

Larry W. Lee (State Bar No. 228175)
Kristen M. Agnew (State Bar No. 247656)
Nicholas Rosenthal (State Bar No. 268297)
DIVERSITY LAW GROUP, P.C.
515 S. Figueroa Street, Suite 1250
Los Angeles, CA 90071
(213) 488-6555
(213) 488-6554 facsimile

William L. Marder (State Bar No. 170131)
bill@polarislawgroup.com
Polaris Law Group
501 San Benito Street, Suite 200
Hollister, CA 95023
(831) 531-4214
(831) 634-0333 facsimile

Attorneys for Plaintiffs and the Putative Class

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA BARBARA

JOSE VALENCIA, an individual,
BRANDON JEROUE, an individual, and on
behalf of all others similarly situated,

Plaintiffs,

vs.

SENTINEL TRANSPORTION, LLC, a
Delaware limited liability company; and
DOES 1 through 50, inclusive,

Defendants.

Case No.: 22CV00951

[Assigned for all purposes to the Hon. James F.
Rigali, Department SM Dept 2]

**PLAINTIFFS' NOTICE OF MOTION AND
MOTION FOR PRELIMINARY APPROVAL
OF CLASS AND REPRESENTATIVE ACTION
SETTLEMENT; MEMORANDUM OF
POINTS AND AUTHORITIES IN SUPPORT**

Date: February 27, 2024

Time: 8:30 a.m.

Dept.: SM Dept. 2

Complaint Filed: April 29, 2022

Trial Date: None

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on February 27, 2024, at 8:30 a.m., or as soon thereafter
3 as the matter may be heard, before the Honorable James F. Rigali, judge presiding, in Department
4 SM Department 2 of the above referenced Court located at 312-C East Cook Street, Santa Maria,
5 California 93454, Plaintiffs Jose Valencia and Brandon Jeroue (“Plaintiffs”) will seek an Order:

6 (1) approving the Joint Stipulation of Class and Representative Action Settlement
7 (“Agreement” or “Settlement Agreement”) in this matter;

8 (2) conditionally certifying the following classes for settlement purposes only: (1) all
9 current and former non-exempt or hourly paid employees of Defendant Sentinel Transportation,
10 LLC (“Defendant”) who worked in a driver position in California at any time from March 8, 2018,
11 through December 1, 2023 (“Driver Class” or “Driver Class Members”); and (2) all current and
12 former non-exempt or hourly paid employees of Sentinel in California who received “Base Pay”
13 at any time from March 8, 2021, through December 1, 2023 (“Wage Statement Class” or “Wage
Statement Class Members”).

14 (3) appointing Plaintiffs as the Class Representatives and Larry W. Lee, Kristen M.
15 Agnew and Nicholas Rosenthal of Diversity Law Group, P.C., and William L. Marder of Polaris
16 Law Group as Class Counsel;

17 (4) preliminarily approving the Settlement and the Gross Settlement Fund of Five
18 Hundred Sixty-Five Thousand Dollars (\$565,000.00);

19 (5) finding on a preliminary basis that the Settlement Agreement appears to be within
20 the range of reasonableness of a settlement, including the amount of the PAGA penalties,
21 Enhancement Payments to Plaintiffs, Class Counsel’s fees and costs, the settlement administration
22 fees, and the allocation of payments to Settlement Class Members, that could ultimately be given
23 final approval by this Court;

24 (6) approving the Notice of Class Action Settlement (“Class Notice”) to be sent to
25 Class Members, which is attached as an exhibit to the Settlement Agreement;

26 (7) approving the distribution of the Class Notice to Class Members substantially in
27 the manner and form set forth in the Settlement Agreement;

28 (8) appointing Phoenix Settlement Administrators as the settlement administrator; and

1 (9) setting the matter for a Final Fairness and Final Approval hearing.

2 This Motion is made pursuant to Rule 3.769 of the California Rules of Court, which
3 provides for court approval of the settlement of a purported class action and allows the Court to
4 preliminarily certify a class for settlement purposes.

5 The basis for this Motion, filed without any opposition from Defendant, is that the proposed
6 settlement is fair, adequate, and reasonable and the procedures proposed by the parties are adequate
7 to ensure the opportunity of Class Members to participate in, opt-out of, or object to the settlement.

8 This Motion will be based on the attached Memorandum of Points and Authorities, the
9 Settlement Agreement, the proposed Class Notice, and the supporting Declarations of Larry W.
10 Lee, Kristen M. Agnew, Nicholas Rosenthal, Plaintiff Jose Valencia, Plaintiff Brandon Jeroue and
11 Kevin Lee of Phoenix Settlement Administrators, and upon the oral arguments of counsel (should
12 there be any) and on the complete records and file herein.

13 DATED: February 1, 2024

Respectfully Submitted,

DIVERSITY LAW GROUP, P.C.

By: _____

Larry W. Lee

Kristen M. Agnew

Nicholas Rosenthal

Attorneys for Plaintiffs

TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION.....	9
II. BACKGROUND OF THE SETTLEMENT.....	10
A. Plaintiffs Submit Written Notices to the LWDA.	10
B. Plaintiffs File Separate Class and Representative PAGA Actions, and Defendant Removes the Class Action to Federal Court.....	10
C. The Parties Stipulate to the Remand of the Class Action and Plaintiffs Narrow the Scope of the Claims.	11
D. The Parties Engage in Formal and Informal Written Discovery.	11
E. The Parties Participate in a Global Mediation of the Class and PAGA Actions.....	12
F. Plaintiffs Seek to File a Consolidated Second Amended Complaint.....	12
III. THE PROPOSED TERMS OF THE SETTLEMENT.....	13
A. Class Definition	13
B. The Gross Settlement Fund.....	13
C. Allocation to PAGA Penalties.....	13
D. Individual Settlement Payments.....	14
E. Attorneys' Fees and Reimbursement for Litigation Costs.....	15
F. Enhancement Payment to the Class Representatives.....	15
G. Settlement Administration Costs.....	15
H. Scope of the Class Members' Release.	15
IV. THE COURT SHOULD GRANT PRELIMINARY APPROVAL OF THE SETTLEMENT.....	16
A. The Settlement is Fair and Reasonable as it Recognizes the Inherent Risk of Litigation.....	17
1. The Off-the-Clock and Reporting Time Pay Claims Are Contested.	17
2. The Reimbursement Claim Is Contested.....	18
3. The Wage Statement Claim Is Contested.	20

1	4.	The Section 204 Claim Is Contested.....	21
2	5.	The Waiting Time Penalties Claim Is Contested.	21
3	B.	Potential Estimated Value of the Class and Representative PAGA Claims...	21
4	1.	The Recovery of Unpaid Wages and Statutory Penalties.....	21
5	2.	The Recovery of Civil PAGA Penalties Is Uncertain.	22
6	3.	The Settlement is Reasonable When Compared to the Value of the	
7		Underlying Labor Code Claim and Inherent Uncertainty of	
8		Litigation.....	23
9	C.	The Court Should Preliminarily Approve the Proposed Enhancement	
10		Payment to the Class Representatives.....	24
11	D.	The Requested Attorneys’ Fees and Litigation Costs Are Reasonable, Fair,	
12		and Appropriate.....	25
13	E.	The Settlement Administrator’s Fees are Reasonable.	26
14	V.	THE PROPOSED CLASS MEETS ALL CERTIFICATION REQUIREMENTS...	26
15	A.	The Class is Ascertainable and Sufficiently Numerous.....	26
16	B.	There are Common Questions of Law and Plaintiffs’ Claims are Typical of	
17		the Class.	26
18	C.	Plaintiffs and Class Counsel Have Adequately Represented the Class.	27
19	VI.	NOTICE TO THE LWDA	28
20	VII.	CONCLUSION	28

TABLE OF AUTHORITIES

Page(s)

