Resorts, Inc./The Oasis at Death Valley (via certified mail)

EXHIBIT B

**PRIVATE ATTORNEYS GENERAL ACT SETTLEMENT AGREEMENT AND
RELEASE**

This Private Attorneys General Act Settlement Agreement and Release (“Settlement Agreement” or “Settlement”) is entered into by and between Steven Williams (“Plaintiff”), for himself and as a representative of the State of California and the Aggrieved Employees (as defined in Section 3(a)(5) below), and Xanterra Parks & Resorts, Inc. (“Defendant”), subject to approval by the Court. The term “Party” or “Parties” as used herein shall refer to Plaintiff, Defendant, or both, as may be appropriate.

1. **Recitals.** This Settlement Agreement is made with reference to the following facts:

a) Plaintiff is a former employee of Defendant. Plaintiff was employed by Defendant from approximately April 2019, until about November 13, 2021;

b) On February 1, 2022, Plaintiff, with the assistance of Diversity Law Group, P.C. (“Plaintiff’s Counsel”), submitted a letter to the California Labor and Workforce Development Agency (“LWDA”), pursuant to the Private Attorneys General Act of 2004, Labor Code section 2698, *et seq.* (“PAGA”), to notify the LWDA of Plaintiff’s intent to seek civil penalties under PAGA for Defendant’s alleged violations of California Labor Code sections 226(a) and 2802, thereby initiating LWDA Case Number LWDA-CM-865812-22 (the “PAGA Notice”);

c) On February 17, 2022, Plaintiff filed a Class Action Complaint against Defendant for violation of Labor Code sections 226 and 2802 and Business and Professions Code section 17200, *et seq.*, Case No. ICSI-CVCV-2022-67661 (the “Action”) in the Superior Court of California, County of Inyo. On June 7, 2022, the Court signed a stipulation and order dismissing Plaintiff’s Class Action causes of action without prejudice and allowing Plaintiff to file a First Amended Complaint (the “Operative Complaint”) that included a PAGA cause of action based on the alleged violations of Labor Code sections 226 and 2802.

d) On or about July 7, 2022, Defendant filed a Motion to Compel Arbitration of Plaintiff’s PAGA claim on an individual basis. On September 9, 2022, the Court stayed the Action and deferred ruling on Defendant’s Motion to Compel Arbitration pending the California Supreme Court’s ruling in *Adolph v. Uber Technologies*, Case No. S274671. The Parties then entered into a stipulation to continue the stay of Action and the Court’s ruling on Defendant’s Motion to Compel Arbitration pending private mediation.

e) On May 8, 2024, the Parties mediated the Action with Todd Smith, Esq. With the aid of the mediator both during and following the mediation, the Parties ultimately reached the Settlement described herein to resolve the Action in its entirety;

f) There has been no determination on the merits of the Action or the PAGA Notice but, in order to avoid additional cost and the uncertainty of litigation, the Parties desire to resolve the Released Claims (as defined in Section **Error! Reference source not found.** below).

2. **No Admission of Wrongdoing.** The Parties agree that neither this Settlement Agreement nor the furnishing of the consideration for this Settlement Agreement shall be deemed or construed at any time for any purpose as an admission by the Released Parties of wrongdoing or evidence of any liability or unlawful conduct of any kind.

3. **Consideration.**

a) In consideration for Plaintiff signing this Settlement Agreement and complying with its terms and the Release of Claims described in Section 8, Defendant shall pay the maximum gross sum of Four Hundred Fifteen Thousand Dollars and Zero Cents (\$415,000.00) (the “Gross Settlement Fund”) to resolve the Action, the PAGA Notice, and Released Claims (as defined herein), which will be paid as follows:

1) Attorneys’ fees in the amount of Thirty-Five Percent (35%) of the Gross Settlement Fund, which is One Hundred Forty-Five Thousand Two Hundred Fifty Dollars and Zero Cents (\$145,250.00), and reimbursement of litigation costs and expenses in the amount of up to Twenty Thousand Dollars and Zero Cents (\$20,000.00) (collectively, “Attorneys’ Fees and Costs”) to Plaintiff’s Counsel, which Defendant will not contest.

