

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

Attorneys for Plaintiff and the Class

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE**

ADEWUNMI OJO, as an individual and on
behalf of all others similarly situated,

Plaintiffs,

vs.

PINNACLE LIGHT INDUSTRIAL, LLC;
and DOES 1 through 50, inclusive,

Defendants.

Case No.: 30-2021-01201515-CU-OE-CXC

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

Date: November 18, 2022

Time: 1:30 p.m.

Dept.: CX101

Complaint Filed: May 19, 2021

Trial Date: None

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

2 **PLEASE TAKE NOTICE** that on November 18, 2022, 2022, at 8:30 a.m., or as soon
3 thereafter as the matter may be heard, before the Honorable Glenda Sanders, judge presiding, in
4 Department CX101 of the above referenced Court, located at 751 West Santa Ana Boulevard,
5 Santa Ana, California 92701, Plaintiff Adewunmi Ojo ("Plaintiff") will seek an Order approving
6 the concurrently filed Joint Stipulation of Settlement and Release Under the Private Attorneys
7 General Act, California Labor Code § 2698, *et seq.*, pursuant to the procedures set forth in Labor
8 Code § 2698, *et seq.*

9 This motion will be based on this notice of motion, the attached memorandum of points
10 and authorities, the accompanying declarations of Kristen M. Agnew, Plaintiff Adewunmi Ojo
11 and Jodey Lawrence (Phoenix Class Action Administrators), the records and file herein, and on
12 such other evidence as may be presented at the hearing of the motion.

13
14 DATED: October 24, 2022

DIVERSITY LAW GROUP, P.C.

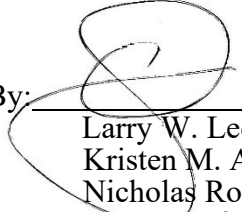
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16 By: 
17 Larry W. Lee
18 Kristen M. Agnew
19 Nicholas Rosenthal
20 Attorneys for Plaintiff, the Class, and
21 Aggrieved Employees
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Pursuant to the Private Attorneys General Act of 2004 (“PAGA”), Labor Code section
4 2698, *et seq.*, Plaintiff Adewunmi Ojo (“Plaintiff”) hereby moves the Court for an order
5 approving the non-reversionary PAGA settlement as set forth in the concurrently filed Joint
6 Stipulation of Settlement and Release Under the Private Attorneys General Act (“Agreement” or
7 “Settlement Agreement”).¹ As set forth in the proposed Second Amended Complaint, Plaintiff
8 seeks PAGA penalties based on Defendant Pinnacle Light Industrial, LLC’s (“Defendant”) alleged failure to reimburse employees for all business-related expenses, including the costs
9 associated with use of their personal vehicles for work related purposes, in violation of Labor
10 Code section 2802, and failure to timely pay wages to employees, in violation of Labor Code
11 section 204.
12

13 As demonstrated below and in the accompanying declaration of Kristen M. Agnew, the
14 proposed settlement warrants the Court’s approval. This settlement was reached after
15 investigation and discovery, including Defendant’s production of relevant documents and payroll
16 data.

17 Pursuant to the terms of the Settlement Agreement, Defendant will pay the gross amount
18 of \$60,000.00 (the “Maximum Settlement Amount”), which includes a payment of
19 approximately \$24,990.76 in civil penalties to the California Labor and Workforce Development
20 Agency (“LWDA”). The proposed release is narrowly tailored to release only claims under
21 PAGA that were or could have been pled based on the PAGA Notice and the operative
22 Complaint—specifically, Labor Code sections 204 and 2802. The proposed settlement
23 constitutes an adequate, fair, and reasonable settlement on behalf of the LWDA and Aggrieved
24 Employees and accomplishes the goals of PAGA.

25 //

26 _____
27 ¹ A true and correct copy of the Settlement Agreement is attached as Exhibit 2 to the Declaration
28 of Kristen M. Agnew in Support of Plaintiff’s Motion to Approve PAGA Settlement (“Agnew Decl.”).

1 **II. SUMMARY OF THE LITIGATION**

2 **A. The PAGA Notice and Complaint.**

3 On May 13, 2021, Plaintiff submitted his written notice under Labor Code section 2699.3
4 (the “PAGA Notice”) to the LWDA and Defendant. As set forth in the PAGA Notice, Plaintiff
5 alleged that Defendant failed to pay wages in a timely matter and failed to reimburse mileage
6 expenses incurred due to driving personal vehicles for work related purposes in violation of
7 California Labor Code sections 204 and 2802. Agnew Decl. ¶ 3, Exhibit 1.

