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**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

**PLAINTIFF’S NOTICE OF MOTION AND
MOTION TO APPROVE SETTLEMENT
AGREEMENT PURSUANT TO THE
PRIVATE ATTORNEYS GENERAL ACT OF
2004; MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT**

Date: September 6, 2024

Time: 9:00 a.m.

Dept.: 1

Complaint Filed: February 17, 2022

Trial Date: None Set

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on that on September 6, 2024, at 9:00 a.m., before the
Honorable Susanne M. Rizo in Department 1 of the above-referenced Court, located at 168 N.
Edwards Street, Independence, California 93526, Plaintiff Steven Williams (“Plaintiff”) will and
hereby does move the Court for entry of an order approving the proposed Private Attorneys
General Act Settlement Agreement and Release (“Settlement Agreement” or “Settlement”)
entered into in the above-captioned civil action between Plaintiff and Defendant Xanterra Parks

1 & Resorts, Inc. (“Defendant”) (Plaintiff and Defendant shall collectively be referred to as the
2 “Parties”) under the Labor Code Private Attorneys General Act of 2004 (the “PAGA”).

3 This motion will be based on this notice of motion, the attached memorandum of points
4 and authorities, the accompanying declarations of Larry W. Lee, Max W. Gavron, Kwanporn
5 “Mai” Tulyathan, and Plaintiff Steven Williams, the records and file herein, and on such other
6 evidence as may be presented at the hearing of the motion.

7
8 DATED: August 14, 2024

DIVERSITY LAW GROUP, P.C.

9
10 By: 

Larry W. Lee

11 Max W. Gavron

12 Attorneys for Plaintiff and the Aggrieved
13 Employees
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1 **I. INTRODUCTION**

2 Pursuant to the Private Attorneys General Act of 2004, Plaintiff Steven Williams
3 (“Plaintiff”) hereby moves the Court for an order approving the non-reversionary PAGA
4 settlement as set forth in the concurrently filed Private Attorneys General Act Settlement
5 Agreement and Release (“Settlement Agreement” or “Settlement” or “SA”) with Defendant
6 Xanterra Parks & Resorts, Inc. (“Defendant”) (together with Plaintiff, the “Parties”).

7 This lawsuit is premised upon Defendant’s alleged violation of California Labor Code §
8 2698 *et seq.*, the Private Attorneys General Act of 2004 (“PAGA”). Specifically, Plaintiff alleged
9 that Defendant failed to reimburse work-related expenses and provide accurate wage statements
10 to employees who were paid overtime wages. Based thereon, Plaintiff sought civil penalties
11 under PAGA on behalf of the State of California and other aggrieved employees.

12 As demonstrated below and in the accompanying Declaration of Max W. Gavron
13 (“Gavron Decl.”), the proposed settlement warrants the Court’s approval. This settlement was
14 reached after investigation and discovery, including informal discovery conducted in connection
15 with the Parties’ settlement negotiations.

16 Pursuant to the terms of the Parties’ proposed Settlement Agreement, Defendant will pay
17 the total amount of \$415,000.00 for the release of PAGA claims in this lawsuit by the aggrieved
18 employees. This amount includes the following:

- 19 • An enhancement payment of \$10,000.00 to Plaintiff, in recognition for his efforts
20 in obtaining the benefits of the settlement on behalf of other aggrieved employees
21 and for Plaintiff’s general release of his claims against Defendant (SA ¶¶ 3.a.2,
22 8.a);
- 23 • Settlement administration costs of \$9,995.00 to Phoenix Settlement
24 Administrators, the third-party Settlement Administrator to be retained by the
25 Parties for issuing settlement payments to aggrieved employees along with an
26 accompanying settlement notice (SA ¶ 3.a.3); and
- 27 • Plaintiff’s Counsel’s fees of up to \$145,250.00, and actual litigation costs of
28

1 \$14,196.58¹ (SA ¶ 3.a.1; Gavron Decl. ¶ 8, Ex. B).