2) An enhancement payment of up to the amount of Ten Thousand Dollars and Zero Cents (\$10,000.00) (“Enhancement Payment”) to Plaintiff, which Defendant will not contest.

3) Costs and expenses of administration of the Settlement up to the amount of Nine Thousand Nine Hundred and Ninety-Five Dollars and Zero Cents (\$9,995.00) (“Settlement Administration Costs”) to Phoenix Settlement Administrators (the “Settlement Administrator”).

4) The amounts stated in Sections 3(a)(1) – 3(a)(3) above, once approved by the Court, shall be paid from the Gross Settlement Fund. The balance remaining after these deductions is referred to as the “Net Settlement Fund.”

5) Seventy-five percent (75%) of the Net Settlement Fund will be distributed to the LWDA (“LWDA Payment”); and the remaining twenty-five percent (25%) will be distributed to the Aggrieved Employees, defined solely for purposes of this Settlement as all persons employed by Defendant in a non-exempt position in the State of California at any time during the Covered Time Frame (the “Aggrieved Employees”). The period February 1, 2021, through June 7, 2024 is the “Covered Time Frame”. The Aggrieved Employees are estimated to have worked approximately 18,325 Total Pay Periods Worked as of approximately April 30, 2024. If the actual number of Total Pay Periods Worked during the Covered Time Frame is greater than ten percent (10%) above 18,325 (*i.e.*, more than 20,158), the Gross Settlement Fund will be increased on a proportional basis by the amount by which it exceeds ten percent (10%) (*i.e.*, an 11% increase in the Total Pay Periods Worked during the Covered Time Frame would result in a 1% increase in the Gross Settlement Fund). The 25% portion of the Net Settlement Fund payable to Aggrieved Employees is referred to as the “Employees’ Portion.”

b) Because this is a settlement of PAGA claims for civil penalties only, no portion of the Settlement is allocated to unpaid wages. One Hundred Percent (100%) of the payments for Attorneys' Fees and Costs, Enhancement Payment, and the Net Settlement Fund to be paid to the LWDA and Aggrieved Employees as described in Section 3(a) above will be treated and reported for tax purposes as non-wage payments and the Settlement Administrator will be responsible for issuing IRS Forms 1099 as required.

c) This is a non-reversionary Settlement, and no portion of the Gross Settlement Fund shall revert to Defendant.

4. **Court Approval is Required.** Plaintiff understands and agrees that the State of California and Aggrieved Employees, including Plaintiff, would not receive the consideration specified in Section 3 above, except for Plaintiff's execution of this Settlement Agreement, and the fulfillment of the promises contained herein, as well as Court approval of the Settlement. If this Settlement Agreement is not approved by the Court, or if the Court's approval of the Settlement is reversed or materially modified on appellate review, then it shall become null and void.

5. **Disbursal of Settlement Funds.**

a) Subject to Section 4 above, within twenty-one (21) calendar days of receiving final court approval of the Settlement and the expiration of the time to file appeals or the resolution of any appeals filed, Defendant shall remit to the Settlement Administrator the sums described more fully in Section 3(a) above.

b) Upon complete distribution of the Gross Settlement Fund by the Settlement Administrator in accordance with this Settlement Agreement, the Settlement Administrator will notify the Parties of distribution of the entire Gross Settlement Fund.

