Aaron A. Bartz (SBN 198722)
aaron@bartzlawgroup.com
Rex J. Phillips (SBN 237747)
rex@bartzlawgroup.com
BARTZ LAW GROUP, APC
5151 California Ave., Suite 100
Irvine, California 92617
Tel.: (949) 504-4413 / Fax: (949) 656-7760

Walter L. Haines, Esq. (SBN 71075)
walter@uelglaw.com
UNITED EMPLOYEES LAW GROUP, PC
8605 Santa Monica Blvd., #63354
West Hollywood, CA 90069
Tel.: (562) 256-1047 / Fax: (562) 256-1006

Attorneys for Plaintiff MICHAEL INGRAM and other aggrieved employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

MICHAEL INGRAM, on behalf of himself and other aggrieved employees;

Plaintiffs,

v.

MP MINE OPERATIONS, LLC, a Nevada limited liability company; and DOES 1 through 100, inclusive,

Defendants.

Case No. CIVSB2405115

[Assigned For All Purposes To: Hon. David E. Driscoll, Dept. S22]

PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR APPROVAL OF PRIVATE ATTORNEYS GENERAL ACT SETTLEMENT AGREEMENT, FOR ATTORNEYS' FEES AND COSTS AND ADMINISTRATIVE FEES; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

[Declarations of Aaron A. Bartz, Walter Haines, Michael Ingram, Jonathan Paul, and [proposed] Order filed concurrently herewith]

Date: May 1, 2025
Time: 8:30 a.m.
Dept.: S22

PLEASE TAKE NOTICE that on May 1, 2025, at 8:30 a.m., or as soon thereafter as the matter may be heard before the Honorable David E. Driscoll, Dept. S22 of the Superior Court of the State of California, County of San Bernardino, San Bernardino Justice Center, 247 West Third Street, San Bernardino, California 92415, Plaintiff Michael Ingram ("Plaintiff") will and hereby does move for entry of an Order and Judgment to include the following provisions:

1. Granting approval, pursuant to California Labor Code section 2699, subd. (l)(2) of the proposed settlement between Plaintiff and Defendant MP Mine Operations, LLC ("Defendant") of the claims brought pursuant to the Private Attorneys General Act of 2004 ("PAGA") as set forth in the PAGA Settlement Agreement ("Settlement Agreement"), attached as Exhibit 1 to the Declaration of Aaron A. Bartz;

2. Approving the PAGA Fund payable to the State of California and Aggrieved Employees as authorized by California Labor Code section 2699, subd. (i);

3. Appointing Xpand Legal Consulting, LLC as the Settlement Administrator;

4. Directing Defendant to transmit settlement funds to the Settlement Administrator in the total amount of $570,000 pursuant to the Settlement Agreement;

5. Directing the Settlement Administrator to distribute the settlement funds to the Aggrieved Employees, and distributing funds to the Labor and Workforce Development Agency ("LWDA"), Plaintiff's Counsel, and for Settlement Administration Costs, in accordance with the terms of the Settlement Agreement;

6. Awarding to Plaintiff's Counsel, from the total $570,000 settlement amount, the amount of $190,000 as compensation for reasonable attorneys' fees, $3,500 for reimbursement of litigation costs and expenses, $7,500 for settlement administration costs, and $5,000 to Plaintiff.

This motion is based on this Notice of Motion and Motion, the Memorandum of Points and Authorities, the Settlement Agreement, the Declarations of Aaron A. Bartz, Walter Haines, Michael Ingram, and Jonathan Paul, the pleadings and other records on file with the Court in this matter, and such evidence and oral argument as may be presented at the hearing on this Motion.

Dated: February 20, 2025

BARTZ LAW GROUP, APC

By: __/s/Aaron A. Bartz/s/________________

Aaron A. Bartz

Attorneys for Plaintiff MICHAEL INGRAM

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

State Cases

Federal Cases

State Statutes

Other Authorities

I.

INTRODUCTION AND SUMMARY OF MOTION

This is an action brought by Plaintiff Michael Ingram ("Plaintiff"), pursuant to the Private Attorneys General Act of 2004 ("PAGA"), to recover civil penalties for himself and other aggrieved employees and the State of California. Plaintiff and the other aggrieved employees are non-exempt employees who worked for Defendant MP Mine Operations, LLC ("Defendant"). Plaintiff, on behalf of himself and other aggrieved employees alleges multiple California wage and hour violations including failure to pay wages and all compensation due, failure to reimburse expenses, failure to authorize and permit meal and rest periods, and related violations.

Plaintiff has agreed to settle the PAGA penalties for the Gross Settlement Amount of **$570,000**. (See Declaration of Aaron A. Bartz ("Bartz Decl."), Ex. 1). The Gross Settlement Amount includes all attorneys' fees and costs, settlement administration expenses, plaintiff's enhancement payment, and penalties payments to the aggrieved employees and the Labor and Workforce Development Agency (LWDA). The PAGA Fund to be distributed to the aggrieved employees and the LWDA is approximately $364,000. The PAGA Fund will be distributed 75% to the LWDA ($273,000), and 25% to the aggrieved employees ($91,000).

This settlement is fair, reasonable and adequate, and therefore should be approved by this Court.

