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

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

Attorneys for Plaintiff TERRANCE OLIVER, on behalf of himself and other aggrieved employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

TERRANCE OLIVER, an individual; on behalf of himself and other aggrieved employees

Plaintiff,

v.

OFF DUTY OFFICERS INC., a California corporation; and DOES 1 through 100, inclusive,

Defendant.

CASE NO. 24CU013040C

Assigned for All Purposes to:
Hon. Blaine K. Bowman – Dept. C-74

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, Terrance Oliver, and [proposed] Order filed concurrently herewith]

Date: March 5, 2027
Time: 8:30 a.m.
Dept.: C-74

Reservation No.: 106094

PLEASE TAKE NOTICE that on March 5, 2027, at 8:30 a.m., or as soon thereafter as the matter may be heard before the Honorable Blaine K. Bowman, Dept. C-74 of the Superior Court of the State of California, County of San Diego, Hall of Justice Courthouse, Sixth Floor, 330 West Broadway, San Diego, California 92101, Plaintiff Terrance Oliver ("Plaintiff") will and hereby does move for entry of an order and judgment as follows:

1. Granting approval, pursuant to California Labor Code section 2699, subd. (l)(2) of the proposed settlement between Plaintiff and Defendant Off Duty Officers, Inc. ("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 Net Settlement Amount 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 $225,000 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 the amount of $75,000 as compensation for reasonable attorneys' fees ("Attorneys' Fees Payment"), $17,460 for reimbursement of litigation costs and expenses ("Litigation Costs Payment"), and $7,000 for Settlement Administration Costs.

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, 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: November 4, 2026

BARTZ LAW GROUP, APC

By: __/s/Aaron A. Bartz/s/_____
Aaron A. Bartz
Attorneys for Plaintiff TERRANCE OLIVER

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I.

INTRODUCTION AND SUMMARY OF MOTION

This is an action brought by Plaintiff Terrance Oliver ("Plaintiff"), pursuant to the Private Attorneys General Act of 2004 ("PAGA"), to recover civil penalties for themselves, other aggrieved employees and the State of California. Plaintiff and the other aggrieved employees are non-exempt employees who worked for Defendant Off Duty Officers Inc. ("Defendant"), and allege California wage and hour violations including failure to pay wages, failure to authorize and permit meal and rest periods, and related violations.

Plaintiff has agreed to settle the PAGA penalties for a Gross Settlement Fund of **$225,000**. The Gross Settlement Fund includes all attorneys' fees and costs, settlement administration expenses, and penalties payments to the aggrieved employees and the Labor and Workforce Development Agency (LWDA). The Net Settlement Amount to be distributed to the aggrieved employees and the LWDA is approximately $125,540. The Net Settlement Amount will be distributed 65% to the LWDA ($81,601), and 35% to the aggrieved employees ($43,939).

The number of aggrieved employees is approximately 1,065. As such, each of the aggrieved employees will receive, on average, approximately $40.42 in penalties. In exchange for such payment, the aggrieved employees are giving up no rights whatsoever to recover for underlying violations of the Labor Code other than for PAGA penalties. Any aggrieved employee may file a claim against Defendant for such violations.

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

II.

PROCEDURAL HISTORY AND FACTUAL BACKGROUND

Plaintiff Terrance Oliver ("Plaintiff") filed a class and Private Attorneys General Act (PAGA) action in San Diego Superior Court on September 25, 2024, on behalf of all non-exempt employees of Defendant Off Duty Officers, Inc. ("Defendant" or "ODO"), alleging wage and hour claims including meal and rest period claims, overtime/minimum wage claims, reimbursement, waiting time and paystub penalties.

Defendant owns and operates a security company within the State of California. Plaintiff and other aggrieved employees worked for Defendant as non-exempt employees between December 2021 and February 2024 at various locations in Southern California.

On or about July 3, 2024, and thereafter on August 20, 2026, Plaintiff provided written notice to the Labor and Workforce Development Agency ("LWDA") and Defendant of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. LWDA and Defendant failed to respond.

