

Larry W. Lee (State Bar No. 228175)
Kristen M. Agnew (State Bar No. 247656)
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 Aggrieved Employees

**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

**DECLARATION OF KRISTEN M. AGNEW
IN SUPPORT OF PLAINTIFF'S MOTION
TO APPROVE THE SECOND AMENDED
JOINT STIPULATION OF SETTLEMENT
AND RELEASE UNDER THE PRIVATE
ATTORNEYS GENERAL ACT**

Date: June 7, 2024
Time: 1:30 p.m.
Dept.: CX103

Complaint Filed: May 19, 2021
Trial Date: None

1 I, Kristen M. Agnew, declare as follows:

2 1. I am an attorney at law, duly licensed to practice before all Courts in the State of
3 California, and am with the law firm Diversity Law Group, P.C., counsel of record for Plaintiff
4 Adewunmi Ojo ("Plaintiff"). I have personal knowledge of the facts set forth below and if called
5 to testify I could and would do so competently.

6 **THE PAGA NOTICE AND COMPLAINT**

7 2. On May 13, 2021, Plaintiff submitted his written notice under Labor Code section
8 2699.3 (the "PAGA Notice") to the LWDA and Defendant Pinnacle Light Industrial, LLC
9 ("Defendant"). Plaintiff alleges that Defendant: (1) failed to pay wages in a timely matter, in
10 violation of Labor Code section 204; and (2) failed to reimburse mileage expenses incurred due
11 to driving personal vehicles for work related purposes, in violation of California Labor Code
12 section 2802. Attached hereto as **Exhibit 1** is a true and correct copy of the PAGA Notice.

13 3. On May 19, 2021, Plaintiff filed a putative class action lawsuit against Defendant
14 in the Superior Court of California, County of Orange. As alleged in the complaint, Plaintiff
15 asserted class claims for: (1) violation of Labor Code section 2802; and (2) violation of Business
16 and Professions Code section 17200, et seq., based on Defendant's alleged failure to reimburse
17 employees for business expenses.

18 4. After approval by the Court, on July 16, 2021, Plaintiff filed the First Amended
19 Representative Action Complaint ("First Amended Complaint"). Plaintiff amended his complaint
20 to add a cause of action for violation of the California Private Attorneys General Act ("PAGA"),
21 Labor Code § 2698, et seq. The First Amended Complaint alleges claims based on the facts
22 described in Plaintiff's PAGA Notice. Plaintiff seeks civil penalties predicated on Defendant's
23 alleged failure to reimburse business expenses and to comply with Labor Code section 204.

24 **DISCOVERY AND INVESTIGATION**

25 5. On or about June 21, 2021, defense counsel advised that Plaintiff had signed an
26 arbitration agreement during the course of his employment with Defendant. Counsel
27 subsequently provided a copy of the agreement. The agreement required Plaintiff to litigate his
28 claims on an individual basis in arbitration. In light of the narrow claims at issue, the Parties

1 agreed to redirect their resources to exploring the possibility of an early resolution.

2 6. Over the course of several months, the Parties extensively met and conferred and
3 engaged in the arms' length negotiations. In connection with the Parties' negotiations, Defendant
4 produced, among other things, electronic documents and data related to the mileage
5 reimbursement records for Plaintiff and the potential aggrieved employees, Defendant's mileage
6 reimbursement policy, as well as data relating to the number of potential aggrieved employees
7 and the number of pay periods worked by the potential aggrieved employees.

8 7. The Parties also extensively discussed underlying merits of the case. With respect
9 to the alleged Labor Code section 2802 violation, Plaintiff contends that Defendant reimbursed
10 mileage expenses at the standard IRS reimbursement rate for up to 225 miles in a pay period.
11 However, when employees drove more than 225 miles in a pay period, Plaintiff contends that
12 Defendant reimbursed the additional mileage at a reduced rate. Defendant maintains that it
13 reimbursed most mileage requests at the standard IRS reimbursement rate.

14 8. Defendant produced mileage reimbursement data for employees during the period
15 of May 13, 2020 to September 11, 2021. The data shows that there are approximately 835 pay
16 periods in which individuals sought mileage reimbursements. In 260 out of the 835 pay periods,
17 the records suggest that the employees drove fewer than 225 miles. Thus, based on Defendant's
18 records there are only approximately 575 pay periods in which employees may have been
19 reimbursed at a rate below the standard IRS rate. However, Defendant contends that, in some
20 instances, it compensated all mileage requests at the standard IRS rate. Thus, the number of
21 potential violations is less than 575.

22 9. Defendant further argued that, as of September 11, 2021, it reimbursed all
23 mileage at the standard IRS reimbursement rate. I confirmed this change in practice through a
24 review of Plaintiff's mileage records and reimbursement requests.

25 10. With respect to the alleged Section 204 violation, Plaintiff alleges that Defendant
26 had a policy of paying wages to employees on or after the eighth day following the close of the
27 pay period, in violation of Labor Code section 204. Although Defendant disputes that its policy
28 was ever unlawful, Defendant maintains that, in an abundance of caution and for business

1 reasons, it changed its payroll practices to pay employees within six days of the close of the pay
2 period, effective June 27, 2021. Defendant produced a copy of the weekly payroll reschedule to
3 establish this modification in policy.

4 11. Given Defendant's change to its payroll practices relative to the entirety of
5 Plaintiff's allegations, Defendant argued that, even if Plaintiff prevailed on the merits, any award
6 of potential civil PAGA penalties would be limited to the period of May 13, 2020 through
7 September 11, 2021.

8 12. Although Defendant had cured the alleged violations as of September 11, 2021,
9 for the purpose of settlement negotiations, the Parties agreed to negotiate a settlement based on
10 the number of pay periods in which the alleged aggrieved employees received the payment of
11 wages and/or expense reimbursements ("Pivotal Pay Periods") during the period of May 13,
12 2020 through October 31, 2021. By extending the relevant period through October 31, 2021, the
13 maximum number of possible pay periods increased from 835 to 875.

14 13. On or about April 26, 2022, the Parties reach a settlement in principle of the entire
15 Action. The Parties thereafter worked to memorialize the terms of the settlement in a long-form
16 settlement agreement.

17 14. On or about September 16, 2022, the Parties executed a Joint Stipulation of
18 Settlement and Release Under the Private Attorneys General Act, California Labor Code § 2698,
19 et seq. ("Settlement Agreement"). The Settlement Agreement is attached as Exhibit A to the
20 Declaration of Kristen M. Agnew, filed on October 21, 2022 [ROA # 59].

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

1 **THE COURT PREVIOUSLY APPROVED THE SETTLEMENT**

2 16. On June 14, 2023, the Court granted Plaintiff's Motion to Approve the Settlement
3 Agreement. [ROA # 99.]

4 17. On June 16, 2023, I emailed the settlement administrator a copy of the June 14,
5 2023 Order, Settlement Agreement and Notice of Settlement to Aggrieved Employees. As
6 required by the Settlement Agreement, Defendant provided the administrator with the number of
7 Pivotal Pay Periods during the period of May 13, 2020 through July 31, 2022.

8 18. On August 14, 2023, the administrator provided the Parties with a summary of the
9 data transmitted by Defendant and the final calculations for disbursement. The summary
10 reflected that there are 1,825 Pivotal Pay Periods during period of May 13, 2020 through July 31,
11 2022.

12 19. As indicated above, the Parties negotiated the settlement with the shared
13 understanding that there was a maximum of 875 Pivotal Pay Periods at issue in the Action. With
14 the addition of 950 Pivotal Pay Periods, the escalator clause was triggered and required a
15 108.57% increase to the Maximum Settlement Amount — *e.g.* an increase from \$60,000 to
16 \$125,142.86.

17 **PLAINTIFF'S PRIOR ATTEMPT TO SEEK APPROVAL OF AN AMENDED**
18 **SETTLEMENT**

19 20. The Parties intended for the calculation of the Pivotal Pay Periods to be limited to
20 the period of May 13, 2020, through October 31, 2021. To address this mistake in the original
21 Settlement Agreement, the Parties negotiated and executed an Amended Joint Stipulation of
22 Settlement and Release Under the Private Attorneys General Act ("Amended Agreement" or
23 "Amended Settlement Agreement"). A true and correct copy of the Amended Settlement
24 Agreement is attached as Exhibit 1 to the Declaration of Kristen M. Agnew in Support of
25 Plaintiff's Motion to Approve the Amended Joint Stipulation of Settlement and Release Under
26 the Private Attorneys General Act, filed on October 25, 2023 [ROA # 108].

27 21. A detailed comparison of the Settlement Agreement and the Amended Settlement
28 Agreement is attached hereto as **Exhibit 2**.

1 22. Consistent with the data points used to negotiate the settlement, the Amended
2 Agreement: (1) limited the calculation of the Pivotal Pay Periods to the period of May 13, 2020,
3 through October 31, 2021; and (2) narrowed the definition of “Aggrieved Employees” to
4 “current and former employees of Defendant in the State of California who were paid wages at
5 any time from May 13, 2020, through October 31, 2021.” At the time, the Parties did not modify
6 the PAGA Period because the Parties contemplated a release period that would extend beyond
7 the date range that was used to determine the number of Pivotal Pay Periods. Since Defendant
8 had modified the payroll practices at issue in this lawsuit, extending the release period could not,
9 and did not result in any additional relevant pay periods or actual or potential loss to the
10 aggrieved employees.

11 23. On October 25, 2023, Plaintiff filed a Motion to Approve the Amended Joint
12 Stipulation of Settlement and Release Under the Private Attorneys General Act [ROA #107].

13 24. In a Minute Order dated February 2, 2024, the Court requested supplemental
14 briefing on the scope of the negotiated PAGA Period. More specifically, “why the original
15 Settlement Agreement defined the PAGA Period as ‘May 13, 2020, through July 31, 2022’ if the
16 parties’ negotiation only contemplated pay periods from May 13, 2020, through October 31,
17 2021.”

18 25. The Parties submitted a Joint Statement in Response to the Court’s February 2,
19 2024 Minute Order [ROA # 126]. In the Joint Statement, the Parties explained that “[a]ccording
20 to the documents produced during the informal exchange of discovery, Defendant altered its
21 payroll practices relative to the entirety of Plaintiff’s allegations, as of September 11, 2021.”
22 Therefore, no additional injuries or penalties could have accrued beyond this date. However, the
23 Parties negotiated a PAGA Period—which also served as the release period—beyond the date
24 range that was used to determine the number of Pivotal Pay Periods at issue. The Parties
25 provided legal authority for extending the release period beyond the liability period at issue.

26 26. In further response to the concerns raised in the Minute Order, the Parties also
27 submitted a Second Amended Joint Stipulation of Settlement and Release Under the Private
28 Attorneys General Act (“Second Amended Agreement” or “Second Amended Settlement”). The

1 Second Amended Agreement: (1) defines the PAGA Period as May 13, 2020, through October
2 31, 2021; and (2) limits the temporal scope of the Released Claims to the PAGA Period. The
3 Notice to Aggrieved Employees incorporates these revisions.

4 27. On March 29, 2024, the Court denied the Motion to Approve the Amended Joint
5 Stipulation of Settlement and Release Under the Private Attorneys General Act. The Court
6 denied the motion because “the pending Motion is for the approval of the Amended Settlement
7 Agreement—not the Second Amended Settlement Agreement.” The Court directed Plaintiff to
8 submit new motion papers.

9 **THE PROPOSED REVISIONS TO THE SETTLEMENT**

10 28. A true and correct copy of the executed Second Amended Settlement Agreement
11 is attached hereto as **Exhibit 3**. A detailed comparison of the Settlement Agreement and the
12 Second Amended Settlement Agreement is attached hereto as **Exhibit 4**.

13 29. **No Change in Maximum Settlement Amount.** Under the terms of the Second
14 Amended Settlement Agreement, the Maximum Settlement Amount remains Sixty Thousand
15 Dollars (\$60,000.00). *See* Second Amended Agreement at § B-9. Thus, the value of the
16 settlement as compared to the pay periods in dispute remains unchanged. To resolve the claims
17 in this case, Defendant will pay approximately \$68.57 per Pivotal Pay Period during the period
18 of May 13, 2020, through October 31, 2021.

19 30. **Modification to PAGA Period.** Section B-11 of the Settlement Agreement
20 defined the “PAGA Period” to mean the period of May 13, 2020 through July 31, 2022. The
21 Second Amended Agreement narrows the definition of “PAGA Period” to the period of May 13,
22 2020, through October 31, 2021. *See* Second Amended Agreement at § B-11. The October 31,
23 2021 end-date is significant because Defendant modified its payroll policies and practices *prior*
24 to this date.

25 31. **Modification to Definition of Aggrieved Employees.** As defined in the
26 Settlement Agreement and the Order Granting Plaintiff’s Motion to Approve Plaintiff’s PAGA
27 Settlement and Judgment [ROA # 99], the settlement encompasses the following group of
28 employees, “all current and former California non-exempt employees of Defendant who were

1 paid wages by Defendant at any time during the [period of May 13, 2020 through July 31,
2 2022]]” (collectively, “Aggrieved Employees”). The Second Amended Settlement Agreement
3 narrows the definition of “Aggrieved Employees” to “current and former employees of
4 Defendant in the State of California who were paid wages at any time from May 13, 2020
5 *through October 31, 2021.*” See Second Amended Agreement at § B-2.

6 32. As defined in the original Settlement Agreement, Defendant’s records reflect that
7 there are thirty-six (36) Aggrieved Employees. As narrowed in the Second Amended Settlement
8 Agreement, there are twenty-four (24) Aggrieved Employees.

9 33. **Modification to Released Claims.** The Settlement Agreement included a release
10 period that ended on July 31, 2022. The Second Amended Settlement narrows the temporal
11 scope of the “Released Claims” to correspond to the PAGA Period (May 13, 2020, through
12 October 31, 2021). See Second Amended Agreement at § B-14.

13 34. **Modification to Calculation of Individual Settlement Payments.** The original
14 Settlement Agreement contemplated that the Individual Settlement Payment to Aggrieved
15 Employees would be based on the number of Pivotal Pay Periods during the period of May 13,
16 2020, through July 31, 2022. However, the Parties intended for the Individual Settlement
17 Payments to be calculated using the number of Pivotal Pay Periods during the period of May 13,
18 2020, *through October 31, 2021*. The Second Amended Settlement Agreement reflects this
19 modification. See Second Amended Agreement at § D-5.

20 35. With these modification, the PAGA Period will be used for the purpose of: (1)
21 determining the release period; (2) identifying Aggrieved Employees; and (3) calculating
22 payments to Aggrieved Employees.

23 36. **Modification to Escalator Provision.** The original Settlement Agreement
24 incorrectly states that the Maximum Settlement Amount was premised on “Defendant’s
25 representation that certain Aggrieved Employees received the payment of wages and/or expense
26 reimbursements (including for mileage, some of which were paid at a rate lower than the
27 applicable IRS standard rate), in a maximum of 875 pay periods” during the period of May 13,
28 2020, through July 31, 2022. However, as indicated above, the Parties negotiated the terms of the

1 settlement with the mutual understanding that there are a maximum 875 Pivotal Pay Periods
2 during the period of May 13, 2020 *through October 31, 2021*. The Second Amended Settlement
3 Agreement reflects this modification. *See* Second Amended Agreement at § D-2.

4 37. **Reduced Enhancement Payment to Plaintiff.** Section B-7 of the original
5 Settlement Agreement called for Plaintiff to receive an Enhancement Payment up to Three
6 Thousand Dollars. Consistent with the Order Granting Plaintiff's Motion to Approve Plaintiff's
7 PAGA Settlement and Judgment [ROA # 99], the Second Amended Settlement Agreement
8 reduced the Enhancement Payment to Two Thousand Dollars.

9 38. **Notice to Aggrieved Employees.** The settlement calls for an explanatory letter to
10 be mailed to Aggrieved Employees. The Parties modified the proposed letter to incorporate the
11 revised definition of "Aggrieved Employees." The revised notice also contains the definition of
12 "Pivotal Pay Periods." A detailed comparison of the original Notice and the Current Notice is
13 attached hereto as Exhibit A to **Exhibit 4**.

14 39. **Administration Costs.** There will be no increase to the administration costs.

15 **SUMMARY OF THE SECOND AMENDED SETTLEMENT AGREEMENT**

16 40. As defined by the Second Amended Agreement, "Aggrieved Employees" means
17 all current and former employees of Defendant in the State of California who were paid wages at
18 any time from May 13, 2020, through October 31, 2021. *See* Second Amended Agreement at §
19 B-2.

20 41. The PAGA Period encompasses the period of May 13, 2020 through October 31,
21 2021. *See* Second Amended Agreement at § B-11. Based upon Defendant's records, Aggrieved
22 Employees received the payment of wages and/or expense reimbursements in approximately 875
23 pay periods during the PAGA Period. *See id.* at § D-2.

24 42. The Second Amended Settlement requires Defendant to pay the gross amount of
25 Sixty Thousand Dollars (\$60,000.00) (the "Maximum Settlement Amount"). *See* Second
26 Amended Agreement at § B-9.

27 43. The balance of the Maximum Settlement Amount remaining after deduction of
28 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. *See* Second Amended Agreement at §§ B-10, D-4, D-5. The PAGA Penalties Fund is estimated to be at least \$34,321.02. Seventy-five percent (75%) of the PAGA Penalties Fund, or approximately \$25,740.77, will be paid to the LWDA for PAGA penalties. *See id.* at § D-4.

44. The remaining twenty-five percent (25%) of the PAGA Penalties Fund, or approximately \$8,580.25, will be distributed to Aggrieved Employees. *See* Second Amended Agreement at § D-4. Any uncashed checks will be paid out pursuant to California Code of Civil Procedure section 384 to the *cy pres* recipient, Legal Aid at Work. *See id.* at § E-4. Neither I nor Diversity Law Group has a relationship with Legal Aid at Work.