II.

PROCEDURAL HISTORY AND FACTUAL BACKGROUND

Defendant owns and operates a rare earth mine processing facility in Mountain Pass, California. Plaintiff and other aggrieved employees worked for Defendant as non-exempt employees in California.

Plaintiff filed and served his PAGA letter on the Labor and Workforce Development Agency (LWDA) on November 22, 2023, and thereafter served an amended PAGA letter on February 2, 2024. (Declaration of Aaron Bartz ("Bartz Decl."), ¶ 9, and Ex. 2). Plaintiff filed his Complaint on February 8, 2024. (Bartz Decl., ¶ 9, and Ex. 3 thereto). After serving his Complaint, Plaintiff prepared an initial set of discovery, but Defendant represented that it would be filing a

Motion to Compel Arbitration, so Plaintiff waited to serve that discovery until Defendant's Motion was heard. Defendant thereafter filed a Motion to Compel Arbitration based upon the holding in *Viking River Cruises, Inc. v. Moriana*, 596 U.S. 639 (2022) ("*Viking River*"). The parties thereafter fully briefed the Motion to Compel Arbitration, and then continued the hearing to allow the parties to discuss a possible informal resolution of the case. (Bartz Decl., ¶ 10.) In order to evaluate the PAGA claims asserted, Defendant produced a sampling of data, including payroll records, timekeeping records, employment policies and employment handbooks bearing on the claims alleged. (Bartz Decl., ¶ 10.) Plaintiff then engaged a damages expert to prepare an estimate of the damages exposure. (Bartz Decl., ¶ 11.)

The parties thereafter engaged in lengthy settlement negotiations over a period of many months, which involved considerable disagreements as to the claims and defenses alleged by each side. (Bartz Decl., ¶ 11). Ultimately, the parties were able to conclude a settlement of the PAGA claims. (*Ibid*.)

III.

SUMMARY OF SETTLEMENT

A. Aggrieved Employees

The Settlement covers the following aggrieved employees:

All persons employed by Defendant as non-exempt employees in California between November 22, 2022 to January 31, 2025. Based upon Defendant's records, there are approximately 586 aggrieved employees between November 22, 2022 and January 31, 2025. (Bartz Decl., ¶ 7).

B. Settlement Fund

Defendant will pay into a common fund the total amount of $570,000 within 10 days of the Effective Date. (Bartz Decl., ¶ 3.) Prior to distributing the settlement checks to aggrieved employees, the Settlement Administrator shall review the addresses provided using the National Change of Address database. Should any of the settlement checks be returned undeliverable, the Settlement Administrator will use the best available technology (via a skip trace or other reasonable method) to locate Settlement Members and to re-mail the settlement checks to any alternative or updated address obtained by the Settlement Administrator. (Bartz Decl., ¶ 4). The PAGA Fund shall be calculated by deducting the Plaintiff's Counsel Fees and Litigation Expenses Payments, Settlement Administration Costs, and enhancement fee to Plaintiff from the Gross Settlement Amount.

A breakdown of the Gross Settlement Amount of **$570,000** is provided below:

1. Individual Settlement Payments to Settlement Members: $91,000;
2. PAGA Payment to the LWDA: $273,000;
3. Plaintiff's Counsel Fees Payment: $190,000;
4. Plaintiff's Counsel Litigation Expenses Payment: $3,500;
5. Settlement Administration Costs: $7,500;
6. Enhancement Fee/Wage Release Fee to Plaintiff: $5,000.

IV.

LEGAL STANDARD FOR APPROVAL OF PAGA SETTLEMENT

The PAGA statute allows an "aggrieved employee" to bring a civil action on behalf of himself or herself and on behalf of other aggrieved employees and the State to recover civil penalties which are specifically established by PAGA with respect to provisions of the California Labor Code which does not otherwise provide for civil penalties (Lab. Code § 2699(g)), and also, civil penalties which, outside of PAGA, only the LWDA can assess upon and collect from an employer (Lab. Code § 2699(a)). Before bringing a civil action under PAGA, an employee must comply with California Labor Code section 2699.3. *See* Labor Code § 2699(a).

The settlement of a PAGA claim requires court approval. *See* Labor Code § 2699, subd. (1)(2) ("The superior court shall review and approve any settlement of any civil action pursuant to this part"). However, "[a] PAGA claim asserted on a non-class representative basis . . . is not considered a class action but a law enforcement action" and therefore one does not have to meet the requirements of a class action. *Casida v. Sears Holding Corp.*, 2012 WL 253217, at *3 (E.D. Cal. Jan. 26, 2012); *Thomas v. Aetna Health of Cal., Inc.*, 2011 WL 2173715, at * 11 (E.D. Cal. June 2, 2011); *Arias v. Superior Court,* 46 Cal.4th 969, 980-88 (2009) (affirming lower court's holding that "plaintiff need not satisfy class action requirements" to assert a PAGA claim); *Pedroza v. PetSmart, Inc.*, 2013 WL 1490667, at *15 (C.D. Cal. Jan. 28, 2013). As such, a court's review of a PAGA settlement involves analysis of several unique features that render the approval process distinct from approval of a class action settlement. A court reviewing a PAGA settlement need only "ensur[e] that a negotiated resolution is fair to those affected." *Williams v. Superior Court,* 3 Cal.5th 531, 549 (2017).