8 On May 19, 2021, Plaintiff filed a putative class action lawsuit against Defendant in the
9 Superior Court of California, County of Orange. Agnew Decl. ¶ 4. Plaintiff asserted class claims
10 for: (1) violation of Labor Code section 2802; and (2) violation of Business and Professions
11 Code section 17200, et seq., based on Defendant’s alleged failure to reimburse employees for
12 business expenses. *Id.*

13 **B. Plaintiff Filed the First Amended Complaint.**

14 After obtaining the approval of the Court, on July 16, 2021, Plaintiff amended his
15 complaint to add a cause of action for violation of PAGA. Agnew Decl. ¶ 5. The First Amended
16 Complaint alleges claims based on the facts described in Plaintiff’s PAGA Notice. *Id.* Plaintiff
17 seeks civil penalties predicated on Defendant’s alleged failure to reimburse business expenses
18 and to comply with Labor Code section 204. *Id.*

19 **C. Plaintiff Signed an Arbitration Agreement.**

20 On or about June 21, 2021, Defendant’s counsel advised that Plaintiff had signed an
21 arbitration agreement during the course of his employment with Defendant. Agnew Decl. ¶ 6.
22 The agreement required Plaintiff to litigate his claims on an individual basis in arbitration. *Id.* In
23 light of the narrow claims at issue, the Parties agreed to redirect their resources to exploring the
24 possibility of an early resolution on as broad a scale as possible consistent with applicable law.
25 *Id.*

26 **D. The Parties Engage in Informed Settlement Negotiations.**

27 Over the course of several months, Plaintiff and Defendant (the “Parties”) met and
28 conferred regarding the underlying merits of the case and engaged in arm’s length negotiations.

1 Agnew Decl. ¶¶ 7-10. In connection with the Parties' negotiations, Defendant produced, among
2 other things, electronic documents and data related to the mileage reimbursement records for
3 Plaintiff and the Aggrieved Employees, Defendant's mileage reimbursement policy, as well as
4 data relating to the number of potential Aggrieved Employees and the number of pay periods
5 worked by Aggrieved Employees during the period of May 13, 2020 through September 11, 2021. *Id.* at ¶ 7.
6 In total, Aggrieved Employees worked 835 pay periods during which the employees received the
7 payment of wages and/or expense reimbursements (including for mileage) during the period of
8 May 13, 2020 through September 11, 2021.² *Id.* This information allowed Plaintiff to conduct a
9 full damage analysis. *Id.*

10 On or about April 26, 2022, the Parties reach a settlement in principle of the entire action.
11 Agnew Decl. ¶ 11. The Parties thereafter worked to memorialize the terms of the settlement in a
12 long-form settlement agreement. *Id.* On or about September 16, 2022, the Parties executed a
13 Joint Stipulation of Settlement and Release Under the Private Attorneys General Act. *Id.* at ¶ 12.
14 Attached true and correct copy of the Settlement Agreement is attached to the Agnew
15 Declaration as Exhibit 2.

16 **III. PLAINTIFF SHOULD BE GRANTED LEAVE TO FILE THE PROPOSED**
17 **SECOND AMENDED COMPLAINT**

18 As part of the proposed settlement, Plaintiff agreed to the dismissal *without prejudice* of
19 the class allegations set forth in the First Amended Class and Representative Action Complaint.
20 Agnew Decl. ¶ 13. Plaintiff further agreed to file a Second Amended Representative Action
21 Complaint for Violation of Labor Code § 2698, *et. seq.* (the "Operative Complaint"). The
22 proposed Operative Complaint contains a single cause of action for violation of the PAGA
23 predicated on Defendant's alleged violation of Labor Code sections 204 and 2802. *Id.* A true and
24 correct copy of the proposed Operative Complaint is attached to the Settlement Agreement as
25
26

27 ² Defendant confirmed that it altered its payroll practices relative to the entirety of Plaintiff's
28 allegations on or before September 11, 2021. Agnew Decl. ¶¶ 9, 10.

Exhibit B. For the Court’s convenience, a redline comparison of the First Amended Complaint and proposed Operative Complaint is attached to the Agnew Declaration as Exhibit 3.

IV. SUMMARY OF THE PROPOSED PAGA SETTLEMENT

A. The Aggrieved Employees

The settlement covers all current and former employees of Defendant in the State of California who were paid wages at any time from May 13, 2020, through July 31, 2022 (the “Aggrieved Employees”). Settlement Agreement § B-2. Based upon Defendant’s records, Aggrieved Employees received the payment of wages and/or expense reimbursements in approximately 875 pay periods during the period of May 13, 2020 through July 31, 2022 (the “PAGA Period”). *Id.* at §§ B-11, D-2; Agnew Decl. ¶ 14.

B. Settlement Sum and Allocation

The Settlement Agreement requires Defendant to pay the gross amount of Sixty Thousand Dollars (\$60,000.00) (the “Maximum Settlement Amount”). Settlement Agreement § B-9. Based on the Maximum Settlement Amount, Defendant will pay approximately \$68.57 per pay period to resolve the claims in this case. Agnew Decl. ¶ 21.