6. **Approval and Implementation of the PAGA Settlement.**

a) The Parties shall seek to obtain Court approval of this Settlement Agreement by way of an unopposed motion to be filed by Plaintiff's Counsel. Plaintiff's Counsel shall provide a draft of all documents to be submitted in connection with the motion to approve this Settlement Agreement to Brian J. Mills, Anne Dwyer, and Alexis R. Sadakane of Snell & Wilmer L.L.P. ("Defendant's Counsel") for review and approval prior to filing. The motion for approval of the Settlement shall include a request that the Court enter judgment, which will resolve and adjudicate all of the claims in the Action.

b) The Parties further agree to cooperate in the drafting and/or filing of any further documents and/or filings reasonably necessary to be prepared and/or filed, and to take all steps that may be requested by the Court in order to expeditiously obtain approval and implementation of this Settlement Agreement, and the payments described in Section 3(a) above.

c) Plaintiff shall comply with all statutory requirements necessary to execute

and complete the administration of the Settlement, including providing notice to the LWDA in accordance with Labor Code section 2699(l).

d) The Parties expressly acknowledge that the Court's approval of the Settlement Agreement is a condition precedent to any payments described in this Settlement Agreement. Therefore, the Parties further acknowledge that, should the Court not grant approval of this Settlement Agreement and/or should the Court refuse to enter judgment in the Action and close the Action based on the Settlement, the entirety of this Settlement Agreement shall be null and void.

7. Payment of PAGA Settlement Sum / Notice to Recipients.

a) Subject to Court approval of this Settlement Agreement, payment of the sums described in Section 3(a) above shall be made by Defendant by transmitting the required sums to a qualified settlement account established by the Settlement Administrator for administration of this Settlement, within twenty-one (21) calendar days of the date provided in Section 5 above. If the date by which payment by Defendant is due falls on a Saturday, Sunday, or legal holiday in the State of California, then the due date shall be extended the next following day which is not a Saturday, Sunday, or legal holiday in the State of California.

1) Each Aggrieved Employee will be entitled to a pro-rata share of 25% of the Net Settlement Fund (*i.e.*, the Employees' Portion) based upon the number of pay periods worked, according to Defendant's payroll records. Specifically, to calculate each Aggrieved Employee's share of the Employees' Portion ("Individual Settlement Payment"), the Settlement Administrator shall (i) divide the Aggrieved Employee's Individual Pay Periods Worked by the Total Pay Periods Worked, and then (ii) multiply this amount by the Employees' Portion to arrive at the Aggrieved Employee's Individual Settlement Payment.

i. The Individual Pay Periods Worked is the total number of pay periods worked by an individual Aggrieved Employee for Defendant in California in a non-exempt position during the Covered Time Period.

ii. The Total Pay Periods Worked is the total number of pay periods worked by all Aggrieved Employees for Defendant in California in non-exempt positions during the Covered Time Frame.

2) One Hundred Percent (100%) of all Individual Settlement Payments are to be considered penalties and the Settlement Administrator will not undertake any deductions, withholding, or remittances for local, state, or federal taxes. Aggrieved Employees' Individual Settlement Payments will be reported on an IRS Form 1099 as required by the IRS.

3) The Aggrieved Employees shall be solely and legally responsible for correctly characterizing any payment to them pursuant to this Settlement for tax purposes and for paying any taxes on the amounts received. The Aggrieved Employees agree to indemnify and hold the Released Parties harmless from any claim or liability for taxes, penalties, or interest arising as a result of any payment to them pursuant to this Settlement.

4) All settlement payments to Aggrieved Employees shall be deemed to be paid to such Aggrieved Employees solely in the year in which such payments are actually received by the Aggrieved Employees. It is expressly understood and agreed that the receipt of such Individual Settlement Payments will not entitle any Aggrieved Employee to additional compensation or benefit plan or agreement in place during the period covered by the Settlement, nor will it entitle any Aggrieved Employee to any increased retirement, 401K benefits or matching benefits, or deferred compensation benefits. It is the intent of this Settlement that the Individual Settlement Payments provided for in this Settlement are the sole payments to be made by Defendant to the Aggrieved Employees, and that the Aggrieved Employees are not entitled to any new or additional compensation or benefits as a result of having received the Individual Settlement Payments.

