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**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 MOTION TO APPROVE
THE AMENDED JOINT STIPULATION OF
SETTLEMENT AND RELEASE UNDER
THE PRIVATE ATTORNEYS GENERAL
ACT**

Date: November 17, 2023
Time: 1:30 p.m.
Dept.: CX103

Complaint Filed: May 19, 2021
Trial Date: None

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

2 **PLEASE TAKE NOTICE** that on November 17, 2023, at 1:30 p.m., or as soon
3 thereafter as the matter may be heard, before the Honorable Lon F. Hurwitz, judge presiding, in
4 Department CX103 of the above referenced Court, located at 751 West Santa Ana Boulevard,
5 Santa Ana, California 92701, Plaintiff Adewunmi Ojo (“Plaintiff”) will move for an Order
6 approving the Amended Joint Stipulation of Settlement and Release Under the Private Attorneys
7 General Act (“Amended Agreement” or “Amended Settlement Agreement”) in this matter.

8 This Motion is made on the grounds that the original Joint Stipulation of Settlement and
9 Release Under the Private Attorneys General Act (“Settlement Agreement”) contained a material
10 error with respect to the method by which the administrator should calculate Individual
11 Settlement Payments to Aggrieved Employees. Plaintiff and Defendant Pinnacle Light Industrial,
12 LLC’s (“Defendant”) (collectively, the “Parties”) negotiated the terms of the settlement with the
13 mutual understanding that there are a maximum of 875 pay periods in which employees received
14 the payment of wages and/or expense reimbursement (“Pivotal Pay Periods”) during the period
15 of *May 13, 2020 through October 31, 2021*. However, section D-5 of the Settlement Agreement
16 calls for the administrator to calculate the Individual Settlement Payments based on the number
17 of Pivotal Pay Periods assigned to each employee during the period of *May 13, 2020 through*
18 *July 31, 2022* (“PAGA Period”). Defendant’s payroll records reflect that there are 1,825 Pivotal
19 Pay Periods during the PAGA Period. With the addition of 950 Pivotal Pay Periods, the escalator
20 clause is triggered and requires a 108.57% increase to the Maximum Settlement Amount. This
21 was not the intention of the Parties.

22 Consistent with the data points used to negotiate the settlement, the Parties intended for
23 the Individual Settlement Payments to be calculated using the number of Pivotal Pay Periods
24 during the period of May 13, 2020 through October 31, 2021. As a result, the Parties have
25 entered into an Amended Settlement Agreement that reflects this modification. This Motion will
26 be based on this notice of motion, the attached memorandum of points and authorities, the
27 accompanying declaration of Kristen M. Agnew, the records and file herein, and on such other
28 evidence as may be presented at the hearing of the motion.

1 DATED: October 25, 2023

DIVERSITY LAW GROUP, P.C.

2
3 By: _____

4 Larry W. Lee
5 Kristen M. Agnew
6 Nicholas Rosenthal
7 Attorneys for Plaintiff, the Class, and
8 Aggrieved Employees
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Adewunmi Ojo (“Plaintiff”) filed this representative Private Attorneys General
4 Act (“PAGA”) against his former employer, Defendant Pinnacle Light Industrial, LLC
5 (“Defendant”). As set forth in the operative Second Amended Complaint, Plaintiff alleges a single
6 cause of action for violation of the PAGA predicated on Defendant’s alleged violation of Labor
7 Code sections 204 and 2802. After extensive arm’s length negotiations, Plaintiff and Defendant
8 (collectively, the “Parties”) reach a settlement in principle and entered into the Joint Stipulation of
9 Settlement and Release Under the Private Attorneys General Act (“Settlement Agreement”).¹

10 On June 14, 2023, the Court granted Plaintiff’s Motion to Approve PAGA Settlement.
11 [ROA # 99.] Subsequently, the Parties initiated the administration process, the first step of which
12 was for Defendant to transmit the number of pay periods in which Aggrieved Employees received
13 the payment of wages and/or expense reimbursements (“Pivotal Pay Periods”). Upon reviewing
14 the data provided to the administrator, the Parties realized that they had made a material error in
15 the Settlement Agreement.