State Cases

<i>Brinker Restaurant Corp. v. Superior Court</i> , 53 Cal. 4th 1004 (2012)	18
<i>Carrington v. Starbucks Corp.</i> , 30 Cal.App.5th 504 (2018)	22
<i>City of San Jose v. Superior Court</i> , 12 Cal. 3d 447, 460 (1974)	27
<i>Cochran v. Schwan's Home Service, Inc.</i> , 228 Cal.App.4th 1137, 1144 (2014)	19
<i>Dunk v. Ford Motor Co.</i> , 48 Cal. App. 4th 1794, 1800-01 (1996)	16
<i>Frlekin v. Apple Inc.</i> , 8 Cal.5th 1038, 1058 (2020)	17
<i>Kullar v. Foot Locker Retail, Inc.</i> , 168 Cal. App. 4th 116, 128 (2008)	17
<i>Kullar</i> , 168 Cal. App. 4th. at 133	17
<i>Laffitte v. Robert Half Int'l</i> , 1 Cal. 5th 480, 503 (Aug. 11, 2016)	25
<i>Lee v. Dynamex, Inc.</i> , 166 Cal. App. 4th 1325, 1334 (2008)	26
<i>Maldonado v. Epsilon Plastics, Inc.</i> , 22 Cal. App. 5th 1308 (2018)	21
<i>McGhee v. Bank of Am.</i> , 60 Cal. App. 3d 442, 450 (1976)	27
<i>McKinnon v. Best Buy Co., Inc.</i> , (Alameda Superior Court Case No. RG03082294)	26
<i>Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles</i> , 186 Cal. App. 4th 399, 408-409 (2010)	17
<i>Richmond v. Dart Industries, Inc.</i> , 29 Cal. 3d 462, 473 (1981)	27
<i>Serrano v. Priest</i> , 20 Cal. 3d 25, 34 (1977)	25
<i>Stephens v. Montgomery Ward & Co.</i> , 193 Cal. App. 3d 411, 421 (1987)	27
<i>Vasquez v. Superior Court</i> , 4 Cal. 3d 800, 812-13 (1971)	27
<i>Ward v. Tilly's, Inc.</i> , 31 Cal.App.5th 1167, 1185 (2019)	17
<i>Wershba v. Apple Computer, Inc.</i> , 91 Cal. App. 4th 224, 254 (2001)	25

Federal Cases

<i>Bellinghausen v. Tractor Supply Co.</i> , No. 13-CV-02377-JSC, 2015 WL 1289342, at p.*6 (N.D. Cal. Mar. 20, 2015)	24
<i>Boeing Co. v. Van Gemert</i> , 444 U.S. 472, 478 (1980)	25
<i>Brotherton v. Cleveland</i> , 141 F. Supp. 2d 907, 913-14 (S.D. Ohio 2001)	24

1	<i>Cook v. Niedert</i> , 142 F.3d 1004, 1016 (7th Cir. 1998)	25
2	<i>Enter. Energy Corp. v. Columbia Gas Transmission Corp.</i> , 137 F.R.D. 240, 251-52 (S.D. Ohio	
3	1991)	25
4	<i>Gaskill v. Gordon</i> , 160 F.3d 361, 363 (7th Cir. 1998).....	25
5	<i>Glass v. UBS Fin. Servs.</i> , No. C-06-4068, 2007 U.S. Dist. LEXIS 8476, at *51-52 (N.D. Cal. Jan.	
6	27, 2007)	25
7	<i>Hanlon v. Chrysler Corp.</i> , 150 F.3d 1011, 1019 (1998).....	27
8	<i>Harris v. Vector Mktg. Corp.</i> , 656 F. Supp. 2d 1128, 1145-46 (N.D. Cal. 2009)	20
9	<i>In re Dun & Bradstreet Credit Servs. Customer Litig.</i> , 130 F.R.D. 366, 374 (S.D. Ohio 1990) .	24
10	<i>In re Mego Fin. Corp. Secs. Litig.</i> , 213 F.3d 454, 459 (9th Cir. 2000)	23
11	<i>Loeza v. JP Morgan Chase Bank, N.A.</i> , 2014 WL 4912730, at *6 (S.D. Cal. Sept. 30, 2014).....	20
12	<i>Lopez v. G.A.T. Airline Ground Support, Inc.</i> , 2010 WL 2839417, at *5 (S.D.Cal.,2010).....	20
13	<i>McKenzie v. Federal Exp. Corp.</i> , 765 F.Supp.2d 1222 (C.D. Cal. 2011)	20
14	<i>Naranjo v. Spectrum Security Services, Inc.</i> , 88 Cal.App.5th 937, 949 (2023)	21
15	<i>O'Connor v. Starbucks Corp.</i> , 2008 WL 2761586, at *2 (N.D.Cal.,2008).....	19
16	<i>Preston v. Porch.com, Inc.</i> , 2022 WL 1214710, at *3 (S.D. Cal., 2022)	26
17	<i>Rannis v. Recchia</i> , 380 Fed.Appx. 646, 650 (9th Cir. 2010)	26
18	<i>Rodriguez v. URS Midwest, Inc.</i> , 2023 WL 6373877, at *13 (C.D. Cal., 2023)	19
19	<i>Van Ba Ma v. Covidien Holding Inc.</i> , U.S. Dist. Ct. Case No. 8:12-cv-02161 (C.D. Cal. 2014) 24	
20	<i>Van Vranken v. Atlantic Richfield Co.</i> , 901 F. Supp. 294, 299-300 (N.D. Cal. 1995)	24
21	<i>Villegas v. J.P. Morgan Chase & Co.</i> , No. CV 09-00261 SBA EMC, 2012 WL 5878390, at p.*6	
22	(N.D. Cal. Nov. 21, 2012).....	24
23	<i>Vincent v. Hughes Air West, Inc.</i> , 557 F.2d 759, 769 (9th Cir. 1997)	25

Statutes

Business and Professions Code § 17200, <i>et seq.</i>	9
Labor Code § 1174.....	9, 10, 16, 27
Labor Code § 1194.....	16
Labor Code § 1198.....	9, 10, 16, 27
Labor Code § 1199.....	9, 10, 16, 27

1	Labor Code § 201.....	9, 10, 16
2	Labor Code § 202.....	9, 10, 16
3	Labor Code § 203.....	9, 10, 16, 21
4	Labor Code § 204.....	9, 10, 16, 21
5	Labor Code § 210.....	11
6	Labor Code § 226.....	16, 21
7	Labor Code § 226(a)	passim
8	Labor Code § 226(a)(9)	20
9	Labor Code § 2698, <i>et seq.</i>	9, 16
10	Labor Code § 2699.....	10
11	Labor Code § 2699(e)(2)	22
12	Labor Code § 2802.....	9, 10, 16, 27
13	Labor Code § 510.....	9, 10, 16, 27
14	Labor Code § 558.....	10, 11

15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **MEMORANDUM OF POINTS & AUTHORITIES**

2 **I. INTRODUCTION.**

3 This is a wage and hour class and representative Private Attorneys General Act
4 (“PAGA”) action. As set forth in the operative Second Amended Complaint, Plaintiffs Jose
5 Valencia and Brandon Jeroue (“Plaintiffs”) allege that Defendant Sentinel Transportation, LLC
6 (“Defendant”) maintained a policy and practice of: (1) failing to reimburse business expenses, in
7 violation of Labor Code § 2802; (2) failing to pay all minimum, regular, overtime, and reporting
8 time wages, in violation of Labor Code §§ 201, 202, 203, 204, 510, 1174, 1198 and 1199; (3)
9 failing to provide accurate, itemized wage statements, in violation of Labor Code § 226(a); (4)
10 violation of Business and Professions Code § 17200, *et seq.*; and (5) violation of California
11 Labor Code § 2698, *et seq.*

12 With the assistance of a private mediator, Plaintiffs and Defendant (collectively, the
13 “Parties”) have reached a proposed class-wide settlement, the terms of which are reflected in the
14 Joint Stipulation of Class and Representative Action Settlement (“Agreement” or “Settlement
15 Agreement”).¹ The Settlement Agreement calls for Defendant to pay the gross settlement amount
16 of \$565,000.000 (“Gross Settlement Fund”), which will be distributed to the Class on a **non-**
17 **reversionary** basis.