Plaintiff and Defendant thereafter stipulated to dismiss the class claims, stay the PAGA representative claims, and Plaintiff thereafter filed an arbitration claim with JAMS, asserting similar wage violations as the class and PAGA case.

Defendant agreed to mediate the PAGA claims and all of Plaintiff's individual claims. According to Defendant's records, there are approximately 1,065 aggrieved employees within the PAGA period (July 3, 2023 – July 17, 2026), and approximately 21,514 pay periods.

Defendant's unlawful wage policies include, among other things, the following:

- Failing to pay for all time worked, including time spent off-the-clock;
- Failing to provide meal periods or to authorize or permit rest periods;
- Failing to pay for all meal or rest period premiums;
- Failing to reimburse employees for their cell phones to perform their jobs.

Thereafter, Defendant produced informally a sampling of time and payroll data, obtaining thousands of pages of time, payroll and personnel records from Defendant, and aggressively negotiating the merits of the claims, and attending mediation before experienced wage and hour mediator Barry Appell, Esq. Based upon a mediator's proposal, the parties reached a fair resolution of this matter. (Bartz Decl., ¶¶ 9-12.)

Next, Plaintiff filed a First Amended Complaint on September 1, 2026 as part of the Settlement Agreement. Defendant filed an Answer on October 16, 2026.

III.

SUMMARY OF SETTLEMENT

A. Aggrieved Employees

The Settlement covers the following aggrieved employees:

Any and all current and former hourly-paid, non-exempt employees who worked for Defendant in the State of California at any time from July 22, 2023 to July 17, 2026.. (Bartz Decl., ¶ 7, Ex. 1).

Based upon Defendant's records, there are approximately 1,065 aggrieved employees through the date of the PAGA period. (Bartz Decl., ¶ 7).

B. Settlement Fund

Defendant will pay into a common fund the total amount of $225,000 within 10 days of the date 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 as undeliverable, the Settlement Administrator will have seven (7) days after it receives the returned undeliverable mail to search for a more current address for the Aggrieved Employee (via a skip trace or other reasonable method) and to re-mail the settlement checks to any alternative or updated address obtained by the Settlement Administrator. (Bartz Decl., ¶ 4). The Net Settlement Amount shall be calculated by deducting the PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, and the Administration Expenses Payment from the Gross Settlement Amount.

A breakdown of the Gross Settlement Fund of **$225,000** is provided below:

1. Individual PAGA Payments to Aggrieved Employees: $43,939;
2. LWDA PAGA Payment to the LWDA: $81,601;
3. PAGA Counsel Fees Payment: $75,000;
4. PAGA Counsel Litigation Expenses Payment: $17,460;
5. Administration Expenses Payment: $7,000.

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. The Settlement Is The Product of Arm's Length Negotiations

In this action, Defendant has produced numerous pages of personnel and policy documents, detailed data regarding the aggrieved employees' pay records, and related employment information for aggrieved employees. (Bartz Decl., ¶ 9). After a thorough review of those records, Plaintiff hired expert Lawrence W. Beall, Esq to calculate the total exposure to PAGA penalties in this case. (Bartz Decl., ¶ 10).

The parties also attended mediation before experienced wage and hour mediator Barry M. Appell, Esq. on April 17, 2026. The negotiations in this case were hard-fought and lengthy. At all times, the settlement negotiations were non-collusive, and involved considerable disputes over payment terms. (Bartz Decl., ¶ 12).

Plaintiff did not settle this case until he had conducted sufficient investigation into the claims, reviewed sufficient data to make a settlement determination, and attended mediation. (Bartz Decl., ¶ 12). Plaintiff believes that this is a 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., ¶¶ 13-17; Haines Decl., ¶¶ 2-3.) 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. The sole PAGA claim that is at issue in this settlement concerns Defendant's failure to: (1) pay all wages owed, including the regular rate of pay for overtime; (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; (6) reimburse employees. (Bartz Decl., ¶ 18).

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.

Off-the-clock time is compensable when an employer knows or should have known the employees are working off-the-clock time. *See Morillion v. Royal Packing Co.*, 22 Cal.4th 575, 585 (2000). Here, Plaintiff contends that Defendant prohibits employees from clocking in early to their scheduled shifts, regardless of whether they are working or not. Plaintiff further contends that aggrieved employees were required to arrive early to get passdown reports from previous guards on duty, but they were not allowed to clock in until later, and that they are required to provide security briefings to the next guard taking over the shift.