45. As part of the Second Amended Settlement, Defendant does not object to Plaintiff’s Counsel’s request for attorneys’ fees of approximately thirty-three and one-third percent (33.33%) of the Maximum Settlement Amount, *i.e.*, Twenty Thousand Dollars (\$20,000.00), plus up to Five Thousand Dollars (\$5,000.00) for reimbursement of litigation costs, subject to the Court approving this Settlement. *See* Second Amended Agreement at § D-9. Plaintiff’s Counsel’s actual litigation costs total \$1,928.98. The costs were all directly incurred in the prosecution of this action, including filing fees, postage, copying, and service of process fees. Attached hereto as **Exhibit 5** is a true and correct copy of my office’s cost bill, which reflects costs incurred in prosecuting this case. Any costs not awarded by the Court will revert to the PAGA Penalties Fund for distribution to the LWDA and Aggrieved Employees.

46. Defendant has also agreed to not object to Plaintiff’s request for an Enhancement Payment of Two Thousand Dollars (\$2,000.00). *See* Second Amended Agreement at § D-8.

47. Finally, the Second Amended Settlement provides for the payment of the fees and expenses reasonably incurred by the Settlement Administrator. *See* Second Amended Agreement at § D-10. The Parties have agreed to utilize Phoenix Settlement Administrators to administer the settlement, with the administration costs estimated to be \$1,750.00. The Parties believe the administration fee to be reasonable.

VALUE OF SETTLEMENT PER PAY PERIOD

48. Based on the Maximum Settlement Amount, Defendant will pay approximately \$68.57 per pay period ($\$60,000 \div 875$ pay periods) to resolve the claims in this case.

49. 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. *See* Second Amended Agreement at § D-5. This is fair, as it directly allocates greater penalties to individuals who have allegedly suffered greater harm.

POTENTIAL CIVIL PENALTIES

50. PAGA penalties are difficult to evaluate in a matter like this, but there are reasons to believe that they would be limited. Defendant has indicated that there were approximately 875 pay periods in which Aggrieved Employees received the payment of wages and/or expense reimbursements during the PAGA Period. Assuming that Plaintiff were to prevail on the merits of the PAGA claim, applying the standard penalty of \$100 per pay period yields \$87,500 in potential liability.

51. In the alternative, if the Court were to “stack” penalties, (*ie*, award multiple PAGA penalties for different Labor Code violations in the same pay period), the potential PAGA the could total as high as \$175,000:

Lab. Code Section	Violation	Pay Periods	PAGA Penalties
Lab. Code § 204	Failure to timely pay wages	875	\$87,500
Lab. Code § 2802	Failure to reimburse business expenses	875	\$87,500
TOTAL			\$175,000

52. However, I believe that is unrealistic to assume that the Court would permit the “stacking” of PAGA penalties in this manner. The above penalty calculations further assume that

1 Plaintiff will prevail on the merits.

2 53. Plaintiff's claims are contested. Defendant contends that it maintained a
3 compliant mileage reimbursement policy. Nonetheless, Defendant argues that, even if Plaintiff
4 establishes that the policy is unlawful, Plaintiff will have a difficult time making a showing that
5 *each* Aggrieved Employee experienced a violation of Labor Code section 2802. Defendant
6 contends that a finding of liability will necessarily require individualized proof that: (1)
7 employees who drove more than 225 miles per week did so in furtherance of the discharge of his
8 or her duties; (2) the additional mileage was necessary and reasonable; and (3) that the reduced
9 reimbursement rate did not cover the employee's actual expenses and wear and tear on their
10 vehicles. Moreover, as discussed above, Defendant maintains that there are only approximately
11 575 pay periods in which employees may have been reimbursed at a rate below the standard IRS
12 rate.

13 54. Defendant also contests Plaintiff's allegation that it had a uniform policy of
14 paying wages to employees on or after the eighth day following the close of the pay period, in
15 violation of Labor Code section 204. Defendant denies that Aggrieved Employees experienced
16 any economic harm.

17 55. In negotiating the amount of the settlement, I took into account the inherent
18 uncertainty in the potential recovery in a PAGA action. By statute, the Court can decline to
19 award the full amount of PAGA penalties where "...if, based on the facts and circumstances of
20 the particular case, to do otherwise, would result in an award that is unjust, arbitrary and
21 oppressive, or confiscatory." *See* Cal. Labor Code § 2699(e)(2). Assuming that Plaintiff
22 prevailed on liability, under the facts of this case, I appreciate the substantial risk that Defendant
23 could present a persuasive argument to reduce the amount of PAGA penalties at trial.

24 56. In this case, Defendant asserted that a substantial reduction in potential PAGA
25 penalties was warranted because: (1) the alleged violations were inadvertent; (2) after Defendant
26 received Plaintiff's PAGA Notice, it changed its payroll system to pay wages within six days of
27 the close of the pay periods and began reimbursing all mileage at the standard IRS rate; and (3)
28 Aggrieved Employees suffered nominal, if any, economic harm as a result of the alleged

1 violations of Labor Code sections 204 and 2802. Thus, Defendant contends that no PAGA
2 penalties were needed to punish or deter Defendant for its inadvertent behavior, much less to
3 deter it from committing any future violations that were completely foreclosed by its new payroll
4 practices.

5 57. I am also aware that Courts routinely award far less than the statutory maximum
6 amount of civil penalties, even where an underlying violation of the Labor Code is found. As
7 shown in the Court of Appeal's decision in *Carrington v. Starbucks Corp.*, while the plaintiff
8 prevailed on his PAGA claim at trial, the trial court reduced the maximum PAGA penalty
9 amount by 90%, citing the employer's good faith attempt at complying with the law. 30 Cal.
10 App. 5th 504, 517 (2018). Upon review, the Court of Appeal found such reduction to be proper.
11 *Id.* at 539; *see O'Connor v. Uber Technologies, Inc.*, 201 F.Supp.3d 1110, 1133 (N.D. Cal.,
12 2016). Thus, assuming that the Court uses *Carrington* as a benchmark and assesses PAGA
13 penalties of approximately 10% of the total maximum, a more realistic estimate of the maximum
14 PAGA penalties at issue—even with “stacking”—is \$17,500.

15 **THE SETTLEMENT IS FAIR, REASONABLE AND ADEQUATE**

16 58. In exchange for the payments described above, Plaintiff and Aggrieved
17 Employees will release Defendant and Released Parties from:

18 [A]ll claims for civil penalties under the California Labor Code
19 Private Attorneys General Act, including costs and attorneys' fees
20 related thereto, predicated on the alleged violation of Labor Code
21 sections 204 and/or 2802, based on the facts as alleged in the PAGA
22 Notice and the Second Amended Representative Action Complaint,
23 whether known or unknown, and including any claims under the
24 California Labor Code and/or applicable Industrial Welfare
25 Commission Wage Orders, as well any resulting claim for attorneys'
26 fees and costs that accrued during the period of May 13, 2020,
27 through October 31, 2021. (the “Released Claims”).

24 Second Amended Agreement at § B-14. The settlement is not intended to release and does not
25 extend to violations of any predicate statutes other than PAGA. The release also does not
26 constitute a waiver of claims by Aggrieved Employees for any individual wage and hour claims.

27 59. I believe that Plaintiff could prevail at trial. However, I also believe in the fairness
28

1 of the settlement, which is based on factoring in the uncertainty and risks attendant to not
2 prevailing on one or more theories of liability, the possibility of losing at trial and potential for
3 appeals. Moreover, as Defendant adamantly denies that it should be liable for the full extent of
4 the alleged penalties, there is a possibility that Plaintiff and the Aggrieved Employees would be
5 awarded less or recover nothing at trial. Thus, after taking into account sharply disputed legal
6 issues involved in this litigation, the risks associated with further prosecution, delays caused by
7 potential appeals, and the substantial benefits to be received pursuant to the Settlement, I believe
8 that the proposed settlement is fair, reasonable, and adequate and is in the best interests of
9 Plaintiff and the Aggrieved Employees.

10 **ATTORNEY'S EXPERIENCE**

11 60. My firm has a great deal of experience in wage and hour class action litigation
12 and has been approved as class counsel in a number of class actions.

13 61. I am one of the primary attorneys on this matter. My qualifications are as follows:
14 I was the 2003 recipient of the Spelman Presidential Scholarship to Emory University School of
15 Law. During law school, I was a summer associate at the law firm of Sonnenschein, Nath and
16 Rosenthal, and clerked with the Atlanta office of the Equal Employment Opportunity
17 Commission. I received my J.D. from Emory University in 2006 and was admitted to the
18 California Bar in December 2006. Following law school, I was an associate at Sonnenschein
19 from September 2006 to May 2009.

20 62. Since 2009, my primary area of practice has been employment litigation. I have
21 practiced law at two preeminent employment defense firms. From May 2009 to June 2011, I was
22 an associate at Ogletree, Deakins, Nash, Smoak & Stewart, P.C. I was also an associate, and then
23 senior associate, in the labor and employment practice group of Seyfarth Shaw, LLP from June
24 2011 to May 2016. At both Ogletree and Seyfarth, I represented a wide array of fortune 500
25 companies in employment litigation in both state and federal courts, as well as before
26 government agencies, including the California Department of Labor. My practice included the
27 defense of single plaintiff and multi-plaintiff lawsuits involving claims under the California Fair
28 Employment and Housing Act, the California Labor Code and the Fair Labor Standards Act. I

1 also handled a number of wage and hour class actions.

2 63. While at Ogletree and Seyfarth, I served as the lead associate on a number of
3 wage and hour class actions, including *Martha Cardenas v. Gold's Gym*, Los Angeles County
4 Superior Court Case No. BC445112; *Nathaniel Werner v. Crown Equipment Corporation*, Los
5 Angeles County Superior Court Case No. BC439428; *Christopher Williams v. Allstate Insurance*
6 *Co.*, Los Angeles County Superior Court Case No. BC382577; *Hwang v. Caltech*, Los Angeles
7 County Superior Court Case No. BC464894; *Melissa Roberts v. Zale Delaware, Inc.*, Los
8 Angeles Superior Court Case No. BC523610; *Michael Oliver v. Konica Minolta Business*
9 *Solutions U.S.A., Inc.*, Santa Clara County Superior Court Case No. 114-CV-263183; *Tessa*
10 *Hodge v. Zale Delaware, Inc., d/b/a Piercing Pagoda*, San Bernardino Superior Court Case No
11 CIVVS1301632; *Warren v. Paychex, Inc.*, N.D. Cal. Case No. 3:10-cv-02006; *Tapia v. Zale*
12 *Delaware Inc. et al*, S.D. Cal. Case No. 3:13-cv-01565; and *Benjamin Burgess et al v. Tesoro*
13 *Refining and Marketing Company et al*, C.D. Cal. Case No. 2:10-cv-05870.

14 64. In June 2016, I joined Diversity Law Group, P.C. where I spend most of my time
15 handling employment cases. I primarily represent employees.

16 65. I have been approved as class counsel in numerous other wage/hour class actions
17 that have been granted class certification and final approval, including: *Antonio Becerra-Mata v.*
18 *PSC Industrial Outsourcing, LP*, San Benito County Superior Court Case No. CU-15-00030;
19 *Kosal So v. Owens-Brockway Glass Container, Inc.*, Los Angeles County Superior Court Case
20 No. BC608609; *Sarah Rodriguez v. Manpower, Inc.*, Santa Clara County Superior Court Case
21 No. 1-16-CV-294904; *Shannon Sanchez v. American Para Professional Systems, Inc.*, Santa
22 Clara County Superior Court Case No. 17CV306751; *Foaad Hanna v. Equinix, LLC*, Santa Clara
23 County Superior Court Case No. 18CV339365; *Alicia Harris v. 24 Seven LLC*, Los Angeles
24 County Superior Court Case No. BC720144; *Mary Della Maggiora v. Watsonville Community*
25 *Hospital*, Santa Cruz Superior Court Case No. 18CV00191; *Michael Randolph v. Pacific Racing*
26 *Association*, Alameda County Superior Court Case No. RG18908139; *Cody Wirbick v. Sundt*
27 *Construction, Inc.*, U.S. District Court for the Eastern District of California Case No. 2:19-cv-
28 02067-MCE-CKD; *Jose Vasquez Ruiz v. Perdue Foods, LLC*, Sonoma County Superior Court

Case No. SCV 264649; *Delmer Wood III v. Reeve Trucking Company Inc.*, San Joaquin Superior Court Case No. STK-CV-UOE-2018-0004414; *Eric Chavez v. Converse, Inc.*, U.S. District Court for the Northern District of California Case No. 15-cv-03746-NC; *Jharett Siron v. Raypak, Inc.*, Ventura County Superior Court Case No. 56-2019-00527959-CU-OE-VTA; *Prexxie Pascual and Arturo Fonseca v. Satellite Healthcare, Inc.*, Santa Clara Superior Court Case No. 19CV345211; and *Markham v. Quik Stop Markets, Inc.*, Santa Clara Superior Court Case No. 19CV341582.

66. I also second chaired two jury trials where I represented the prevailing defendant. Both cases involved employees who brought claims against their former employers pursuant to the Fair Employment & Housing Act. The cases are: *Jeff Cowell v. Eaton Aerospace LLC et al*, Los Angeles County Superior Court Case No. BC401543; and *Richard Gulden v. Pratt & Whitney Rocketdyne Inc. et al.*, Los Angeles County Superior Court Case No. BC468909. More recently, I was lead trial counsel on a PAGA bench trial, in which the plaintiff was the prevailing party.

67. Through June 14, 2023 (the date of approval of the Settlement Agreement), I incurred approximately 33.10 hours in connection with the litigation of this lawsuit. Attached hereto as **Exhibit 6** is a summary of the hours I spent on this case through June 14, 2023. Thus, the total lodestar for my hours through June 14, 2023, will be approximately \$23,170 based on an hourly rate of \$700.00 per hour ([33.10 hours] x \$700). I have been approved at an hourly rate of \$700.00 per hour by various Courts, including: *Foaad Hanna v. Equinix, LLC*, Santa Clara County Superior Court Case No. 18CV339365; *Alicia Harris v. 24 Seven LLC*, Los Angeles County Superior Court Case No. BC720144; *Mary Della Maggiora v. Watsonville Community Hospital*, Santa Cruz Superior Court Case No. 18CV00191; *Michael Randolph v. Pacific Racing Association*, Alameda County Superior Court Case No. RG18908139; *Prexxie Pascual and Arturo Fonseca v. Satellite Healthcare, Inc.*, Santa Clara Superior Court Case No. 19CV345211; *Chavez v. Converse, Inc.*, United States District Court, Northern District of California Case No. 15-cv-03746-NC; and *Carrillo v. New Balance Athletics, Inc.*, Santa Clara Superior Court Case No. 19CV352469.

68. Since June 14, 2023, I have spent approximately 22.20 additional hours on this case, including corresponding with the Settlement Administrator and Defendant's counsel regarding administration of the settlement, negotiating and drafting the Amended Agreement and Second Amended Agreement, and obtaining Court approval of the proposed amendments. Attached hereto as **Exhibit 7** is a summary of the hours I have spent on this case since June 14, 2023.

69. I acknowledge that the errors in the Settlement Agreement should have been caught prior to Court approval. I apologize for the inconvenience imposed on the Court. In submitting the Amended Settlement Agreement, the Parties believed that limited revisions were required of the Settlement Agreement, namely (1) limiting the relevant temporal parameters of the Pivotal Pay Periods to the period of May 13, 2020 to October 31, 2021; and (2) narrowing the scope of the Aggrieved Employees to individuals who worked during this time (without this change some employees may have been covered by the release, but would not have received an Individual Settlement Payment).

70. The Parties elected not to modify the definition of “PAGA Period” in the Amended Settlement Agreement. At the time the settlement was initially negotiated, the Parties agreed to extend the PAGA Period, which also functioned as the release period, beyond October 31, 2021. As explained in the Joint Statement in Response to the Court’s February 2, 2024 Minute Order [ROA # 126], some courts have approved settlements where the release period extends beyond the liability period at issue.

71. However, after reviewing the Court’s February 2, 2024 Minute Order, the Parties entered into the Second Amended Settlement Agreement to resolve any remaining confusion. The Parties agreed to use the same timeframe of May 13, 2020 to October 31, 2021 for the purpose of: (1) defining the PAGA Period; (2) defining Aggrieved Employees; (3) calculating Individual Settlement Payments to Aggrieved Employees; and (4) defining the temporal scope of the Released Claims.

NOTICE TO LWDA

72. On June 16, 2023, my office submitted a copy of the Court's Order approving the

1 PAGA Settlement to the LWDA. Attached hereto as **Exhibit 8** is a true and correct copy of the
2 submission confirmation.

3 73. On October 25, 2023, my office submitted a copy of the Motion to Approve the
4 Amended PAGA Settlement, Amended Joint Stipulation of Settlement and Release Under the
5 Private Attorneys General Act, and proposed order to the LWDA's website. Attached hereto as
6 **Exhibit 9** is a true and correct copy of the submission confirmation.

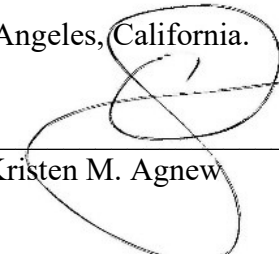
7 74. On February 2, 2024, my office uploaded a copy of the Court's February 2, 2024
8 Minute Order to the LWDA's website. Attached hereto as **Exhibit 10** is a true and correct copy
9 of the submission confirmation.

10 75. On March 15, 2024, my office uploaded a copy of the Joint Statement in
11 Response to the Court's February 2, 2024 Minute Order and in Support of Plaintiff's Motion to
12 Approve the Amended Joint Stipulation of Settlement, the Second Amended Settlement
13 Agreement, and proposed order to the LWDA's website. Attached hereto as **Exhibit 11** is a true
14 and correct copy of the submission confirmation.

15 76. Concurrent with the filing of the Motion to Approve the Second Amended PAGA
16 Settlement, my office uploaded the Motion, Second Amended Joint Stipulation of Settlement and
17 Release Under the Private Attorneys General Act, and proposed order to the LWDA's website.
18 Attached hereto as **Exhibit 12** is a true and correct copy of the submission confirmation.

19 I declare under penalty of perjury under the laws of the State of California that the
20 foregoing is true and correct.