18 Prior to the settlement of this action, the Parties thoroughly investigated the facts relating
19 to the class and PAGA claims alleged in the lawsuit and engaged in a thorough study of legal
20 principles applicable to the claims asserted against Defendant. Through the exchange of both
21 formal and informal discovery, Defendant provided necessary data pertaining to the number of
22 putative class members and number of pay periods at issue, as well as information pertaining to
23 Defendant’s payroll policies and practices. The Parties believe that the settlement for the
24 consideration and on the terms set forth in the Settlement Agreement is fair, adequate, and
25 reasonable, in light of all known circumstances and the expenses and risks inherent in litigation.
26 Therefore, the Parties respectfully request that the Court grant this Motion for Preliminary
27 Approval of Class Action Settlement.

28 ¹ A true and correct copy of the Settlement Agreement (“SA”) is attached to the Declaration of Kristen M. Agnew in Support of Plaintiffs’ Motion for Preliminary Approval (“Agnew Decl.” or “Agnew Declaration”) at **Exhibit C**.

1 **II. BACKGROUND OF THE SETTLEMENT.**

2 **A. Plaintiffs Submit Written Notices to the LWDA.**

3 Defendant provides crude oil trucking and transportation management services. Plaintiff
4 Jose Valencia (“Plaintiff Valencia”) and Plaintiff Brandon Jeroue (“Plaintiff Jeroue”) were
5 employed as truck drivers by Defendant. *See* Declaration of Jose Valencia (“Valencia Decl.”) ¶
6 2; Declaration of Brandon Jeroue (“Jeroue Decl.”) ¶ 2. Throughout their employment, Plaintiffs
7 were paid as hourly non-exempt employees. *See* Valencia Decl. ¶ 2; Jeroue Decl. ¶ 2.

8 On January 20, 2022, Plaintiff Valencia submitted written notice to the California Labor
9 and Workforce Development Agency (“LWDA”), alleging that Defendant violated Labor Code
10 §§ 204, 226(a), and 2802, pursuant to Labor Code § 2699. *See* Agnew Decl. ¶ 3, Ex. A. On
11 March 2, 2022, Plaintiff Jeroue submitted a second written notice to the LWDA, alleging that
12 Defendant violated Labor Code §§ 201, 202, 203, 204, 226(a), 510, 558, 1174, 1198, 1199 and
13 2802, pursuant to Labor Code § 2699. *See id.* at ¶ 4, Ex. B.

14 As set forth in their respective PAGA notices, Plaintiffs allege wage and hour violations
15 predicated on Defendant’s alleged failure to: (1) reimburse employees for work-related expenses,
16 including those related to the maintenance of work-related clothing, such as fire resistant
17 clothing, and the use of personal cell phones to submit time records and communicate with other
18 employees; (2) pay minimum, regular and/or overtime wages to drivers for the time spent
19 waiting to be informed as to whether a truck was available; (3) pay reporting time wages to
20 drivers who reported to work and had their shift cancelled; (4) provide accurate itemized wage
21 statements that identify the applicable hourly rate of pay and applicable hours for “Base Pay”
22 wages; and (5) pay earned wages to employees in a timely manner. *See* Agnew Decl. ¶ 5.

23 **B. Plaintiffs File Separate Class and Representative PAGA Actions, and**
24 **Defendant Removes the Class Action to Federal Court.**

25 On March 8, 2022, Plaintiffs filed a class action complaint against Defendant in the
26 matter of *Jose Valencia et. al. v. Sentinel Transportation, LLC*, Superior Court of California for
27 the County of Santa Barbara, Case No. 22CV00951 (the “Action”). *See* Agnew Decl. ¶ 6. In the
28 original complaint, Plaintiffs asserted class claims predicated on the Labor Code violations
articulated in the PAGA notices. *See id.* On April 11, 2022, Defendant removed the Action to the

1 United States District Court for the Central District of California. *See id.* at ¶ 7.

2 On April 29, 2023, Plaintiffs filed a related representative PAGA complaint against
3 Defendant in the matter of *Jose Valencia, et al. v. Sentinel Transportation, LLC*, Santa Barbara
4 Superior Court Case No. 22CV01684 (“PAGA Action”). *See* Agnew Decl. ¶ 8. In the PAGA
5 Action, Plaintiffs seek civil PAGA penalties for the Labor Code violations alleged the PAGA
6 Notices. *See id.*

7 **C. The Parties Stipulate to the Remand of the Class Action and Plaintiffs**
8 **Narrow the Scope of the Claims.**

9 On May 11, 2022, Plaintiffs filed a motion to remand the Action, on the basis that the
10 amount in controversy does not exceed the jurisdictional threshold required by CAFA. *See*
11 Agnew Decl. ¶ 9. Shortly thereafter, the Parties stipulated to the remand of the Action, on the
12 condition that Plaintiffs would amend the complaint and narrow the scope of the claims. *See id.*
13 Following the remand of the Action, on June 16, 2022, Plaintiffs filed the First Amended
14 Complaint. *See id.* at ¶ 10. As set forth in the First Amended Complaint, Plaintiffs: (1) limit the
15 claim for unpaid minimum wages and overtime to only those shifts on which putative class
16 members reported to work but had their shifts cancelled; and (2) omit reference to penalties
under Labor Code §§ 210 and 558. *See id.*

17 **D. The Parties Engage in Formal and Informal Written Discovery.**

18 The Parties engaged in an extensive exchange of documents and information, through
19 both formal and informal discovery. *See* Agnew Decl. ¶¶ 16-21, 43, 46. Plaintiffs propounded
20 Special Interrogatories (Set One) and Requests for Production of Documents (Set One). *See id.* at
21 ¶ 17. Amongst other relevant topics, the discovery required Defendant to provide documents and
22 information relevant to class certification, including the number of putative class members, time
23 and payroll records, Defendant’s overtime and reporting time pay policies, Defendant’s cell
24 phone policy, reimbursement procedures, and documents pertaining to the display of “Base Pay”
25 wages paid to employees. *See id.* Defendant served responses to both sets of written discovery.
26 *See id.* The Parties extensively met and conferred regarding Defendant’s discovery responses.
27 *See id.* at ¶ 18. In connection with these discussions, the Parties discussed the factual allegations
28 and the merits of their respective claims and defenses. *See id.*

1 In or around April 2023, the Parties agreed to redirect their efforts towards an early
2 resolution of the Action and agreed to participate in private mediation. *See* Agnew Decl. ¶ 19.
3 The Parties further agreed to stay further written discovery, in favor of the informal exchange of
4 information leading up to mediation. *See id.* Defendant provided numerous data points regarding
5 the scope of the class and range of potential damages and penalties at issue, such as: (1) the
6 number of non-exempt drivers; (2) the number of employees paid “Base Pay” wages; (3) the
7 number of alleged aggrieved employees; (4) the number of pay periods worked by non-exempt
8 drivers; (5) the number of pay periods worked by alleged aggrieved employees; (6) the average
9 hourly rate of pay for non-exempt drivers; (7) the number of wage statements reflecting the
10 payment of “Base Pay” wages; (8) revised wage statements that include the hours and hourly rate
11 for “Base Pay” wages; and (9) wage statements reflecting Defendant’s change in policies
12 regarding its payroll schedule. *See id.* Using the data provided by Defendant, Class Counsel
13 performed a comprehensive damages analysis. *See id.* at ¶ 20.

14 **E. The Parties Participate in a Global Mediation of the Class and PAGA**
15 **Actions.**

16 On October 2, 2023, the Parties engaged in an all-day mediation session with Francis J.
17 Ortman III, a respected and experienced mediator knowledgeable of both the wage and hour laws
18 and representative claims at issue in this Action. *See* Agnew Decl. ¶ 21. As a result of the
19 mediation, and after the exchange of further information and extended negotiations following
20 mediation, the Parties reached the present class-wide Settlement, memorialized by a written
21 Memorandum of Understanding (“MOU”) fully executed on October 3, 2023. *See id.* The Parties
22 subsequently executed the Joint Stipulation of Class and Representative Action Settlement, a true
23 and correct copy of which is attached as **Exhibit C** to the Agnew Declaration. The settlement
24 discussions were conducted at arm’s-length. *See id.* at ¶ 22.