16 The Parties negotiated the terms of the settlement with the mutual understanding that there
17 are a maximum 875 Pivotal Pay Periods during the period of May 13, 2020 through October 31,
18 2021. However, section 5 of the Settlement Agreement provided that the Individual Settlement
19 Payments to Aggrieved Employees would be premised on the number of Pivotal Pay Periods
20 during the period of *May 13, 2020 through July 31, 2022* (“PAGA Period”). The data provided by
21 Defendant to the administrator reflects that there are 1,825 Pivotal Pay Periods during the PAGA
22 Period. With the addition of 950 Pivotal Pay Periods, the escalator clause was triggered and
23 required a 108.57% increase to the Maximum Settlement Amount — *e.g.* an increase from \$60,000
24 to \$125,142.86. *See id.* This was not the intention of the Parties.

25 The Parties have executed an Amended Joint Stipulation of Settlement and Release Under
26

27
28 ¹ The Court approved Settlement Agreement is attached as Exhibit A to the Declaration of
Kristen M. Agnew, filed on October 21, 2022 [ROA # 59].

the Private Attorneys General Act (“Amended Agreement” or “Amended Settlement Agreement”) to remedy this error. Plaintiff respectfully requests that the Court: 1) approve the changes made in the Amended Settlement Agreement; and 2) set a new final accounting hearing date, which is on or after July 1, 2024.

II. PROCEDURAL HISTORY

A. Summary of the Alleged Labor Code Violations.

As set forth in the PAGA Notice and the Operative Second Amended Complaint, Plaintiff alleges that Defendant: (1) failed to pay wages in a timely matter, in violation of Labor Code section 204; and (2) failed to reimburse mileage expenses incurred due to driving personal vehicles for work related purposes, in violation of California Labor Code section 2802. *See* Declaration of Kristen M. Agnew in Support of Motion to Approve the Amended Joint Stipulation of Settlement and Release Under the Private Attorneys General Act (“Agnew Decl.”) ¶¶ 2-4.

B. The Parties Engage in Informed Settlement Negotiations.

On or about September 16, 2022, the Parties executed a Joint Stipulation of Settlement and Release Under the Private Attorneys General Act, California Labor Code § 2698, et seq. (“Settlement Agreement”). *See* Agnew Decl. ¶ 5. Prior to entering into the settlement, the Parties met and conferred regarding the underlying merits of the case and engaged in arm’s length negotiations. *See id* at ¶¶ 6-10.

In connection with the Parties’ negotiations, Defendant produced, among other things, electronic documents and data related to the mileage reimbursement records for Plaintiff and the potential aggrieved employees, Defendant’s mileage reimbursement policy, the number of potential aggrieved employees and the number of pay periods worked by the potential aggrieved employees. *See* Agnew Decl. ¶ 6.

According to the documents produced during the informal exchange of discovery, Defendant altered its payroll practices relative to the entirety of Plaintiff’s allegations. *See* Agnew Decl. ¶¶ 8-10. The records reflect that, as of September 11, 2021, Defendant reimbursed all mileage at the standard IRS reimbursement rate. *See id.* at ¶ 8. Furthermore, effective June

27, 2021, Defendant changed its payroll practices to pay employees within six days of the close of the pay period. *See id.* at ¶ 9. Thus, as argued by Defendant, any award of civil PAGA penalties would be limited to the period of May 13, 2020 through September 11, 2021. *See id.* at ¶ 10.

C. The Court Granted Plaintiff’s Motion to Approve PAGA Settlement

On June 14, 2023, the Court granted Plaintiff’s Motion to Approve PAGA Settlement. [ROA # 99.] As material to the instant Motion, the Court approved the Settlement as to the following group of employees, “all current and former California non-exempt employees of Defendant who were paid wages by Defendant at any time during the PAGA Period [the period of May 13, 2020 through July 31, 2022]” (collectively, “Aggrieved Employees”).²

D. The Escalator Clause Was Inadvertently Triggered.

On June 16, 2023, Plaintiff’s counsel initiated the settlement administration process. *See* Agnew Decl. ¶ 14. As required by the Settlement Agreement, Defendant provided the administrator with the number of pay periods in which Aggrieved Employees received the payment of wages and/or expense reimbursements (“Pivotal Pay Periods”) during the PAGA Period (May 13, 2020 through July 31, 2022). *See id.* On August 14, 2023, the administrator provided the Parties with a summary of the data transmitted by Defendant and the final calculations for disbursement. *See id.* at ¶ 15. The summary reflected that there are 1,825 Pivotal Pay Periods during the PAGA Period. *See id.*