The balance of the Maximum Settlement Amount remaining after deduction of the approved enhancement payment to Plaintiff, attorneys’ fees and costs, and settlement administration costs (the “PAGA Penalties Fund”), will be available for distribution to the LWDA and Aggrieved Employees. Settlement Agreement §§ B-10, D-4, D-5. The PAGA Penalties Fund is estimated to be at least \$33,321.02. Agnew Decl. ¶ 16. Seventy-five percent (75%) of the PAGA Penalties Fund, or approximately \$24,990.76, will be paid to the LWDA for PAGA penalties. Settlement Agreement § D-4; Agnew Decl. ¶ 16. The remaining twenty-five percent (25%), or approximately \$8,330.26, will be distributed to Aggrieved Employees. Settlement Agreement § D-5; Agnew Decl. ¶ 17.

The amount any particular Aggrieved Employee will be entitled to recover will depend on the number of pay periods in which he or she received the payment of wages and/or expense reimbursements during the PAGA Period, with some entitled to receive more and others less. Settlement Agreement § D-5; Agnew Decl. ¶22. This is fair, as it directly allocates greater

1 penalties to individuals who have allegedly suffered greater harm. *Id.* Any uncashed checks will
2 be paid out pursuant to California Code of Civil Procedure section 384 to the *cy pres* recipient,
3 Legal Aid at Work. Settlement Agreement §E-4; Agnew Decl. ¶ 17. Neither the Parties nor their
4 respective counsel have a relationship with the designated *cy pres*. Settlement Agreement §E-4;
5 Agnew Decl. ¶ 17.

6 As part of the Settlement Agreement, Defendant does not object to Plaintiff's Counsel's
7 request for attorneys' fees of approximately thirty-three and one-third percent (33.33%) of the
8 Maximum Settlement Amount, *i.e.*, Twenty Thousand Dollars (\$20,000.00), plus up to Five
9 Thousand Dollars (\$5,000.00) for reimbursement of litigation costs, subject to the Court
10 approving this Settlement.³ Settlement Agreement § D-9. Also, as part of the Settlement
11 Agreement, Defendant does not object to Plaintiff's request for an enhancement payment of
12 Three Thousand Dollars (\$3,000.00). *Id.* at § D-8.

13 Finally, the Settlement Agreement provides for the payment of the fees and expenses
14 reasonably incurred by the Settlement Administrator. Settlement Agreement § D-10. The
15 Parties have agreed to utilize Phoenix Settlement Administrators to administer the settlement,
16 with the administration costs estimated to be \$1,750.00. Declaration of Jodey Lawrence,
17 Exhibit. B.

18 **C. Scope of the Released Claims**

19 In exchange for the payments described above, Plaintiff and Aggrieved Employees will
20 release Defendant and Released Parties from:

21 [A]ll claims for civil penalties under the California Labor Code
22 Private Attorneys General Act, including costs and attorneys' fees
23 related thereto, predicated on the alleged violation of Labor Code
24 sections 204 and/or 2802, based on the facts as alleged in the PAGA
25 Notice and the Second Amended Representative Action Complaint,
26 whether known or unknown, and including any claims under the
27 California Labor Code and/or applicable Industrial Welfare
Commission Wage Orders, as well any resulting claim for attorneys'
fees and costs that accrued during the period of May 13, 2020,
through July 31, 2022. (the "Released Claims").

28 ³ As set forth below, Plaintiff's Counsel seeks reimbursement for its anticipated actual litigation costs in the amount of \$1,928.98. Agnew Decl. ¶ 18, Exhibit 4.

1 Settlement Agreement § B-14. The Settlement is not intended to release does not extend to
2 violations of any predicate statutes other than PAGA. Agnew Decl. ¶ 32. The release also does
3 not constitute a waiver of claims by Aggrieved Employees for any individual wage and hour
4 claims. *Id.*

5 **V. THE PAGA SETTLEMENT IS REASONABLE AND SHOULD BE APPROVED**

6 **A. PAGA Overview**

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

19 Labor Code section 2699(a) states that any Labor Code provision “that provides for a
20 civil penalty to be assessed and collected by the [LWDA] may, as an alternative, be recovered
21 through a civil action brought by an aggrieved employee on behalf of himself or herself and
22 other current or former employees pursuant to the procedures specified in Section 2699.3.” An
23 “aggrieved employee” means “any person who was employed by the alleged violator and against
24 whom one or more of the alleged violations was committed.” Lab. Code § 2699(c). Prior to
25 commencing an action, the allegedly aggrieved employee must provide notice to the LWDA and
26 the employer setting forth the “specific provisions of [the Labor Code] alleged to have been
27 violated, including the facts and theories to support the alleged violation.” Lab. Code §
28 2699.3(a)(1). If the LWDA decides not to investigate the allegations or issue a citation to the

1 employer, the proposed representative plaintiff is entitled to commence a PAGA action after 65
2 days. Lab. Code § 2699.3(a)(2).