2 After subtracting the settlement administration costs, Plaintiff's Counsel's attorneys' fees
3 and costs, Plaintiff's enhancement payment, the remaining amount of \$235,558.42 will be
4 distributed in accordance with PAGA's requirements. Gavron Decl. ¶ 9 Pursuant to the PAGA,
5 75% of the net amount, or approximately \$176,668.82 will be paid to the California Labor and
6 Workforce Development Agency, and the remaining \$58,889.61 will be distributed to the
7 aggrieved employees. *Id.*

8 The proposed release for the aggrieved employees is narrowly tailored to release only
9 claims for civil penalties under PAGA arising out of the facts alleged or that could have been
10 alleged in this lawsuit and does not release any other claims.

11 Accordingly, the proposed settlement constitutes an adequate, fair, and reasonable
12 settlement on behalf of the LWDA and aggrieved employees and accomplishes the goals of
13 PAGA.

14 **II. PROCEDURAL HISTORY**

15 On or about February 1, 2022, Plaintiff submitted his written notice under Labor Code §
16 2699.3 (the "PAGA Notice") to the California Labor & Workforce Development Agency
17 ("LWDA") and Defendant. Gavron Decl. ¶ 2, Ex. A (PAGA Notice). As set forth in the PAGA
18 Notice, Plaintiff alleged that Defendant violated Labor Code §§ 226(a) and 2802. *Id.*

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

23 On June 7, 2022, upon entry of the Court's Order granting the Parties' stipulation,
24 Plaintiff filed a First Amended Complaint alleging a single cause of action for violation of Labor
25 Code § 2698, *et seq.*, predicated on underlying violations of Labor Code §§ 226 and 2802. *Id.* ¶

27 ¹ The Parties' Settlement Agreement allocates up to \$20,000 in costs. The balance between
28 those actually incurred and provided for in the Settlement Agreement will be allocated to the net
settlement amount for distribution to the State and Aggrieved Employees.

1 4. The First Amended Complaint is the operative complaint (“Complaint”). No class claims
2 remain in the Action.

3 On or about July 7, 2022, Defendant filed a motion to compel arbitration of Plaintiff’s
4 PAGA claim on an individual basis. The Court stayed the Action on September 9, 2022,
5 deferring ruling on Defendant’s motion to compel arbitration pending the California Supreme
6 Court’s ruling in *Adolph v. Uber Technologies*, Case No. S274671. *Id.* ¶ 6. The Parties
7 subsequently stipulated to continue the stay of Action and Court’s ruling on Defendant’s motion
8 to compel arbitration pending private mediation. *Id.* ¶ 6.

9 In anticipation of mediation, the Parties exchanged informal discovery, including
10 information regarding the number of employees who were paid overtime wages, number of pay
11 periods, and documents regarding reimbursements and other policies, which allowed Plaintiff to
12 conduct liability and exposure analysis. *Id.* ¶ 7.

13 Thereafter, on May 8, 2024, the Parties engaged in an all-day mediation with neutral
14 Todd Smith, Esq. Following arm’s length negotiations and discussions between the Parties both
15 during and following mediation, during which the Parties spoke at length about the strengths and
16 weaknesses of each side’s claims and defenses, and the scope of Defendant’s purported liability,
17 the Parties were able to reach an agreement in principle. *Id.* ¶ 8. The Parties entered into a
18 Memorandum of Understanding, then finalized the settlement terms in the concurrently filed
19 Settlement Agreement, a true and correct copy of which is attached to the Declaration of Max W.
20 Gavron. *Id.*, Ex. B. The settlement is the result of informed and non-collusive arm’s length
21 negotiations.

22 **III. SUMMARY OF THE PROPOSED PAGA SETTLEMENT**

23 The material terms of the settlement are described below and set forth in detail in the
24 concurrently filed Settlement Agreement.