The Parties, however, entered into the Settlement Agreement, with the understanding that there were a maximum of 875 Pivotal Pay Periods. *See* Agnew Decl. ¶ 16. To this end, the Parties intended for the calculation of the Pivotal Pay Periods to be limited to the period of May 13, 2020, through October 31, 2021. *See id.* at ¶ 17. The Settlement Agreement did not accurately reflect the Parties’ intentions. Instead, the Settlement Agreement required the administrator to allocate the Individual Settlement Payments based on the number of Pivotal Pay

² On June 16, 2023, Plaintiff submitted a copy of the Court’s Order approving the PAGA Settlement to the LWDA. *See* Agnew Decl. ¶ 13, Exhibit 3.

1 Periods during timeframe of May 13, 2020 through July 31, 2022. *See* Agnew Decl., Ex. 2 at §
2 D-5. In other words, the Settlement Agreement expanded the relevant timeframe to calculate the
3 Pivotal Pay Periods by nine months. With addition of six months of pay periods, the escalator
4 clause was triggered and required a 108.57% increase to the Maximum Settlement Amount —
5 *e.g.* an increase from \$60,000 to \$125,142.86. *See id.* at ¶ 16. This was not the intention of the
6 Parties.

7 **E. The Parties Enter the Amended Settlement Agreement.**

8 Consistent with the data points used to negotiate the settlement, the Parties intended for
9 the calculation of the Pivotal Pay Periods to be limited to the period of May 13, 2020, through
10 October 31, 2021. *See* Agnew Decl. ¶ 11. To address this mistake in the original Settlement
11 Agreement, the Parties have negotiated and executed an Amended Joint Stipulation of Settlement
12 and Release Under the Private Attorneys General Act (“Amended Agreement” or “Amended
13 Settlement Agreement”). *See id.* at ¶ 17. A true and correct copy of the Amended Settlement
14 Agreement is attached to the Agnew Declaration as Exhibit 1.

15 **III. SUMMARY OF THE PROPOSED REVISIONS TO THE SETTLEMENT**

16 Below is a summary of the material revisions made in the Amended Settlement
17 Agreement. A detailed comparison of the Settlement Agreement and the Amended Settlement
18 Agreement is attached to the Agnew Declaration as Exhibit 2.

19 **A. The Maximum Settlement Amount Remain the Same**

20 Under the terms of the Amended Settlement Agreement, the Maximum Settlement
21 Amount remains Sixty Thousand Dollars (\$60,000.00). *See* Agnew Decl., Ex. 1 (Amended
22 Settlement) at § B-9. Thus, to resolve the claims in this case, Defendant will continue to pay
23 approximately \$68.57 per Pivotal Pay Period, during the period of May 13, 2020, through
24 October 31, 2021. *See* Agnew Decl. ¶ 18.

25 **B. The Definition of Aggrieved Employees Ends on October 31, 2021**

26 As material to the instant Motion, the Court approved the Settlement as to the following
27 group of employees, “all current and former California non-exempt employees of Defendant who
28 were paid wages by Defendant at any time during the PAGA Period [the period of May 13, 2020

1 through July 31, 2022]” (collectively, “Aggrieved Employees”). [ROA # 99.] The Amended
2 Settlement Agreement narrows the definition of “Aggrieved Employees” to “current and former
3 employees of Defendant in the State of California who were paid wages at any time from May
4 13, 2020 *through October 31, 2021*.” See Agnew Decl., Ex. 1 (Amended Settlement) at § B-2.
5 The October 31, 2021 end-date is significant because Defendant modified its payroll policies and
6 practices prior to this date. See Section II-B, *supra*. Thus, as argued by Defendant, even if
7 Plaintiff prevailed on the merits, Aggrieved Employees could not recover civil penalties past
8 October 31, 2021. See Agnew Decl. ¶ 10.

9 As defined in the original Settlement Agreement, Defendant’s records reflect that there
10 are thirty-six (36) Aggrieved Employees. As narrowed in the Amended Settlement Agreement,
11 there are twenty-four (24) Aggrieved Employees. See Agnew Decl. ¶ 21.