3 The California Supreme Court has explained that a plaintiff who brings a PAGA claim
4 “represents the same legal right and interest as state labor law enforcement agencies,” and brings
5 PAGA claims “as the proxy or agent” of the State. *Arias*, 46 Cal.4th at 986. Of the civil penalties
6 recovered, seventy-five percent goes to the LWDA, and the remaining twenty-five percent goes
7 to the “aggrieved employees” for collecting the penalties on behalf of the State Lab. Code §
8 2699(i); *Baumann v. Chase Inv. Servs. Corp.*, 747 F.3d 1117, 1123 (9th Cir. 2014) (a PAGA
9 representative’s recovery is “an incentive to perform a service to the state, not restitution for
10 wrongs done to members of the class”).

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

13 In class action cases, the purpose of the Court’s preliminary evaluation of the settlement
14 is to determine whether it is within the “range of reasonableness,” and thus whether notice to the
15 class of the terms and conditions of the settlement, and the scheduling of a formal fairness
16 hearing, are worthwhile. *See* 4 Herbert B. Newberg, *Newberg on Class Actions* § 11.25, *et seq.*
17 and § 13.64 (4th ed. 2002 and Supp. 2004) (“*Newberg*”). The “judge must make a preliminary
18 determination on the fairness, reasonableness, and adequacy of the settlement terms and must
19 direct the preparation of notice of the certification, proposed settlement, and date of the final
20 fairness hearing.” *Manual for Complex Litigation, Fourth* § 21.632 (Fed. Jud. Ctr., 4th ed. 2004).
21 To make the preliminary fairness determination, courts may consider several relevant factors,
22 including “the strength of the plaintiff’s case; the risk, expense, complexity, and likely duration
23 of further litigation; the risk of maintaining class action status through trial; the amount offered
24 in settlement; the extent of discovery completed and the stage of the proceedings; [and] the
25 experience and views of counsel...” *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th
26 Cir. 1998).

27 By contrast, court approval of PAGA settlements is governed by section 2699(1) of the
28 Labor Code, which provides, in relevant part: “The court shall review and approve any penalties

sought as part of a proposed settlement agreement pursuant to this part.” The parties are not obligated to “satisfy class action requirements,” including the standards for class action settlement approval. ⁴ *Arias*, 46 Cal. 4th at 980-988 (affirming lower court’s holding that “plaintiff need not satisfy class action requirements” to assert a PAGA claim).

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

C. The Settlement is Reasonable and Effectuates PAGA’s Objectives

The Court’s focus in a PAGA case is not the amount that aggrieved employees will ultimately receive as a result of a settlement, but instead, on whether the gross settlement amount achieves PAGA’s objectives. Under PAGA, the penalties recovered are meant to supplement agency funding for education and enforcement purposes. *See* Lab. Code § 2699(i). Here, the settlement represents an extraordinary recovery for the Aggrieved Employees and the State, and thus the settlement certainly effectuates PAGA’s purpose.

The settlement is also consistent with the State’s public policy favoring resolution of disputes. “California law favors the settlement of disputes as our high court clarified in *Neary*[]. Settlement is efficient; it reduces costs, saves resources, and minimizes court congestion. [] The parties are best positioned to understand their interests and resolve a dispute in a mutually beneficial manner without court intervention into the settlement.” *Consumer Advocacy Group, Inc. v. Kintetsu*, 141 Cal. App. 4th 46, 62-63 (2006) (citing *Neary v. Regents of Univ. of Cal.*, 3 Cal. 4th 273, 277- 278 (1992)).

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⁴ PAGA also does not require class action procedures, such as notice and opt-out rights. *O’Connor v. Uber Technologies, Inc.*, 201 F.Supp.3d 1110, 1133 (N.D. Cal., 2016) (explaining that “in a lawsuit which asserts a PAGA claims and seeks class certification for labor/wage claims, even class members who opt out of the class would be bound by an adverse PAGA judgment or settlement”).

1 **D. The Scope of the Release is Appropriately Limited**

2 Because an aggrieved employee’s PAGA action is a substitute for an action brought by
3 the government, “judgment in [a PAGA] action is binding not only on the named employee
4 plaintiff but also on government agencies and any aggrieved employee not a party to the
5 proceeding.” *Arias*, 46 Cal. 4th at 986. However, “the nonparty employees, because they were
6 not given notice of the action or afforded any opportunity to be heard, would not be bound by the
7 judgment as to remedies other than civil penalties.” *Id.* at 987; *see also*, Lab. Code § 2699(g)(1)
8 (non-party aggrieved employees retain all rights “to pursue or recover other remedies available
9 under state or federal law, either separately or concurrently with an action taken under this
10 part”).

11 Here, if approved, the Settlement would release Defendant and other releasees from civil
12 penalties under PAGA predicated on alleged violations of Labor Code sections 204 and 2802
13 during the PAGA Period. Settlement Agreement § B-14. The Settlement would not impact
14 Aggrieved Employees’ ability to pursue PAGA claims predicated on other Labor Code
15 violations. Agnew Decl. ¶ 32. Nor does the Settlement release individual wage and hour claims
16 that Aggrieved Employees may have against Defendant. *Id.* Therefore, the limited scope of the
17 release also supports approval.