25 **A. The Aggrieved Employees**

26 The purported aggrieved employees affected by this Settlement, or Aggrieved
27 Employees, are defined as “all persons employed by Defendant in a non-exempt position in the
28 State of California at any time during the Covered Time Frame.” SA ¶ 3.a.5. The Covered Time

Frame in this matter runs from February 1, 2021, through June 7, 2024. *Id.* Based upon Defendant’s records, as of April 30, 2024, there are approximately 18,325 pay periods during the Covered Time Frame. *Id.*

B. Settlement Sum and Allocation

The Settlement Agreement requires Defendant to pay a total of Four Hundred Fifteen Thousand Dollars (\$415,000.00) (the “Gross Settlement Amount”). SA ¶ 3.a. The balance of the Gross Settlement Amount remaining after deduction of the approved Plaintiff’s Counsel’s attorneys’ fees and costs, Plaintiff’s Enhancement Payment, and Settlement Administration Costs, totaling \$9,995.00 (“Net Settlement Fund”), will be available for distribution to the LWDA and Aggrieved Employees. *Id.* ¶¶ 3.a.1, 3.a.2, 3.a.3, 3.a.5; Gavron Decl. ¶ 9. Seventy-five percent² (75%) of the Net Settlement Fund, or approximately \$176,668.82, will be paid to the LWDA for PAGA penalties (“LWDA Payment”). SA ¶ 3.a.5; Gavron Decl. ¶ 10. The remaining twenty-five percent (25%), or approximately \$58,889.61, will be distributed to the Aggrieved Employees (“Employees’ Portion”). SA ¶ 3.a.5, Gavron Decl. ¶ 10.

The portion of the Net Settlement Fund (or Employees’ Portion) distributed to Aggrieved Employees will be distributed on a *pro rata* basis, based on the number of pay periods each Aggrieved Employee worked in a non-exempt position during the Covered Time Frame. SA ¶ 7.a.1. Defendant represents that there are approximately 1,300 Aggrieved Employees who worked approximately 18,325 pay periods during the Covered Time Frame. *Id.* ¶ 3.a.5. Based thereon, each Aggrieved Employee will be entitled to recover, on average, approximately \$45.30 each. Gavron Decl. ¶ 13. The amount any particular Aggrieved Employee will be entitled to recover will be greater or lower than this average depending on the number of pay periods he or she worked during the same pay period. *Id.* This is fair, as it directly allocates greater penalties to individual Aggrieved Employees who have allegedly suffered greater harm. *Id.* The Settlement

² California recently passed an amended version of the PAGA statute, which allocates less to the state and more to the aggrieved employees. However, by its terms, this new version of the statute only applies to cases where the PAGA Notice was served on or after June 19, 2024. Accordingly, Plaintiff analyzes this settlement pursuant to the terms of the prior version of the statute.

1 will require Defendant to pay approximately \$22.65 per pay period included in the settlement
2 (\$415,000.00 / 18,325 pay periods).

3 The Employees' Portion payments to Aggrieved Employees (or Individual Settlement
4 Payments) shall be accompanied by a Cover Letter that explains the settlement and calculation of
5 the Individual Settlement Payment amount. SA ¶ 7.a.1, 7.b. The Cover Letter also provides
6 contact information for the Settlement Administrator in the event any Aggrieved Employee has
7 questions. *See* SA ¶ 7.b, Ex. A.

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

11 As part of the Settlement Agreement, Defendant does not object to Plaintiff's Counsel's
12 request for attorneys' fees of \$145,250.00, which is approximately thirty-five percent (35%) of
13 the Gross Settlement Amount. SA ¶ 3.a.1. While the Settlement Agreement provides for
14 reimbursement of documented litigation costs of up to \$20,000.00, Plaintiff's Counsel is only
15 requesting for reimbursement of \$14,196.58 in actual litigation costs. *Id.* ¶ 3.a.1; Gavron Decl.
16 ¶ 33, Ex. C. Also, as part of the Settlement Agreement, Defendant does not object to Plaintiff's
17 request for an Enhancement Payment of \$10,000.00, in recognition for Plaintiff's efforts in
18 obtaining the benefits of the settlement on behalf of other purported aggrieved employees and
19 for Plaintiff's general release of his claims against Defendant. SA ¶¶ 3.a, 3.a.2.

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

24 **C. Scope of the Released Claims by Aggrieved Employees**

25 In exchange for such payments, Plaintiff, the Aggrieved Employees, and the State of
26 California will release Defendant, its parents, subsidiaries, and affiliated companies, current and
27 former agents, officers, directors, managers, shareholders, members, owners, insurers,
28 employees, representatives, and attorneys of the foregoing, and all persons acting by, through,

under, or in concert with any of them, and his respective heirs, predecessors, successors, and assigns (the “Released Parties”) from the following:

all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the facts stated in the PAGA Claim and/or the Lawsuit, 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”).