Defendant contends that it paid all wages owed and that it had a strict off-the-clock policy prohibiting employees from working off-the-clock.

Pursuant to Labor Code § 558, penalties for regular rate violations are $50 for the first pay period, and $100 for each subsequent pay period. Thus, the maximum potential PAGA penalties for the unpaid wage claim is $2,204,650, which is calculated as follows: 1,065

[number of aggrieved employees] x $50 [first pay period penalty] + 21,514 [number of subsequent pay periods] x $100 [subsequent pay period penalty] = $2,204,650. Plaintiff believes he had a 10% 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, 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 $154,326 ($2,204,650 x .1 [chances of success] x .7 [court discretion] = $154,326). (Bartz Decl., ¶ 18.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.

During the PAGA period, Plaintiff alleges that Defendant's time records showing clock-in and clock-out times are, for the most part, for show only. Plaintiff contends that many of the guards worked at single-guard posts, including Plaintiff, which prohibited guards from taking a duty-free meal period. As such, Plaintiff contends that Defendant violated the aggrieved employees' meal periods frequently during the PAGA period.

In response to such arguments, Defendant contends that they permit all aggrieved employees more than 30-minute meal periods, and whenever meal periods were late, short or missed, aggrieved employees received meal period penalties. Defendant further contends that Plaintiff will be unable to establish why certain aggrieved employees did not take their meal

periods, and that in any event, Defendant had no duty to ensure that meal periods were taken, pursuant to *Brinker*.

The maximum potential PAGA penalties recoverable for meal period violations are $2,151,140. Given that PAGA allows penalties of $100 per pay period , the amount is calculated as follows: 21,514 [pay periods] x $100 [penalty amount] = $2,151,400. Based on the various issues raised above regarding proving meal period violations, Plaintiff believes that they have a 10% chance of proving all of those penalties. Thus, Plaintiff believes that the real value of the meal period penalties is $150,580. ($2,151,400 x .1 [chances of success] x .7 [court discretion] = $150,580). (Bartz Decl., ¶ 18.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."

Any requirement to maintain contact or otherwise remain on-call during a rest period constitutes a violation of California law. *See Augustus v. ABM Security Services, Inc.*, 2 Cal. 5th 257 (2016). As *Augustus* found, "one cannot square the practice of compelling employees to remain at the ready, tethered by time and policy to particular locations or communications devices, with the requirement to relieve employees of all work duties and employer control during 10-minutes rest periods." *Id*. at 269. The Court noted that some employers may find it "burdensome to relieve their employee of all duties during rest periods" and suggested two possible options: to

"provide employees with another rest period to replace one that was interrupted" or to "pay the premium set forth in Wage Order 4, subdivision 12(B), and section 226.7." *Id*. at 272.

Plaintiff believes *Augustus* applies here, in that Plaintiff contends that he and other security guards were always "on call" and frequently worked at single-guard posts. As such, Plaintiff alleges that neither Plaintiff nor other security guards were authorized or permitted to take 10-minute duty free rest periods for every 4 hours of work or major fraction thereof.

Defendant contends that they 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 $2,151,140. Given that PAGA allows penalties of $100 per pay period , the amount is calculated as follows: 21,514 [pay periods] x $100 [penalty amount] = $2,151,400. 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 $150,580. ($2,151,400 x .1 [chances of success] x .7 [court discretion] = $150,580). (Bartz Decl., ¶ 18.c).

4. Failure to pay all wages on termination

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.