21 Executed on this 8th day of May 2024, at Los Angeles, California.

22
23 
24 _____
25 Kristen M. Agnew
26
27
28

INDEX OF EXHIBITS

Exhibit 1	PAGA Notice, dated May 12, 2021
Exhibit 2	Comparison of Settlement Agreement and the Amended Settlement Agreement
Exhibit 3	Second Amended Settlement Agreement
	Ex. A: Notice to Aggrieved Employees
	Ex. B: Second Amended Complaint
Exhibit 4	Comparison of the Settlement Agreement and the Second Amended Settlement Agreement
	Ex. A: Comparison of Notice to Aggrieved Employees
Exhibit 5	Litigation Costs Bill
Exhibit 6	Time and Task Chart through June 14, 2023
Exhibit 7	Time and Task Chart since June 14, 2023
Exhibit 8	Proof of Submission of the Court's Order approving the PAGA Settlement to the LWDA, dated June 16, 2023
Exhibit 9	Proof of Submission of the Motion to Approve the Amended PAGA Settlement, Amended Joint Stipulation of Settlement and Release Under the Private Attorneys General Act, and proposed order to the LWDA's website, dated October 25, 2023
Exhibit 10	Proof of Submission of the Court's February 2, 2024 Minute Order to the LWDA's website, dated February 2, 2024
Exhibit 11	Proof of Submission of the Joint Statement in Response to the Court's February 2, 2024 Minute Order and in Support of Plaintiff's Motion to Approve the Amended Joint Stipulation of Settlement, the Second Amended Settlement Agreement, and proposed order to the LWDA's website, dated March 15, 2024
Exhibit 12	Proof of Submission of the Motion to Approve the Second Amended PAGA Settlement, my office uploaded the Motion, Second Amended Joint Stipulation of Settlement and Release Under the Private Attorneys General Act, and proposed order to the LWDA's website

EXHIBIT 1

ADEWUNMI OJO

c/o DIVERSITY LAW GROUP, P.C.
515 S. FIGUEROA STREET, SUITE 1250
LOS ANGELES, CALIFORNIA 90071
TELEPHONE (213) 488-6555
FACSIMILE (213) 488-6554

May 12, 2021

VIA ON-LINE FILING WITH LWDA AND CERTIFIED MAIL, RETURN RECEIPT
REQUESTED TO EMPLOYER

California Labor & Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612
PAGA@dir.ca.gov

Re: Ojo v. Pinnacle Light Industrial, LLC

To Whom It May Concern:

This correspondence shall constitute written notice under Labor Code section 2699.3 of the claims asserted on behalf of myself and all similarly situated aggrieved employees against my employer, Pinnacle Light Industrial, LLC. (the "Company"). I allege that the Company:

1. Violated Labor Code § 204 by failing to pay all similarly situated employees, including myself, their earned wages in a timely manner. For example, for the pay period of April 11, 2021 through April 17, 2021, the wages earned during such pay period were not paid until April 30, 2021, which is more than 10 days after the end of the pay period.
2. Violated Labor Code § 2802 by failing to pay all similarly situated employees, including myself, all mileage expenses incurred due to driving our personal vehicles for work related purposes. Specifically, while some miles we drive are reimbursed at \$0.54 cents per mile, which is around the IRS recommended reimbursement rate, other miles we drive are reimbursed at a much lower rate.

The address for the Company is as follows:

Pinnacle Light Industrial, LLC
5501 Lyndon B Johnson Freeway
Suite 600
Dallas, TX 75240

As part of this Notice, I also demand that Defendant cure all violations and pay all applicable penalties. Please contact my attorney Larry W. Lee at the above address/phone number if you have any questions regarding this matter.

May 12, 2021

Page 2

Sincerely,

DocuSigned by:


FB68413D7019415
Adewunmi Ojo

cc: Pinnacle Light Industrial, LLC (via certified mail)

EXHIBIT 2

AMENDED JOINT STIPULATION OF SETTLEMENT AND RELEASE UNDER THE PRIVATE ATTORNEYS
GENERAL ACT, CALIFORNIA LABOR CODE § 2698, ET SEQ.

1 This Amended Joint Stipulation of Settlement and Release (“Agreement” or
2 “Settlement”) under the Private Attorneys General Act, California Labor Code section 2698 *et*
3 *seq.* (“PAGA”), is made by and between Adewunmi Ojo (“Ojo” or “Plaintiff”), individually
4 and as representative on behalf of Aggrieved Employees, as further defined herein, and the
5 State of California, and Pinnacle Light Industrial, LLC (“Pinnacle” or “Defendant”). Ojo and
6 Pinnacle are collectively referred to herein as the “Parties” and may be individually referred to
7 as a “Party.”

8 **A. FACTUAL BACKGROUND AND RECITALS**

9 1. This Settlement is made and entered into by and between Plaintiff and Defendant,
10 and is subject to the terms and conditions hereof, and to the Court’s approval. The Parties
11 expressly acknowledge that this Agreement is entered into solely for the purpose of
12 compromising significantly disputed claims and that nothing herein is an admission of liability
13 or wrongdoing by Defendant. Defendant denies that it is liable to Plaintiff or the Aggrieved
14 Employees, and denies that it has violated any law.

15 2. On May 13, 2021, Plaintiff filed a notice with the California Labor and Workforce
16 Development Agency (“LWDA”), alleging that Defendant violated Labor Code sections 204
17 and 2802 (“PAGA Notice”). As set forth in the PAGA Notice, Plaintiff alleged that Defendant
18 failed to pay wages within seven days of the close of the pay period, in violation of Labor Code
19 section 204. Plaintiff further alleged that Defendant failed to reimburse employees for all
20 mileage related expenses, in violation of Labor Code section 2802.

21 3. On May 19, 2021, Plaintiff filed a putative class action lawsuit against Defendant,
22 entitled *Adewunmi Ojo, as an individual and on behalf of all others similarly situated v.*
23 *Pinnacle Light Industrial, LLC*, in Orange County Superior Court Case No. 30-2021-01201515-
24 CU-OE-CXC. As alleged in the complaint, Plaintiff asserted claims for: (1) Violation of Labor
25 Code section 2802; and (2) Violation of Business and Professions Code section 17200, *et seq.*,
based on Defendant’s alleged failure to reimburse employees for business expenses

26 4. On July 16, 2021, Plaintiff amended his complaint to add a cause of action for
27 violation of the California Private Attorneys General Act (“PAGA”), Labor Code § 2898, *et*

1 *seq.* Ojo premised his PAGA claim on Defendant's alleged failure to reimburse business
2 expenses and to comply with Labor Code section 204. Plaintiff sought civil penalties and an
3 award of reasonable attorneys' fees and costs as permitted by the PAGA, Labor Code § 2698,
4 *et seq.*

5 5. On or about August 16, 2021, Defendant filed an Answer to Plaintiff's Unverified
6 First Amended Class and Representative Action Complaint.

7 6. During Plaintiff's employment with Defendant, Plaintiff (and one or more of all
8 of the Aggrieved Employees) executed an arbitration agreement that contained a class action
9 waiver. In light of the narrow claims at issue, the Parties agreed to redirect their resources to
10 exploring the possibility of an early resolution on as broad a scale as possible consistent with
11 applicable law.

12 7. Over the course of several months, the Parties conducted arm's length
13 negotiations that resulted in the current settlement. In connection with the Parties' negotiations,
14 Defendant produced, among other things, electronic documents and data related to the mileage
15 reimbursement records for Plaintiff and the Aggrieved Employees, Defendant's mileage
16 reimbursement policy, as well as data relating to the number of potential Aggrieved Employees
17 and the number of pay periods worked by Aggrieved Employees during the applicable PAGA
18 Period.⁺ Defendant has confirmed that it altered its payroll practices relative to the entirety of
19 Plaintiff's allegations on or before ~~of~~ September 11, 2021, and that not all Aggrieved
20 Employees were impacted by either or both allegedly improper pay practice on each pay period
21 during the PAGA Period.

22 8. The Parties recognize the risk, expense, and delay in continuing the Action, and
23 therefore believe the Settlement to be fair, reasonable, and adequate. Accordingly, the Parties
24 desire to settle, compromise, and discharge all disputes and claims arising from or related to the
25 Action.

26 9. The Parties are unaware of any class or other representative action in any other
27 court that asserts claims similar to those alleged in the Action.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

B. DEFINITIONS

1. “Action” means *Adewunmi Ojo, as an individual and on behalf of all others similarly situated v. Pinnacle Light Industrial, LLC*, in Orange County Superior Court Case No. 30-2021-01201515-CU-OE-CXC.

2. “Aggrieved Employees” is defined, consistent with Plaintiff’s Second Amended Complaint, as 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~~October 31, ~~2022~~2021.

3. “Plaintiff’s Counsel” means Diversity Law Group, P.C. and Polaris Law Group LLP.

4. “Complaint” means the Second Amended Representative Action Complaint filed by Plaintiff in the Action, effectively withdrawing any claims other than those brought under PAGA.

5. “Defendant” or “Pinnacle” means Pinnacle Light Industrial, LLC.

6. “Effective Date” means the date on which the Superior Court or any Party hereto serves notice of entry of the Superior Court’s Order and Judgment approving and entering the Amended PAGA Settlement set forth herein.

7. “Enhancement Payment” means the amount that the Court authorizes to be paid to Plaintiff, in addition to his Individual Settlement Payment, in recognition of his efforts and risks in assisting with the prosecution of the Action. Subject to the Court granting approval of the Settlement, the Parties agree that Plaintiff shall be paid up to ~~three~~two thousand dollars and zero cents (~~\$32~~,000.00) from the Maximum Settlement Amount. It is understood by Plaintiff that the Court has final discretion in any Enhancement Payment.

8. “Individual Settlement Payment” means the amount payable from the Net PAGA Payment to each Aggrieved Employee.

9. “Maximum Settlement Amount” means the maximum settlement amount of sixty thousand dollars and zero cents (\$60,000.00) to be paid by Defendant as a result of this Agreement. The Maximum Settlement Amount includes all Individual Settlement Payments to

1 Aggrieved Employees, payment to the LWDA, the Enhancement Payment to Plaintiff,
2 Settlement Administration Costs, and Attorneys Fees and Costs.

3 10. "PAGA Penalties Fund" means the balance of the Maximum Settlement Amount
4 remaining after deduction of the approved Enhancement Payment to Plaintiff, Attorneys' Fees
5 and Costs, and Settlement Administration Costs.

6 11. "PAGA Period" means May 13, 2020 through July 31, 2022.

7 12. "Parties" means Plaintiff and Defendant, together.

8 13. "Plaintiff" means Plaintiff Adewunmi Ojo.

9 14. "Released Claims" means all claims for civil penalties under the California Labor
10 Code Private Attorneys General Act, including costs and attorneys' fees related thereto,
11 predicated on the alleged violation of Labor Code sections 204 and/or 2802, based on the facts
12 as alleged in the PAGA Notice and the Second Amended Representative Action Complaint,
13 whether known or unknown, and including any claims under the California Labor Code and/or
14 applicable Industrial Welfare Commission Wage Orders, as well any resulting claim for
15 attorneys' fees and costs that accrued during the period of May 13, 2020, through July 31, 2022.

16 15. "Released Parties" means Defendant and its present and former parent
17 companies, affiliates, predecessors, successors, assigns, shareholders, owners, officers,
18 directors, employees, agents, trustees, attorneys, representatives, administrators, fiduciaries,
19 beneficiaries, subrogees, executors, partners, parents, subsidiaries, and privies.

20 16. "Settlement Administration Costs" means the fees and expenses reasonably
21 incurred by the Settlement Administrator as a result of the procedures and processes expressly
22 required for completion of the settlement and by this Agreement, which are estimated at one
23 thousand seven hundred fifty dollars and zero cents (\$1,750). Any portion of the Settlement
24 Administration Costs not used or approved by the Court shall be added to the PAGA Penalties
25 Fund.

26 17. "Settlement Administrator" means Phoenix Settlement Administrators.

27 C. AMENDMENTS TO COMPLAINT

28 1. Dismissal of Class Action Allegations. In connection with this Settlement, the

1 Parties shall file a joint request for the dismissal without prejudice of the class allegations set
2 forth in the First Amended Class and Representative Action Complaint filed by Plaintiff. This
3 Settlement shall not become effective unless and until the Court dismisses the class allegations
4 without prejudice.

5 2. Second Amended Complaint. In connection with this Settlement, Plaintiff shall
6 file a Second Amended Representative Action Complaint in Orange County Superior Court in
7 the form attached hereto as Exhibit B. The Parties agree that Defendant shall maintain any and
8 all affirmative defenses but shall not be required to file an Answer or other responsive pleading
9 to the Second Amended Representative Action Complaint and that such agreement precludes
10 Plaintiff from any right to: (a) obtain a default judgment against Defendant on the basis that
11 Defendant did not respond to the Second Amended Representative Action Complaint; (b) argue
12 that Defendant waived any right to a demurrer or other challenge to the pleadings; and (c) argue
13 that Defendant waived any affirmative defense. If the Settlement does not obtain approval,
14 Plaintiff will withdraw the Second Amended Representative Action Complaint and it will be
15 void ab initio.

16 **D. PAYMENT OF CONSIDERATION**

17 1. Settlement Consideration. Defendant shall pay the sum of the Maximum
18 Settlement Amount as specified in this Agreement, which shall be used to pay: (1) Individual
19 Settlement Payments; (2) Attorneys' Fees and Costs; (3) Enhancement Payment; (4) Settlement
20 Administration Costs; and (5) payment to the LWDA. The Parties agree that this is a non-
21 reversionary Settlement and that no portion of the Maximum Settlement Amount shall revert to
22 Defendant. Payment shall be made to the Settlement Administrator for disbursement in
23 accordance with the Superior Court's order and judgment approving the Amended PAGA
24 Settlement.

25 2. Escalator Clause. The Maximum Settlement Amount was calculated with, and is
26 premised on, Defendant's representation that certain Aggrieved Employees received the
27 payment of wages and/or expense reimbursements (including for mileage, some of which were
28 paid at a rate lower than the applicable IRS standard rate), in a maximum of 875 pay periods

1 during the ~~PAGA Period~~period from May 13, 2020, through October 31, 2021 (“Pivotal Pay
2 Periods”). If the data submitted by Defendant to the Settlement Administrator shows that there
3 are more than 875 Pivotal Pay Periods ~~in which those same Aggrieved Employees received~~
4 ~~payment of wages and/or expense reimbursements (including for mileage, some of which were~~
5 ~~paid at a rate lower than the applicable IRS standard rate), during the PAGA Period~~, the amount
6 of the Maximum Settlement Amount shall increase in proportion to the increase in the total
7 number of ~~pay periods~~Pivotal Pay Periods. Defendant shall also be responsible for the
8 settlement administration costs of this additional payment, which shall not be taken out of the
9 additional payment, but will be paid for separately.

10 3. Funding of the Maximum Settlement Amount. Within fifteen (15) calendar days
11 of the Effective Date, Defendant shall deposit the Maximum Settlement Amount with the
12 Settlement Administrator who shall place that sum into a Qualified Settlement Fund (“QSF”).
13 The QSF shall be an interest-bearing account established by the Settlement Administrator at a
14 federally-insured bank that is mutually acceptable to the Parties and the Settlement
15 Administrator. The funds in the QSF shall be invested either in short-term U.S. Treasury
16 securities with maturity dates of less than 90 days at the time of deposit, or in an SEC-registered
17 money market fund investing exclusively in U.S. Treasury securities with average maturities of
18 less than 90 days and rated AAA by Standard & Poor’s. The Parties agree that the QSF is
19 intended to be a “Qualified Settlement Fund” under Section 468B of the Internal Revenue Code
20 and Treas. Reg. § 1.468B-1, 26 C.F.R. § 1.468B-1, *et seq.*, and will be administered by the
21 Settlement Administrator as such. With respect to the QSF, the Settlement Administrator shall:
22 (1) open and administer the Settlement Account in such a manner as to qualify and maintain
23 the qualification of the QSF as a “Qualified Settlement Fund” under Section 468B of the
24 Internal Revenue Code and Treas. Reg. § 1.468B-1; (2) satisfy all federal, state, and local
25 income and other tax reporting, return, and filing requirements with respect to the QSF, and any
26 interest or other income earned by the QSF, and (3) satisfy out of the QSF all (i) taxes (including
27 any estimated taxes, interest, or penalties) with respect to the interest or other interest earned
28 by the QSF, and (ii) fees, expenses and costs incurred in connection with the opening and

1 administration of the QSF and the performance of its duties and functions as described in this
2 Agreement. The aforementioned taxes, fees, costs, and expenses shall be treated as, and shall
3 be, included in the costs of administering the QSF and as Claims Administration Expenses. The
4 Parties and the Settlement Administrator shall treat the QSF as coming into existence as a
5 Qualified Settlement Fund on the earliest date permitted as set forth in 26 C.F.R. § 1.468B-
6 1(j)(2)(i), and such election statement shall be attached to the appropriate returns as required by
7 26 C.F.R. § 1.468B-1(j)(e)(ii). The Parties agree to cooperate with the Settlement Administrator
8 and one another to the extent reasonably necessary to carry out the provisions of this Section.

9 4. Allocation of the PAGA Penalties Fund. The PAGA Penalties Fund shall be used
10 to satisfy Individual Settlement Payments to Aggrieved Employees and payment to the LWDA
11 in accordance with the terms of this Agreement. The PAGA Penalties Fund is the maximum
12 amount that will be available for distribution to the LWDA and Aggrieved Employees in full
13 satisfaction of all Released Claims. Pursuant to PAGA, seventy-five percent (75%) of the
14 PAGA Penalties Fund will be paid to the LWDA, and the remaining twenty-five percent (25%)
15 will be paid to all Aggrieved Employees ("Net PAGA Payment"). Plaintiff and Plaintiff's
16 Counsel shall be responsible for notifying the LWDA of the Settlement to the extent required
17 by law, including providing proof of such notice as required or upon request.