SA ¶¶ 8.b, 8.c. This release is appropriately tailored as it only releases claims for civil penalties under PAGA arising out of the facts alleged or that could have been alleged in this lawsuit and PAGA Notice and does not release any other claims. Gavron Decl. ¶ 18. Further, other than Plaintiff, none of the Aggrieved Employees are bound by any general release or waiver of the protections of Code of Civil Procedure § 1542 as part of this settlement. SA ¶ 8.a.

IV. THE PAGA SETTLEMENT IS REASONABLE AND SHOULD BE APPROVED

A. PAGA Overview

In 2004, California enacted PAGA, which allows aggrieved employees, on behalf of the LWDA and other aggrieved employees, to bring suit against their employers for alleged violations of the California labor laws and to obtain penalties that previously could only be obtained by the State. The PAGA was enacted because the Legislature determined that it was “in the public interest to allow aggrieved employees, acting as private attorneys general, to recover civil penalties for Labor Code violations,” since the State had not been able to fully or adequately enforce its labor laws. *Arias v. Superior Court*, 46 Cal. 4th 969, 980 (2009); *Ochoa-Hernandez v. Cjaders Foods, Inc.*, 2010 WL 1340777, *4 (N.D. Cal. April 2, 2010) (“The act’s declared purpose is to supplement enforcement actions by public agencies, which lack adequate resources to bring all such actions themselves. Unlike class actions, these civil penalties are not meant to compensate unnamed employees because the action is fundamentally a law enforcement action.”).

Labor Code § 2699(a) states that any Labor Code provision “that provides for a civil penalty to be assessed and collected by the [LWDA] may, as an alternative, be recovered through

1 a civil action brought by an aggrieved employee on behalf of himself or herself and other current
2 or former employees pursuant to the procedures specified in Section 2699.3.” An “aggrieved
3 employee” means “any person who was employed by the alleged violator and against whom one
4 or more of the alleged violations was committed.” Cal. Lab. Code § 2699, subd. (c). Prior to
5 commencing an action, the allegedly aggrieved employee must provide notice to the LWDA and
6 the employer setting forth the “specific provisions of [the Labor Code] alleged to have been
7 violated, including the facts and theories to support the alleged violation.” Cal. Lab. Code §
8 2699.3, subd. (a)(1). If the LWDA decides not to investigate the allegations or issue a citation to
9 the employer, the proposed representative plaintiff is entitled to commence a PAGA action after
10 65 days. Cal. Lab. Code § 2699.3, subd. (a)(2).

11 The California Supreme Court has explained that a plaintiff who brings a PAGA claim
12 “represents the same legal right and interest as state labor law enforcement agencies,” and brings
13 PAGA claims “as the proxy or agent” of the State. *Arias*, 46 Cal. 4th at p. 986. Of the civil
14 penalties recovered, seventy-five percent goes to the LWDA, and the remaining twenty-five
15 percent goes to the “aggrieved employees” for collecting the penalties on behalf of the State. Cal.
16 Lab. Code § 2699, subd. (i); *Baumann v. Chase Inv. Servs. Corp.*, 747 F.3d 1117, 1123 (9th Cir.
17 2014) (a PAGA representative’s recovery is “an incentive to perform a service to the state, not
18 restitution for wrongs done to members of the class”).

19 **B. Class Action Settlement Standards Do Not Govern the Settlement Approval**
20 **Process for PAGA Claims**

21 In class action cases, the purpose of the Court’s preliminary evaluation of the settlement
22 is to determine whether it is within the “range of reasonableness,” and thus whether notice to the
23 class of the terms and conditions of the settlement, and the scheduling of a formal fairness
24 hearing, are worthwhile. *See* Alba Conte & Herbert B. Newberg, *4 Newberg on Class Actions* §
25 11.25, *et seq.* and § 13.64 (4th ed. 2002 and Supp. 2004) (“*Newberg*”). The “judge must make a
26 preliminary determination on the fairness, reasonableness, and adequacy of the settlement terms
27 and must direct the preparation of notice of the certification, proposed settlement, and date of the
28 final fairness hearing.” *Manual for Complex Litigation, Fourth* § 21.632 (Fed. Jud. Ctr., 4th ed.