b) The Settlement Administrator shall distribute each Individual Settlement Payment by way of check, along with a cover letter ("Cover Letter") agreed to by the Parties and approved by the Court, in substantially the form attached hereto as "**Exhibit A**", in the following manner:

1) No later than ten (10) calendar days after the Court's order granting approval of the Settlement, Defendant shall provide the Settlement Administrator with a list of all Aggrieved Employees (the "Aggrieved Employees List"), containing the following information for each Aggrieved Employee: (i) first and last name; (ii) last known address; (iii) last known telephone number and/or email address (if available); (iv) Social Security number; (v) dates worked during the Covered Time Frame; and (vi) Individual Pay Periods Worked.

2) The Settlement Administrator shall conduct one (1) National Change of Address ("NCOA") search for all individuals identified on the Aggrieved Employees List.

3) No later than ten (10) calendar days after the Settlement Administrator receives the Aggrieved Employees List and Gross Settlement Fund, the Settlement Administrator shall mail the agreed-upon Cover Letter and Individual Settlement Payment checks (together, the "PAGA Settlement Package") to all Aggrieved Employees by first-class United States mail. For each PAGA Settlement Package that is returned undeliverable within thirty (30) calendar days of the initial mailing, the Settlement Administrator shall promptly attempt to locate an alternate, updated address for the Aggrieved Employee at issue by using a skip-trace search and shall attempt one (1) re-mailing of the PAGA Settlement Package.

4) The Individual Settlement Payment checks issued to Aggrieved Employees shall remain valid for one hundred eighty (180) calendar days, and thereafter, shall be canceled. Funds associated with canceled checks shall be transmitted to the California State Controller's Office Unclaimed Property Division in the name of the Aggrieved Employee(s) at issue and in the amount of his or her respective Individual Settlement Payment(s).

c) No later than ten (10) calendar days after the Settlement Administrator receives the Aggrieved Employees List and Gross Settlement Fund, the Settlement Administrator

shall transmit the LWDA Payment to the LWDA.

d) No later than ten (10) calendar days after the Settlement Administrator receives the Aggrieved Employees List and Gross Settlement Fund, the Settlement Administrator shall transmit the Attorneys' Fees and Costs to Plaintiff's Counsel.

e) No later than ten (10) calendar days after the Settlement Administrator receives the Aggrieved Employees List and Gross Settlement Fund, the Settlement Administrator shall transmit the Enhancement Payment to Plaintiff.

f) Only after the Settlement Administrator receives the Aggrieved Employees List and Gross Settlement Fund and the PAGA Settlement Packages have been mailed to all Aggrieved Employees, shall the Settlement Administrator transmit the Settlement Administration Costs to itself.

8. **Release of Claims by Plaintiff, Aggrieved Employees, and the State of California.**

a) **General Release and Waiver of Claims by Plaintiff.** Upon the date the Court has entered an order and/or judgment approving the Settlement Agreement, and except as to the rights and obligations created by this Settlement Agreement, Plaintiff (and his heirs, personal representatives, successors and assigns), will be deemed to have knowingly and voluntarily released and forever discharged the Released Parties from any and all charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts, and expenses (including attorneys' fees and costs actually incurred), known or unknown, suspected or unsuspected, arising from his employment or the termination of his employment, including but not limited to all claims that were or could have been alleged, based on the facts contained in the Action and/or the PAGA Notice. Plaintiff will further expressly waive and relinquish, to the fullest extent permitted by law, the provisions, rights, and benefits of Section 1542 of the California Civil Code, which provides:

A general release does not extend to claims which the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor or released party.

b) Upon the date the Court has entered an order and/or judgment approving the Settlement Agreement, Plaintiff, the State of California, and each of the Aggrieved Employees, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, will be deemed to have knowingly and voluntarily released and forever discharged the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the facts stated in the PAGA Notice and/or the Action, including but not limited to, claims related to or arising out of alleged failure to provide accurate and complete itemized wage statements

pursuant to Labor Code § 226 and failure to reimburse business expenses pursuant to Labor Code § 2802 (the “Released Claims”).

c) The Released Parties are defined as Defendant, its parents, subsidiaries, and affiliated companies, current and former agents, officers, directors, managers, shareholders, members, owners, insurers, employees, representatives, and attorneys of the foregoing, and all persons acting by, through, under, or in concert with any of them, and their respective heirs, predecessors, successors, and assigns.