18 5. Calculation of Individual Settlement Payment. The Net PAGA Payment shall be
19 used to satisfy Individual Settlement Payments to Aggrieved Employees in accordance with the
20 terms of this Agreement. The Settlement Administrator shall allocate the Individual
21 Settlement Payments by first dividing the Net PAGA Payment by the number of Pivotal Pay
22 Periods in which Aggrieved Employees received the payment of wages ~~during~~ and/or expense
23 reimbursements (including for mileage, some of which were paid at a rate lower than the PAGA
24 Period-applicable IRS standard rate) during the period from May 13, 2020, through October
25 31, 2021 That value will then be multiplied by the number of ~~pay periods~~ Pivotal Pay Periods
26 in which each respective Aggrieved employee received the payment of wages and/or expense
27 reimbursements (including for mileage, some of which were paid at a rate lower than the
28 applicable IRS standard rate) during the PAGA Period period from May 13, 2020, through

Formatted: English (United States), Not Expanded by /
Condensed by

Formatted: English (United States), Not Expanded by /
Condensed by

1 October 31, 2021. Aggrieved Employees are entitled to 100% of the Net PAGA Payment.
2 Defendant maintains no reversionary right to any portion of the Net PAGA Payment.

3 6. Tax Treatment of Individual Settlement Payment. All Individual Settlement
4 Payments shall be allocated one hundred percent (100%) as penalties. The amount of payments
5 shall be reported on an IRS Form 1099 issued by the Settlement Administrator.

6 7. No Credit Toward Benefit Plans. Payments to Aggrieved Employees as
7 referenced herein will not be utilized to calculate any additional benefits under any benefit plans
8 to which any Aggrieved Employee may be eligible, including, but not limited to profit-sharing
9 plans, bonus plans, 401(k) plans, stock purchase plans, vacation plans, sick leave plans, PTO
10 plans, and any other benefit plan. Rather, it is the Parties' intention that this Settlement
11 Agreement will not affect any rights, contributions, or amounts to which any Aggrieved
12 Employee may be entitled under any benefit plans.

13 8. Enhancement Payment. Defendant agrees not to oppose or impede any
14 application or motion by Plaintiff for an Enhancement Payment of up to ~~threetwo~~ thousand
15 dollars and zero cents (\$~~32~~,000.00) to Plaintiff. The Enhancement Payment shall be paid from
16 the Maximum Settlement Amount, and shall be paid in addition to Plaintiff's Individual
17 Settlement Payment as an Aggrieved Employee. It is understood by Plaintiff that the Court has
18 final discretion in any Enhancement Payment. The Settlement Administrator shall issue an IRS
19 Form 1099 to Plaintiff reflecting the Enhancement Payment. Plaintiff shall be solely and
20 legally responsible to pay any and all applicable taxes on his Enhancement Payment and shall
21 hold Defendant harmless from any claim, assessment, or liability for taxes, penalties, or
22 interest arising as a result of the Enhancement Payment. Any portion of the Enhancement
23 Payment not awarded to Plaintiff shall be added to the PAGA Penalties Fund and shall be
24 distributed to Aggrieved Employees and LWDA as provided in this Agreement.

25 9. Attorneys' Fees and Costs: In full satisfaction of all claims Plaintiff may have
26 for attorneys' fees, litigation costs, and expenses arising out of the Action, Defendant agrees
27 that Plaintiff's Counsel shall be paid a maximum amount of twenty thousand dollars and zero
28 cents (\$20,000.00) in attorneys' fees and up to five thousand dollars and zero cents (\$5,000.00)

1 in litigation costs and expenses (“Attorneys’ Fees and Costs”), which shall be paid from the
2 Maximum Settlement Amount. The Settlement Administrator shall issue an IRS Form 1099
3 to Plaintiff’s Counsel reflecting the awarded attorneys’ fees, costs, and expenses. The Parties
4 understand that the Court makes the final determination on the award of Attorneys’ Fees and
5 Costs, and that any portion of these amounts not awarded as Attorneys’ Fees and Costs shall
6 be added to the PAGA Penalties Fund and distributed to Aggrieved Employees and LWDA
7 as provided in this Agreement.

8 10. Settlement Administration Costs. The Settlement Administrator shall be paid for
9 the reasonable costs of administration of the Settlement from the Maximum Settlement
10 Amount, currently estimated at one thousand seven hundred fifty dollars and zero cents
11 (\$1,750). These costs, which shall be paid from the Maximum Settlement Amount, shall
12 include, *inter alia*, the required tax reporting on the Individual Settlement Payments, the
13 issuance of Form 1099 IRS forms, establishing a Qualified Settlement Fund, administering and
14 distributing the Maximum Settlement Amount, and providing necessary reports and
15 declarations. Any portion of the Settlement Administration Costs not allowed shall be added to
16 the PAGA Penalties Fund and shall be distributed to Aggrieved Employees and the LWDA as
17 provided in this Agreement.

18 **E. ADMINISTRATION OF SETTLEMENT**

19 1. Approval of Amended PAGA Settlement. Plaintiff’s Counsel shall request the
20 entry of an Order in the form attached as Exhibit C from the Court granting final approval,
21 which shall include findings and orders: (i) approving the settlement, (ii) adjudging the terms
22 to be fair, reasonable, and adequate and binding on the State of California, (iii) reciting the
23 release terms, (iv) directing that the settlement’s terms and provisions be carried out; (v)
24 entering final judgment in accordance with this Agreement and without further fees or costs to
25 any party, except as expressly set forth in this Agreement; and (vi) retaining jurisdiction to
26 oversee administration and enforcement of the terms of this Agreement and the Court’s orders.
27 Plaintiff’s motion shall be unopposed by Defendant, unless Plaintiff’s approval motion seeks
28 relief inconsistent with or not specified by this Agreement. In such event, Defendant reserves

1 the right to address any assertions that are not contained in this Agreement. Plaintiff will request
2 a hearing on the request for entry of the attached Order to the extent required by the applicable
3 local rules and on the earliest date available to the Court and the Parties.

4 a. Settlement Administration. The Parties agree to cooperate in the
5 administration of the Settlement and to make all reasonable efforts to control and minimize the
6 costs and expenses incurred in the administration of the Settlement. The Settlement
7 Administrator shall provide the following services: Establish and maintain a Qualified
8 Settlement Fund account;

9 b. Calculate the Individual Settlement Payments to be paid to Aggrieved
10 Employees in accordance with the terms and provisions of this Agreement;

11 c. Print and issue Individual Settlement Payment checks;

12 d. Verify the last known address for each Aggrieved Employee through a
13 generally utilized, national address update database prior to mailing the Individual Settlement
14 Payment check;

15 e. Issue and transmit payment to the California Labor and Workforce
16 Development Agency for its portion of the Settlement amount;

17 f. Disburse any awards of costs and attorneys' fees and the Enhancement
18 Payment;

19 g. Prepare and issue 1099 Forms; and

20 h. Perform such other tasks necessary to effectuate the terms of this
21 Agreement or as the Parties mutually agree or the Court orders the Parties to perform.

1 2. Delivery of the Aggrieved Employee List and Data. Within fifteen (15) calendar
2 days after the Effective Date, Defendant shall provide the Settlement Administrator with a
3 Microsoft Office Excel spreadsheet and shall include each Aggrieved Employee's: full name;
4 employee number; most recent mailing address; social security number; and the number of ~~pay~~
5 ~~periods~~Pivotal Pay Periods in which the employee received payment of wages during the ~~PAGA~~
6 ~~Period~~period from May 13, 2020, through October 31, 2021.

7 3. Timing of Distribution. Within ten (10) calendar days after the payment of the
8 entire Maximum Settlement Amount, the Settlement Administrator will issue payments to: (a)
9 Aggrieved Employees; (b) the California Labor and Workforce Development Agency; (c)
10 Plaintiff; and (d) Plaintiff's Counsel. The Settlement Administrator will issue the appropriate
11 tax forms for all payments issued under this Settlement by the due date to provide such tax
12 forms for the ~~2021~~2023 calendar year.

13 4. Mailing of Individual Settlement Payments to Aggrieved Employees: The
14 Settlement Administrator will issue each Aggrieved Employee a check for his or her share of
15 the PAGA Penalties Fund, along with an explanatory letter attached hereto as Exhibit A. Checks
16 will remain negotiable for 180 days. Any checks returned as non-deliverable on or before the
17 check cashing deadline will be sent promptly via regular First-Class U.S. Mail to the forwarding
18 address affixed thereto. Funds represented by settlement checks that remained un-cashed for
19 more than 180 days after issuance shall be paid out pursuant to California Code of Civil
20 Procedure section 384 to the following *cy pres* recipient: Legal Aid at Work. Neither the Parties
21 nor their respective counsel have a relationship with the designated *cy pres*.

21 **F. RELEASE OF CLAIMS**

22 5. Release of Claims by Aggrieved Employees. Upon the payment of the Maximum
23 Settlement Amount by Defendant, Plaintiff and all Aggrieved Employees, hereby do and shall
24 be deemed to have fully, finally and forever released, settled, compromised, relinquished and
25 discharged, to the fullest extent possible, any and all of the Released Parties of and from any
26 and all Released Claims. With respect to the Released Claims only, the Aggrieved Employees
27 waive any and all rights and benefits under California Civil Code Section 1542, which reads:

28 -12-

AMENDED JOINT STIPULATION OF SETTLEMENT AND RELEASE UNDER THE PRIVATE
ATTORNEYS GENERAL ACT, CALIFORNIA LABOR CODE § 2698, ET SEQ.

1 “A general release does not extend to claims that the creditor or releasing party does not
2 know or suspect to exist in his or her favor at the time of executing the release and that, if
3 known by him or her, would have materially affected his or her settlement with the debtor
4 or released party.”

5 6. No Right to Opt-Out. The Parties agree there is no statutory right for any
6 Aggrieved Employee to opt out or otherwise exclude himself or herself from the Settlement.
7 As such, no notice of the settlement, providing the opportunity to opt out or object, is required.

8 7. General Release and Waiver of Claims by Plaintiff. As a condition to obtaining
9 the Enhancement Payment provided for herein, and as part of the consideration for that
10 payment, Plaintiff (on behalf of himself and his spouse, heirs, executors, administrators,
11 trustees, and/or permitted assigns) also agrees to a general release of any and all claims or causes
12 of action against Defendant and Released Parties—which shall include without limitation any
13 and all claims which in any way relate to his employment with Defendant, as well as his
14 termination from that employment (if any), under California or federal law, in tort, common
15 law, statute, contract, or equity, whether pled in the Complaint or not, including, but not limited
16 to any claims under the Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1991,
17 the Americans With Disabilities Act, the Genetic Information Nondiscrimination Act, the Age
18 Discrimination in Employment Act, the Families First Coronavirus Response Act, the Fair
19 Labor Standards Act, the California Fair Employment and Housing Act, the California Labor
20 Code, the California Fair Employment and Housing Act, or any California Industrial Welfare
21 Commission wage order, based on any act, omission, event, occurrence, or nonoccurrence by
22 Defendant or Released Parties to the date of Plaintiff’s execution of the Agreement, except for
23 any law that prohibit waiver or release of such claims without Court or agency approval.
24 Plaintiff further expressly waives and relinquishes, to the fullest extent permitted by law, the
25 provisions, rights and benefits of Section 1542 of the California Civil Code, which provides:
26 “A general release does not extend to claims that the creditor or releasing party does not
27 know or suspect to exist in his or her favor at the time of executing the release and that, if
28 known by him or her, would have materially affected his or her settlement with the debtor

1 or released party.” Having been informed of this provision and his rights under it, Plaintiff
2 waives and relinquishes the provisions of California Civil Code section 1542 with respect to
3 this Agreement and his release of any and all of his individual claims and causes of action as
4 provided herein.²

5 **G. MISCELLANEOUS**

6 1. Tax Liability. Defendant, Defendant’s counsel, the Settlement Administrator, and
7 Plaintiff’s Counsel make no representation as to the tax treatment or legal effect of the payments
8 called for hereunder, and Plaintiff and Aggrieved Employees are not relying on any statement,
9 representation, or calculation by Defendant, Defendant’s counsel, Plaintiff’s Counsel, or by the
10 Settlement Administrator in this regard. Plaintiff and Aggrieved Employees understand and
11 agree that they will be solely responsible for the payment of any and all taxes and penalties
12 assessed on their respective payments described herein and will defend, indemnify, and hold
13 Defendant, Defendant’s counsel, Plaintiff’s Counsel and the Settlement Administrator free and
14 harmless from and against any claims resulting from treatment of such payments as non-taxable
15 penalties/damages.

16 2. Circular 230 Disclaimer. EACH PARTY TO THIS AGREEMENT (FOR
17 PURPOSES OF THIS SECTION, THE “ACKNOWLEDGING PARTY” AND EACH
18 PARTY TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN
19 “OTHER PARTY”) ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF
20 THIS AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE

21 ² By entering into this Agreement, Plaintiff further understands and agrees that he: (a)
22 has read this Agreement carefully and completely; (b) understands and knowingly and
23 voluntarily agrees to the terms, conditions, and waivers set forth in this Agreement;
24 (c) is hereby advised in writing to consult with an attorney of his/her choice prior to
25 executing this Agreement and has had ample opportunity and sufficient time to seek
26 such advice; (d) agrees that the Payment provided in this Agreement is in addition to
27 any consideration to which he/she may already be entitled; (e) agrees that claims for age
28 discrimination that arise after the executive of this Agreement are not waived by this
Agreement; (f) may take up to twenty-one (21) days to consider whether he/she desires
to execute this Agreement; and (g) has a period of seven (7) days after executing this
Agreement to revoke this Agreement. Any such revocation must be in writing and
delivered to (and received by) counsel for Defendant on or before the seventh day.

1 BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER
2 ADVISERS, IS OR WAS INTENDED TO BE, NOR SHALL ANY SUCH
3 COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE
4 RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES
5 TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED);
6 (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS OR
7 ITS OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING
8 TAX ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED
9 INTO THIS AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER
10 PARTY OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT
11 ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY
12 ATTORNEY OR ADVISER TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY
13 THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO
14 ATTORNEY OR ADVISER TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION
15 THAT PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY'S OR
16 ADVISER'S TAX STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS
17 LEGALLY BINDING) UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF
18 THE TAX TREATMENT OR TAX STRUCTURE OF ANY TRANSACTION, INCLUDING
19 ANY TRANSACTION CONTEMPLATED BY THIS AGREEMENT.

20 3. No Prior Assignments. The Parties and their counsel represent, covenant, and
21 warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported
22 to assign, transfer, or encumber to any person or entity any portion of any liability, claim,
23 demand, action, cause of action or right herein released and discharged.

24 4. Nullification of Settlement Agreement. In the event that: (i) the Court does not
25 approve the Settlement as provided herein; or (ii) the Settlement does not become final for any
26 other reason, then this Settlement Agreement, and any documents generated to bring it into
27 effect, will be null and void, and the Parties will be returned to their original respective
28 positions. Notwithstanding the above, in such event, the Parties will meet and confer to address

1 any concerns raised by the Court to determine whether and to what extent the Action may be
2 resolved in a manner consistent with the Parties' intent and consistent with the Court's
3 concerns.

4 5. Continued Jurisdiction. After entry of the judgment, the Court will have
5 continuing jurisdiction solely for purposes of addressing: (i) the interpretation and enforcement
6 of the terms of the Settlement, (ii) settlement administration matters, and (iii) such post-Court
7 Approval matters as may be appropriate under court rules or as set forth in this Settlement.

8 6. Entire Agreement. This Settlement Agreement constitutes the entirety of the
9 Parties' settlement terms. No other prior or contemporaneous written or oral agreements may
10 be deemed binding on the Parties.

11 7. Amendment or Modification. This Settlement Agreement may be amended or
12 modified only by a written instrument, signed by either the Parties or their successors-in-interest
13 or counsel for all Parties.

14 8. Authorization to Enter Into Settlement Agreement. Counsel for all Parties
15 warrant and represent they are expressly authorized by the Parties whom they represent to
16 negotiate this Settlement Agreement and to take all appropriate action required or permitted to
17 be taken by such Parties pursuant to this Settlement Agreement to effectuate its terms and to
18 execute any other documents required to effectuate the terms of this Settlement Agreement. The
19 Parties and their counsel will cooperate with each other and use their best efforts to effect the
20 implementation of the Settlement. If the Parties are unable to reach agreement on the form or
21 content of any document needed to implement the Settlement, or on any supplemental
22 provisions that may become necessary to effectuate the terms of this Settlement, the Parties
23 may seek the assistance of the Court to resolve such disagreement.

24 9. Binding on Successors and Assigns. This Settlement Agreement will be binding
25 upon, and inure to the benefit of, the successors or assigns of the Parties hereto.

26 10. California Law Governs. All terms of this Settlement Agreement and Exhibit A
27 will be governed by and interpreted according to the laws of the State of California.

1 11. Execution and Counterparts. This Settlement Agreement is subject only to the
2 execution of all Parties. However, the Settlement Agreement may be executed in one or more
3 counterparts. All executed counterparts and each of them, including facsimile and scanned
4 copies of the signature page, will be deemed to be one and the same instrument provided that
5 counsel for the Parties will exchange among themselves original signed counterparts.

6 12. Acknowledgement that the Settlement is Fair and Reasonable. The Parties
7 believe this Settlement Agreement is a fair, adequate, and reasonable settlement of the Action
8 and have arrived at this Settlement after arm's-length negotiations. The Parties further
9 acknowledge that they are each represented by competent counsel and that they have had an
10 opportunity to consult with their counsel regarding the fairness and reasonableness of this
11 Settlement.

12 13. Invalidity of Any Provision. Before declaring any provision of this Settlement
13 Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest
14 extent possible consistent with applicable precedents so as to define all provisions of this
15 Settlement Agreement valid and enforceable. If any provision of this Settlement Agreement is
16 or becomes invalid or unenforceable in any respect, the validity and enforceability of the
17 remaining provisions contained herein shall not be affected.

18 14. Captions. The captions and section numbers in this Settlement Agreement are
19 inserted for the reader's convenience, and in no way define, limit, construe or describe the scope
20 or intent of the provisions of this Settlement Agreement.

21 15. Waiver. No waiver of any condition or covenant contained in this Settlement
22 Agreement or failure to exercise a right or remedy by any of the Parties hereto will be
23 considered to imply or constitute a further waiver by such party of the same or any other
24 condition, covenant, right, or remedy.

25 16. Enforcement Action. In the event that one or more of the Parties institutes any
26 legal action or other proceeding against any other Party or Parties to enforce the provisions of
27 this Settlement or to declare rights and/or obligations under this Settlement, the successful Party
28 or Parties will be entitled to recover from the unsuccessful Party or Parties reasonable attorneys'

1 fees and costs, including expert witness fees incurred in connection with any enforcement
2 actions.