In a PAGA case, the Court's focus is not the monetary amount which aggrieved employees or the State are to receive, but instead, whether the total settlement amount achieves the PAGA's objectives. The purpose of the PAGA is "to incentivize private parties to recover civil penalties for the government that otherwise may not have been assessed and collected by overburdened state enforcement agencies." *See Ochoa-Hernandez v. Cjaders Foods, Inc.,* 2010 WL 1340777, at *4 (N.D. Cal. Apr. 2, 2010) (citing *Arias, supra,* 46 Cal.4th at 986). Penalties recovered under the PAGA are, in part, to "be distributed to the [LWDA] for enforcement of labor laws . . . and for education of employers and employees about their rights and responsibilities under this code, to be continuously appropriated to supplement and not supplant the finding to the agency for those purposes." *See* Labor Code § 2699(j). The recovery of penalties on behalf of the state, by way of a PAGA claim, is essentially a law enforcement action. *See Amalgamated Transit Union, Local 1756, AFL-CIO v. Sup. Ct.,* 46 Cal.4th 993, 1003 (2009) (stating that the PAGA is mechanism for "an aggrieved employee to recover civil penalties—for Labor Code violations—that otherwise would be sought by state labor law enforcement agencies").

V.

THE SETTLEMENT IS FAIR, ADEQUATE AND REASONABLE

This Settlement resulted from Plaintiff's thorough and extensive review of informal discovery, and aggressive negotiating stance to obtain a reasonable recovery. This PAGA settlement should therefore be approved.

A. The Settlement Is Presumed Fair

A representative settlement is presumed fair where: (1) the settlement is reached through arm's length bargaining, (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently, (3) [and] counsel is experienced in similar litigation. *See Dunk v. Ford Motor Company,* 48 Cal. App. 4th 1794, 1802 (1996). Similar to class actions, PAGA settlements are subject to a court's approval under a fair, adequate and reasonable standard. *See Moniz v. Adecco USA, Inc.*, 72 Cal.App.5th 56, 76-77 (2021). A court may also consider relevant factors such as the strength of the plaintiffs' 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, the experience and views of counsel, [and] the presence of a governmental participant. . .. *See Officers of Justice v. Civil Service Com'n of City and County of San Francisco,* 688 F.2d 615, 624 (9th Cir. 1995). "This list is not exhaustive and should be tailored to each case. Due regard should be given to what is otherwise a private consensual agreement between the parties." (*Dunk, supra*, 48 Cal. App. 4th at 1801.) Moreover, the trial court has broad powers to determine whether a proposed [representative action] settlement is fair. (*See Mallick v. Superior Court,* 89 Cal. App. 3d 434 (1979).

B. <u>The Settlement Is The Product of Arm's Length Negotiations</u>

In this action, Defendant produced personnel and policy documents, detailed data regarding the aggrieved employees' pay and time records, and related employment information for aggrieved employees. (Bartz Decl., ¶ 10). After a thorough review of those records, Plaintiff retained a damages expert to compile a damages summary reflecting the total PAGA penalties' exposure in this case. (Bartz Decl., ¶ 10).

The negotiations in this case were hard fought and lengthy, and occurred over a period of many months. At all times, the settlement negotiations were non-collusive, and involved considerable disputes over payment terms. Plaintiff did not settle this case until he had conducted sufficient investigation into the claims, and reviewed sufficient data to make a settlement determination. (Bartz Decl., ¶ 11). Plaintiff believes that this is a very good settlement of the PAGA claims, which will not affect any aggrieved employee's right to pursue underlying Labor Code violations against Defendant if he or she chooses to do so. (*Ibid*).

C. Plaintiff's Counsel Is Experienced In Similar Litigation And Endorse The Settlement

The view of attorneys in representative litigation is "entitled to significant weight." *Fisher Bros. v. Cambridge-Lee Industries, Inc.,* 630 F.Supp. 482, 488 (E.D. Pa. 1985); *see also Ellis v. Naval Air Rework Facility,* 87 F.R.D. 15, 18 (N.D. Cal. 1980). Plaintiff's counsel have significant experience in complex representative and class action wage and hour litigation. (Bartz Decl., ¶¶ 12-16; Declaration of Walter Haines ("Haines Decl."), ¶ 3). As such, they are experienced and qualified to evaluate the claims and defenses in this case, and unequivocally support the settlement reached herein.

D. The Strength of Plaintiff's Case, The Amount Offered In Settlement, and The Risk, Expense, Complexity, and Duration of Further Litigation Favors Settlement

Where both sides face significant uncertainty, the attendant risks favor settlement. *Hanlon v. Chrysler Corp.,* 150 F.3d 1011, 1026 (9th Cir. 1998). Moreover, "[t]he expense and possible duration of the litigation should be considered in evaluating the reasonableness of [a] settlement." *In re Mega Financial Corp. Securities Litigation,* 213 F.3d 454, 458 (9th Cir. 2000).