18 **E. The Settlement is Fair and Reasonable as it Recognizes the Inherent Risk of**
19 **Litigation**

20 Though Plaintiff is reasonably confident that he would prevail at trial, proceeding in
21 litigation entails significant risk on the underlying merits of Plaintiff’s theory, in addition to the
22 still-developing law under PAGA.

23 **1. Plaintiff’s Claims are Contested**

24 Plaintiff contends that Defendant reimbursed mileage expenses at the standard IRS
25 reimbursement rate for up to 225 miles in a pay period. Agnew Decl. ¶ 8. However, when
26 employees drove more than 225 miles in a pay period, Plaintiff contends that Defendant
27 reimbursed the additional mileage at a reduced rate. *Id.*

28 Defendant argues, and provided supporting documentation, that the use of a discounted

1 rate ceased on September 11, 2021. Agnew Decl. at ¶ 9. Defendant, however, contends that any
2 violations that may have occurred prior to the date of correction are limited. In support of this
3 argument, Defendant produced mileage reimbursement data for employees during the period of
4 May 13, 2020 to September 11, 2021. Agnew Decl. at ¶ 8. The data shows that there are
5 approximately 835 pay periods in which individuals sought mileage reimbursements. *Id.* In 260
6 out of the 835 pay periods, the records suggest that the employees drove fewer than 225 miles.
7 *Id.* Thus, based on Defendant's records there are only approximately 575 pay periods in which
8 employees may have been reimbursed at a rate below the standard IRS rate.⁵ *Id.*

9 Defendant further argues that, even if Plaintiff establishes that Defendant's
10 reimbursement policy is unlawful, Plaintiff will have a difficult time making a showing that *each*
11 Aggrieved Employee experienced a violation of Labor Code section 2802. Agnew Decl. ¶ 27. In
12 this respect, Defendant contends that a finding of liability will necessarily require individualized
13 proof that: (1) employees who drove more than 225 miles per week did so in furtherance of the
14 discharge of his or her duties; (2) the additional mileage was necessary and reasonable; and (3)
15 that the reduced reimbursement rate did not cover the employee's actual expenses and wear and
16 tear on their vehicles. *Id.* Defendant contends that establishing a violation for each Aggrieved
17 Employee will make trial unmanageable. *See Wesson v. Staples the Off. Superstore, LLC*, 68 Cal.
18 App. 5th 746, 763 (2021) (striking PAGA claim as unmanageable).

19 Defendant also contests Plaintiff's allegation that it had a policy of paying wages to
20 employees on or after the eighth day following the close of the pay period, in violation of Labor
21 Code section 204. Agnew Decl. ¶ 28. Nonetheless, Defendant maintains that, in an abundance of
22 caution and for business reasons, it changed its payroll practices to pay employees within six
23 days of the close of the pay period, effective June 27, 2021. *Id.* at ¶ 10. Defendant produced a
24 copy of the weekly payroll reschedule to establish this modification in policy. *Id.*

25 However, even if Plaintiff were to prevail on the merits of the PAGA claim, the potential
26

27 ⁵ Defendant contends that, in some instances, it compensated all mileage requests at the standard
28 IRS rate. Agnew Decl. ¶ 8.

1 recovery is uncertain. Defendant contends that it made a good faith effort to comply with the
2 law. Agnew Decl. ¶ 30. As argued by Defendant, in deciding whether to award the maximum
3 penalty amount, courts may focus on whether the employer made a good faith effort to follow
4 the law. For example, in *Thurman v. Bayshore Transit Management, Inc.*, the Court of Appeal
5 upheld the trial court’s significant reduction of PAGA penalties by 30% because the employer
6 was not initially on notice that it was in violation of the law and because it would have been
7 unfair to award penalties where the employer was unaware of the violations. 203 Cal. App. 4th
8 1112, 1136 (2012). When the employer made aware of the violations, it timely took steps to
9 come into compliance. *Id.* By contrast, the imposition of full penalties was justified when an
10 employer took a “cavalier approach to fulfilling its contractual and statutory obligations” and
11 demonstrated “reckless disregard.” *Id.* Furthermore, as the California Court of Appeal has
12 affirmed, trial courts are well within their discretion to reduce PAGA penalties “for technical
13 violations that cause no injury,” especially where the “violation was inadvertent.” *Raines v.*
14 *Coastal Pac. Food Distributors, Inc.*, 23 Cal. App. 5th 667, 681 (2018).