9. **Governing Law and Interpretation.**

a) This Settlement Agreement shall be governed and conformed in accordance with the laws of the State of California. Should any non-material provision of this Settlement Agreement be declared illegal or unenforceable by any court of competent jurisdiction and cannot be modified to be enforceable such provision immediately shall become null and void, leaving the remainder of this Settlement Agreement in full force and effect.

b) In the event of a breach of any provision of this Settlement Agreement, any Party reserves the right to institute an action specifically to enforce any term or terms of this Settlement Agreement or seek damages for breach. In an action to enforce any term or terms of this Settlement Agreement or to seek damages for breach of this Settlement Agreement, the prevailing Party in that action shall be entitled to recover reasonable attorney’s fees and costs from the non-prevailing Party.

10. **Amendment.** This Settlement Agreement may not be modified, altered, or changed except in writing and signed by both Parties’ counsel, wherein specific reference is made to this Settlement Agreement, subject to approval by the Court.

11. **Miscellaneous.**

a. Plaintiff and Plaintiff’s Counsel agree that they will not issue any press releases, initiate any contact with the press, respond to any press inquiry or have any communication with the press about this case and/or the fact, amount, or terms of the Settlement. In addition, Plaintiff and Plaintiff’s Counsel agree that they will not engage in any advertising or distribute any marketing materials relating to the Settlement, including but not limited to any postings on any websites maintained by Plaintiff’s Counsel; provided, however, that Plaintiff’s Counsel may state that it has settled a PAGA claim against a hospitality employer so long as neither Defendant nor the Plaintiff is identified.

b. The Parties agree to bear their own attorneys’ fees and costs related to this Action except as specifically provided in this Settlement Agreement with respect to the Attorneys’ Fees and Costs.

c. The Parties agree to stay all proceedings in the Action, except such proceedings necessary to implement and complete the Settlement, pending approval of the Settlement.

d. This Settlement Agreement may be signed in counterparts, each of which shall be deemed an original, but all of which, taken together shall constitute the same instrument. A signature made on a faxed or electronically transmitted copy of the Settlement Agreement or a signature transmitted by facsimile or electronic mail shall have the same effect as the original signature.

e. The section headings used in this Settlement Agreement are intended solely for convenience of reference and shall not in any manner amplify, limit, modify, or otherwise be used in the interpretation of any of the provisions hereof.

f. This Settlement Agreement was the result of negotiations between the Parties and their respective counsel under the auspices of mediator Todd Smith, Esq. In the event of vagueness, ambiguity, or uncertainty, this Settlement Agreement shall not be construed against the Party preparing it but shall be construed as if both Parties prepared it jointly, and the Parties may present their disputes to the mediator to resolve any vagueness, ambiguity, or uncertainty.

g. The Parties agree that the Settlement is fair and reasonable and will so represent to the Court. In addition, Mediator Todd Smith, Esq. may, at his discretion, execute a declaration supporting the Settlement and the reasonableness of this Settlement, and the Court may, in its discretion, contact Todd Smith to discuss the Settlement and whether or not the Settlement is fair and reasonable.

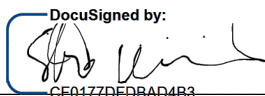
h. If Plaintiff or Defendant fail to enforce this Settlement Agreement or to insist on performance of any term, that failure does not mean a waiver of that term or of the Settlement Agreement. The Settlement Agreement remains in full force and effect anyway.

i. The Court shall retain jurisdiction over the Parties and this matter to enforce terms of the Settlement Agreement under California Code of Civil Procedure Section 664.6, including after judgment is entered. Should either Party be required to enforce the Settlement Agreement through court action, the prevailing party shall be entitled to reasonable attorneys' fees and costs.