12 **C. The Calculation of Individual Settlement Payment Is Limited to Pay Periods**
13 **Through October 31, 2021**

14 The original Settlement Agreement contemplated that the Individual Settlement Payment
15 to Aggrieved Employees would be based on the number of Pivotal Pay Periods —*e.g.* pay
16 periods in which an employee received the payment of wages and/or expense reimbursements—
17 during the period of May 13, 2020, through July 31, 2022. See Agnew Decl., Ex. 2 (Redline
18 Settlement Agreement) at § D-5. However, the Parties intended for the Individual Settlement
19 Payments to be calculated using the number of Pivotal Pay Periods during the period of May 13,
20 2020, *through October 31, 2021*. See Agnew Decl. ¶ 17. The Amended Settlement Agreement
21 reflects this modification. See Agnew Decl., Ex. 1 (Amended Settlement) at § D-5.

22 **D. The Escalator Clause Is Premised on Pivotal Pay Periods Through October**
23 **31, 2021**

24 The original Settlement Agreement incorrectly states that the Maximum Settlement
25 Amount was premised on “Defendant’s representation that certain Aggrieved Employees
26 received the payment of wages and/or expense reimbursements (including for mileage, some of
27 which were paid at a rate lower than the applicable IRS standard rate), in a maximum of 875 pay
28 periods during the PAGA Period” (May 13, 2020, through July 31, 2022). See Agnew Decl., Ex.

2 (Redline Settlement Agreement) at § D-2. However, the Parties negotiated the terms of the settlement with the mutual understanding that there are a maximum 875 Pivotal Pay Periods during the period of May 13, 2020 *through October 31, 2021*. See Agnew Decl. ¶ 11. The Amended Settlement Agreement reflects this modification. See Agnew Decl., Ex. 1 (Amended Settlement) at § D-2.

E. The Enhancement Payment to Plaintiff Is Reduced to Conform to the Order

Section B-7 of the original Settlement Agreement called for Plaintiff to receive an Enhancement Payment up to three thousand dollars. See Agnew Decl., Ex. 2 (Redline Settlement Agreement) at § B-7. Consistent with the Order Granting Plaintiff's Motion to Approve Plaintiff's PAGA Settlement and Judgment [ROA # 99], the Amended Settlement Agreement reduced the Enhancement Payment to two thousand dollars. See Agnew Decl., Ex. 1 (Amended Settlement) at § B-7.

F. The Notice to Aggrieved Employees

The settlement calls for an explanatory letter to be mailed to Aggrieved Employees. The Parties modified the proposed letter to incorporate the revised definition of "Aggrieved Employees." See Agnew Decl. ¶ 25, Ex. 1 (Amended Settlement) at Exhibit A. The revised notice also contains the definition of "Pivotal Pay Periods." See *id.*

G. The Parties Did Not Alter Scope of the Released Claims

The Amended Settlement Agreement calls for Plaintiff and Aggrieved Employees to release Defendant and Released Parties from:

[A]ll claims for civil penalties under the California Labor Code Private Attorneys General Act, including costs and attorneys' fees related thereto, predicated on the alleged violation of Labor Code sections 204 and/or 2802, based on the facts as alleged in the PAGA Notice and the Second Amended Representative Action Complaint, whether known or unknown, and including any claims under the 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").

See Agnew Decl. ¶ 25, Ex. 1 (Amended Settlement) at § B-14. This is the same release

1 previously approved by the Court.

2 **IV. THE AMENDED PAGA SETTLEMENT IS REASONABLE AND SHOULD BE**
3 **APPROVED**

4 Based on the above, Plaintiff respectfully requests the Court approve the Amended Joint
5 Stipulation of Settlement and Release Under the Private Attorneys General Act. Further, Plaintiff
6 asks that the Court set a revised final accounting hearing date. The current date of January 24,
7 2024 does not leave enough time for the settlement administration process to be completed.
8 Plaintiff asks that a revised final accounting hearing date be set for a date on or after July 1,
9 2024.

10
11 DATED: October 25, 2023

DIVERSITY LAW GROUP, P.C.

12
13 By: _____

Larry W. Lee
Kristen M. Agnew
Nicholas Rosenthal
Attorneys for Plaintiff and Aggrieved
Employees