2004). To make the preliminary fairness determination, courts may consider several relevant factors, including “the strength of the plaintiff’s case; the risk, expense, complexity, and likely duration of further litigation; the risk of maintaining class action status through trial; the amount offered in settlement; the extent of discovery completed and the stage of the proceedings; [and] the experience and views of counsel....” *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998).

By contrast, court approval of PAGA settlements is governed by Section 2699(1) of the Labor Code, which provides, in relevant part: “The court shall review and approve any penalties sought as part of a proposed settlement agreement pursuant to this part.” The parties are not obligated to “satisfy class action requirements,” including the standards for class action settlement approval. *Arias*, 46 Cal. 4th at pp. 980-988 (affirming lower court’s holding that “plaintiff need not satisfy class action requirements” to assert a PAGA claim).

Notably, unlike the class action settlement approval process, there is also no statutory mechanism for this Court to conduct a two-step settlement approval review. Cal. Lab. Code § 2699, subd. (1). In addition, “[u]nnamed employees need not be given notice of the PAGA claim, nor do they have the ability to opt-out of the representative PAGA claim” or “contest a settlement, if any, reached between the parties.” *Ochoa-Hernandez*, 2010 WL 1340777 at p. *13.

C. The Scope of the Release is Appropriately Limited

As explained above, the release for Aggrieved Employees is narrowly tailored to release only claims for civil penalties under PAGA pursuant to Labor Code §§ 226 and 2802, arising out of the facts alleged or that could have been alleged in this lawsuit and PAGA Notice. The release does not impact any Aggrieved Employees’ ability to pursue any other claims outside of this scope as it does not release their individual Labor Code claims. Therefore, this limited scope of the release also supports approval of the settlement.

Because an aggrieved employee’s PAGA action is a substitute for an action brought by the government, “judgment in [a PAGA] action is binding not only on the named employee plaintiff but also on government agencies and any aggrieved employee not a party to the proceeding.” *Arias*, 46 Cal. 4th at p. 986. However, “the nonparty employees, because they were

1 not given notice of the action or afforded any opportunity to be heard, would not be bound by the
2 judgment as to remedies other than civil penalties.” *Id.* at p. 987; *see also*, Cal. Lab. Code §
3 2699, subd. (g)(l) (non-party aggrieved employees retain all rights “to pursue or recover other
4 remedies available under state or federal law, either separately or concurrently with an action
5 taken under this part”).

6 Accordingly, the Aggrieved Employees will be subject to only a limited release strictly
7 confined to the violations of PAGA under Labor Code §§ 226 and 2802, and any resulting claim
8 for attorneys’ fees and costs. SA ¶ 8.b. The release is therefore appropriately tailored.

9 **D. Plaintiff’s Rationale for Agreeing to the Settlement**

10 Citing a decline in “[s]taffing levels for state labor law enforcement” and finding the
11 “vigorous assessment and collection of civil penalties as provided in the Labor Code” to
12 sometimes be “the only meaningful deterrent to unlawful conduct,” the Legislature enacted
13 PAGA in 2003 to deter violations of the Labor Code by augmenting the limited enforcement
14 capability of the LWDA with private enforcement actions by “aggrieved employees” acting as
15 private attorneys general. *See* 2003 Cal. Stat. ch. 906 § 1; *see also Iskanian v. CLS*
16 *Transportation Los Angeles, LLC*, 59 Cal. 4th 348, 383 (2014). Thus, a PAGA is in the nature of
17 in the nature of an enforcement action, where the named plaintiff acts as a proxy of the LWDA
18 to collect penalties otherwise recoverable only by the LWDA. *See Arias*, 46 Cal. 4th at 986; *see*
19 *also Iskanian*, 59 Cal. 4th at 381-82. In that role, the named plaintiff “take[s] on a special
20 responsibility to their fellow aggrieved workers who are effectively bound by any judgment.”
21 *See O’Connor*, 201 F. Supp. 3d at 1134.