3 17. Mutual Preparation. The Parties have had a full opportunity to negotiate the terms
4 and conditions of this Settlement Agreement. Accordingly, this Settlement Agreement will not
5 be construed more strictly against one party than another merely by virtue of the fact that it may
6 have been prepared by counsel for one of the Parties. The Parties further acknowledge and
7 agree that, because of the arms-length negotiations between the Parties, all Parties have
8 contributed to the preparation of this Settlement Agreement.

9 18. Representation by Counsel. The Parties acknowledge that they have been
10 represented by counsel throughout all negotiations that preceded the execution of this
11 Settlement Agreement, and that this Settlement Agreement has been executed with the consent
12 and advice of counsel, and reviewed in full.

13 19. Binding Agreement. The Parties warrant that they understand and have full
14 authority to enter into this Settlement, and further intend that this Settlement Agreement will
15 be fully enforceable and binding on all parties, and agree that it will be admissible and subject
16 to disclosure in any proceeding to enforce its terms, notwithstanding any settlement
17 confidentiality provisions that otherwise might apply under federal or state law.

18 20. Denial of Liability. The Parties expressly recognize that the making of this
19 agreement does not in any way constitute an admission or concession of wrongdoing on the
20 part of Defendant. Nothing in this Settlement, nor any action taken in implementation thereof,
21 nor any statements, discussions or communications, nor any materials prepared, exchanged,
22 issued or used during the course of this Action, is intended by the Parties to, nor will any of the
23 foregoing constitute, be introduced, be used or be admissible in any way in any other judicial,
24 arbitral, administrative, investigative, or other forum or proceeding, as evidence of any violation
25 of any federal, state, or local law, statute, ordinance, regulation, rule or executive order, or any
26 obligation or duty at law or in equity. Notwithstanding the foregoing, this agreement may be
27 used in any proceeding in the Court that has as its purpose the interpretation, implementation,

1 or enforcement of the Settlement or any orders or judgments of the Court entered into in
2 connection therewith.

3 **IN WITNESS WHEREOF**, the undersigned Settling Parties and their duly authorized
4 representatives accept and agree to the terms of this Agreement and hereby execute it
5 voluntarily and with a full understanding of its consequences.

6
7 DATED: _____ **PLAINTIFF ADEWUNMI OJO**

8
9
10 _____
Plaintiff Adewunmi Ojo

11 DATED: _____ **DEFENDANT PINNACLE LIGHT**
12 **INDUSTRIAL, LLC**

13
14 _____
By: Erin Stewart

15 **APPROVED AS TO FORM:**

16
17 DATED: _____ **DIVERSITY LAW GROUP, P.C.**

18
19 _____
Kristen M. Agnew
20 Attorneys for Plaintiff and the Aggrieved
Employees

21 DATED: _____ **WICK PHILLIPS GOULD & MARTIN LLP**

22
23 _____
Marcia Jackson
24 Attorneys for Defendant
25 Pinnacle Light Industrial, LLC

EXHIBIT A

<<DATE>>

<<FIRST NAME>> <<LAST NAME>>
<<ADDRESS>>

Re: *Adewunmi Ojo v. Pinnacle Light Industrial, LLC*,
Orange County Superior Court Case No. 30-2021-01201515-CU-OE-CXC

Dear <<FIRST NAME>> <<LAST NAME>>:

Enclosed you will find a check made payable to you. This is your payment from the settlement of the lawsuit entitled *Adewunmi Ojo v. Pinnacle Light Industrial, LLC*, Case No. 30-2021-01201515-CU-OE-CXC (Orange County Superior Court) (the “Action”).

Adewunmi Ojo (“Named Plaintiff”) filed the Action against Pinnacle Light Industrial, LLC, (“Defendant” or the “Company”) pursuant to the California Private Attorneys General Act of 2004, California Labor Code section 2698 *et seq.* (“PAGA”). Named Plaintiff brought the Action on behalf of the State of California and all employees who received the payment of wages and/or mileage reimbursement under one or more former Company policies during the period of May 13, 2020-~~onward~~, through October 31, 2021. You have been identified as one of the individuals on whose behalf the case was brought.

The Named Plaintiff in the Action claimed that Defendant owed penalties under PAGA for alleged violations of the California Labor Code. More specifically, the Named Plaintiff alleged that Defendant failed to pay wages within seven days of the close of the pay period, in violation of Labor Code section 204. The Named Plaintiff further alleged that Defendant failed to reimburse employees for all or part of their mileage-related expenses, in violation of Labor Code section 2802. Defendant maintains that all employees were timely paid wages and reimbursements, and Defendant further denies that it owes any penalties.

The Court has not ruled on the merits of the lawsuit, but it has approved the settlement amount the parties agreed to. That settlement provides for a cash payment by Defendant in the amount of \$60,000 (“Maximum Settlement Amount”). After deducting the service award to Plaintiff (\$32,000), attorneys’ fees (\$20,000), actual litigation costs (up to \$5,000) and the Settlement Administrator’s costs (\$1,750) from the Maximum Settlement Amount, the remaining balance represents the PAGA Penalties Fund.

The Court has approved a PAGA Penalties Fund in the amount of \$ TBD. By statute, seventy-five percent of the PAGA Penalties Fund (\$TBD) goes to the State of California’s Labor and Workforce Development Agency. The remaining twenty-five percent (\$TBD) will be paid to the individuals who were allegedly affected by the Labor Code violations at issue in the case.

Formatted: Not Highlight

Formatted: Not Highlight

Formatted: Not Highlight

1 Pursuant to the settlement, enclosed is a check for your share of a portion of the civil
2 penalties. Your portion was calculated based on the number of pay ~~periods~~ “Pivotal Pay
3 Periods” you worked during the relevant time period. As defined by the Settlement, “Pivotal
4 Pay Periods” means any pay period in which you received the payment of wages and/or
5 expense reimbursements (including for mileage, some of which were paid at a rate lower than
6 the applicable IRS standard rate) during the period from May 13, 2020, through October 31,
7 2021.

8 You are not a party to this lawsuit, but you and the government are bound by the judgment in
9 this matter as to civil penalties. As such, you will be giving up or “releasing” Defendant from
10 all PAGA claims predicated on the alleged violation of Labor Code sections 204 and 2802
11 that accrued during the period of May 13, 2020, through July 31, 2022.

12 As set forth above, in agreeing to this settlement, Defendant does not admit that it is liable in
13 any way to its current or former employees.

14 Should you have any questions regarding the settlement, the contact information for the
15 Settlement Administrator is included below:

16
17 Contact information for Settlement Administrator:

18 Sincerely,

19 [NAME AND TITLE OF SIGNATORY]

20
21 SS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

AMENDED JOINT STIPULATION OF SETTLEMENT AND RELEASE UNDER THE PRIVATE ATTORNEYS
GENERAL ACT, CALIFORNIA LABOR CODE § 2698, ET SEQ.

Formatted: Normal, Right: 0"

Formatted: Right: 1", Bottom: 1", Section start: New page,
Footer distance from edge: 0.5"

EXHIBIT 3

Larry W. Lee (State Bar No. 228175)
Kristen M. Agnew (State Bar No. 247656)
Nicholas Rosenthal (State Bar No. 268297)
Max Gavron (State Bar No. 291697)
DIVERSITY LAW GROUP, P.C.
515 S. Figueroa St., Suite 1250
Los Angeles, California 90071
(213) 488-6555
(213) 488-6554 facsimile

William L. Marder, Esq. (State Bar No. 170131)
Polaris Law Group LLP
501 San Benito Street, Suite 200
Hollister, CA 95023
Tel: (831) 531-4214
Fax: (831) 634-0333

Attorneys for Plaintiff and the Aggrieved Employees

**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

[Assigned for all purposes to the Hon.
Glenda Sanders, Department CX101]

**SECOND AMENDED JOINT
STIPULATION OF SETTLEMENT
AND RELEASE UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT, CALIFORNIA LABOR CODE §
2698, *ET SEQ.***

1 This Second Amended Joint Stipulation of Settlement and Release (“Agreement” or
2 “Settlement”) under the Private Attorneys General Act, California Labor Code section 2698 *et*
3 *seq.* (“PAGA”), is made by and between Adewunmi Ojo (“Ojo” or “Plaintiff”), individually
4 and as representative on behalf of Aggrieved Employees, as further defined herein, and the
5 State of California, and Pinnacle Light Industrial, LLC (“Pinnacle” or “Defendant”). Ojo and
6 Pinnacle are collectively referred to herein as the “Parties” and may be individually referred to
7 as a “Party.”

8 **A. FACTUAL BACKGROUND AND RECITALS**

9 1. This Settlement is made and entered into by and between Plaintiff and Defendant,
10 and is subject to the terms and conditions hereof, and to the Court’s approval. The Parties
11 expressly acknowledge that this Agreement is entered into solely for the purpose of
12 compromising significantly disputed claims and that nothing herein is an admission of liability
13 or wrongdoing by Defendant. Defendant denies that it is liable to Plaintiff or the Aggrieved
14 Employees, and denies that it has violated any law.

15 2. On May 13, 2021, Plaintiff filed a notice with the California Labor and Workforce
16 Development Agency (“LWDA”), alleging that Defendant violated Labor Code sections 204
17 and 2802 (“PAGA Notice”). As set forth in the PAGA Notice, Plaintiff alleged that Defendant
18 failed to pay wages within seven days of the close of the pay period, in violation of Labor Code
19 section 204. Plaintiff further alleged that Defendant failed to reimburse employees for all
20 mileage related expenses, in violation of Labor Code section 2802.

21 3. On May 19, 2021, Plaintiff filed a putative class action lawsuit against Defendant,
22 entitled *Adewunmi Ojo, as an individual and on behalf of all others similarly situated v.*
23 *Pinnacle Light Industrial, LLC*, in Orange County Superior Court Case No. 30-2021-01201515-
24 CU-OE-CXC. As alleged in the complaint, Plaintiff asserted claims for: (1) Violation of Labor
25 Code section 2802; and (2) Violation of Business and Professions Code section 17200, *et seq.*,
based on Defendant’s alleged failure to reimburse employees for business expenses

26 4. On July 16, 2021, Plaintiff amended his complaint to add a cause of action for
27 violation of the California Private Attorneys General Act (“PAGA”), Labor Code § 2898, *et*

1 *seq.* Ojo premised his PAGA claim on Defendant's alleged failure to reimburse business
2 expenses and to comply with Labor Code section 204. Plaintiff sought civil penalties and an
3 award of reasonable attorneys' fees and costs as permitted by the PAGA, Labor Code § 2698,
4 *et seq.*

5 5. On or about August 16, 2021, Defendant filed an Answer to Plaintiff's Unverified
6 First Amended Class and Representative Action Complaint.

7 6. During Plaintiff's employment with Defendant, Plaintiff (and one or more of all
8 of the Aggrieved Employees) executed an arbitration agreement that contained a class action
9 waiver. In light of the narrow claims at issue, the Parties agreed to redirect their resources to
10 exploring the possibility of an early resolution on as broad a scale as possible consistent with
11 applicable law.

12 7. Over the course of several months, the Parties conducted arm's length
13 negotiations that resulted in the current settlement. In connection with the Parties' negotiations,
14 Defendant produced, among other things, electronic documents and data related to the mileage
15 reimbursement records for Plaintiff and the Aggrieved Employees, Defendant's mileage
16 reimbursement policy, as well as data relating to the number of potential Aggrieved Employees
17 and the number of pay periods worked by Aggrieved Employees during the applicable PAGA
18 Period. Defendant has confirmed that it altered its payroll practices relative to the entirety of
19 Plaintiff's allegations on or before of September 11, 2021, and that not all Aggrieved
20 Employees were impacted by either or both allegedly improper pay practice on each pay period
21 during the PAGA Period.

22 8. The Parties recognize the risk, expense, and delay in continuing the Action, and
23 therefore believe the Settlement to be fair, reasonable, and adequate. Accordingly, the Parties
24 desire to settle, compromise, and discharge all disputes and claims arising from or related to the
25 Action.

26 9. The Parties are unaware of any class or other representative action in any other
27 court that asserts claims similar to those alleged in the Action.

B. DEFINITIONS

1. “Action” means *Adewunmi Ojo, as an individual and on behalf of all others similarly situated v. Pinnacle Light Industrial, LLC*, in Orange County Superior Court Case No. 30-2021-01201515-CU-OE-CXC.

2. “Aggrieved Employees” is defined, consistent with Plaintiff’s Second Amended Complaint, as all current and former employees of Defendant in the State of California who were paid wages at any time from May 13, 2020, through October 31, 2021.

3. “Plaintiff’s Counsel” means Diversity Law Group, P.C. and Polaris Law Group LLP.

4. “Complaint” means the Second Amended Representative Action Complaint filed by Plaintiff in the Action, effectively withdrawing any claims other than those brought under PAGA.

5. “Defendant” or “Pinnacle” means Pinnacle Light Industrial, LLC.

6. “Effective Date” means the date on which the Superior Court or any Party hereto serves notice of entry of the Superior Court’s Order and Judgment approving and entering the Amended PAGA Settlement set forth herein.

7. “Enhancement Payment” means the amount that the Court authorizes to be paid to Plaintiff, in addition to his Individual Settlement Payment, in recognition of his efforts and risks in assisting with the prosecution of the Action. Subject to the Court granting approval of the Settlement, the Parties agree that Plaintiff shall be paid up to two thousand dollars and zero cents (\$2,000.00) from the Maximum Settlement Amount. It is understood by Plaintiff that the Court has final discretion in any Enhancement Payment.

8. “Individual Settlement Payment” means the amount payable from the Net PAGA Payment to each Aggrieved Employee.

9. “Maximum Settlement Amount” means the maximum settlement amount of sixty thousand dollars and zero cents (\$60,000.00) to be paid by Defendant as a result of this Agreement. The Maximum Settlement Amount includes all Individual Settlement Payments to Aggrieved Employees, payment to the LWDA, the Enhancement Payment to Plaintiff,

1 Settlement Administration Costs, and Attorneys Fees and Costs.

2 10. "PAGA Penalties Fund" means the balance of the Maximum Settlement Amount
3 remaining after deduction of the approved Enhancement Payment to Plaintiff, Attorneys' Fees
4 and Costs, and Settlement Administration Costs.

5 11. "PAGA Period" means May 13, 2020 through October 31, 2021.

6 12. "Parties" means Plaintiff and Defendant, together.

7 13. "Plaintiff" means Plaintiff Adewunmi Ojo.

8 14. "Released Claims" means all claims for civil penalties under the California Labor
9 Code Private Attorneys General Act, including costs and attorneys' fees related thereto,
10 predicated on the alleged violation of Labor Code sections 204 and/or 2802, based on the facts
11 as alleged in the PAGA Notice and the Second Amended Representative Action Complaint,
12 whether known or unknown, and including any claims under the California Labor Code and/or
13 applicable Industrial Welfare Commission Wage Orders, as well any resulting claim for
14 attorneys' fees and costs that accrued during the period of May 13, 2020, through October 31,
15 2021.

16 15. "Released Parties" means Defendant and its present and former parent
17 companies, affiliates, predecessors, successors, assigns, shareholders, owners, officers,
18 directors, employees, agents, trustees, attorneys, representatives, administrators, fiduciaries,
19 beneficiaries, subrogees, executors, partners, parents, subsidiaries, and privies.

20 16. "Settlement Administration Costs" means the fees and expenses reasonably
21 incurred by the Settlement Administrator as a result of the procedures and processes expressly
22 required for completion of the settlement and by this Agreement, which are estimated at one
23 thousand seven hundred fifty dollars and zero cents (\$1,750). Any portion of the Settlement
24 Administration Costs not used or approved by the Court shall be added to the PAGA Penalties
25 Fund.

26 17. "Settlement Administrator" means Phoenix Settlement Administrators.

27 C. AMENDMENTS TO COMPLAINT

28 1. Dismissal of Class Action Allegations. In connection with this Settlement, the

1 Parties shall file a joint request for the dismissal without prejudice of the class allegations set
2 forth in the First Amended Class and Representative Action Complaint filed by Plaintiff. This
3 Settlement shall not become effective unless and until the Court dismisses the class allegations
4 without prejudice.

5 2. Second Amended Complaint. In connection with this Settlement, Plaintiff shall
6 file a Second Amended Representative Action Complaint in Orange County Superior Court in
7 the form attached hereto as Exhibit B. The Parties agree that Defendant shall maintain any and
8 all affirmative defenses but shall not be required to file an Answer or other responsive pleading
9 to the Second Amended Representative Action Complaint and that such agreement precludes
10 Plaintiff from any right to: (a) obtain a default judgment against Defendant on the basis that
11 Defendant did not respond to the Second Amended Representative Action Complaint; (b) argue
12 that Defendant waived any right to a demurrer or other challenge to the pleadings; and (c) argue
13 that Defendant waived any affirmative defense. If the Settlement does not obtain approval,
14 Plaintiff will withdraw the Second Amended Representative Action Complaint and it will be
15 void ab initio.

16 **D. PAYMENT OF CONSIDERATION**

17 1. Settlement Consideration. Defendant shall pay the sum of the Maximum
18 Settlement Amount as specified in this Agreement, which shall be used to pay: (1) Individual
19 Settlement Payments; (2) Attorneys' Fees and Costs; (3) Enhancement Payment; (4) Settlement
20 Administration Costs; and (5) payment to the LWDA. The Parties agree that this is a non-
21 reversionary Settlement and that no portion of the Maximum Settlement Amount shall revert to
22 Defendant. Payment shall be made to the Settlement Administrator for disbursement in
23 accordance with the Superior Court's order and judgment approving the Amended PAGA
Settlement.

24 2. Escalator Clause. The Maximum Settlement Amount was calculated with, and is
25 premised on, Defendant's representation that certain Aggrieved Employees received the
26 payment of wages and/or expense reimbursements (including for mileage, some of which were
27 paid at a rate lower than the applicable IRS standard rate), in a maximum of 875 pay periods

1 during the period from May 13, 2020, through October 31, 2021 (“Pivotal Pay Periods”). If the
2 data submitted by Defendant to the Settlement Administrator shows that there are more than
3 875 Pivotal Pay Periods, the amount of the Maximum Settlement Amount shall increase in
4 proportion to the increase in the total number of Pivotal Pay Periods. Defendant shall also be
5 responsible for the settlement administration costs of this additional payment, which shall not
6 be taken out of the additional payment, but will be paid for separately.