In this case, Plaintiff seeks PAGA penalties only. Plaintiff alleges that Defendant failed to do the following: (1) pay all wages, overtime, regular rate of pay, and compensation owed; (2) provide duty-free meal periods; (3) authorize and permit duty-free rest periods; (4) pay all wages due upon termination; (5) properly maintain and submit accurate itemized wage statements; and (6) to pay for all reimbursable expenses. (Bartz Decl., ¶ 17).

1. Unpaid wages

California Labor Code § 510(a) and the applicable Wage Orders regulating payment of wages in the State of California, provide that eight (8) hours of labor constitutes a day's work and any work in excess of eight (8) hours in one (1) workday and any work in excess of forty (40) hours in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for each employee and any work in excess of twelve (12) hours in any one workday shall be compensated at the rate of no less than twice the regular rate of pay for each employee.

Plaintiff contends that Defendant violated wage laws based on the theory that Plaintiff and other aggrieved employees worked off-the-clock, including prior to and after their shifts. Plaintiff makes several allegations. First, Plaintiff asserts that he was not compensated at the regular rate of pay for overtime when he was paid bonuses and paid stock grants and other incentive compensation, as such compensation was non-discretionary. Second, Plaintiff alleges that Defendant required Plaintiff and others to show up early to their shifts and stay after their shifts to leave the premises and go through security checkpoints, without payment. *See Huerta v. CSI Electrical Contractors*, 15 Cal.5th 908 (2024). Plaintiff further alleges that regardless of whether such time spent off-the-clock only adds up to a few minutes per day, California does not recognize the *de minimis* doctrine, and such time must be compensated. *See Troester v. Starbucks Corp.*, 5 Cal.5th 829 (2018).

Defendant contends that it has numerous defenses to Plaintiff's unpaid wage claims, including that it paid for all hours worked, had policies prohibiting working off-the-clock, and that any bonuses or other incentive compensation paid was discretionary, and therefore was not required to be included in the regular rate of pay.

Pursuant to Labor Code § 558, penalties for regular rate violations are $50 per pay period. Thus, the maximum potential PAGA penalties for the unpaid wage claim is $1,412,500, which is calculated as follows: $50 [penalty per pay period] x 28,250 [number of pay periods] = $1,412,500.[1] Plaintiff believes this was his strongest claim, and that he had a 50% chance of success on the unpaid wage theory. Nevertheless, Labor Code section 2699(e)(2) also gives a trial court broad discretion to reduce PAGA penalties: "[A] court may award a lesser amount than the maximum civil penalty amount specified by this part if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust,

---

[1] Plaintiff calculates only the first penalty amount, because the subsequent penalty amounts do not apply because there is no evidence that Defendant has been the subject of any prior violations of the Labor Code by the Labor Commissioner. *See Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th 1157, 1208-1209 (2008) ("Until the employer has been notified that it is violating a Labor Code provision. . ., the employer cannot be presumed to be aware that its continuing underpayment of employees is a 'violation' subject to penalties").

arbitrary and oppressive, or confiscatory." Case law supports a trial court's discretion in downgrading penalties based on these factors. *See Thurman v. Bayshore Transit Management, Inc.*, 203 Cal.App.4th 1112, 1135-1136 (2012) (no abuse of discretion by reducing penalty by 30 percent). Thus, Plaintiff believes that the real value of the unpaid wage penalties is approximately **$494,375**. ($1,412,500 x .5 [chances of success] x .7 [court discretion] = $494,375). (Bartz Decl., ¶ 17.a).

2. Meal period violations

Plaintiff contends that Defendant failed to provide Plaintiff and other aggrieved employees thirty-minute duty-free meal periods for every five hours of work as is required by Labor Code § 512, the applicable wage orders, and in violation of *Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004 (2012). In *Brinker*, the California Supreme Court held that "under ... Labor Code § 512, subdivision (a), an employer must relieve the employee of all duty for the designated period." *Id*. at 1034.

Plaintiff alleges that meal periods were short, late and missed because of the work demands on Plaintiff and other aggrieved employees, whereby Plaintiff alleges that he and other aggrieved employees were unable to take their meal periods timely, they were uninterrupted with work inquires, and Plaintiff and other aggrieved employees were required to stay on the premises during their meal periods. After extensively analyzing the meal period violations, Plaintiff found that for the most part, Defendant was in substantial compliance with California's meal period laws in terms of timing, pursuant to *Donohue v. AMN Services, LLC*, 11 Cal.5th 58 (2021). As such, Plaintiff does not value that part of the meal period claim highly.

Defendant contends that it permits all aggrieved employees more than 30-minute meal periods, and whenever meal periods were late, short or missed, Defendant paid meal period premiums. Defendant further argues that individual issues will predominate because of the various scenarios affecting different classes of employees working for Defendant. As such, Defendant claims that PAGA claims must meet a manageability requirement. *See Wesson v. Staples The Office Superstore, LLC*, 68 Cal.App.5th 746 (2021) (holding that courts have inherent authority to ensure the manageability of PAGA claims).