HAVING ELECTED TO EXECUTE THIS SETTLEMENT AGREEMENT, TO FULFILL THE PROMISES, AND TO RECEIVE THE CONSIDERATION SET FORTH ABOVE, PLAINTIFF AND DEFENDANT, FREELY AND KNOWINGLY, AND AFTER DUE CONSIDERATION, ENTER INTO THIS SETTLEMENT AGREEMENT.

IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this Settlement Agreement as of the date set forth below:

Date: 7/23/2024, 2024

DocuSigned by:

CF0177DFDBAD4B3...

Steven Williams
Individually and On Behalf of

the State of California and Aggrieved Employees

XANTERRA PARKS & RESORTS, INC.

Date: _____, 2024

Name _____

Title _____

Approved as to form and content.

DIVERSITY LAW GROUP

Date: July 23 _____, 2024

DocuSigned by:
Max Gavron
57F8B43F1DCE4BB...

Max Gavron

Attorneys for Plaintiff Steven Williams

Approved as to form and content.

SNELL & WILMER L.L.P.

Date: _____, 2024

Anne E. Dwyer

Attorneys for Defendant Xanterra Parks & Resorts,
Inc.

Exhibit A

<<Mailing Date>>

To: <<First Name>> <<Last Name>>
<<Street Address>>
<<City>> <<State>> <<Zip>>

Re: Settlement Payment from *Steven Williams v. Xanterra Parks & Resorts, Inc.*, Superior Court of California, County of Inyo Case No. ICSI-CVCV-2022-67661

Dear <<First Name>> <<Last Name>>:

Please find enclosed a check in the amount of <<amount of payment>> (“Individual Settlement Payment”). This check is your payment from the settlement in the lawsuit entitled *Steven Williams v. Xanterra Parks & Resorts, Inc.*, Superior Court of California, County of Inyo Case No. ICSI-CVCV-2022-67661 (“Action”).

The lawsuit was filed on February 17, 2022, by Steven Williams (“Plaintiff”) against Xanterra Parks & Resorts, Inc., which is his former employer. On June 7, 2022, Plaintiff amended his complaint to allege a single cause of action, on behalf of the State of California, with respect to himself and other alleged aggrieved employees, to seek recovery of civil penalties pursuant to the Private Attorneys General Act of 2004, California Labor Code § 2698, *et seq.* (“PAGA”), for alleged violations of California Labor Code sections 226 and 2802 – for failure to provide accurate wage statements and reimburse business expenses. Prior to filing the lawsuit, on February 1, 2022, Plaintiff submitted a letter to the California Labor and Workforce Development Agency (“LWDA”), pursuant to PAGA, to provide notice of his intent to seek civil penalties under PAGA for Defendant’s alleged violations of California Labor Code sections 226 and 2802, thereby initiating LWDA Case Number LWDA-CM-865812-22 (the “PAGA Notice”).

Defendant denies all of Plaintiff’s allegations and denies any wrongdoing of any kind associated with Plaintiff’s allegations.

A settlement was reached between Plaintiff and Defendant Xanterra Parks & Resorts, Inc. (“Xanterra”).

On << Date>>, the settlement was approved by the Court, with a portion to be paid to the LWDA and a portion to be paid to all persons employed by Xanterra in a non-exempt position in the State of California at any time during the Covered Time Frame (“Aggrieved Employees”). The period February 1, 2021, through June 7, 2024 is the “Covered Time Frame”.

You are receiving a portion of the settlement (the enclosed Individual Settlement Payment) because you have been identified as an Aggrieved Employee. Your Individual Settlement Payment is based on the total number of pay periods that you worked for Xanterra in California in a non-exempt position during the Covered Time Frame. The Individual Settlement Payment is considered to be 100% penalties, which will be reported on an IRS Form 1099. You are responsible for paying any and all taxes that may be due as a result of any payment issued to you

under the settlement and should consult a tax advisor regarding the tax consequences of such payment.