Plaintiff contends Defendant violated Labor Code § 203 in two distinct ways. ***First***, Defendant failed to pay meal and rest period premium payments on class members' wage statements. Meal and rest period premium payments constitute "wages" for purposes of waiting time penalties. *Naranjo, supra*, 13 Cal.5th at 117. Under section 203, the term "willfully" does not require a showing that the employer knew of its obligation and intentionally refused to act. *See Baker v. American Horticulture Supply, Inc.*, 186 Cal.App.4th 1059, 1076 (2010) ("[t]he knowledge requirement would be difficult to prove and would encourage [employers] to remain

ignorant of their obligations under the Act" if "willful" were defined to require both knowledge and intentional refusal to act). Instead, "'willful' merely means that the employer intentionally failed or refused to perform an act which was required to be done." *Barnhill v. Robert Saunders & Co.*, 125 Cal.App.3d 1, 7 (1981).

Second, Plaintiff and the aggrieved employees allege that they have a direct claim for waiting time penalties because Defendant failed to pay them overtime and minimum wages and for each hour worked, based on Defendant's failure to pay for all pre-shift and post-shift work.

Defendant contends no wages are due, and thus no penalties owed under PAGA. Defendant further argues that their 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 contends 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 $106,500, by multiplying 1,065 [employees] by $100 [penalty]. 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 $7,455 (106,500 x .1 [chances of success] .70 [court discretion] = $7,455). (Bartz Decl., ¶ 18.d).

5. Improper pay stubs

Labor Code §226(a) states in pertinent part: "Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and

any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, … (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer…, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee… ."

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 that 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 $2,151,140. Given that PAGA allows penalties of $100 per pay period , the amount is calculated as follows: 21,514 [pay periods] x $100 [penalty amount] = $2,151,400. 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 $150,580. ($2,151,400 x .1 [chances of success] x .7 [court discretion] = $150,580). (Bartz Decl., ¶ 18.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. . .."

Here, Plaintiff and the other security guards contend that they were required to use their own personal cell phones for recording their time, and communicating with dispatchers, supervisors and other workers regarding work business. *See Cochran v. Schwan's Home Serv., Inc.*, 228 Cal. App. 4th 1137, 1144 (2014) (finding that reimbursement for personal cell phone usage required when mandatory for performing one's job). 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 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 $106,500. But given the tenuous nature of this claim, Plaintiff estimates the real value is 10% of that amount, or $10,650. (Bartz Decl., ¶ 18.f).

7. Total exposure to PAGA penalties

Based upon the alleged Labor Code violations, Plaintiff believes the total actual PAGA exposure is approximately $624,171. Based on a settlement value of $225,000, this amounts to approximately 36% of the total exposure to PAGA penalties. Plaintiff believes this to be a 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.[1] Moreover, even to the extent any violations are proven, Defendant argues that any

[1] 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*

heightened penalties from subsequent violations are not warranted. *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"). (Bartz Decl., ¶ 18.g).

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 IS NOT REQUIRED

"[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).)

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.

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. Plaintiff's Attorneys Fees Are Also Recoverable Under The Lodestar Adjustment Approach

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. ¶¶ 13-17; Haines Decl., ¶¶ 2-3). 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., ¶ 19, and Ex. 4 thereto; Haines Decl., ¶¶ 6-12).

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. Defendant also had valid arbitration agreements with Plaintiff and other aggrieved employees, which made this case more difficult in settling on a representative basis.

4. Plaintiff's Counsel Worked Efficiently And Skillfully

Plaintiff obtained significant informal discovery, interviewed witnesses, 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 $225,000 settlement, which would not have been achieved but for Plaintiff and his attorneys' ability to efficiently prosecute the case to a successful conclusion.

C. Plaintiff's Counsel's Costs Are Documented and Reasonable

Plaintiff's counsel are also entitled to their reasonable out-of-pocket costs incurred in prosecuting this action, in the amount of **$17,460**, which includes filing and motion fees, and other costs necessary to the prosecution of this case. (Bartz Decl., ¶ 19, Ex. 5 thereto). Moreover, Xpand Legal Consulting, LLC has agreed to provide settlement administration services in the amount of **$7,000**, 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."), ¶¶ 3-9, 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.
CONCLUSION

Based on the foregoing, Plaintiff respectfully requests that this Court grant its Motion to Approve the PAGA Settlement.

Dated: November 4, 2026

BARTZ LAW GROUP, APC

By: /s/Aaron A. Bartz/s/
Aaron A. Bartz
Attorneys for Plaintiff TERRANCE OLIVER