The maximum potential PAGA penalties recoverable for meal period violation are $2,207,500 as calculated by Plaintiff's expert, who analyzed the meal period time data, and found that 6.7% of shifts had either a late, missed, or short meal period under *Donohue*. Based on the various issues raised above regarding proving meal period violations, Plaintiff believes that he has a 10% chance of proving all of those penalties. Thus, Plaintiff believes that the real value of the meal period penalties is **$154,525**. ($2,207,500 x .1 [chances of success] x .7 [court discretion] = $154,525). (Bartz Decl., ¶ 17.b).

3. Rest period claims

Section 12(A) of the IWC Wage Order(s) states: "Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages."

Section 12(B) of the IWC Wage Order(s) states: "If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided."

Under *Brinker, supra,* the California Supreme Court found that employers have a "duty to make a good faith effort to authorize and permit rest breaks in the middle of each work period. . .." *Brinker, supra*, 53 Cal.4th at 1031. Plaintiff alleges that rest periods were not authorized or permitted because Plaintiff and other aggrieved employees were unable to take duty-free rest periods because they were unable to use the rest time to do as they pleased, and in any event, when they took their rest periods, they were always interrupted.

Defendant contends that it complied with California's rest period requirements, and produced a rest period policy that facially complies with California law.

Plaintiff calculates total penalties on the rest period claim of $2,825,000. Given that PAGA allows penalties of $100 per pay period, the amount is calculated as follows: 28,250 [total number of pay periods] x $100 [pay period penalty amount] = $2,825,000. Given Defendant's facially valid rest period policy, and potential individual issues relating to proving rest break violations, Plaintiff believes he had a 10% chance of recovering all of the above penalties on the rest period claim, in the absence of other mitigating factors. Given that a court has discretion regarding the amount of penalties to be assessed, Plaintiff therefore believes the real exposure of PAGA penalties on the rest period claim is approximately **$197,750**. ($2,825,000 x .1 [chances of success] x .7 [court discretion] = $197,750.) (Bartz Decl., ¶ 17.c).

4. <u>Failure to pay all wages on termination</u>

Plaintiff further alleges that pursuant to Labor Code §203, aggrieved employees terminated from Defendant's employment are entitled to a penalty pursuant to Labor Code §256, because Defendant did not pay them all wages due upon separation. Such a claim is derivative, and for the same reasons as stated above, Defendant contends no wages are due, and thus no penalties owed under PAGA. Defendant further argues that its failure to pay wages upon separation was not "willful," in that the law is uncertain as to claims asserted in this case or whether the failure to pay is due to a good faith dispute. *See Barnhill v. Robert Saunders & Co.*, 125 Cal.App.3d 1, 8 (1981) (employer's failure to pay is not willful if its failure is due to uncertainty in the law); *Road Sprinkler Fitters Local Union No. 669 v. G & G Fire Sprinklers, Inc.*, 102 Cal.App.4th 765, 782 (2002) (willfulness not met if defendant's failure to pay a result of a "good faith mistaken belief that wages are not owed"). Defendant further argues that Labor Code § 256 only applies to seasonal laborers and therefore is inapposite to the aggrieved employees in this case. *See Culley v. Lincare, Inc.*, 236 F.Supp.3d 1184 (E.D. Cal. 2017).

Plaintiff calculates PAGA penalties on this claim of $754,838. This was calculated by multiplying 240 [penalty hours per employee] by $25.78 [average rate of pay per employee] by 122 [terminated employees]. Based on the heightened willfulness standard, Plaintiff estimates that the real exposure of this claim is 10% of those total penalties. Moreover, Plaintiff applies the same discounts as set forth above in the above analysis as to the court's discretion to reduce penalties.

As such, Plaintiff believes the real exposure on this claim to be **$52,839**. ($754,838 x .1 [chances of success] .70 [court discretion] = $52,839). (Bartz Decl., ¶ 17.d).

5. Improper pay stubs

Plaintiff further alleges that Defendant failed to provide proper pay statements that complied with Labor Code § 226.

Plaintiff alleges similar theories of liability as above with respect to the paystub claim, i.e. that the wage statements are defective because they do not reflect all wages owed, and fail to show premium payments for missed meal and rest periods. *See Naranjo v. Spectrum Security Servs., Inc.*, 13 Cal.5th 93 (2022). Plaintiff further alleges that to obtain PAGA penalties for pay stub violations, a plaintiff need not satisfy the "injury" or "knowing and intentional" requirements of Labor Code section 226(e)(1). *See Raines v. Coastal Pacific Food Distributors, Inc.*, 23 Cal.App.5th 667 (2018).

On the other hand, Defendant argues derivative violations of Labor Code § 226 do not give rise to pay stub violations upon which PAGA penalties arise. *See Maldonado v. Epsilon Plastics, Inc.*, 22 Cal.App.5th 1308 (2018); *see also Culley v. Lincare Inc.*, 236 F.Supp.3d 1184, 1195-1196 (E.D. Cal. 2017). Defendant further argues that any such violations were inadvertent, and therefore not actionable. *See Heritage Residential Care, Inc. v. Division of Labor Standards Enforcement*, 192 Cal.App.4th 75 (2011).