22 Plaintiff’s claims in this action are based on alleged violations of Labor Code §§ 226,
23 2802, and 2698, *et seq.* *See generally* Plaintiff’s Complaint and PAGA Notice. When reviewing
24 a settlement agreement, “the test is not the maximum amount plaintiffs might have obtained at
25 trial on the complaint” (*see Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 250
26 (2001)), nor is it “whether the settlement agreement is perfect in the estimation the reviewing
27 court” (*see Lane v. Facebook, Inc.*, 696 F.3d 811, 819 (9th Cir. 2012)). The test is “whether the
28 settlement is reasonable under all of the circumstances.” *See Wershba*, 91 Cal. App. 4th at 250.

1 Relevant considerations include the strength of a plaintiff's case and the risk, expense,
2 complexity, and likely duration of further litigation. *See Kullar v. Foot Locker Retail, Inc.*, 168
3 Cal. App. 4th 116, 130 (2008); *see also Smith v. H.F.D. No. 55, Inc.*, No. 2:15-cv-01293-KJM-
4 KJN, 2018 WL 1899912 at *2 (E.D. Cal. Apr. 20, 2018). In PAGA settlements, courts also
5 consider their authority to award less than the maximum penalty authorized by PAGA. *See* Cal.
6 Lab. Code § 2699(e)(2); *see also Smith*, 2018 WL 1899912 at *3.

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

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

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

14 Numerous courts have held that **gross** settlements approximating between only 8 and
15 25% of the defendant’s potential exposure are fair and reasonable. *See, e.g., In re Mego Fin.*
16 *Corp. Secs. Litig.*, 213 F.3d 454, 459 (9th Cir. 2000) (holding that class action settlement
17 recovering 16% of potential exposure was fair and reasonable; “[i]t is well-settled law that a cash
18 settlement amounting to only a fraction of the potential recovery does not per se render the
19 settlement inadequate or unfair. Rather, the fairness and the adequacy of the settlement should be
20 assessed relative to risks of pursuing the litigation to judgment”; noting that whether the
21 settlement is fair and adequate depends on the “the difficulties in proving the case”);
22 *Bellinghausen v. Tractor Supply Co.*, No. 13-CV-02377-JSC, 2015 WL 1289342, at *6 (N.D.
23 Cal. Mar. 20, 2015) (holding that class action settlement recovering between 8.5% and 25% of
24 the defendant’s potential exposure was fair); *Van Ba Ma v. Covidien Holding Inc.*, No. 8:12-cv-
25 02161-DOC-RNBx, 2014 WL 13296 (C.D. Cal. Jan. 31, 2014) (court granted preliminary
26 approval of wage and hour class settlement which obtained **only 9.1%** of projected damages,
27 given the risks of continued litigation) *Villegas v. J.P. Morgan Chase & Co.*, No. CV 09-00261
28 SBA EMC, 2012 WL 5878390, at *6 (N.D. Cal. Nov. 21, 2012) (holding that gross class action

1 settlement of approximately 15% of the potential recovery was fair and reasonable); *Greko v.*
2 *Diesel U.S.A., Inc.*, No. 10-cv-02576 NC, 2013 WL 1789602, at *5 (N.D. Cal. Apr. 26, 2013)
3 (24 percent was reasonable).

4 In the present case, the Gross Settlement Amount is approximately 22.6% of the
5 maximum exposure (\$415,000.00 ÷ \$1,832,500), which is a very reasonable settlement amount.
6 In sum, this settlement is fair, reasonable, and consistent with PAGA's policies and purposes
7 under these circumstances.

8 **E. The Attorneys' Fees are Reasonable**

9 PAGA allows a prevailing plaintiff to obtain attorneys' fees and costs. Cal. Lab. Code §
10 2699, subd. (g). Similar to awarding fees in a class action, California state and federal courts
11 have recognized that an appropriate method for determining award of attorneys' fees for
12 representative actions is to use a percentage of the total value of benefits to class members by the
13 settlement. *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 254 (2001); *Serrano v.*
14 *Priest*, 20 Cal. 3d 25, 34 (1977) ("*Serrano III*"); *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478
15 (1980); *Vincent v. Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1997). The purpose of this
16 equitable doctrine is to avoid unjust enrichment of counsel and to "spread litigation costs
17 proportionally among all the beneficiaries so that the active beneficiary does not bear the entire
18 burden alone." *Vincent*, 557 F. 2d at p. 769.