7 3. Funding of the Maximum Settlement Amount. Within fifteen (15) calendar days
8 of the Effective Date, Defendant shall deposit the Maximum Settlement Amount with the
9 Settlement Administrator who shall place that sum into a Qualified Settlement Fund (“QSF”).
10 The QSF shall be an interest-bearing account established by the Settlement Administrator at a
11 federally-insured bank that is mutually acceptable to the Parties and the Settlement
12 Administrator. The funds in the QSF shall be invested either in short-term U.S. Treasury
13 securities with maturity dates of less than 90 days at the time of deposit, or in an SEC-registered
14 money market fund investing exclusively in U.S. Treasury securities with average maturities of
15 less than 90 days and rated AAA by Standard & Poor’s. The Parties agree that the QSF is
16 intended to be a “Qualified Settlement Fund” under Section 468B of the Internal Revenue Code
17 and Treas. Reg. § 1.468B-1, 26 C.F.R. § 1.468B-1, *et seq.*, and will be administered by the
18 Settlement Administrator as such. With respect to the QSF, the Settlement Administrator shall:
19 (1) open and administer the Settlement Account in such a manner as to qualify and maintain
20 the qualification of the QSF as a “Qualified Settlement Fund” under Section 468B of the
21 Internal Revenue Code and Treas. Reg. § 1.468B-1; (2) satisfy all federal, state, and local
22 income and other tax reporting, return, and filing requirements with respect to the QSF, and any
23 interest or other income earned by the QSF, and (3) satisfy out of the QSF all (i) taxes (including
24 any estimated taxes, interest, or penalties) with respect to the interest or other interest earned
25 by the QSF, and (ii) fees, expenses and costs incurred in connection with the opening and
26 administration of the QSF and the performance of its duties and functions as described in this
27 Agreement. The aforementioned taxes, fees, costs, and expenses shall be treated as, and shall
28 be, included in the costs of administering the QSF and as Claims Administration Expenses. The

1 Parties and the Settlement Administrator shall treat the QSF as coming into existence as a
2 Qualified Settlement Fund on the earliest date permitted as set forth in 26 C.F.R. § 1.468B-
3 1(j)(2)(i), and such election statement shall be attached to the appropriate returns as required by
4 26 C.F.R. § 1.468B-1(j)(e)(ii). The Parties agree to cooperate with the Settlement Administrator
5 and one another to the extent reasonably necessary to carry out the provisions of this Section.

6 4. Allocation of the PAGA Penalties Fund. The PAGA Penalties Fund shall be used
7 to satisfy Individual Settlement Payments to Aggrieved Employees and payment to the LWDA
8 in accordance with the terms of this Agreement. The PAGA Penalties Fund is the maximum
9 amount that will be available for distribution to the LWDA and Aggrieved Employees in full
10 satisfaction of all Released Claims. Pursuant to PAGA, seventy-five percent (75%) of the
11 PAGA Penalties Fund will be paid to the LWDA, and the remaining twenty-five percent (25%)
12 will be paid to all Aggrieved Employees ("Net PAGA Payment"). Plaintiff and Plaintiff's
13 Counsel shall be responsible for notifying the LWDA of the Settlement to the extent required
14 by law, including providing proof of such notice as required or upon request.

15 5. Calculation of Individual Settlement Payment. The Net PAGA Payment shall be
16 used to satisfy Individual Settlement Payments to Aggrieved Employees in accordance with the
17 terms of this Agreement. The Settlement Administrator shall allocate the Individual
18 Settlement Payments by first dividing the Net PAGA Payment by the number of Pivotal Pay
19 Periods in which Aggrieved Employees received the payment of wages and/or expense
20 reimbursements (including for mileage, some of which were paid at a rate lower than the
21 applicable IRS standard rate) during the period from May 13, 2020, through October 31, 2021.
22 That value will then be multiplied by the number of Pivotal Pay Periods in which each
23 respective Aggrieved employee received the payment of wages and/or expense
24 reimbursements (including for mileage, some of which were paid at a rate lower than the
25 applicable IRS standard rate) during the period from May 13, 2020, through October 31, 2021.
26 Aggrieved Employees are entitled to 100% of the Net PAGA Payment. Defendant maintains
27 no reversionary right to any portion of the Net PAGA Payment.

1 6. Tax Treatment of Individual Settlement Payment. All Individual Settlement
2 Payments shall be allocated one hundred percent (100%) as penalties. The amount of payments
3 shall be reported on an IRS Form 1099 issued by the Settlement Administrator.

4 7. No Credit Toward Benefit Plans. Payments to Aggrieved Employees as
5 referenced herein will not be utilized to calculate any additional benefits under any benefit plans
6 to which any Aggrieved Employee may be eligible, including, but not limited to profit-sharing
7 plans, bonus plans, 401(k) plans, stock purchase plans, vacation plans, sick leave plans, PTO
8 plans, and any other benefit plan. Rather, it is the Parties' intention that this Settlement
9 Agreement will not affect any rights, contributions, or amounts to which any Aggrieved
10 Employee may be entitled under any benefit plans.

11 8. Enhancement Payment. Defendant agrees not to oppose or impede any
12 application or motion by Plaintiff for an Enhancement Payment of up to two thousand dollars
13 and zero cents (\$2,000.00) to Plaintiff. The Enhancement Payment shall be paid from the
14 Maximum Settlement Amount, and shall be paid in addition to Plaintiff's Individual Settlement
15 Payment as an Aggrieved Employee. It is understood by Plaintiff that the Court has final
16 discretion in any Enhancement Payment. The Settlement Administrator shall issue an IRS
17 Form 1099 to Plaintiff reflecting the Enhancement Payment. Plaintiff shall be solely and
18 legally responsible to pay any and all applicable taxes on his Enhancement Payment and shall
19 hold Defendant harmless from any claim, assessment, or liability for taxes, penalties, or
20 interest arising as a result of the Enhancement Payment. Any portion of the Enhancement
21 Payment not awarded to Plaintiff shall be added to the PAGA Penalties Fund and shall be
22 distributed to Aggrieved Employees and LWDA as provided in this Agreement.

23 9. Attorneys' Fees and Costs: In full satisfaction of all claims Plaintiff may have
24 for attorneys' fees, litigation costs, and expenses arising out of the Action, Defendant agrees
25 that Plaintiff's Counsel shall be paid a maximum amount of twenty thousand dollars and zero
26 cents (\$20,000.00) in attorneys' fees and up to five thousand dollars and zero cents (\$5,000.00)
27 in litigation costs and expenses ("Attorneys' Fees and Costs"), which shall be paid from the
28 Maximum Settlement Amount. The Settlement Administrator shall issue an IRS Form 1099

1 to Plaintiff's Counsel reflecting the awarded attorneys' fees, costs, and expenses. The Parties
2 understand that the Court makes the final determination on the award of Attorneys' Fees and
3 Costs, and that any portion of these amounts not awarded as Attorneys' Fees and Costs shall
4 be added to the PAGA Penalties Fund and distributed to Aggrieved Employees and LWDA
5 as provided in this Agreement.

6 10. Settlement Administration Costs. The Settlement Administrator shall be paid for
7 the reasonable costs of administration of the Settlement from the Maximum Settlement
8 Amount, currently estimated at one thousand seven hundred fifty dollars and zero cents
9 (\$1,750). These costs, which shall be paid from the Maximum Settlement Amount, shall
10 include, *inter alia*, the required tax reporting on the Individual Settlement Payments, the
11 issuance of Form 1099 IRS forms, establishing a Qualified Settlement Fund, administering and
12 distributing the Maximum Settlement Amount, and providing necessary reports and
13 declarations. Any portion of the Settlement Administration Costs not allowed shall be added to
14 the PAGA Penalties Fund and shall be distributed to Aggrieved Employees and the LWDA as
15 provided in this Agreement.

16 **E. ADMINISTRATION OF SETTLEMENT**

17 1. Approval of Amended PAGA Settlement. Plaintiff's Counsel shall request the
18 entry of an Order in the form attached as Exhibit C from the Court granting final approval,
19 which shall include findings and orders: (i) approving the settlement, (ii) adjudging the terms
20 to be fair, reasonable, and adequate and binding on the State of California, (iii) reciting the
21 release terms, (iv) directing that the settlement's terms and provisions be carried out; (v)
22 entering final judgment in accordance with this Agreement and without further fees or costs to
23 any party, except as expressly set forth in this Agreement; and (vi) retaining jurisdiction to
24 oversee administration and enforcement of the terms of this Agreement and the Court's orders.
25 Plaintiff's motion shall be unopposed by Defendant, unless Plaintiff's approval motion seeks
26 relief inconsistent with or not specified by this Agreement. In such event, Defendant reserves
27 the right to address any assertions that are not contained in this Agreement. Plaintiff will request
28 a hearing on the request for entry of the attached Order to the extent required by the applicable

1 local rules and on the earliest date available to the Court and the Parties.

2 a. Settlement Administration. The Parties agree to cooperate in the
3 administration of the Settlement and to make all reasonable efforts to control and minimize the
4 costs and expenses incurred in the administration of the Settlement. The Settlement
5 Administrator shall provide the following services: Establish and maintain a Qualified
6 Settlement Fund account;

7 b. Calculate the Individual Settlement Payments to be paid to Aggrieved
8 Employees in accordance with the terms and provisions of this Agreement;

9 c. Print and issue Individual Settlement Payment checks;

10 d. Verify the last known address for each Aggrieved Employee through a
11 generally utilized, national address update database prior to mailing the Individual Settlement
12 Payment check;

13 e. Issue and transmit payment to the California Labor and Workforce
14 Development Agency for its portion of the Settlement amount;

15 f. Disburse any awards of costs and attorneys' fees and the Enhancement
16 Payment;

17 g. Prepare and issue 1099 Forms; and

18 h. Perform such other tasks necessary to effectuate the terms of this
19 Agreement or as the Parties mutually agree or the Court orders the Parties to perform.

20 2. Delivery of the Aggrieved Employee List and Data. Within fifteen (15) calendar
21 days after the Effective Date, Defendant shall provide the Settlement Administrator with a
22 Microsoft Office Excel spreadsheet and shall include each Aggrieved Employee's: full name;
23 employee number; most recent mailing address; social security number; and the number of
24 Pivotal Pay Periods in which the employee received payment of wages during the period from
May 13, 2020, through October 31, 2021.

25 3. Timing of Distribution. Within ten (10) calendar days after the payment of the
26 entire Maximum Settlement Amount, the Settlement Administrator will issue payments to: (a)
27 Aggrieved Employees; (b) the California Labor and Workforce Development Agency; (c)

1 Plaintiff; and (d) Plaintiff's Counsel. The Settlement Administrator will issue the appropriate
2 tax forms for all payments issued under this Settlement by the due date to provide such tax
3 forms for the 2023 calendar year.

4 4. Mailing of Individual Settlement Payments to Aggrieved Employees: The
5 Settlement Administrator will issue each Aggrieved Employee a check for his or her share of
6 the PAGA Penalties Fund, along with an explanatory letter attached hereto as Exhibit A. Checks
7 will remain negotiable for 180 days. Any checks returned as non-deliverable on or before the
8 check cashing deadline will be sent promptly via regular First-Class U.S. Mail to the forwarding
9 address affixed thereto. Funds represented by settlement checks that remained un-cashed for
10 more than 180 days after issuance shall be paid out pursuant to California Code of Civil
11 Procedure section 384 to the following *cy pres* recipient: Legal Aid at Work. Neither the Parties
12 nor their respective counsel have a relationship with the designated *cy pres*.

13 **F. RELEASE OF CLAIMS**

14 5. Release of Claims by Aggrieved Employees. Upon the payment of the Maximum
15 Settlement Amount by Defendant, Plaintiff and all Aggrieved Employees, hereby do and shall
16 be deemed to have fully, finally and forever released, settled, compromised, relinquished and
17 discharged, to the fullest extent possible, any and all of the Released Parties of and from any
18 and all Released Claims. With respect to the Released Claims only, the Aggrieved Employees
19 waive any and all rights and benefits under California Civil Code Section 1542, which reads:
20 **"A general release does not extend to claims that the creditor or releasing party does not**
21 **know or suspect to exist in his or her favor at the time of executing the release and that, if**
22 **known by him or her, would have materially affected his or her settlement with the debtor**
23 **or released party."**

24 6. No Right to Opt-Out. The Parties agree there is no statutory right for any
25 Aggrieved Employee to opt out or otherwise exclude himself or herself from the Settlement.
26 As such, no notice of the settlement, providing the opportunity to opt out or object, is required.

27 7. General Release and Waiver of Claims by Plaintiff. As a condition to obtaining
28 the Enhancement Payment provided for herein, and as part of the consideration for that

1 payment, Plaintiff (on behalf of himself and his spouse, heirs, executors, administrators,
2 trustees, and/or permitted assigns) also agrees to a general release of any and all claims or causes
3 of action against Defendant and Released Parties—which shall include without limitation any
4 and all claims which in any way relate to his employment with Defendant, as well as his
5 termination from that employment (if any), under California or federal law, in tort, common
6 law, statute, contract, or equity, whether pled in the Complaint or not, including, but not limited
7 to any claims under the Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1991,
8 the Americans With Disabilities Act, the Genetic Information Nondiscrimination Act, the Age
9 Discrimination in Employment Act, the Families First Coronavirus Response Act, the Fair
10 Labor Standards Act, the California Fair Employment and Housing Act, the California Labor
11 Code, the California Fair Employment and Housing Act, or any California Industrial Welfare
12 Commission wage order, based on any act, omission, event, occurrence, or nonoccurrence by
13 Defendant or Released Parties to the date of Plaintiff's execution of the Agreement, except for
14 any law that prohibit waiver or release of such claims without Court or agency approval.
15 Plaintiff further expressly waives and relinquishes, to the fullest extent permitted by law, the
16 provisions, rights and benefits of Section 1542 of the California Civil Code, which provides:
17 **“A general release does not extend to claims that the creditor or releasing party does not**
18 **know or suspect to exist in his or her favor at the time of executing the release and that, if**
19 **known by him or her, would have materially affected his or her settlement with the debtor**
20 **or released party.”** Having been informed of this provision and his rights under it, Plaintiff
21 waives and relinquishes the provisions of California Civil Code section 1542 with respect to
22 this Agreement and his release of any and all of his individual claims and causes of action as
23 provided herein.¹

24 ¹ By entering into this Agreement, Plaintiff further understands and agrees that he: (a)
25 has read this Agreement carefully and completely; (b) understands and knowingly and
26 voluntarily agrees to the terms, conditions, and waivers set forth in this Agreement;
27 (c) is hereby advised in writing to consult with an attorney of his/her choice prior to
28 executing this Agreement and has had ample opportunity and sufficient time to seek
such advice; (d) agrees that the Payment provided in this Agreement is in addition to
any consideration to which he/she may already be entitled; (e) agrees that claims for age
discrimination that arise after the executive of this Agreement are not waived by this
Agreement; (f) may take up to twenty-one (21) days to consider whether he/she desires

1 **G. MISCELLANEOUS**

2 1. Tax Liability. Defendant, Defendant's counsel, the Settlement Administrator, and
3 Plaintiff's Counsel make no representation as to the tax treatment or legal effect of the payments
4 called for hereunder, and Plaintiff and Aggrieved Employees are not relying on any statement,
5 representation, or calculation by Defendant, Defendant's counsel, Plaintiff's Counsel, or by the
6 Settlement Administrator in this regard. Plaintiff and Aggrieved Employees understand and
7 agree that they will be solely responsible for the payment of any and all taxes and penalties
8 assessed on their respective payments described herein and will defend, indemnify, and hold
9 Defendant, Defendant's counsel, Plaintiff's Counsel and the Settlement Administrator free and
10 harmless from and against any claims resulting from treatment of such payments as non-taxable
11 penalties/damages.

12 2. Circular 230 Disclaimer. EACH PARTY TO THIS AGREEMENT (FOR
13 PURPOSES OF THIS SECTION, THE "ACKNOWLEDGING PARTY" AND EACH
14 PARTY TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN
15 "OTHER PARTY") ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF
16 THIS AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE
17 BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER
18 ADVISERS, IS OR WAS INTENDED TO BE, NOR SHALL ANY SUCH
19 COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE
20 RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES
21 TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED);
22 (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS OR
23 ITS OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING
24 TAX ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED
25 INTO THIS AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER

26 _____
27 to execute this Agreement; and (g) has a period of seven (7) days after executing this
28 Agreement to revoke this Agreement. Any such revocation must be in writing and
delivered to (and received by) counsel for Defendant on or before the seventh day.

1 PARTY OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT
2 ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY
3 ATTORNEY OR ADVISER TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY
4 THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO
5 ATTORNEY OR ADVISER TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION
6 THAT PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY'S OR
7 ADVISER'S TAX STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS
8 LEGALLY BINDING) UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF
9 THE TAX TREATMENT OR TAX STRUCTURE OF ANY TRANSACTION, INCLUDING
10 ANY TRANSACTION CONTEMPLATED BY THIS AGREEMENT.

11 3. No Prior Assignments. The Parties and their counsel represent, covenant, and
12 warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported
13 to assign, transfer, or encumber to any person or entity any portion of any liability, claim,
14 demand, action, cause of action or right herein released and discharged.

15 4. Nullification of Settlement Agreement. In the event that: (i) the Court does not
16 approve the Settlement as provided herein; or (ii) the Settlement does not become final for any
17 other reason, then this Settlement Agreement, and any documents generated to bring it into
18 effect, will be null and void, and the Parties will be returned to their original respective
19 positions. Notwithstanding the above, in such event, the Parties will meet and confer to address
20 any concerns raised by the Court to determine whether and to what extent the Action may be
21 resolved in a manner consistent with the Parties' intent and consistent with the Court's
22 concerns.