Plaintiff calculates pay stub penalties to be approximately $2,825,000. Given that PAGA allows penalties of $100 per pay period, the amount is calculated as follows: 28,250 [number of total pay periods] x $100 [pay period penalty amount] = $2,825,000. Based on the fact that this is a derivative claim, Plaintiff believes he had a 10% chance of recovering all of the potentially recoverable civil penalties. Moreover, Plaintiff applies the same discounts as set forth above in the analysis as to the court's discretion to reduce penalties. As such, Plaintiff believes the real exposure on this claim to be **$197,750**. ($2,825,000 x .1 [chances of success] x .7 [court discretion] = $197,750). (Bartz Decl., ¶ 17.e).

6. Reimbursement of expenses

Labor Code § 2802 provides, in pertinent part: "An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer. . .."

Plaintiff contends that Defendant required he and other aggrieved employees to use their personal cell phones to respond to work calls and respond to text messages during their employment. Defendant contends that Plaintiff and the other aggrieved employees were prohibited from working off the clock, and therefore any use of personal cell phones for work purposes during work or non-work hours was voluntary and not reimbursable.

Upon further investigation and discussions with witnesses, Plaintiff was unable to substantiate this claim to prove PAGA penalties across all pay periods. At most, therefore, because of proof problems with this claim, Plaintiff values the total reimbursement claim at $100 per employee, or $58,600. But given the tenuous nature of this claim, Plaintiff estimates the real value is 10% of that amount, or **$5,860**. (Bartz Decl., ¶ 17.f).

7. Total exposure to PAGA penalties

Based upon the alleged Labor Code violations, Plaintiff's believe the total actual PAGA exposure is approximately **$1,103,099**. Based on a settlement value of $570,000, this amounts to approximately 52% of the total reasonable exposure to PAGA penalties. Plaintiff believes this to be a very good result, given that Defendant has valid defenses to Plaintiff's claims, and there is a substantial question as to whether a trial court will even award cumulative penalties sought by Plaintiff for alleged multiple Labor Code violations because there is no established precedent for such an award.[2] (Bartz Decl., ¶ 17.g).

[2] While there are cases allowing for the "stacking" of penalties when it comes to evaluating the "amount in controversy" where a case has been removed to federal court (*see Schiller v. David's Bridal, Inc.*, 2010 WL 2793650 (E.D. Cal. July 14, 2010), it appears to be an open question whether such "stacked" penalties may be awarded when they potentially overlap and "double count" remedies for similar violations.

The purpose of the PAGA is to "achieve maximum compliance with [California's] labor laws." *See Iskanian v. CLS Transp. Los Angeles, LLC*, 59 Cal.4th 348, 379 (2014). The penalties recovered here on behalf of the State and aggrieved employees achieve that purpose.

VI.
NOTICE OF THE SETTLEMENT

"[A] PAGA action is a statutory action for penalties brought as a proxy for the State," and as such, "there is no need to protect absent employees' due process rights[.]" *Williams v. Superior Court,* 3 Cal.5th 531, 546 (2017). "Unnamed employees need not be given notice of the PAGA claim, nor do they have the ability to opt-out of the representative PAGA claim." *Ochoa-Hernandez v. Cjaders Foods, Inc.,* 2010 WL 1340777, at *5 (N.D. Cal. Apr. 2, 2010). A representative PAGA action need not satisfy class action requirements, and no due process concern arises from the fact that there are "nonparty aggrieved employees who are not given notice if, and an opportunity to be heard in, a representative action that is not brought a class action." *Arias v. Sup. Ct.,* 46 Cal.4th 969, 984 (2009). "PAGA does not make other potentially aggrieved employees parties" to the action and no "due process concerns arise under PAGA because absent employees do not own a personal claim for PAGA civil penalties and whatever personal claims the absent employees might have for a relief are not at stake." *Williams, supra,* 3 Cal. 5th at 546-547 (internal references omitted, citing *Amalgamated Transit Union, Local 1756, AFL-CIO v. Sup. Ct.,* 46th Cal.4th 993, 1003 (2009) and *Iskanian v. CLS Transportation Los Angeles, LLC,* 59 Cal.4th 348, 381 (2014).)

Notwithstanding the above, the Settlement Administrator will provide notice to the aggrieved employees, along with a check for their penalties, of the nature of the claims and release at issue in this case. (Bartz Decl., ¶ 21).

VII.

ATTORNEYS' FEES AND COSTS

A. Fees Can Be Awarded As A Percentage of the Common Fund

When a common fund is created, attorneys who secured the fund are entitled to a percentage of the fund. (*See Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480, 503 ["the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created]; *Lealao v. Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 26 ["percentage fees have traditionally been allowed in . . . common fund cases"]). Plaintiff's request for one-third of the common fund is reasonable, falls within the Ninth Circuit's historical benchmark for attorneys fees of 25% to 50% of a common fund, and is fair compensation for undertaking complex litigation on a contingent basis. (*See, e.g.*, Rubinstein, Conte and Newberg, Newberg on Class Actions at § 14:6 [surveying cases, and finding that 30-50% of fees awarded in cases in which the common fund is relatively small]; *see also In re Ampicillin Antitrust Litigation* (D.D.C. 1981) 526 F.Supp. 494 [court approved attorney fee award equal to 45% of the settlement fund].)