25 **F. Plaintiffs Seek to File a Consolidated Second Amended Complaint.**

26 In order to effectuate the terms of the Settlement, the Parties stipulated to the filing of a
27 Second Amended Class and Representative Action Complaint (“Second Amended Complaint”) in the Action. *See* Agnew Decl. ¶ 11. The Second Amended Complaint adds the claims asserted
28 in the PAGA Action. *See id.* On February 1, 2024, the Parties submitted a Joint Stipulation for

1 Leave to File Second Amended Complaint. *See id.* The Second Amended Complaint is the
2 operative complaint. *See id.* at ¶ 12.

3 **III. THE PROPOSED TERMS OF THE SETTLEMENT.**

4 **A. Class Definition**

5 The proposed Class consists of the following group of employees: (1) all current and
6 former non-exempt or hourly paid employees of Sentinel who worked in a driver position in
7 California at any time from March 8, 2018, through December 1, 2023 (“Driver Class” or “Driver
8 Class Members”); and (2) all current and former non-exempt or hourly paid employees of
9 Sentinel in California who received “Base Pay” at any time from March 8, 2021, through
10 December 1, 2023 (“Wage Statement Class” or “Wage Statement Class Members”). *See* SA §
11 A-6. There are approximately 367 employees that comprise the Class. *See* Agnew Decl. ¶ 23.

12 The Settlement also encompasses “Aggrieved Employees,” which is defined to mean “all
13 non-exempt or hourly paid employees of Sentinel in California at any time from January 20, 2021
14 through December 1, 2023.” *See* SA § A-2. There are approximately 265 Aggrieved Employees.
15 *See* Agnew Decl. ¶ 24.

16 **B. The Gross Settlement Fund.**

17 The Settlement provides for the gross settlement amount of Five Hundred Sixty-Five
18 Thousand Dollars (\$565,000.00) (the “Gross Settlement Fund”). *See* SA § A-15. The amount of
19 the Gross Settlement Fund was calculated with, and is premised on, Defendant’s representation
20 that Class Members worked 19,843 pay periods during the Class Period. *See* SA at § E-3.²

21 **C. Allocation to PAGA Penalties.**

22 The Settlement allocates Fifty Thousand Dollars (\$50,000.00) of the Gross Settlement
23 Fund to PAGA penalties (“PAGA Settlement Amount”). *See* SA §§ A-24, E-7. Pursuant to
24 PAGA, seventy-five percent of the PAGA Settlement Amount, *i.e.*, the sum of Thirty-Seven
25 Thousand Five Hundred Dollars (\$37,500.00), shall be paid to the LWDA. *See id.* at § E-7. The
26 remaining twenty-five percent of the PAGA Amount, *i.e.*, the sum of Twelve Thousand Five
27 Hundred Dollars (\$12,500.00) (“Net PAGA Payment”), shall be distributed to Aggrieved

28 ²If the actual number of pay periods at issue exceeds 19,843 by ten percent or more, the Gross Settlement Fund shall be increased proportionally to the amount of the total increase or the Class Period shall be shortened and closed on the date that is closest to without exceeding 21, 828 pay periods. *See* SA § E-3.

1 Employees. *See id.* Aggrieved Employees will be entitled to receive a portion of the Net PAGA
2 Payment on a *pro rata* basis, based upon the total number of pay periods each Aggrieved
3 Employee worked during the PAGA Period, regardless of whether the employee submits a timely
4 and valid Request for Exclusion from the Settlement Agreement. *See* SA § E-10.³ The Individual
5 PAGA Settlement Amounts shall be allocated as 100% penalties. *See id.*

6 **D. Individual Settlement Payments.**

7 The balance of the Gross Settlement Fund remaining after deduction of the approved
8 Attorneys' Fees and Costs, Settlement Administration Costs, Enhancement Payments, and the
9 LWDA Payment constitutes the "Net Settlement Amount." *See* SA § A-21. Class Counsel
10 estimates that the Net Settlement Amount will be at least \$276,666.67. *See* Agnew Decl. ¶ 27.

11 The Net Settlement Amount will be available for distribution to Settlement Class Members
12 (*i.e.*, Class Members who do not opt-out). *See* SA §§ A-35, E-8. The amount allocated to each
13 Settlement Class Member will be based on the number of pay periods worked by the employee
14 during the Class Period. *See id.* at § E-9. Based on the size of the Class, the number of pay periods
15 at issue and the estimated amount of the Net Settlement Amount, Settlement Class Members will
16 be entitled to recover, on average, up to \$1,036.20 each or \$13.90 per pay period worked during
17 the Class Period. *See* Agnew Decl. ¶ 56. The amount any particular Class Member will be entitled
18 to recover will be greater or lower than this average depending on the number of pay periods he or
19 she worked, with some entitled to receive more, and others less. *Id.* This is fair, as it directly
20 allocates greater recovery to individual Class Members who have allegedly suffered greater harm.
Id.

21 All Individual Settlement Payments shall be allocated as 90% penalties and interest, and
22 10% wages. *See* SA at § G-4.⁴ The funds represented by uncashed settlement checks will be paid
23 out pursuant to California Code of Civil Procedure section 384 to Legal Aid at Work, the
24

25 ³ There is no right to opt-out of or object to the PAGA settlement under the Settlement Agreement. Any Aggrieved
26 Employee who opts out of the Settlement Agreement for purpose of the proposed class action settlement will still be
27 bound by the release of the PAGA claims and receive a portion of the Aggrieved Employee Payment. *See* SA § F-6.

28 ⁴ Class Members do not need to do anything should they wish to receive their share of the settlement funds. This
substantially decreases the amount of burden each Class Member must bear in order to receive his/her settlement
share. If a Class Member does not wish to take part in this settlement and be bound by the release of the class claims,
he/she must submit an exclusion request. Such obligations are thoroughly identified in the Notice Packet. *See* SA, Ex.
B.

1 designated cy pres recipient. *See id.* at § G-2. Neither Plaintiffs nor Class Counsel maintains an
2 interest in and/or relationship with Legal Aid at Work. *See* Agnew Decl. ¶ 57; Lee Decl. ¶ 3;
3 Rosenthal Decl. ¶ 3.

4 **E. Attorneys' Fees and Reimbursement for Litigation Costs.**

5 As part of the Settlement, Defendant does not object to Class Counsel's request for
6 attorney's fees up to one-third of the Gross Settlement Fund, *i.e.*, the sum of One Hundred Eighty-
7 Eight Thousand Three Hundred Thirty-Three Dollars and Thirty-Three Cents (\$188,333.33), plus
8 up to Twenty Thousand Dollars (\$20,000.00) for reimbursement of litigation costs, subject to the
9 Court finally approving this Settlement. *See* SA § A-3. Any portion of the requested attorneys'
10 fees and/or litigation costs not awarded to Class Counsel shall be added to the Net Settlement
11 Amount. *See id.* at § E-4.

12 **F. Enhancement Payment to the Class Representatives.**

13 Subject to approval by the Court, the Class Representatives may request the payment of
14 an Enhancement Payment in the amount of Ten Thousand Dollars (\$10,000.00) each. *See* SA §
15 A-13. Both the Class Representatives and Class Counsel expressly acknowledge that the Court
16 has final discretion in any fee award or Enhancement Payment *See id.* at § E-5.

17 **G. Settlement Administration Costs.**

18 Finally, the Settlement provides for the payment of the fees and expenses reasonably
19 incurred by the Settlement Administrator. *See* SA § A-34. The Parties have received a quote from
20 Phoenix Settlement Administrators for a fee of approximately Ten Thousand Dollars (\$10,000.00).
21 *See* Declaration of Kevin Lee ("Admin. Decl.") ¶ 8, Ex. B Any portion of the Settlement
22 Administration Costs not used or approved by the Court shall be added to the Net Settlement Fund.