15 In this case, Defendant asserted that a substantial reduction in potential PAGA penalties
16 was warranted because: (1) the alleged violations were inadvertent; (2) after Defendant received
17 Plaintiff’s pre-filing LWDA notice, it changed its payroll system to pay wages within six days of
18 the close of the pay periods and began reimbursing all mileage at the standard IRS rate; and (3)
19 Aggrieved Employees did not suffer any economic harm as a result of the alleged violations of
20 Labor Code sections 204 and 2802. Agnew Decl. ¶ 30. Thus, Defendant contends that no PAGA
21 penalties were needed to punish or deter Defendant for its inadvertent behavior, much less to
22 deter it from committing any future violations that were completely foreclosed by its new payroll
23 practices. *Id.*

24 2. Recovery of Penalties After Trial

25 Defendant has indicated that there are approximately 875 pay periods in which Aggrieved Employees
26 received the payment of wages and/or expense reimbursements during the PAGA Period. Agnew Decl. ¶
27 14; Settlement Agreement § D-2. Therefore, pursuant to the PAGA, Plaintiff has calculated total
28 exposure, if the Court were to award penalties for each violation alleged, could total as high as

1 \$175,000. Agnew Decl. ¶ 24. This, however, assumes that the Court would “stack” penalties —
2 ie award multiple PAGA penalties for the same pay period based on different violations of the
3 Labor Code—which is highly unlikely. *Id.*

4 If the Court only awarded a maximum penalty for a single violation per pay period, the
5 total penalties would only be approximately \$87,500. Agnew Decl. ¶ 23. Even then, pursuant to
6 Labor Code § 2699(f)(2) the Court can decline to award the full amount of PAGA penalties “if,
7 based on the facts and circumstances of the particular case, to do otherwise, would result in an
8 award that is unjust, arbitrary and oppressive, or confiscatory.” Courts routinely award far less
9 than the statutory maximum amount of civil penalties, even where an underlying violation of the
10 Labor Code is found. Indeed, as shown in the Court of Appeal’s decision in *Carrington v.*
11 *Starbucks Corp.*, while the plaintiff prevailed on his PAGA claim at trial, the trial court reduced
12 the maximum PAGA penalty amount by 90%, citing the employer’s good faith attempt at
13 complying with the law. 30 Cal. App. 5th 504, 517 (2018). Upon review, the Court of Appeal
14 found such reduction to be proper. *Id.* at 539; *see O’Connor*, 201 F.Supp.3d 1110 at 1133 (noting
15 that even if PAGA penalties amounted to \$1 billion, such award “could well be reduced, as a
16 court may reduce the penalty when to do otherwise would result in an award that is unjust,
17 arbitrary and oppressive, or confiscatory”); *Magadia v. Wal-Mart Assocs. et al.*, 2019 U.S. Dist.
18 Lexis 91792 at *87-*100 (N.D. Cal. May 31, 2019) (while the trial court imposed substantial
19 PAGA penalties upon the defendant, such amount still represented reductions of 67% and 80%
20 of the potential PAGA penalties at issue).

21 Here, Plaintiff maintains that there does not exist any reason for reducing PAGA
22 penalties. However, Plaintiff is aware that Defendant could make a compelling argument to the
23 contrary. Agnew Decl. ¶ 31.

24 3. Settlement is Reasonable When Compared to the Value of the 25 Underlying Labor Code Claim

26 The Court’s assessment of the proposed settlement must take into account that any
27 penalties awarded may be subject to substantial reduction. When this is considered, in
28 conjunction with the history of PAGA settlements, and the fact that Plaintiff may recover

1 nothing, the proposed settlement is patently reasonable. Indeed, the Maximum Settlement
2 Amount is approximately 34.28% of the maximum amount of penalties at issue, if the Court
3 permitted an award of multiple violations per pay period. Agnew Decl. ¶ 24. Settlement for this
4 reduced value allows for the distribution of penalties in an amount which accounts for the risk of
5 continued litigation and Defendant’s likely arguments that higher penalties would have been
6 confiscatory. It also sufficiently deters Defendant from engaging in similar conduct in the future,
7 which is one of the primary goals of PAGA.

8 The proposed settlement exceeds PAGA settlements that courts have approved in other
9 cases, when considered as a percentage of the overall settlement value of the case. The proposed
10 settlement, in fact, far exceeds other PAGA settlements approved by courts—including those
11 that provide for less than the one percent allocation to PAGA penalties. *See, e.g., Hopson v.*
12 *Hanesbrands Inc.*, 2009 WL 928133, *9 (N.D. Cal. Apr. 3, 2009) (approving total PAGA
13 allocation that was 0.49% of \$408,420.32 gross settlement; *Moore v. PetSmart, Inc.*, 2015 WL
14 5439000, *8 (N.D. Cal. Aug. 4, 2015) (approving total PAGA allocation that was 0.5% of
15 \$10,000,000 gross settlement); *Lusby v. Gamestop Inc.*, 97 F.R.D. 400, 407 (N.D. Cal. 2013)
16 (approving total PAGA allocation that was 0.67% of \$750,000 gross settlement). For example, in
17 *Cotter v. Lyft, Inc.*, the plaintiff alleged that drivers who use Lyft were misclassified as
18 independent contractors. 2016 WL 3561742 (N.D. Cal. June 23, 2016). The parties settled all
19 Labor Code and PAGA claims for \$27 million, with a PAGA allocation of \$1 million – or 3.7%
20 of the total settlement. *Id.* at *2. In granting preliminary approval to the proposed settlement in
21 *Cotter*, the court noted that the PAGA allocation “might seem low when compared to the
22 maximum PAGA penalties,” but acknowledged that it was in fact “quite high compared to the
23 typical amount apportioned to claims for PAGA penalties in wage and hour settlements.” *Id.* at
24 *5.