23 5. Continued Jurisdiction. After entry of the judgment, the Court will have
24 continuing jurisdiction solely for purposes of addressing: (i) the interpretation and enforcement
25 of the terms of the Settlement, (ii) settlement administration matters, and (iii) such post-Court
26 Approval matters as may be appropriate under court rules or as set forth in this Settlement.

1 6. Entire Agreement. This Settlement Agreement constitutes the entirety of the
2 Parties' settlement terms. No other prior or contemporaneous written or oral agreements may
3 be deemed binding on the Parties.

4 7. Amendment or Modification. This Settlement Agreement may be amended or
5 modified only by a written instrument, signed by either the Parties or their successors-in-interest
6 or counsel for all Parties.

7 8. Authorization to Enter Into Settlement Agreement. Counsel for all Parties
8 warrant and represent they are expressly authorized by the Parties whom they represent to
9 negotiate this Settlement Agreement and to take all appropriate action required or permitted to
10 be taken by such Parties pursuant to this Settlement Agreement to effectuate its terms and to
11 execute any other documents required to effectuate the terms of this Settlement Agreement. The
12 Parties and their counsel will cooperate with each other and use their best efforts to effect the
13 implementation of the Settlement. If the Parties are unable to reach agreement on the form or
14 content of any document needed to implement the Settlement, or on any supplemental
15 provisions that may become necessary to effectuate the terms of this Settlement, the Parties
16 may seek the assistance of the Court to resolve such disagreement.

17 9. Binding on Successors and Assigns. This Settlement Agreement will be binding
18 upon, and inure to the benefit of, the successors or assigns of the Parties hereto.

19 10. California Law Governs. All terms of this Settlement Agreement and Exhibit A
20 will be governed by and interpreted according to the laws of the State of California.

21 11. Execution and Counterparts. This Settlement Agreement is subject only to the
22 execution of all Parties. However, the Settlement Agreement may be executed in one or more
23 counterparts. All executed counterparts and each of them, including facsimile and scanned
24 copies of the signature page, will be deemed to be one and the same instrument provided that
25 counsel for the Parties will exchange among themselves original signed counterparts.

26 12. Acknowledgement that the Settlement is Fair and Reasonable. The Parties
27 believe this Settlement Agreement is a fair, adequate, and reasonable settlement of the Action
28 and have arrived at this Settlement after arm's-length negotiations. The Parties further

1 acknowledge that they are each represented by competent counsel and that they have had an
2 opportunity to consult with their counsel regarding the fairness and reasonableness of this
3 Settlement.

4 13. Invalidity of Any Provision. Before declaring any provision of this Settlement
5 Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest
6 extent possible consistent with applicable precedents so as to define all provisions of this
7 Settlement Agreement valid and enforceable. If any provision of this Settlement Agreement is
8 or becomes invalid or unenforceable in any respect, the validity and enforceability of the
9 remaining provisions contained herein shall not be affected.

10 14. Captions. The captions and section numbers in this Settlement Agreement are
11 inserted for the reader's convenience, and in no way define, limit, construe or describe the scope
12 or intent of the provisions of this Settlement Agreement.

13 15. Waiver. No waiver of any condition or covenant contained in this Settlement
14 Agreement or failure to exercise a right or remedy by any of the Parties hereto will be
15 considered to imply or constitute a further waiver by such party of the same or any other
16 condition, covenant, right, or remedy.

17 16. Enforcement Action. In the event that one or more of the Parties institutes any
18 legal action or other proceeding against any other Party or Parties to enforce the provisions of
19 this Settlement or to declare rights and/or obligations under this Settlement, the successful Party
20 or Parties will be entitled to recover from the unsuccessful Party or Parties reasonable attorneys'
21 fees and costs, including expert witness fees incurred in connection with any enforcement
22 actions.

23 17. Mutual Preparation. The Parties have had a full opportunity to negotiate the terms
24 and conditions of this Settlement Agreement. Accordingly, this Settlement Agreement will not
25 be construed more strictly against one party than another merely by virtue of the fact that it may
26 have been prepared by counsel for one of the Parties. The Parties further acknowledge and
27 agree that, because of the arms-length negotiations between the Parties, all Parties have
28 contributed to the preparation of this Settlement Agreement.

1 18. Representation by Counsel. The Parties acknowledge that they have been
2 represented by counsel throughout all negotiations that preceded the execution of this
3 Settlement Agreement, and that this Settlement Agreement has been executed with the consent
4 and advice of counsel, and reviewed in full.

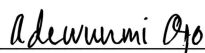
5 19. Binding Agreement. The Parties warrant that they understand and have full
6 authority to enter into this Settlement, and further intend that this Settlement Agreement will
7 be fully enforceable and binding on all parties, and agree that it will be admissible and subject
8 to disclosure in any proceeding to enforce its terms, notwithstanding any settlement
9 confidentiality provisions that otherwise might apply under federal or state law.

10 20. Denial of Liability. The Parties expressly recognize that the making of this
11 agreement does not in any way constitute an admission or concession of wrongdoing on the
12 part of Defendant. Nothing in this Settlement, nor any action taken in implementation thereof,
13 nor any statements, discussions or communications, nor any materials prepared, exchanged,
14 issued or used during the course of this Action, is intended by the Parties to, nor will any of the
15 foregoing constitute, be introduced, be used or be admissible in any way in any other judicial,
16 arbitral, administrative, investigative, or other forum or proceeding, as evidence of any violation
17 of any federal, state, or local law, statute, ordinance, regulation, rule or executive order, or any
18 obligation or duty at law or in equity. Notwithstanding the foregoing, this agreement may be
19 used in any proceeding in the Court that has as its purpose the interpretation, implementation,
20 or enforcement of the Settlement or any orders or judgments of the Court entered into in
21 connection therewith.

22 **IN WITNESS WHEREOF**, the undersigned Settling Parties and their duly authorized
23 representatives accept and agree to the terms of this Agreement and hereby execute it
24 voluntarily and with a full understanding of its consequences.

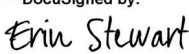
DATED: 2/8/2024

PLAINTIFF ADEWUNMI OJO

DocuSigned by:

Plaintiff Adewunmi Ojo

DATED: 2/7/2024

**DEFENDANT PINNACLE LIGHT
INDUSTRIAL, LLC**

DocuSigned by:

By: Erin Stewart

APPROVED AS TO FORM:

DATED: 2/8/2024

DIVERSITY LAW GROUP, P.C.


Kristen M. Agnew
Attorneys for Plaintiff and the Aggrieved
Employees

DATED: 2/7/2024

WICK PHILLIPS GOULD & MARTIN LLP


Marcia Jackson
Attorneys for Defendant
Pinnacle Light Industrial, LLC

EXHIBIT A

<<DATE>>

<<FIRST NAME>> <<LAST NAME>>
<<ADDRESS>>

Re: *Adewunmi Ojo v. Pinnacle Light Industrial, LLC*,
Orange County Superior Court Case No. 30-2021-01201515-CU-OE-CXC

Dear <<FIRST NAME>> <<LAST NAME>>:

Enclosed you will find a check made payable to you. This is your payment from the settlement of the lawsuit entitled *Adewunmi Ojo v. Pinnacle Light Industrial, LLC*, Case No. 30-2021-01201515-CU-OE-CXC (Orange County Superior Court) (the “Action”).

Adewunmi Ojo (“Named Plaintiff”) filed the Action against Pinnacle Light Industrial, LLC, (“Defendant” or the “Company”) pursuant to the California Private Attorneys General Act of 2004, California Labor Code section 2698 *et seq.* (“PAGA”). Named Plaintiff brought the Action on behalf of the State of California and all employees who received the payment of wages and/or mileage reimbursement under one or more former Company policies during the period of May 13, 2020 through October 31, 2021. You have been identified as one of the individuals on whose behalf the case was brought.

The Named Plaintiff in the Action claimed that Defendant owed penalties under PAGA for alleged violations of the California Labor Code. More specifically, the Named Plaintiff alleged that Defendant failed to pay wages within seven days of the close of the pay period, in violation of Labor Code section 204. The Named Plaintiff further alleged that Defendant failed to reimburse employees for all or part of their mileage-related expenses, in violation of Labor Code section 2802. Defendant maintains that all employees were timely paid wages and reimbursements, and Defendant further denies that it owes any penalties.

The Court has not ruled on the merits of the lawsuit, but it has approved the settlement amount the parties agreed to. That settlement provides for a cash payment by Defendant in the amount of \$60,000 (“Maximum Settlement Amount”). After deducting the service award to Plaintiff (\$2,000), attorneys’ fees (\$20,000), actual litigation costs (up to \$5,000) and the Settlement Administrator’s costs (\$1,750) from the Maximum Settlement Amount, the remaining balance represents the PAGA Penalties Fund.

The Court has approved a PAGA Penalties Fund in the amount of \$ TBD. By statute, seventy-five percent of the PAGA Penalties Fund (\$TBD) goes to the State of California’s Labor and Workforce Development Agency. The remaining twenty-five percent (\$TBD) will be paid to the individuals who were allegedly affected by the Labor Code violations at issue in the case.

1 Pursuant to the settlement, enclosed is a check for your share of a portion of the civil
2 penalties. Your portion was calculated based on the number of pay "Pivotal Pay Periods" you
3 worked during the relevant time period. As defined by the Settlement, "Pivotal Pay Periods"
4 means any pay period in which you received the payment of wages and/or expense
5 reimbursements (including for mileage, some of which were paid at a rate lower than the
6 applicable IRS standard rate) during the period from May 13, 2020, through October 31,
7 2021.

8 You are not a party to this lawsuit, but you and the government are bound by the judgment in
9 this matter as to civil penalties. As such, you will be giving up or "releasing" Defendant from
10 all PAGA claims predicated on the alleged violation of Labor Code sections 204 and 2802
11 that accrued during the period of May 13, 2020, through October 31, 2021.

12 As set forth above, in agreeing to this settlement, Defendant does not admit that it is liable in
13 any way to its current or former employees.

14 Should you have any questions regarding the settlement, the contact information for the
15 Settlement Administrator is included below:

16
17 Contact information for Settlement Administrator:

18 Sincerely,

19 [NAME AND TITLE OF SIGNATORY]

20
21 ss

EXHIBIT B

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)
Polaris Law Group LLP
501 San Benito Street, Suite 200
Hollister, CA 95023
(831) 531-4214
(831) 634-0333 facsimile

Attorneys for Plaintiff and the Aggrieved Employees

**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

[Assigned for all purposes to the Hon. Glenda
Sanders, Department CX101]

**SECOND AMENDED REPRESENTATIVE
ACTION COMPLAINT FOR VIOLATION OF
LABOR CODE § 2698 *ET SEQ.***

DEMAND OVER \$25,000.00

1 Plaintiff Adewunmi Ojo (“Plaintiff”), hereby submits this Second Amended
2 Representative Action Complaint against Defendant Pinnacle Light Industrial, LLC
3 (“Defendant”) and Does 1-50 (hereinafter collectively referred to as “Defendants”), on behalf of
4 himself and other aggrieved employees of Defendant for all penalties arising from Defendant’s
5 violations of the California Labor Code as follows:

6 **INTRODUCTION**

7 1. This representative action is within the Court’s jurisdiction under California
8 Labor Code sections 204, 2802 and 2698 *et seq.*, and the California Industrial Welfare
9 Commission’s (“IWC”) Wage Orders.

10 2. This Complaint challenges systemic illegal employment practices resulting in
11 violations of the California Labor Code against employees of Defendant.

12 3. Plaintiff is informed and believes and based thereon alleges that Defendants
13 jointly and severally have acted intentionally and with deliberate indifference and conscious
14 disregard to the rights of all employees by failing to reimburse employees for work-related
15 mileage expenses and failing to timely pay wages to employees.

16 4. Plaintiff is informed and believes and based thereon alleges that Defendants have
17 engaged in, among other things a system of willful violations of the California Labor Code and
18 applicable IWC Wage Orders by creating and maintaining policies, practices and customs that
19 knowingly deny employees the above stated rights and benefits.

20 **JURISDICTION AND VENUE**

21 5. The Court has jurisdiction over the violations of the California Labor Code
22 sections 204, 2802 and 2698 *et seq.*

23 6. Venue is proper in Orange County because Defendant maintains operations in
24 Orange County.

25 **PARTIES**

26 7. Plaintiff is a current employee of Defendant.

27 8. Plaintiff was and is the victim of the policies, practices, and customs of Defendant
28 complained of in this action in ways that have deprived him of the rights guaranteed by

1 California Labor Code sections 204, 2802 and 2698 *et seq.* and the applicable IWC Wage
2 Orders.

3 9. Plaintiff is informed and believes and based thereon alleges that Defendant
4 Pinnacle Light Industrial, LLC was and is a Texas limited liability company that does business in
5 California, including in Orange County.

6 10. Plaintiff is informed and believes and based thereon alleges that at all times herein
7 mentioned Defendant and Does 1 through 50 are and were business entities, individuals, and
8 partnerships, licensed to do business and actually doing business in the State of California.

9 11. As such, and based upon all the facts and circumstances incident to Defendants'
10 business in California, Defendants are subject to California Labor Code sections 204, 2802 and
11 2698 *et seq.*, and the applicable IWC Wage Orders.

12 12. Plaintiff does not know the true names or capacities, whether individual, partner
13 or corporate, of the defendants sued herein as Does 1 through 50, inclusive, and for that reason,
14 said defendants are sued under such fictitious names, and Plaintiff prays for leave to amend this
15 complaint when the true names and capacities are known. Plaintiff is informed and believes and
16 based thereon alleges that each of said fictitious defendants were responsible in some way for the
17 matters alleged herein and proximately caused Plaintiff and aggrieved employees to be subject to
18 the illegal employment practices, wrongs and injuries complained of herein.

19 13. At all times herein mentioned, each of said Defendants participated in the doing
20 of the acts hereinafter alleged to have been done by the named Defendant; and furthermore, the
21 Defendants, and each of them, were the agents, servants and employees of each of the other
22 Defendants, as well as the agents of all Defendants, and at all times herein mentioned, were
23 acting within the course and scope of said agency and employment.

24 14. Plaintiff is informed and believes and based thereon alleges that at all times
25 material hereto, each of the Defendants named herein was the agent, employee, alter ego and/or
26 joint venturer of, or working in concert with each of the other co-defendants and was acting
27 within the course and scope of such agency, employment, joint venture, or concerted activity.
28 To the extent said acts, conduct, and omissions were perpetrated by certain Defendants, each of

1 the remaining Defendants confirmed and ratified said acts, conduct, and omissions of the acting
2 Defendants.

3 15. At all times herein mentioned, Defendants, and each of them, were members of,
4 and engaged in, a joint venture, partnership and common enterprise, and acting within the course
5 and scope of, and in pursuance of, said joint venture, partnership and common enterprise.

6 16. At all times herein mentioned, the acts and omissions of various Defendants, and
7 each of them, concurred and contributed to the various acts and omissions of each and all of the
8 other Defendants in proximately causing the injuries and damages as herein alleged. At all times
9 herein mentioned, Defendants, and each of them, ratified each and every act or omission
10 complained of herein. At all times herein mentioned, the Defendants, and each of them, aided
11 and abetted the acts and omissions of each and all of the other Defendants in proximately causing
12 the damages as herein alleged.

13 **FIRST CAUSE OF ACTION**

14 **Violation of Labor Code §§ 2698 Et Seq.**

15 **(By Plaintiff and Aggrieved Employees Against All Defendants)**

16 17. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
17 though fully set forth herein.

18 18. Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code
19 section 2698 et seq., Plaintiff brings this cause of action for violation of PAGA as a proxy for the
20 State of California and in this capacity, will seek penalties on behalf of all Aggrieved Employees
21 from May 13, 2020, through the present for Defendant's violations of Labor Code sections 204
22 and 2802, arising from Defendant's policy and practice of: (a) failing to reimburse employees for
23 all business-related expenses, including the costs associated with use of their personal vehicles
24 for work related purposes, in violation of Labor Code section 2802; and (b) failing to timely pay
25 wages to employees, in violation of Labor Code section 204.

26 19. At all relevant times, Defendant regularly failed to reimburse and indemnify
27 Plaintiff and Aggrieved Employees for expenses incurred in the performance of their duties,
28 including, but not limited to, expenses associated with travel mileage. Defendant required

1 Plaintiff and Aggrieved Employees to use their personal vehicles to travel in the course of
2 performing their duties. Defendant, however, failed to properly reimburse Plaintiff and
3 Aggrieved Employees for their vehicle expenses such as mileage, gas, and wear and tear to their
4 vehicles.

5 20. Additionally, Defendant failed to pay earned wages to Plaintiff and Aggrieved
6 Employees in a timely manner. More specifically, wages were paid more than seven days after
7 the close of the payroll period, in violation of Labor Code section 204. For example, for the pay
8 period of April 11, 2021 through April 17, 2021, the wages earned during such pay period were
9 not paid until April 30, 2021, which is more than ten days after the end of the pay period.

10 21. On or about May 13, 2021, Plaintiff sent written notice to the California Labor &
11 Workforce Development Agency ("LWDA") of Defendant's violations of Labor Code sections
12 204 and 2802, pursuant to Labor Code § 2698, *et seq.* To date, the LWDA has not responded to
13 Plaintiff's written notice.

14 22. As such, pursuant to Labor Code section 2699(a), Plaintiff seeks recovery of any
15 and all applicable civil penalties for Defendant's violation of Labor Code sections 204 and 2802,
16 for the time period described above, on behalf of himself and other Aggrieved Employees.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiff prays for judgment as an individual and on behalf of all others
19 that this suit is brought against Defendants, jointly and severally, as follows:

20 1. Upon the First Cause of Action, for civil penalties according to proof pursuant to
21 Labor Code section 2698, *et seq.*, and for costs and attorneys' fees;

22 2. On all causes of action, for attorneys' fees and costs as provided by California
23 Labor Code sections 2699 and 2802, and Code of Civil Procedure section 1021.5; and

24 3. For such other and further relief as the Court may deem just and proper.
25
26
27
28

1 DATED: October 21, 2022

DIVERSITY LAW GROUP, P.C.