Under the common fund doctrine, "a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole." *Boeing Co. v. Van Gemert,* 444 U.S. 472, 478, 100 S.Ct. 745, 750, 62 L.Ed.2d 676 (1980). The Supreme Court explained:

> The doctrine rests on the perception that persons who obtain the benefit of a lawsuit without contributing to its cost are unjustly enriched at the successful litigant's expense. Jurisdiction over the fund involved in litigation allows a court to prevent this inequity by assessing attorney's fees against the entire fund, thus spreading fees proportionately among those benefitted by the suit." (Citations omitted.)

(*Id.*; *see also Laffitte, supra,* 1 Cal.5th at 503 ["the percentage method is a valuable tool that should not be denied our trial courts"]; *Serrano v. Priest* (1977) 20 Cal.3d 25, 34 ["one who expends attorneys' fees in winning a suit which creates a fund from which other derive benefits, may require those passive beneficiaries to bear a fair share of the litigation costs"].)

Thus, the common fund doctrine ensures that each member of the class contributes proportionately to the payment of attorney's fees recovered from monetary payments that the prevailing party recovered in the lawsuit. "Put another way, in common fund cases, a variant of the usual rule applies and the winning party pays his or her own attorneys fees. . .." *Stanton v. Boeing*, 327 F.3d 938, 967 (9th Cir. 2003), citing *Wininger v. SI Mgmt L.P.*, 301 F.3d 1115 (9th Cir. 2002).

Because Plaintiff's attorneys secured a fund for Plaintiff and the other aggrieved employees, they are entitled to a reasonable percentage of that fund.

B. <u>Plaintiff's Attorneys Fees Are Also Recoverable Under The Lodestar Adjustment Approach</u>

Fees in representative cases are also appropriate under the lodestar method, whereby the number of hours reasonably expended is multiplied by a reasonable hourly rate. *See Lealao, supra,* 82 Cal.App.4th at 26. Under PAGA, moreover, attorneys' fees and costs are statutorily recoverable. *See* Cal. Labor Code § 2699, subd. (g)(1). Once a lodestar has been established, it may "be adjusted, based on consideration of factors specific to the case, in order to fix the fee at the fair market value for the legal services provided." *PLCM Group, Inc. v. Drexler,* 22 Cal.4th 1084, 1095 (2000). In evaluating the lodestar, and whether an upward adjustment is appropriate, courts look to the qualifications of counsel, the reasonableness of the rates charged, the novelty and difficulty of the case, the contingent nature of the case, the results achieved, and related matters. *See, e.g.*, *Serrano, supra*, 20 Cal.3d 25, 49; *see also Press v. Lucky Stores, Inc.,* 34 Cal.3d 311, 321-322 (1983). All such factors support the fee award here.

1. Plaintiff's Counsel Are Well-Qualified To Represent The Aggrieved Employees And Their Rates Are Reasonable

Counsel for Plaintiff are experienced employment lawyers, and have extensive experience in the specific subcategory of wage and hour claims. (Bartz Decl. ¶¶ 12-16; Haines Decl., ¶ 3). Moreover, counsel for Plaintiff have hourly rates that are reasonable in the relevant market, and below that found with other class action employment lawyers with similar expertise. (Bartz Decl., ¶ 19).

2. Plaintiff's Counsel's Lodestar Is Well Documented

A properly supported motion for attorney's fees is prima facie evidence that the expenses and services were necessarily incurred. *Hadley v. Krepel*, 167 Cal.App.3d 677, 682 (1985). Here, counsel provide appropriately detailed declarations and detailed, contemporaneous billing statements in support of the lodestar amounts. (Bartz Decl., ¶ 20, and Ex. 4).

Based on Plaintiffs' counsel's lodestar here results in a 1.92 multiplier. A multiplier is appropriate when "(1) attorneys take a case with the expectation they will receive a risk enhancement if they prevail, (2) their hourly rate does not reflect that risk, and (3) there is evidence the case was risky." *Stetson v. Grissom*, 821 F.3d 1157, 1166 (9th Cir. 2016). Here, Plaintiffs' counsel took this case on a full contingency basis, and there was a substantial risk both at the beginning of the case and after *Viking River* that this case could not move forward as a PAGA action. Plaintiffs' hourly rates are also lower than market rates for hourly defense counsel and do not reflect the risk with this being a contingency case. (Bartz Decl., ¶ 19).

California law also embraces the application of fee multipliers. *See Wershba v. Apple Computer,* 91 Cal.App.4th 224, 255 (2001) (under California law, "[m]ultipliers can range from 2 to 4 or even higher."). The multiplier requested here is also well below those granted in other complex class actions involving a common fund. *See Uschold v. NSMG Shared Servs., LLC*, 2020 WL 3035776, at *16 (N.D. Cal. June 5, 2020) (applying multiplier of **4** in wage and hour class action); *Kang v. Wells Fargo Bank, N.A.*, 2021 WL 5826230 (N.D. Cal. Dec. 8, 2021) (multiplier of **5.49** granted after lodestar cross-check in wage and hour class action); *Steiner v. Am. Broadcasting Co.*, 248 Fed. App'x 780, 783 (9th Cir. 2007) (awarding cross-check multiplier of **6.85**); *Gutierrez v. Wells Fargo Bank, N.A.*, 2015 WL 2438274, at *7 (N.D. Cal., May 21, 2015) (applying **5.5** lodestar multiplier in UCL class action).