23 **H. Scope of the Class Members' Release.**

24 Upon the payment of the Gross Settlement Fund, Plaintiffs and Settlement Class Members
25 will provide a release to the Released Parties. Settlement Class Members who are members of the
26 Driver Class will release the following claims:

27 [A]ll claims that were, or that could have been, pled in the Second
28 Amended Complaint, based on the facts and theories alleged in the
Action, for violation of Labor Code §§ 201, 202, 203, 204, 226, 510,
1174, 1198, 1199 and 2802, and that accrued during the Class
Period. The release includes a release of statutory penalties,

interests, attorneys' fees, and costs.

See SA § D-1.1. Settlement Class Members who are members of the Wage Statement Class will release the following claims:

[A]ll claims that were, or that could have been, pled in the Second Amended Complaint for violation of Labor Code § 226(a), based on Defendant's alleged failure to accurately display the applicable hourly rate for "Base Pay" and corresponding number of hours worked, and that accrued during the period of March 8, 2021, through December 1, 2023. The release includes a release of statutory penalties, interests, attorneys' fees, and costs.

See SA § D-1.2. The scope of the release, as listed above, is identified in the Class Notice.

Additionally, upon the payment of the Gross Settlement Fund, Aggrieved Employees will entire into a release of derivative PAGA Claims:

[A]ll claims for civil penalties or other remedies recoverable under Labor Code section 2698, et seq. (PAGA), which were, or that could have been, pled in the Second Amended Complaint and/or the LWDA Letters sent by Plaintiffs, dated January 20, 2022 and February 24, 2022, for violation of Labor Code §§ 201, 202, 203, 204, 226, 510, 1174, 1194, 1198, 1199 and 2802, and that accrued during the PAGA Period. This release includes a release of civil penalties, attorneys' fees, and costs.

See SA § D-2. As shown, the scope of the release is narrow and is limited to the claims that were, or that could have been, asserted in the Operative Second Amended Complaint.

IV. THE COURT SHOULD GRANT PRELIMINARY APPROVAL OF THE SETTLEMENT

To prevent fraud, collusion, or unfairness to the class, the settlement of a class action requires court approval. *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1800-01 (1996). In considering whether a settlement is reasonable, the trial court should consider relevant factors, which may include the strength of 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, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement. *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 128 (2008).

In order to approve a class action settlement, the court must satisfy itself that the class

1 settlement is within the “ballpark” of reasonableness. *Kullar*, 168 Cal. App. 4th. at 133. The record
2 need not contain an explicit statement of the maximum theoretical recovery. *Munoz v. BCI Coca-*
3 *Cola Bottling Co. of Los Angeles*, 186 Cal. App. 4th 399, 408-409 (2010).

4 As demonstrated in Sections II-D and II-E, the Settlement was reached through arm’s
5 length negotiations between experienced wage and hour attorneys. Agnew Decl. ¶¶ 16-21.

6 **A. The Settlement is Fair and Reasonable as it Recognizes the Inherent Risk of**
7 **Litigation.**

8 Although Plaintiffs and Class Counsel believe in the merits of the Action, they also
9 recognize the risk, expense, and delay in continuing litigation with the class and PAGA claims,
10 and believe the settlement to be fair, reasonable, and adequate. *See* Agnew Decl. ¶ 58; Declaration
11 of Larry W. Lee (“Lee Decl.”) at ¶ 2; Declaration of Nicholas Rosenthal (“Rosenthal Decl.”) at ¶
12 2; Declaration of William L. Marder (“Marder Decl.”) at ¶ 2. Indeed, they are experienced
13 litigators and appreciate the possibility of non-certification on one or more of the theories alleged
14 in the Second Amended Complaint. *See* Agnew Decl. ¶ 58; Lee Decl. ¶ 2; Marder Decl. ¶ 2;
15 Rosenthal Decl. ¶ 2.

16 **1. The Off-the-Clock and Reporting Time Pay Claims Are Contested.**

17 Plaintiffs and Driver Class Members are truck drivers. Agnew Decl. ¶ 33. On the days
18 when a driver reported to work, and a truck was not available, the employee’s shift would be
19 cancelled. *See id.* Although this time is compensable, Plaintiffs allege that drivers were not paid
20 minimum, regular and/or overtime wages for the time spent waiting to be informed as to whether
21 a truck was available. *See Frlekin v. Apple Inc.*, 8 Cal.5th 1038, 1058 (2020) (Time spent on
22 premises waiting for, and undergoing, mandatory exit searches is compensable as “hours
23 worked”). Additionally, Defendant failed to pay Driver Class Members reporting time pay for
24 cancelled shifts, as required by the Wage Order. *See Ward v. Tilly's, Inc.*, 31 Cal.App.5th 1167,
25 1185 (2019) (“If an employer directs employees to present themselves for work by physically
26 appearing at the workplace at the shift's start, then the reporting time requirement is triggered by
the employee's appearance at the jobsite”).

27 Defendant denies Plaintiffs’ allegations. *See* Agnew Decl. ¶ 34. Defendant’s timekeeping
28 system allowed drivers to record non-productive time, including pre-trip inspections and the time

1 spent waiting for a truck to arrive. Citing to *Brinker Restaurant Corp. v. Superior Court*, 53 Cal.
2 4th 1004 (2012) and its progeny, Defendant argues that its liability is contingent on proof that
3 Defendant knew or should have known that off-the-clock work was occurring. *See id.* In the
4 absence of a uniform policy that requires off-the-clock work, Defendant argues that Plaintiffs
5 will not be able to establish the requisite knowledge through common proof. *See id.*

6 Defendant further argues that the minimum wage and overtime claims are not suitable to
7 be adjudicated on a class-wide basis. *See Agnew Decl.* at ¶ 35. As argued by defense counsel,
8 there are no centralized records that will establish the amount of time that Driver Class Members
9 spent waiting for a truck to become available on shifts that were ultimately cancelled. *See id.*
10 Thus, according to Defendant, it would be necessary to determine for each individual employee
11 the amount and nature of the uncompensated work. Therefore individual, rather than common,
12 questions would predominate. *See id.*

13 Additionally, Defendant disputes the existence of a common policy that resulted in the
14 non-payment of reporting time pay. *Agnew Decl.* ¶ 36. As argued by Defendant, when a driver's
15 shift is cancelled, most drivers are given the option to do other work at the terminal. *See id.*
16 According to Defendant, an adjudication of the alleged reporting time violation would require
17 individualized assessments as to the circumstances of the cancelled shift, including whether the
18 employee declined available work. *See id.* Defendant further argues that, even if Plaintiffs were
19 able to establish that some drivers were not properly paid reporting time pay, such a claim would
20 not be manageable because the non-payment was sporadic and further isolated to a single
21 terminal. *See id.*

22 **2. The Reimbursement Claim Is Contested.**

23 Plaintiffs allege that Driver Class Members incurred expenses while performing reasonable
24 and necessary work-related duties. *See Agnew Decl.* ¶ 37. Plaintiffs estimate that they incurred
25 between \$80 to \$160 per month in out-of-pocket expenses relating to the maintenance of work-
26 related clothing. *See Jeroue Decl.* ¶ 4; *Valencia Decl.* ¶ 4. Since Driver Class Members transported
27 flammable materials, they were required to wear heavy, fire-resistant clothing. Due to the bulky
28 nature of the gear and the need to use specialty detergent to preserve its integrity, Driver Class
Members could not wash their work clothes with personal items. *See Jeroue Decl.* ¶ 4; *Valencia*

Decl. ¶ 4. Whereas here, an employee is responsible for laundering specialty clothing, the employer must reimburse the employee for the demonstrated costs of laundering it. *See Rodriguez v. URS Midwest, Inc.*, 2023 WL 6373877, at *13 (C.D. Cal., 2023) (certifying a reimbursement class where it was “generally undisputed that employee uniforms are consistently stained with grease, which means they must be washed separately from other laundry”); *O'Connor v. Starbucks Corp.*, 2008 WL 2761586, at *2 (N.D.Cal.,2008) (employers owe duty to maintain uniform if it requires special laundering or care). Similarly, employees must be reimbursed for the costs associated with the use of a personal cell phone for work-related reasons, such as communicating with co-workers and submitting time records using a personal cell phone. *See Cochran v. Schwan's Home Service, Inc.*, 228 Cal.App.4th 1137, 1144 (2014) (“If an employee is required to make work-related calls on a personal cell phone, then he or she is incurring an expense for purposes of section 2802”). Plaintiffs maintain that, as a matter of practice, Defendant did not reimburse Driver Class Members for such expenses.