19 The Common Fund doctrine is predicated on the principle of preventing unjust
20 enrichment. When a litigant's efforts create or preserve a fund from which others derive benefits,
21 he may require the passive beneficiaries to compensate those who created the fund. Both
22 California state and federal courts have embraced this doctrine. *Serrano III*, 20 Cal. 3d at p. 35;
23 *Vincent*, 557 F.2d at p. 769. Similarly, in *City and County of San Francisco v. Sweet*, 12 Cal. 4th
24 105, 110 (1995), the California Supreme Court recognized that the common fund doctrine has
25 been applied "consistently in California when an action brought by one party creates a fund in
26 which other persons are entitled to share." The reasons for applying the common fund doctrine
27 include: "fairness to the successful litigant, who might otherwise receive no benefit because his
28 recovery might be consumed by the expenses; correlative prevention of an unfair advantage to

1 the others who are entitled to share in the fund and who should bear their share of the burden of
2 its recovery; encouragement of the attorney for the successful litigant who will be more willing
3 to undertake and diligently prosecute proper litigation for the protection or recovery of the fund
4 if he is assured that he will be properly and directly compensated should his efforts be
5 successful.” *Id.*

6 California state and federal courts have recognized that an appropriate method for
7 determining award of attorneys’ fees is based on a percentage of the total value of benefits to
8 class members by the settlement. *Chavez v. Netflix, Inc.*, (2008) 162 Cal.App.4th 43, 66, fn. 11;
9 *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 254 (2001); *Serrano v. Priest*, 20 Cal.
10 3d 25, 34 (1977) [*Serrano III*]; *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *Vincent v.*
11 *Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1997). The purpose of this equitable doctrine
12 is to avoid unjust enrichment to the Class and to “spread litigation costs proportionally among all
13 the beneficiaries so that the active beneficiary does not bear the entire burden alone.” *Vincent v.*
14 *Hughes Air West, Inc.*, *supra*, 557 F.2d at 769.

15 The California Supreme Court has provided guidance regarding the award of attorneys’
16 fees in wage and hour class action settlements. Under California law, the award of attorneys’
17 fees in common fund wage and hour class action settlements should start with the percentage
18 method. *See Laffitte v. Robert Half Int’l*, 1 Cal. 5th 480, 503 (2016) (“We join the overwhelming
19 majority of federal and state courts in holding that when class action litigation establishes a
20 monetary fund for the benefit of the class members, and the trial court in its equitable powers
21 awards class counsel a fee out of that fund, the court may determine the amount of a reasonable
22 fee by choosing an appropriate percentage of the fund created.”). Under the percentage of the
23 fund method, the Court’s objective remains to “mimic the market” in fixing a reasonable fee. *See*
24 *Gaskill v. Gordon*, 160 F.3d 361, 363 (7th Cir. 1998) (J. Posner) (“When a fee is set by a court
25 rather than by contract, the object is to set it at a level that will approximate what the market will
26 set.... The judge, in other words, is trying to mimic the market in legal services.”).

27 Here, the fee award representing 35% of the fund clearly falls within that range and is
28 consistent with other rulings of other courts and comprehensive surveys of class action
settlements and fee awards. *See Martin v. AmeriPride Servs.*, 2011 U.S. Dist. LEXIS 61796, 23

(S.D. Cal. June 9, 2011) (recognizing that “courts may award attorney’s fees in the 30-40% range in wage and hour class actions that result in recovery of a common fund under \$10 million”); *see also* Eisenberg & Miller, *Attorney Fees in Class Action Settlements: An Empirical Study: 1993-2008*, 7 J. of Empirical Leg. Stud. 248, 262, fn. 16 (2010) (independent studies of class action litigation nationwide conclude that fees in the range sought here are consistent with market rates). It is also critical to note that prompt settlement cannot be used to diminish the fee or the enhancement based on a percentage-of-the-fund. *Lealao*, 82 Cal. App. 4th at p. 52 (the promptness of settlement “cannot be used to justify the refusal to apply a multiplier”). According to *Lealao*, courts placed “an extraordinarily high value” on settlement, and counsel should be rewarded, not punished, for achieving this goal in a timely fashion. *Id.* Here, Plaintiff’s request for a fee award of \$145,250.00, or thirty-five percent, is reasonable and fair when compared to the results achieved. Accordingly, the Court should approve this amount.