The multiplier also does not reflect additional work that will need to be performed in this case. PAGA Counsel estimate that they will spend at least 15 hours preparing for and attending the final approval hearing, conferring with the settlement administrator, and assisting in administering the settlement. (Bartz Decl., ¶ 19). Accounting for such future incurred fees is permissible when performing a lodestar cross-check. *See In re Volkswagen "Clean Diesel"*

Marketing, Sales Practices, and Products Liability Litig., 746 Fed.Appx. 655, 659 (9th Cir. 2018); *Reyes v. Bakery and Confectionary Union and Ind. Int'l Pension Fund*, 281 F.Supp.3d 833, 856 (N.D. Cal. 2017) (finding that 125 anticipated future hours included in lodestar to manage "class members' claims" appropriate and reasonable). When such future hours are included in the lodestar, the multiplier is reduced to approximately 1.68. (Bartz Decl., ¶ 20).

3. Novelty And Difficulty Of The Case

Plaintiff and his counsel were able to secure a favorable settlement only after investigating the claims and researching the theories of potential liability in this case. One of the primary theories of liability was based upon Defendant's failure to pay the regular rate on stock grants provided to non-exempt employees. This is a novel issue in California, and has not been decided by any appellate court. A federal district court recently certified a class of employees making a similar claim, but there has been no decision yet on liability. *See Costa v. Apple, Inc.*, 2025 WL 445365 (N.D. Cal. Feb. 10, 2025) (certifying class of non-exempt employees who received restricted stock units as compensation).

4. Plaintiff's Counsel Worked Efficiently And Skillfully

Plaintiff obtained significant informal discovery, and researched all available claims in investigating the alleged wage and hour violations. Plaintiff and his counsel resolved the case only after intense settlement negotiations that nearly broke down several times. Plaintiff's counsel's tenacity produced the highest and best settlement possible from Defendant.

5. Plaintiff's Counsel Worked Entirely On A Contingency Basis

Plaintiff's counsel worked on a complete contingency and advanced all expenses and costs. The contingent risk included liability issues, damage issues, and evolving changes under PAGA. According to the California Supreme Court:

> A contingent fee must be higher than a fee for the same legal services paid as they are performed. The contingent fee compensates the lawyer not only for the legal services he renders but for the loan of those services. The implicit interest rate on such a loan is higher because the risk of default (the loss of the case, which

cancels the debt of the client to the lawyer) is much higher than that of conventional loans.

(*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132-1133, quoting Posner, Economic Analysis of Law (4th ed. 1992) pp. 534, 567.)

6. Plaintiff's Counsel Achieved A Good Result

Plaintiff's counsel obtained a $570,000 settlement, which would not have been achieved but for Plaintiff and his attorneys' ability to efficiently prosecute the case to a successful conclusion.

C. <u>Plaintiff's Counsel's Costs Are Documented and Reasonable</u>

Plaintiff's counsel are also entitled to their reasonable out-of-pocket costs incurred in prosecuting this action, in the amount of $3,500, which includes filing and motion fees, and expert witness fees necessary to the prosecution of this case. (Bartz Decl., ¶ 20, Ex. 5 thereto). Moreover, Xpand Legal Consulting, LLC has agreed to provide settlement administration services in the amount of $7,500, including preparing and mailing the notices to the aggrieved employees, distributing the payments, and performing other administration duties for this PAGA settlement. (Declaration of Jonathan Paul ("Paul Decl."), ¶¶ 3-10, and Ex. B thereto). All such amounts should be deducted from the common fund created, and Defendant does not oppose Plaintiff's counsel's request for costs and administration expenses.

VIII.

<u>PLAINTIFF'S ENHANCEMENT/RELEASE PAYMENT IS FAIR AND REASONABLE</u>

Enhancement payments are appropriate for PAGA representatives, similar to class action representatives. Service awards are "are intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney general." *Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 958–59 (9th Cir. 2009). An award of $5,000 is presumptively reasonable. *See Connelly v. Starbucks Corp.*, 2023 WL 6387077, *12 (E.D. Cal. 2023) (noting that $5,000 award is presumptively reasonable, and awarding $10,000 to the named plaintiff. In PAGA actions, incentive awards are routinely granted, and a $5,000 incentive award is presumptively reasonable. *See Ambrose v. US Med-Equip, LLC*, 2024 WL 307843, *10 (E.D. Cal. Jan. 26, 2024).

Here, Plaintiff is providing a general release, including wage claims, acted as the representative plaintiff in this case, and assisted counsel with prosecuting the claims asserted in the Complaint. (Bartz Decl., ¶ 18). An award of $5,000 to Plaintiff is therefore fair and reasonable, and should be granted.

IX.
<u>CONCLUSION</u>

Based on the foregoing, Plaintiff respectfully requests that this Court grant his Motion and enter the proposed Order and Judgment submitted concurrently with this Motion.

Dated: February 20, 2025

BARTZ LAW GROUP, APC

By: __/s/Aaron A. Bartz/s/________________
Aaron A. Bartz
Attorneys for Plaintiff MICHAEL INGRAM