Under the settlement, as of <<date of entry of order by the Court approving the Settlement>>, the Released Parties were fully released and forever discharged from any and all Released Claims.

“Released Parties” means Xanterra, its parents, subsidiaries, and affiliated companies, current and former agents, officers, directors, managers, shareholders, members, owners, insurers, employees, representatives, and attorneys of the foregoing, and all persons acting by, through, under, or in concert with any of them, and their respective heirs, predecessors, successors, and assigns.

“Released Claims” means all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the facts stated in the PAGA Notice and/or the Action, including but not limited to, claims related to or arising out of alleged failure to provide accurate and complete itemized wage statements pursuant to Labor Code § 226 and failure to reimburse business expenses pursuant to Labor Code § 2802.

The enclosed check is valid for 180 days from the original date of issuance and mailing, and if it is not cashed, deposited, or otherwise negotiated within the 180-day timeframe, it will be cancelled, and the funds associated with the cancelled check will be transmitted to the California State Controller’s Office Unclaimed Property Division in your name and in the amount of your respective Individual Settlement Payment.

Do not call or write the Court or Office of the Clerk of the Court to ask questions about the settlement or to ask tax-related questions. If you have any such questions, you may contact Plaintiff’s counsel, Diversity Law Group, P.C., Larry Lee & Max W. Gavron, at 213-488-6555.

EXHIBIT C

8/14/2024
11:01 AM

DIVERSITY LAW GROUP
Slip Listing

Page 1

Selection Criteria

Slip Classification Open
Client (hand select) Include: Williams, Steven v. Xanterra
Slip.Transaction Ty 2 - 2

Rate Info - identifies rate source and level

Slip ID		Timekeeper	Units	Rate	Slip Value
Dates and Time		Activity	DNB Time	Rate Info	
Posting Status		Client	Est. Time	Bill Status	
Description		Reference	Variance		
70897	EXP	Olympia	2	0.25	0.50
1/31/2022		Photocopies			
WIP		Williams, Steven v. Xanterra			
Photocopies					
70898	EXP	Olympia	1	6.13	6.13
1/31/2022		Postage			
WIP		Williams, Steven v. Xanterra			
Postage					
70534	EXP	Mariana Becerra	1	75.00	75.00
2/1/2022		Court fees			
WIP		Williams, Steven v. Xanterra			
LWDA					
70777	EXP	Linda Lee	1	1726.99	1726.99
2/18/2022		Court fees			
WIP		Williams, Steven v. Xanterra			
One Legal - Complaint					
71191	EXP	Olympia	2	0.25	0.50
2/28/2022		Photocopies			
WIP		Williams, Steven v. Xanterra			
Photocopies					
71192	EXP	Olympia	1	6.13	6.13
2/28/2022		Postage			
WIP		Williams, Steven v. Xanterra			
Postage					
72127	EXP	Linda Lee	1	95.35	95.35
3/23/2022		Atty Service			
WIP		Williams, Steven v. Xanterra			
Attorney Service - Complaint Service					
71301	EXP	Linda Lee	1	175.02	175.02
4/4/2022		Court fees			
WIP		Williams, Steven v. Xanterra			
OneLegal - POS of Summons					