25 A PAGA allocation need not represent any particular percentage of the overall settlement
26 value in order to secure court approval, and courts routinely approve PAGA settlements
27 representing only a tiny fraction of the overall settlement value. Here, on the other hand, the
28 settlement proposes a payment of approximately \$24,990.76 in penalties to the LWDA and

1 approximately \$8,330.26 in penalties to the Aggrieved Employees, which is an outstanding result
2 in a PAGA-only case. *See* Agnew Decl. ¶¶ 16, 17. The proposed settlement sum in this case
3 vastly exceeds, both in terms of the total dollar amount and as a percentage of overall settlement
4 value, the typical PAGA settlement.

5 **F. The Attorneys' Fees are Reasonable**

6 Labor Code § 2699(g)(1) provides for the recovery of attorneys' fees and costs in any
7 successful action brought under PAGA. Although this is not a class action, in class actions
8 California state and federal courts have recognized that an appropriate method for determining
9 award of attorneys' fees is based on a percentage of the total value of benefits to class members
10 by the settlement. *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 254 (2001); *Serrano*
11 *v. Priest*, 20 Cal. 3d 25, 34 (1977) ("*Serrano III*"); *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478
12 (1980); *Vincent v. Hughes Air West, Inc.*, 557 F. 2d 759, 769 (9th Cir. 1997). The purpose of this
13 equitable doctrine is to avoid unjust enrichment of counsel and to "spread litigation costs
14 proportionally among all the beneficiaries so that the active beneficiary does not bear the entire
15 burden alone." *Vincent*, 557 F. 2d at 769.

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

1 if he is assured that he will be properly and directly compensated should his efforts be
2 successful.” *Id.*

3 Indeed, most recently, the California Supreme Court has also held that the award of
4 attorneys’ fees in common fund wage and hour class action settlements should start with the
5 percentage method. *See Laffitte v. Robert Half Int’l*, 1 Cal. 5th 480, 503 (2016) (“We join the
6 overwhelming majority of federal and state courts in holding that when class action litigation
7 establishes a monetary fund for the benefit of the class members, and the trial court in its
8 equitable powers awards class counsel a fee out of that fund, the court may determine the amount
9 of a reasonable fee by choosing an appropriate percentage of the fund created.”).

10 The California Supreme Court in *Laffitte* affirmed a fee award representing 33 1/3
11 percent of the fund. *Laffitte*, 1 Cal. 5th at 506. And this was based on a lodestar amount that
12 required a multiplier of 2.13. *Id.* at 487. As the Court held, only when the multiplier is
13 “extraordinarily high or low [should] the trial court [] consider whether the percentage method
14 should be adjusted so as to bring the imputed multiplier within a justifiable range.” *Id.* at 505.

15 Here, as set forth in the Agnew Declaration, Plaintiff’s attorneys have spent at least 33.10
16 hours litigating this current action. Agnew Decl. ¶¶ 41, Exhibit 5. Counsel anticipates spending
17 an additional five hours preparing for the hearing on this motion, corresponding with the
18 Settlement Administrator and Defendant’s counsel regarding administration of the settlement. *Id.*
19 Based thereon and based on counsel’s hourly rate of \$700, the lodestar equates to \$23,170
20 ([33.10 hours + 5 hours] x 700), which exceeds the amount of the requested fees. Agnew Decl. ¶
21 42, Exhibit 5. Thus, the requested fee amount of \$20,000.00 is fair and reasonable.

22 Additionally, Plaintiff’s Counsel’s cost reimbursement request in the amount of
23 \$1,928.98 is also reasonable. Agnew Decl. ¶ 18, Exhibit 4. The costs were all directly incurred in
24 the prosecution of this action, including filing fees, postage, copying, and service of process fees.
25 *Id.* As such, the requested costs should be awarded as fair and reasonable.

26 **G. The Settlement Administrator’s Fees Should be Approved**

27 The Parties have agreed to pay actual costs of administration, or \$1,750.00, to the
28 Settlement Administrator, Phoenix Settlement Administrators, to administer this settlement.

Settlement Agreement § B-16; Lawrence Decl. ¶ 8, Ex. B. The Parties believe that the administration fee is reasonable and should be approved. Agnew Decl. ¶ 20.