Defendant denies Plaintiffs’ allegations. *See Agnew Decl. ¶ 38.* According to Defendant, there is no obligation to reimburse drivers for the costs associated with laundering work gear, as these items can be washed during a typical laundry routine with a standard detergent. *See O'Connor*, 2008 WL 2761586, at *5 (garments requiring only minimal care do not require the employer to bear the cost of their maintenance). With respect to the use of personal cellphones on the job, Defendant maintains that: (1) Driver Class Members were provided two-way radios to communicate with dispatch and other employees; and (2) Defendant utilized an electronic timekeeping system, which negated the need for employees to use cell phones to submit daily time entries. *See Agnew Decl. ¶ 38.* Thus, according to Defendant, the decision to use a cell phone for business purposes is a personal decision and not one required by company policy. *See id.* Defendant contends that the law does not require an employer to be responsible for expenses it does not know about. *See id.*

Defendant further argues that, even if Plaintiffs prevailed on the merits, Plaintiffs cannot establish class-wide damages. *See Agnew Decl. ¶ 39.* Defendant contends that damages will necessarily hinge on individualized inquiries into the actual expenses incurred by Driver Class Members and whether each employee submitted a reimbursement request. *See id.*

1 **3. The Wage Statement Claim Is Contested.**

2 Plaintiffs bring a wage statement claim based on Defendant’s failure to list the rate and
3 hours used to calculate “Base Pay” wages. *See* Agnew Decl. ¶ 40. Labor Code § 226(a)(9)
4 mandates that “[a]n employer, semimonthly or at the time of each payment of wages, shall furnish
5 to his or her employee...an accurate itemized statement in writing showing...(9) all applicable
6 hourly rates in effect during the pay period and the corresponding number of hours worked at each
7 hourly rate by the employee...” As alleged by Plaintiffs, whenever “Base Pay” wages were paid,
8 the corresponding wage statement omitted the applicably hourly rate and hours used to calculate
9 the wage. Instead, only the gross amount of the “Base Pay” was listed. Thus, Plaintiffs allege that
10 there is no plausible way an employee could determine the hours or rate for “Base Pay” wages on
11 their own. *See id.* Courts have consistently found employers to be in violation of § 226(a) where
12 their wage statements failed to provide the accurate rates and corresponding hours worked during
13 the pay period. *See McKenzie v. Federal Exp. Corp.*, 765 F.Supp.2d 1222 (C.D. Cal. 2011) (finding
14 that the wage statements do comply with § 226(a)(9) for failure to list the correct overtime rate
15 and number of hours worked overtime); *Lopez v. G.A.T. Airline Ground Support, Inc.*, 2010 WL
16 2839417, at *5 (S.D.Cal.,2010) (same).

17 Defendant maintains that any alleged omission of information from the wage statements
18 was not a “knowing and intentional failure” by Defendant to comply with Labor Code § 226(a),
19 nor did any omission result in any “injury” to Plaintiffs or the Wage Statement Class, and penalties
20 are therefore unwarranted. *See* Agnew Decl. ¶ 41; *Harris v. Vector Mktg. Corp.*, 656 F. Supp. 2d
21 1128, 1145-46 (N.D. Cal. 2009); *Loeza v. JP Morgan Chase Bank, N.A.*, 2014 WL 4912730, at *6
22 (S.D. Cal. Sept. 30, 2014 (holding that an employer is only liable for damages as a result of failing
23 to furnish conforming wage statements to employees that suffer injury as a result of a knowing
24 and intentional failure by an employer to comply with § 226(a)); *Naranjo v. Spectrum Security*
25 *Services, Inc.*, 88 Cal.App.5th 937, 949 (2023 (holding that an employer’s failure to include meal
26 and rest period premium pay on the wage statements was not “knowing and intentional” because
27 it had a good faith belief that it was not in violation of Labor Code § 226) (petition for review
28 granted, May 31, 2023).

 Plaintiffs also pursue a wage statement violation that is purely derivative in nature (*See*

1 Agnew Decl. ¶ 42), and therefore vulnerable to a motion for summary judgment based on the
2 weaknesses of the underlying primary claims. *See Maldonado v. Epsilon Plastics, Inc.*, 22 Cal.
3 App. 5th 1308 (2018) (finding that the employees did not suffer a violation under 226(a) where
4 their wage statement cause of action was derived from an underlying wage and hour violation for
5 overtime).

6 **4. The Section 204 Claim Is Contested.**

7 Plaintiffs assert a representative PAGA claim based on the allegation that Defendant had
8 a consistent policy of paying wages to employees on or after the eighth day following the close
9 of the pay period, in violation of Labor Code section 204. *See* Agnew Decl. ¶ 44. Defendant
10 argues that even if the Court ultimately found a violation of Labor Code section 204, the alleged
11 violation is a technical one, which did not result in the underpayment of wages to Aggrieved
12 Employees. *See id.* Additionally, the Court has discretion under PAGA to reduce the maximum
13 allowable PAGA penalties. *See* Section IV-B-2.

14 **5. The Waiting Time Penalties Claim Is Contested.**

15 Plaintiffs seek waiting time penalties based on Defendant’s alleged underpayment and/or
16 non-payment of wages. *See* Agnew Decl. ¶ 46. In order to establish liability for waiting time
17 penalties under Labor Code § 203, it is the plaintiff’s burden to prove not only that there was a
18 failure to pay final wages in a timely manner, but also that the failure to pay wages in a timely
19 manner was “willful.” Cal. Lab. Code § 203(a); *Naranjo v. Spectrum Security Services, Inc.*, 88
20 Cal.App.5th 937, 949 (2023) (holding that an employer’s failure to pay meal period premiums to
21 departing employees was not “willful” under Section 203 because the employer had a good faith
22 belief that it was in compliance with the law). Defendant maintains that Plaintiffs cannot establish
23 the predicate fact that any earned wages were not paid at the time of termination. *See* Agnew Decl.
24 ¶ 46. Defendant further contends, that to the extent that Plaintiffs overcome this hurdle, Plaintiffs
25 would still need to prove that Defendant willfully delayed each final payment, and this is an
inherently fact intensive inquiry, which is not susceptible to class-wide adjudication. *See id.*

26 **B. Potential Estimated Value of the Class and Representative PAGA Claims.**

27 **1. The Recovery of Unpaid Wages and Statutory Penalties.**

28 Based on the class data provided by Defendant, Class Counsel estimated that Defendant

1 would face potential liability of up to approximately \$2,212,882.40 in unpaid wages and statutory
2 penalties, if Plaintiffs succeeded at trial on all class claims. *See* Agnew Decl. ¶ 47. The breakdown
3 for the calculation of the class damages and penalties is set forth in detail in the Agnew Declaration.
4 *See id.*

5 **2. The Recovery of Civil PAGA Penalties Is Uncertain.**

6 Due to the discretionary nature of PAGA penalties, PAGA civil penalties are difficult to
7 evaluate. Defendant has indicated that, at the time of mediation, there were approximately
8 13,056 pay periods in which Aggrieved Employees worked during the period of January 20,
9 2021 to August 18, 2023. *See* Agnew Decl. ¶ 48. Assuming that Plaintiffs were to prevail on the
10 merits of the PAGA claim, applying the standard penalty of \$100 per pay period (regardless of
11 the number of violations) yields \$ 1,305,600 in potential liability. *See id.* However, in the
12 alternative, if the Court were to “stack” penalties (*i.e.*, award multiple PAGA penalties for
13 different Labor Code violations in the same pay period), the potential PAGA penalties could
14 total as high as \$3,230,900. *See id.* at ¶ 49.