8/14/2024
11:01 AM

DIVERSITY LAW GROUP
Slip Listing

Page 2

Slip ID		Timekeeper	Units	Rate	Slip Value
Dates and Time		Activity	DNB Time	Rate Info	
Posting Status		Client	Est. Time	Bill Status	
Description		Reference	Variance		
72363	EXP	Erika Mejia	1	187.75	187.75
5/4/2022		Atty Service			
WIP		Williams, Steven v. Xanterra			
Attorney Service - Joint Stip					
72085	EXP	Olympia	14	0.25	3.50
5/31/2022		Photocopies			
WIP		Williams, Steven v. Xanterra			
Photocopies					
72086	EXP	Olympia	1	1.56	1.56
5/31/2022		Postage			
WIP		Williams, Steven v. Xanterra			
Postage					
72386	EXP	Erika Mejia	1	187.75	187.75
6/10/2022		Atty Service			
WIP		Williams, Steven v. Xanterra			
Attorney Service - NOE					
72404	EXP	Erika Mejia	1	187.75	187.75
6/17/2022		Atty Service			
WIP		Williams, Steven v. Xanterra			
Attorney Service - CMS					
73259	EXP	Erika Mejia	1	202.75	202.75
8/26/2022		Atty Service			
WIP		Williams, Steven v. Xanterra			
Attorney Service - Oppo					
72922	EXP	Olympia	1	31.40	31.40
8/26/2022		Delivery serv			
WIP		Williams, Steven v. Xanterra			
Federal Express					
74084	EXP	Erika Mejia	1	223.75	223.75
12/6/2022		Atty Service			
WIP		Williams, Steven v. Xanterra			
Attorney Service - Joint Stip					
74100	EXP	Erika Mejia	1	198.75	198.75
12/21/2022		Atty Service			
WIP		Williams, Steven v. Xanterra			
Attorney Service - NOE					
74859	EXP	Valeria Tril	1	234.75	234.75
3/7/2023		Atty Service			
WIP		Williams, Steven v. Xanterra			
Attorney Service - Notice of Remote Appearance					

8/14/2024
11:01 AM

DIVERSITY LAW GROUP
Slip Listing

Page 3

Slip ID		Timekeeper	Units	Rate	Slip Value
Dates and Time		Activity	DNB Time	Rate Info	
Posting Status		Client	Est. Time	Bill Status	
Description		Reference	Variance		
75641	EXP	Erika Mejia	1	201.75	201.75
6/9/2023		Atty Service			
WIP		Williams, Steven v. Xanterra			
Attorney Service - Joint Stip					
76297	EXP	Erika Mejia	1	201.75	201.75
9/13/2023		Atty Service			
WIP		Williams, Steven v. Xanterra			
Attorney Service - Joint Stip					
76306	EXP	Erika Mejia	1	201.75	201.75
9/18/2023		Atty Service			
WIP		Williams, Steven v. Xanterra			
Attorney Service - NOE					
77990	EXP	Olympia	1	9000.00	9000.00
4/8/2024		Arbitrators			
WIP		Williams, Steven v. Xanterra			
Todd Smith Mediation					
78976	EXP	Olympia	1	201.75	201.75
7/8/2024		Atty Service			
WIP		Williams, Steven v. Xanterra			
Attorney Service - Joint Status Report					
78981	EXP	Valeria Tril	1	201.75	201.75
7/17/2024		Atty Service			
WIP		Williams, Steven v. Xanterra			
Attorney Service - Notice of Remote Appearance					
78982	EXP	Olympia	1	223.75	223.75
7/17/2024		Atty Service			
WIP		Williams, Steven v. Xanterra			
Attorney Service - Joint Stip					
78992	EXP	Olympia	1	168.75	168.75
7/25/2024		Atty Service			
WIP		Williams, Steven v. Xanterra			
Attorney Service - NOE					
79016	EXP	Max Gavron	1	250.00	250.00
8/12/2024		Court fees			
WIP		Williams, Steven v. Xanterra			
Final Costs					
Grand Total					
Billable			0.00		14196.58

8/14/2024
11:01 AM

DIVERSITY LAW GROUP
Slip Listing

Page 4

Slip ID	Timekeeper	Units	Rate	Slip Value
Dates and Time	Activity	DNB Time	Rate Info	
Posting Status	Client	Est. Time	Bill Status	
Description	Reference	Variance		
	Unbillable	0.00		0.00
	Total	0.00		14196.58

EXHIBIT D