F. The Costs are Reasonable

Additionally, Plaintiff’s Counsel’s reimbursement of actual litigation costs in the amount of \$14,196.58 is also reasonable, especially in light of the fact that the Parties agreed that Plaintiff’s Counsel may seek up to \$20,000.00 as reimbursement for litigation costs under the Settlement Agreement. *See* SA ¶ 3.a.1; Gavron Decl. ¶ 33 Ex. C. As set forth in Plaintiff’s Counsel’s declaration, the costs were all directly incurred in the prosecution of the Action, including, but not limited to, filing fees, service of process costs, mediation costs, and other costs. Gavron Decl. ¶ 33. As such, the requested costs are fair and reasonable and should be approved.

G. The Settlement Administrator’s Fees Should be Approved

The Parties have agreed to pay actual costs of administration, which are estimated not to exceed \$9,995.00 to the Settlement Administrator, Phoenix Settlement Administrators, to administer this settlement. SA ¶ 3.a.3. The Parties believe that the administration fee is reasonable and should be approved. Gavron Decl. ¶ 17.

H. Plaintiff’s Enhancement Payment Should Be Approved

Courts have held that named plaintiff in class, or private attorney general actions can

1 request a service award. *Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 958-59 (9th Cir. 2009)
2 (explaining that service awards “are intended to compensate class representatives for work done
3 on behalf of the class, to make up for financial or reputational risk undertaken in bringing the
4 action, and, sometimes, to recognize their **willingness to act as a private attorney general**”)
5 (emphasis added).

6 Here, Plaintiff seeks \$10,000.00 for the enhancement award, which is intended to
7 compensate Plaintiff for the time spent on this case, including reviewing pleadings, including his
8 PAGA letter to the LWDA, the complaints, the Settlement Agreement, and his declaration,
9 providing information and documents for this lawsuit and the resulting settlement, and for
10 executing a general release, including for all known and unknown claims under Civil Code §
11 1542. Declaration of Steven Williams (“Williams Decl.”) ¶¶ 6, 7. Plaintiff provided a general
12 release, which is more expansive than the release provided by the aggrieved employees, and thus
13 an enhancement is warranted. This requested enhancement is consistent with awards approved
14 in other common fund cases. *See Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294, 299-
15 300 (N.D. Cal. 1995) (incentive award of \$50,000); *In re Dun & Bradstreet Credit Servs.*
16 *Customer Litig.*, 130 F.R.D. 366, 374 (S.D. Ohio 1990) (two incentive awards of \$55,000, and
17 three incentive awards of \$35,000); *Brotherton v. Cleveland*, 141 F. Supp. 2d 907, 913-14 (S.D.
18 Ohio 2001) (granting a \$50,000 incentive award); *Enter. Energy Corp. v. Columbia Gas*
19 *Transmission Corp.*, 137 F.R.D. 240, 251-52 (S.D. Ohio 1991) (\$50,000 awarded to each class
20 representative); *Glass v. UBS Fin. Servs.*, No. C-06-4068, 2007 U.S. Dist. LEXIS 8476, at *51-
21 52 (N.D. Cal. Jan. 27, 2007) (awarding \$25,000 incentive award in FLSA overtime wages class
22 action); *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998) (affirming \$25,000 incentive
23 award to class representative in ERISA case).

24 **I. Notice to the LWDA Has Been Provided**

25 Concurrent with the filing of this Motion, Plaintiff uploaded the instant motion to the
26 LWDA’s website. Gavron Decl. ¶ 34, Ex. D.

27 **V. CONCLUSION**

28 Based on the above, Plaintiff requests that the Court approve the current PAGA

1 settlement.

2
3 DATED: August 14, 2024

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4
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