15 However, even assuming Plaintiffs ultimately prevail on the PAGA claim, the Court has
16 discretion to reduce any PAGA penalties. Pursuant to Labor Code § 2699(e)(2), the Court can
17 decline to award PAGA penalties where “if, based on the facts and circumstances of the
18 particular case, to do otherwise, would result in an award that is unjust, arbitrary and oppressive,
19 or confiscatory.” Indeed, as shown in the Court of Appeal’s decision in *Carrington v. Starbucks*
20 *Corp.*, 30 Cal.App.5th 504 (2018), while the plaintiff prevailed on his PAGA claim upon trial,
21 the trial court reduced the maximum PAGA penalty amount by 90%, citing the employer’s good
22 faith attempt at complying with the law. *Id.* at p. 517. Upon review, the Court of Appeal found
23 such a reduction to be proper. *Id.* at 539.

24 Although Class Counsel believe in the merits of the alleged claims and maintains that
25 there is no reason for reducing PAGA penalties, Class Counsel is aware that Defendant may raise
26 defenses to the claims and further with respect to the reduction of PAGA penalties and that it
27 could be persuasive to the Court. *See* Agnew Decl. ¶¶ 50, 52, 53. Thus, even if Plaintiffs were to
28 successfully prove this claim at trial, there is a possibility that the Court may only award a small

percentage of PAGA penalties, as the Court has discretion to do so. The Settlement Fund was premised with this risk in mind. *See id.*

3. The Settlement is Reasonable When Compared to the Value of the Underlying Labor Code Claim and Inherent Uncertainty of Litigation.

The settlement for each Class Member is fair, reasonable, and adequate, given the inherent risks of litigation, including the substantial risks relative to class certification, the costs of pursuing such litigation, and the risks associated with the Court’s discretion to reduce PAGA penalties. *See Agnew Decl.* ¶58.⁵ Here, based on the amounts explained above, the total exposure for the class and PAGA claims amount to \$5,443,782.40. *See id.* at ¶ 54. The Settlement Fund here is \$565,000.00, and thus amounts to approximately 10.37% of Defendant’s maximum exposure. *See id.* However, this figure assumes that the Court would award \$3,230,900 in civil PAGA penalties, which presumes that the Court were to “stack” penalties. *See id.* In the alternative, if the Court applies a single \$100 PAGA penalty per pay period, the realistic exposure on the class and PAGA claims totals \$3,518,482.40. *See id.* at ¶ 55. Thus, without the stacking of PAGA penalties, the Settlement Fund is approximately 16.05% of the total estimated liability. *See id.* Numerous courts have held that **gross** settlements approximating between 8 and 25% of the defendant’s potential exposure are fair and reasonable.⁶

//

//

⁵ Despite the asserted fairness of the settlement terms, as set forth in the Notice of Settlement of Class and Representative Action (“Notice”), should any Class Member wish to pursue his or her own case for the claims being released herein, each Class Member has the right to submit a request for exclusion (*i.e.*, opt-out) from the settlement. (*See* Notice, attached as **Exhibit A** to the Settlement Agreement.) Moreover, as set forth in the Notice, Class Members are advised of their right to object to any of the terms contained in the Stipulation and attend the final approval hearing.

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

1 **C. The Court Should Preliminarily Approve the Proposed Enhancement**
2 **Payment to the Class Representatives.**

3 Plaintiffs each request an enhancement of Ten Thousand Dollars (\$10,000.00). *See* SA §§
4 A-13, E-14. Plaintiffs personally met with Class Counsel on various occasions to discuss the case,
5 provide documents and information to Class Counsel, and review the Settlement Agreement. *See*
6 Valencia Decl. ¶ 9; Jeroue Decl. ¶ 9. In addition to the invaluable services that Plaintiffs provided,
7 they also took significant risks, both professionally and monetarily, in acting as the Class
8 Representatives and seeking benefits on behalf of the Class. *See* Valencia Decl. ¶ 11; Jeroue Decl.
9 ¶ 11. Because the claims alleged by the Class Representatives involved the payment of costs to
10 the prevailing party, Plaintiffs could have possibly faced paying the fees and costs of Defendant,
11 had Plaintiffs not prevailed in this action. *See* Valencia Decl. ¶ 11; Jeroue Decl. ¶ 11.

12 Further, given that future employers are much less likely to hire individuals who have filed
13 suit against their prior employer, particularly cases of this nature, Plaintiffs may face prejudice in
14 the future from other potential employers. Plaintiffs took this risk upon themselves. *See* Valencia
15 Decl. ¶ 11; Jeroue Decl. ¶ 11. Class Members did not have to file individual lawsuits and bear the
16 risks of payment of fees and costs if they did not prevail, nor did they have to face the potential
17 for retaliation and not getting future employment had they filed a public lawsuit.

18 Notably, courts have routinely granted approval of representative enhancements for far
19 greater amounts than the \$10,000.00 sought by each Plaintiffs in this case. *See, e.g., Van Vranken*
20 *v. Atlantic Richfield Co.*, 901 F. Supp. 294, 299-300 (N.D. Cal. 1995) (incentive award of
21 \$50,000); *In re Dun & Bradstreet Credit Servs. Customer Litig.*, 130 F.R.D. 366, 374 (S.D. Ohio
22 1990) (two incentive awards of \$55,000, and three incentive awards of \$35,000); *Brotherton v.*
23 *Cleveland*, 141 F. Supp. 2d 907, 913-14 (S.D. Ohio 2001) (granting a \$50,000 incentive award);
24 *Enter. Energy Corp. v. Columbia Gas Transmission Corp.*, 137 F.R.D. 240, 251-52 (S.D. Ohio
25 1991) (\$50,000 awarded to each class representative); *Glass v. UBS Fin. Servs.*, No. C-06-4068,
26 2007 U.S. Dist. LEXIS 8476, at *51-52 (N.D. Cal. Jan. 27, 2007) (awarding \$25,000 incentive
27 award in FLSA overtime wages class action); *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998)
28 (affirming \$25,000 Incentive award to class representative in ERISA case). Here, Plaintiffs request
a modest enhancement of \$10,000 each, which is reasonable and consistent with case law.

1 **D. The Requested Attorneys’ Fees and Litigation Costs Are Reasonable, Fair,**
2 **and Appropriate.**

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

11 Under California law, the award of attorneys’ fees in common fund wage and hour class
12 action settlements should start with the percentage method. *See Laffitte v. Robert Half Int’l*, 1 Cal.
13 5th 480, 503 (Aug. 11, 2016) (“We join the overwhelming majority of federal and state courts in
14 holding that when class action litigation establishes a monetary fund for the benefit of the class
15 members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the
16 court may determine the amount of a reasonable fee by choosing an appropriate percentage of the
17 fund created”). Under the percentage of the fund method, the Court’s objective remains to “mimic
18 the market” in fixing a reasonable fee. *See Gaskill v. Gordon*, 160 F.3d 361, 363 (7th Cir. 1998)
19 (J. Posner) (“When a fee is set by a court rather than by contract, the object is to set it at a level
20 that will approximate what the market will set...The judge, in other words, is trying to mimic the
21 market in legal services”).

22 The results delivered by Class Counsel also support the requested percentage of the fund.
23 Here, the Parties have agreed to a payment of a maximum of one-third of the Gross Settlement
24 Fund for payment to Class Counsel as attorneys’ fees. The Parties have agreed to a payment of the
25 foregoing attorney’s fees and, thus, this payment should be presumed to be fair. Further, it is not
26 uncommon for courts to award attorneys’ fees as one-third or 33.3% of the settlement amount in
27 wage and hour class action settlements. For example, in *McKinnon v. Best Buy Co., Inc.*, (Alameda
28 Superior Court Case No. RG03082294), the court awarded over \$9 million as attorneys’ fees,
which was 33% of the maximum settlement amount of \$26.9 million. At the time of Final

1 Approval, Class Counsel will also provide the court with declarations and time records to show
2 that a payment of one-third of the recovery is justified and fair even under the lodestar method.