H. Representative Plaintiff's Payment Should be Approved

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

Here, Plaintiff seeks \$3,000 for his service award, which is intended to compensate Plaintiff for the time spent on this case, including reviewing pleadings, the potential for hesitation from later prospective employers that might find out he brought this claim, and for executing a general release, including for all known and unknown claims under Civil Code § 1542. Declaration of Adewunmi Ojo ¶¶ 6-9. This requested enhancement is consistent with awards approved in other common fund cases. *See Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294, 299-300 (N.D. Cal. 1995) (incentive award of \$50,000); *In re Dun & Bradstreet Credit Servs. Customer Litig.*, 130 F.R.D. 366, 374 (S.D. Ohio 1990) (two incentive awards of \$55,000, and three incentive awards of \$35,000); *Brotherton v. Cleveland*, 141 F. Supp. 2d 907, 913-14 (S.D. Ohio 2001) (granting a \$50,000 incentive award); *Enter. Energy Corp. v. Columbia Gas Transmission Corp.*, 137 F.R.D. 240, 251-52 (S.D. Ohio 1991) (\$50,000 awarded to each class representative); *Glass v. UBS Fin. Servs.*, No. C-06-4068, 2007 U.S. Dist. LEXIS 8476, at *51-52 (N.D. Cal. Jan. 27, 2007) (awarding \$25,000 incentive award in FLSA overtime wages class action); *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998) (affirming \$25,000 Incentive award to class representative in ERISA case).

I. Notice to the LWDA Has Been Provided

Concurrent with the filing of this motion, Plaintiff uploaded the instant motion to the LWDA's website. Agnew Decl. ¶ 43, Exhibit 6.

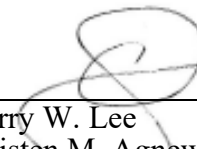
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1 **VI. CONCLUSION**

2 Based on the above, Plaintiff requests the Court approve the current PAGA settlement.

3
4 DATED: October 24, 2022

DIVERSITY LAW GROUP, P.C.

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6 By: 
7 Larry W. Lee
8 Kristen M. Agnew
9 Nicholas Rosenthal
10 Attorneys for Plaintiff, the Class, and
11 Aggrieved Employees
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1 **PROOF OF SERVICE**

2 **(Code of Civil Procedure Sections 1013a, 2015.5)**

3
4 STATE OF CALIFORNIA]
5 COUNTY OF LOS ANGELES]ss.
6]

7 I am employed in the County of Los Angeles, State of California. I am over the age of
8 18 and not a party to the within action; my business address is 515 S. Figueroa Street, Suite
9 1250, Los Angeles, California 90071.

10 On October 24, 2022, I served the following document(s) described as:

- 11 **1. PLAINTIFF'S NOTICE OF MOTION AND MOTION TO APPROVE**
12 **SETTLEMENT AGREEMENT PURSUANT TO THE PRIVATE ATTORNEYS**
13 **GENERAL ACT; MEMORANDUM OF POINTS AND AUTHORITIES IN**
14 **SUPPORT**
- 15 **2. DECLARATION OF KRISTEN M. AGNEW IN SUPPORT OF PLAINTIFF'S**
16 **NOTICE OF MOTION AND MOTION TO APPROVE SETTLEMENT**
17 **AGREEMENT PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT**
- 18 **3. DECLARATION OF ADEWUNMI OJO IN SUPPORT OF PLAINTIFF'S**
19 **NOTICE OF MOTION AND MOTION TO APPROVE SETTLEMENT**
20 **AGREEMENT PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT**
- 21 **4. DECLARATION OF JODEY LAWRENCE REGARDING NOTICE AND**
22 **ADMINISTRATION OF SETTLEMENT**
- 23 **5. [PROPOSED] ORDER GRANTING PLAINTIFF'S MOTION TO APPROVE**
24 **PLAINTIFF'S PAGA SETTLEMENT AND JUDGMENT**

25 on the interested parties in this action as follows:

26 Marcia Jackson
27 Marcia.jackson@wickphillips.com
28 Wick Phillips Gould & Martin LLP
3131 McKinney Avenue, Suite 500
Dallas, TX 75204
*Attorneys for Defendant Pinnacle Light
Industrial, LLC*

Zachary A. Bulthuis
zbulthuis@huntingtonls.com
Huntington Legal Solutions
17011 Beach Blvd., Suite 900
Huntington Beach, CA 92647
*Attorneys for Defendant Pinnacle Light
Industrial, LLC*

1 X BY ELECTRONIC SERVICE: Based on a court order I caused the above-
2 entitled document(s) to be served through the One Legal E-Filing System at the website
3 www.onelegal.com addressed to all parties appearing on the electronic service list for the above-
4 entitled case. The service transmission was reported as complete and a copy of the filing
5 receipt/confirmation will be filed, deposited, or maintained with the original document(s) in this
6 office.

7 I declare under penalty of perjury under the laws of the State of California that the
8 above is true and correct. Executed on October 24, 2022, at Los Angeles, California.

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Erika Mejia