3 Further, the Parties have agreed to reimbursement of Class Counsel's litigation costs. Class
4 Counsel have, at their own risk, expended costs, for example, to file this instant action, service of
5 process, payment of mediation fees and other litigation related costs. Lee Decl. ¶ 4. Based on the
6 foregoing, the court should preliminarily approve the attorney's fees and costs being requested by
7 the Parties.

8 **E. The Settlement Administrator's Fees are Reasonable.**

9 The Parties request that Phoenix Settlement Administrators be appointed as the claims
10 representative in this case. The Parties have agreed to an estimated payment of Ten Thousand
11 Dollars (\$10,000.00) to Phoenix to send notices and to administer this settlement. Phoenix is a
12 well-recognized class action settlement administrator. Admin. Decl. ¶ 3, Ex. A.

13 **V. THE PROPOSED CLASS MEETS ALL CERTIFICATION REQUIREMENTS**

14 **A. The Class is Ascertainable and Sufficiently Numerous.**

15 The Class that Plaintiffs seek to conditionally certify is ascertainable. "Class members are
16 'ascertainable' where they may be readily identified without unreasonable expense or time by
17 reference to official records." *Lee v. Dynamex, Inc.*, 166 Cal. App. 4th 1325, 1334 (2008) (same).
18 Defendant has determined that there are approximately 367 employees that comprise the Class.
19 *See Agnew Decl. ¶ 23.* Thus, the Class is sufficiently numerous. *See Preston v. Porch.com, Inc.*,
20 2022 WL 1214710, at *3 (S.D. Cal., 2022) (a "presumption of numerosity created by twenty-five
21 to thirty members"); *Rannis v. Recchia*, 380 Fed.Appx. 646, 650 (9th Cir. 2010) (district court "did
not abuse its discretion in determining that the class of 20 satisfies the numerosity requirement").

22 **B. There are Common Questions of Law and Plaintiffs' Claims are Typical of the**
23 **Class.**

24 The commonality requirement is met when there are questions of law and fact common to
25 the class. *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (1998) ("The existence of shared
26 legal issues with divergent legal factual predicates is sufficient, as is a common core of salient
27 facts couple with disparate legal remedies within the class"). Commonality requires only that some
28 common legal or factual questions exist; the plaintiffs need not show that all issues in the litigation

are identical. *See Richmond v. Dart Industries, Inc.*, 29 Cal. 3d 462, 473 (1981). Defendant's conduct is central to the commonality inquiry. *See City of San Jose v. Superior Court*, 12 Cal. 3d 447, 460 (1974); *Vasquez v. Superior Court*, 4 Cal. 3d 800, 812-13 (1971). Where the employer's conduct is uniformly directed at a class of employees, as it is here, the class wide impact of the Defendant's policies satisfies the commonality requirement. *See Stephens v. Montgomery Ward & Co.*, 193 Cal. App. 3d 411, 421 (1987). Here, Plaintiffs allege, in part, that Defendant, as a matter of its corporate policy, practice, or procedure violated the Labor Code by: (a) failing to reimburse business expenses, in violation of Labor Code section 2802; (b) failing to provide accurate, itemized wage statements, in violation of Labor Code section 226(a); (c) failing to pay all minimum, regular, overtime, and reporting time wages, in violation of Labor Code sections 510, 1174, 1198, and 1199; and (d) engaging in Unfair Business Practices in violation of the UCL. *See Valencia Decl.* ¶¶ 3-7; *Jeroue Decl.* ¶¶ 3-7. In other words, Plaintiffs were allegedly subjected to the same policy and practice as other Class Members. *See Valencia Decl.* ¶¶ 3-7; *Jeroue Decl.* ¶¶ 3-7. Thus, Plaintiffs' claims are typical to those of Class Members.

C. Plaintiffs and Class Counsel Have Adequately Represented the Class.

The adequacy requirement is also met. "Adequacy of representation depends on whether the plaintiff's attorney is qualified to conduct the proposed litigation and the plaintiff's interests are not antagonistic to the interests of the class." *McGhee v. Bank of Am.*, 60 Cal. App. 3d 442, 450 (1976). Here, Plaintiffs do not have any interests adverse to the Class, nor have any such issues been raised or presented. *See Valencia Decl.* ¶ 8; *Jeroue Decl.* ¶ 8. Plaintiffs have taken all necessary steps to represent the interests of the Class, by providing information and documents. *See Valencia Decl.* ¶ 9; *Jeroue Decl.* ¶ 9. For such reasons, Plaintiffs have adequately represented the Class Members and will continue to do so.

Further, as detailed in their declarations, Class Counsel are experienced and well-qualified class action litigators who have litigated many wage and hour class actions and have each been certified as class counsel in numerous other class actions, particularly wage and hour class actions. *Agnew Decl.* ¶¶ 59-65; *Lee Decl.* ¶¶ 5-8; *Marder Decl.* ¶¶ 5-12; *Rosenthal Decl.* ¶¶ 4, 5. From the inception of the case, Class Counsel have solely represented the interest of the Class. For example, Class Counsel expended significant time and resources propounding written discovery,

1 exchanging informal discovery, drafting a mediation statement, and attending mediation. *See*
2 Agnew Decl. ¶¶ 16-21. Finally, the mediation and settlement were also obtained for the benefit of
3 the Class, not for the individual Plaintiffs.

4 **VI. NOTICE TO THE LWDA**

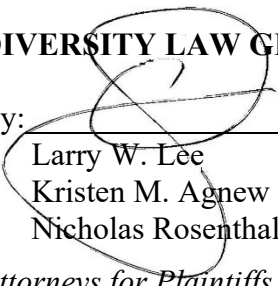
5 Concurrently with the filing of this motion, Plaintiffs submitted the Settlement
6 Agreement and supporting documents to the LWDA. *See* Agnew Decl. ¶ 66.

7 **VII. CONCLUSION**

8 Here, the proposed settlement is fair, adequate, and reasonable. It will result in both
9 substantial monetary benefits to Class Members; it is non-collusive; and it was achieved as the
10 result of informed, extensive, and arm's length negotiations conducted by counsel for the
11 respective Parties who are experienced in wage and hour class action litigation. For the foregoing
12 reasons, Plaintiffs respectfully request that the Court grant preliminary approval of the proposed
13 settlement, sign the proposed Order, approve and authorize mailing of the proposed Class Notice,
14 and set a date for a final approval hearing.

15 DATED: February 1, 2024

DIVERSITY LAW GROUP, P.C.

16 By: 
17 _____
18 Larry W. Lee
19 Kristen M. Agnew
20 Nicholas Rosenthal
21 *Attorneys for Plaintiffs*

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

1
2 **9. DECLARATION OF KEVIN LEE REGARDING PLAINTIFFS' MOTION FOR**
3 **PRELIMINARY APPROVAL OF CLASS AND REPRESENTATIVE ACTION**
4 **SETTLEMENT**

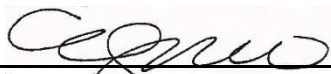
5 on the interested parties in this action as follows:

6 Michael S. Chamberlin
7 Nicholas D. Poper
8 Vivian Y. Shen
9 BAKER & HOSTETLER LLP
10 11601 Wilshire Boulevard, Suite 1400
11 Los Angeles, CA 90025-0509
12 mchamberlin@bakerlaw.com
13 npoper@bakerlaw.com
14 vshen@bakerlaw.com

15 *Attorneys for Defendant Sentinel Transportation, LLC*

16 X BY ELECTRONIC SERVICE: Based on a court order I caused the above-
17 entitled document(s) to be served through the Odyssey eFileCA E-Filing System at the website
18 www.california.tylerhost.net, addressed to all parties appearing on the electronic service list for
19 the above-entitled case. The service transmission was reported as complete and a copy of the
20 filing receipt/confirmation will be filed, deposited, or maintained with the original document(s)
21 in this office.

22 I declare under penalty of perjury under the laws of the State of California that the
23 above is true and correct. Executed on February 1, 2024, at Los Angeles, California.

24
25
26
27
28


Erika Mejia