2
3 By: _____

Larry W. Lee

4 Kristen M. Agnew

5 Nicholas Rosenthal

6 Attorneys for Plaintiff and the Aggrieved
Employees

EXHIBIT 4

Larry W. Lee (State Bar No. 228175)
Kristen M. Agnew (State Bar No. 247656)
Nicholas Rosenthal (State Bar No. 268297)
Max Gavron (State Bar No. 291697)
DIVERSITY LAW GROUP, P.C.
515 S. Figueroa St., Suite 1250
Los Angeles, California 90071
(213) 488-6555
(213) 488-6554 facsimile

William L. Marder, Esq. (State Bar No. 170131)
Polaris Law Group LLP
501 San Benito Street, Suite 200
Hollister, CA 95023
Tel: (831) 531-4214
Fax: (831) 634-0333

Attorneys for Plaintiff and the Aggrieved Employees

**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

[Assigned for all purposes to the Hon.
Glenda Sanders, Department CX101]

**SECOND AMENDED JOINT
STIPULATION OF SETTLEMENT
AND RELEASE UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT, CALIFORNIA LABOR CODE §
2698, ET SEQ.**

1 This Second Amended Joint Stipulation of Settlement and Release (“Agreement” or
2 “Settlement”) under the Private Attorneys General Act, California Labor Code section 2698 *et*
3 *seq.* (“PAGA”), is made by and between Adewunmi Ojo (“Ojo” or “Plaintiff”), individually
4 and as representative on behalf of Aggrieved Employees, as further defined herein, and the
5 State of California, and Pinnacle Light Industrial, LLC (“Pinnacle” or “Defendant”). Ojo and
6 Pinnacle are collectively referred to herein as the “Parties” and may be individually referred to
7 as a “Party.”

8 **A. FACTUAL BACKGROUND AND RECITALS**

9 1. This Settlement is made and entered into by and between Plaintiff and Defendant,
10 and is subject to the terms and conditions hereof, and to the Court’s approval. The Parties
11 expressly acknowledge that this Agreement is entered into solely for the purpose of
12 compromising significantly disputed claims and that nothing herein is an admission of liability
13 or wrongdoing by Defendant. Defendant denies that it is liable to Plaintiff or the Aggrieved
14 Employees, and denies that it has violated any law.

15 2. On May 13, 2021, Plaintiff filed a notice with the California Labor and Workforce
16 Development Agency (“LWDA”), alleging that Defendant violated Labor Code sections 204
17 and 2802 (“PAGA Notice”). As set forth in the PAGA Notice, Plaintiff alleged that Defendant
18 failed to pay wages within seven days of the close of the pay period, in violation of Labor Code
19 section 204. Plaintiff further alleged that Defendant failed to reimburse employees for all
20 mileage related expenses, in violation of Labor Code section 2802.

21 3. On May 19, 2021, Plaintiff filed a putative class action lawsuit against Defendant,
22 entitled *Adewunmi Ojo, as an individual and on behalf of all others similarly situated v.*
23 *Pinnacle Light Industrial, LLC*, in Orange County Superior Court Case No. 30-2021-01201515-
24 CU-OE-CXC. As alleged in the complaint, Plaintiff asserted claims for: (1) Violation of Labor
25 Code section 2802; and (2) Violation of Business and Professions Code section 17200, *et seq.*,
based on Defendant’s alleged failure to reimburse employees for business expenses

26 4. On July 16, 2021, Plaintiff amended his complaint to add a cause of action for
27 violation of the California Private Attorneys General Act (“PAGA”), Labor Code § 2898, *et*

1 *seq.* Ojo premised his PAGA claim on Defendant's alleged failure to reimburse business
2 expenses and to comply with Labor Code section 204. Plaintiff sought civil penalties and an
3 award of reasonable attorneys' fees and costs as permitted by the PAGA, Labor Code § 2698,
4 *et seq.*

5 5. On or about August 16, 2021, Defendant filed an Answer to Plaintiff's Unverified
6 First Amended Class and Representative Action Complaint.

7 6. During Plaintiff's employment with Defendant, Plaintiff (and one or more of all
8 of the Aggrieved Employees) executed an arbitration agreement that contained a class action
9 waiver. In light of the narrow claims at issue, the Parties agreed to redirect their resources to
10 exploring the possibility of an early resolution on as broad a scale as possible consistent with
11 applicable law.

12 7. Over the course of several months, the Parties conducted arm's length
13 negotiations that resulted in the current settlement. In connection with the Parties' negotiations,
14 Defendant produced, among other things, electronic documents and data related to the mileage
15 reimbursement records for Plaintiff and the Aggrieved Employees, Defendant's mileage
16 reimbursement policy, as well as data relating to the number of potential Aggrieved Employees
17 and the number of pay periods worked by Aggrieved Employees during the applicable PAGA
18 Period.⁺ Defendant has confirmed that it altered its payroll practices relative to the entirety of
19 Plaintiff's allegations on or before ~~of~~ September 11, 2021, and that not all Aggrieved
20 Employees were impacted by either or both allegedly improper pay practice on each pay period
21 during the PAGA Period.

22 8. The Parties recognize the risk, expense, and delay in continuing the Action, and
23 therefore believe the Settlement to be fair, reasonable, and adequate. Accordingly, the Parties
24 desire to settle, compromise, and discharge all disputes and claims arising from or related to the
25 Action.

26 9. The Parties are unaware of any class or other representative action in any other
27 court that asserts claims similar to those alleged in the Action.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

B. DEFINITIONS

1. “Action” means *Adewunmi Ojo, as an individual and on behalf of all others similarly situated v. Pinnacle Light Industrial, LLC*, in Orange County Superior Court Case No. 30-2021-01201515-CU-OE-CXC.

2. “Aggrieved Employees” is defined, consistent with Plaintiff’s Second Amended Complaint, as 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~~October 31, ~~2022~~2021.

3. “Plaintiff’s Counsel” means Diversity Law Group, P.C. and Polaris Law Group LLP.

4. “Complaint” means the Second Amended Representative Action Complaint filed by Plaintiff in the Action, effectively withdrawing any claims other than those brought under PAGA.

5. “Defendant” or “Pinnacle” means Pinnacle Light Industrial, LLC.

6. “Effective Date” means the date on which the Superior Court or any Party hereto serves notice of entry of the Superior Court’s Order and Judgment approving and entering the Amended PAGA Settlement set forth herein.

7. “Enhancement Payment” means the amount that the Court authorizes to be paid to Plaintiff, in addition to his Individual Settlement Payment, in recognition of his efforts and risks in assisting with the prosecution of the Action. Subject to the Court granting approval of the Settlement, the Parties agree that Plaintiff shall be paid up to ~~three~~two thousand dollars and zero cents (~~\$32~~,000.00) from the Maximum Settlement Amount. It is understood by Plaintiff that the Court has final discretion in any Enhancement Payment.

8. “Individual Settlement Payment” means the amount payable from the Net PAGA Payment to each Aggrieved Employee.

9. “Maximum Settlement Amount” means the maximum settlement amount of sixty thousand dollars and zero cents (\$60,000.00) to be paid by Defendant as a result of this Agreement. The Maximum Settlement Amount includes all Individual Settlement Payments to

1 Aggrieved Employees, payment to the LWDA, the Enhancement Payment to Plaintiff,
2 Settlement Administration Costs, and Attorneys Fees and Costs.

3 10. "PAGA Penalties Fund" means the balance of the Maximum Settlement Amount
4 remaining after deduction of the approved Enhancement Payment to Plaintiff, Attorneys' Fees
5 and Costs, and Settlement Administration Costs.

6 11. "PAGA Period" means May 13, 2020 through ~~July~~October 31, ~~2022~~2021.

7 12. "Parties" means Plaintiff and Defendant, together.

8 13. "Plaintiff" means Plaintiff Adewunmi Ojo.

9 14. "Released Claims" means all claims for civil penalties under the California Labor
10 Code Private Attorneys General Act, including costs and attorneys' fees related thereto,
11 predicated on the alleged violation of Labor Code sections 204 and/or 2802, based on the facts
12 as alleged in the PAGA Notice and the Second Amended Representative Action Complaint,
13 whether known or unknown, and including any claims under the California Labor Code and/or
14 applicable Industrial Welfare Commission Wage Orders, as well any resulting claim for
15 attorneys' fees and costs that accrued during the period of May 13, 2020, through ~~July~~October
16 31, ~~2022~~2021.

17 15. "Released Parties" means Defendant and its present and former parent
18 companies, affiliates, predecessors, successors, assigns, shareholders, owners, officers,
19 directors, employees, agents, trustees, attorneys, representatives, administrators, fiduciaries,
20 beneficiaries, subrogees, executors, partners, parents, subsidiaries, and privies.

21 16. "Settlement Administration Costs" means the fees and expenses reasonably
22 incurred by the Settlement Administrator as a result of the procedures and processes expressly
23 required for completion of the settlement and by this Agreement, which are estimated at one
24 thousand seven hundred fifty dollars and zero cents (\$1,750). Any portion of the Settlement
25 Administration Costs not used or approved by the Court shall be added to the PAGA Penalties
26 Fund.

27 17. "Settlement Administrator" means Phoenix Settlement Administrators.

28 C. AMENDMENTS TO COMPLAINT

-5-

SECOND AMENDED JOINT STIPULATION OF SETTLEMENT AND RELEASE UNDER THE PRIVATE
ATTORNEYS GENERAL ACT, CALIFORNIA LABOR CODE § 2698, ET SEQ.

1 1. Dismissal of Class Action Allegations. In connection with this Settlement, the
2 Parties shall file a joint request for the dismissal without prejudice of the class allegations set
3 forth in the First Amended Class and Representative Action Complaint filed by Plaintiff. This
4 Settlement shall not become effective unless and until the Court dismisses the class allegations
5 without prejudice.

6 2. Second Amended Complaint. In connection with this Settlement, Plaintiff shall
7 file a Second Amended Representative Action Complaint in Orange County Superior Court in
8 the form attached hereto as Exhibit B. The Parties agree that Defendant shall maintain any and
9 all affirmative defenses but shall not be required to file an Answer or other responsive pleading
10 to the Second Amended Representative Action Complaint and that such agreement precludes
11 Plaintiff from any right to: (a) obtain a default judgment against Defendant on the basis that
12 Defendant did not respond to the Second Amended Representative Action Complaint; (b) argue
13 that Defendant waived any right to a demurrer or other challenge to the pleadings; and (c) argue
14 that Defendant waived any affirmative defense. If the Settlement does not obtain approval,
15 Plaintiff will withdraw the Second Amended Representative Action Complaint and it will be
16 void ab initio.

17 **D. PAYMENT OF CONSIDERATION**

18 1. Settlement Consideration. Defendant shall pay the sum of the Maximum
19 Settlement Amount as specified in this Agreement, which shall be used to pay: (1) Individual
20 Settlement Payments; (2) Attorneys' Fees and Costs; (3) Enhancement Payment; (4) Settlement
21 Administration Costs; and (5) payment to the LWDA. The Parties agree that this is a non-
22 reversionary Settlement and that no portion of the Maximum Settlement Amount shall revert to
23 Defendant. Payment shall be made to the Settlement Administrator for disbursement in
24 accordance with the Superior Court's order and judgment approving the Amended PAGA
Settlement.

25 2. Escalator Clause. The Maximum Settlement Amount was calculated with, and is
26 premised on, Defendant's representation that certain Aggrieved Employees received the
27 payment of wages and/or expense reimbursements (including for mileage, some of which were
28

1 paid at a rate lower than the applicable IRS standard rate), in a maximum of 875 pay periods
2 during the ~~PAGA Period~~period from May 13, 2020, through October 31, 2021 ("Pivotal Pay
3 Periods"). If the data submitted by Defendant to the Settlement Administrator shows that there
4 are more than 875 Pivotal Pay Periods ~~in which those same Aggrieved Employees received~~
5 ~~payment of wages and/or expense reimbursements (including for mileage, some of which were~~
6 ~~paid at a rate lower than the applicable IRS standard rate), during the PAGA Period,~~ the amount
7 of the Maximum Settlement Amount shall increase in proportion to the increase in the total
8 number of ~~pay periods~~Pivotal Pay Periods. Defendant shall also be responsible for the
9 settlement administration costs of this additional payment, which shall not be taken out of the
10 additional payment, but will be paid for separately.

11 3. Funding of the Maximum Settlement Amount. Within fifteen (15) calendar days
12 of the Effective Date, Defendant shall deposit the Maximum Settlement Amount with the
13 Settlement Administrator who shall place that sum into a Qualified Settlement Fund ("QSF").
14 The QSF shall be an interest-bearing account established by the Settlement Administrator at a
15 federally-insured bank that is mutually acceptable to the Parties and the Settlement
16 Administrator. The funds in the QSF shall be invested either in short-term U.S. Treasury
17 securities with maturity dates of less than 90 days at the time of deposit, or in an SEC-registered
18 money market fund investing exclusively in U.S. Treasury securities with average maturities of
19 less than 90 days and rated AAA by Standard & Poor's. The Parties agree that the QSF is
20 intended to be a "Qualified Settlement Fund" under Section 468B of the Internal Revenue Code
21 and Treas. Reg. § 1.468B-1, 26 C.F.R. § 1.468B-1, *et seq.*, and will be administered by the
22 Settlement Administrator as such. With respect to the QSF, the Settlement Administrator shall:
23 (1) open and administer the Settlement Account in such a manner as to qualify and maintain
24 the qualification of the QSF as a "Qualified Settlement Fund" under Section 468B of the
25 Internal Revenue Code and Treas. Reg. § 1.468B-1; (2) satisfy all federal, state, and local
26 income and other tax reporting, return, and filing requirements with respect to the QSF, and any
27 interest or other income earned by the QSF, and (3) satisfy out of the QSF all (i) taxes (including
28 any estimated taxes, interest, or penalties) with respect to the interest or other interest earned

1 by the QSF, and (ii) fees, expenses and costs incurred in connection with the opening and
2 administration of the QSF and the performance of its duties and functions as described in this
3 Agreement. The aforementioned taxes, fees, costs, and expenses shall be treated as, and shall
4 be, included in the costs of administering the QSF and as Claims Administration Expenses. The
5 Parties and the Settlement Administrator shall treat the QSF as coming into existence as a
6 Qualified Settlement Fund on the earliest date permitted as set forth in 26 C.F.R. § 1.468B-
7 1(j)(2)(i), and such election statement shall be attached to the appropriate returns as required by
8 26 C.F.R. § 1.468B-1(j)(e)(ii). The Parties agree to cooperate with the Settlement Administrator
9 and one another to the extent reasonably necessary to carry out the provisions of this Section.

10 4. Allocation of the PAGA Penalties Fund. The PAGA Penalties Fund shall be used
11 to satisfy Individual Settlement Payments to Aggrieved Employees and payment to the LWDA
12 in accordance with the terms of this Agreement. The PAGA Penalties Fund is the maximum
13 amount that will be available for distribution to the LWDA and Aggrieved Employees in full
14 satisfaction of all Released Claims. Pursuant to PAGA, seventy-five percent (75%) of the
15 PAGA Penalties Fund will be paid to the LWDA, and the remaining twenty-five percent (25%)
16 will be paid to all Aggrieved Employees ("Net PAGA Payment"). Plaintiff and Plaintiff's
17 Counsel shall be responsible for notifying the LWDA of the Settlement to the extent required
18 by law, including providing proof of such notice as required or upon request.

19 5. Calculation of Individual Settlement Payment. The Net PAGA Payment shall be
20 used to satisfy Individual Settlement Payments to Aggrieved Employees in accordance with the
21 terms of this Agreement. The Settlement Administrator shall allocate the Individual
22 Settlement Payments by first dividing the Net PAGA Payment by the number of Pivotal Pay
23 Periods in which Aggrieved Employees received the payment of wages ~~during~~ and/or expense
24 reimbursements (including for mileage, some of which were paid at a rate lower than the PAGA
25 Period-applicable IRS standard rate) during the period from May 13, 2020, through October
26 31, 2021 That value will then be multiplied by the number of ~~pay periods~~ Pivotal Pay Periods
27 in which each respective Aggrieved employee received the payment of wages and/or expense
28 reimbursements (including for mileage, some of which were paid at a rate lower than the

1 applicable IRS standard rate) during the PAGA-Period period from May 13, 2020, through
2 October 31, 2021. Aggrieved Employees are entitled to 100% of the Net PAGA Payment.

3 Defendant maintains no reversionary right to any portion of the Net PAGA Payment.

4 6. Tax Treatment of Individual Settlement Payment. All Individual Settlement
5 Payments shall be allocated one hundred percent (100%) as penalties. The amount of payments
6 shall be reported on an IRS Form 1099 issued by the Settlement Administrator.

7 7. No Credit Toward Benefit Plans. Payments to Aggrieved Employees as
8 referenced herein will not be utilized to calculate any additional benefits under any benefit plans
9 to which any Aggrieved Employee may be eligible, including, but not limited to profit-sharing
10 plans, bonus plans, 401(k) plans, stock purchase plans, vacation plans, sick leave plans, PTO
11 plans, and any other benefit plan. Rather, it is the Parties' intention that this Settlement
12 Agreement will not affect any rights, contributions, or amounts to which any Aggrieved
13 Employee may be entitled under any benefit plans.

14 8. Enhancement Payment. Defendant agrees not to oppose or impede any
15 application or motion by Plaintiff for an Enhancement Payment of up to ~~threetwo~~ thousand
16 dollars and zero cents (\$~~32~~,000.00) to Plaintiff. The Enhancement Payment shall be paid from
17 the Maximum Settlement Amount, and shall be paid in addition to Plaintiff's Individual
18 Settlement Payment as an Aggrieved Employee. It is understood by Plaintiff that the Court has
19 final discretion in any Enhancement Payment. The Settlement Administrator shall issue an IRS
20 Form 1099 to Plaintiff reflecting the Enhancement Payment. Plaintiff shall be solely and
21 legally responsible to pay any and all applicable taxes on his Enhancement Payment and shall
22 hold Defendant harmless from any claim, assessment, or liability for taxes, penalties, or
23 interest arising as a result of the Enhancement Payment. Any portion of the Enhancement
24 Payment not awarded to Plaintiff shall be added to the PAGA Penalties Fund and shall be
25 distributed to Aggrieved Employees and LWDA as provided in this Agreement.

26 9. Attorneys' Fees and Costs: In full satisfaction of all claims Plaintiff may have
27 for attorneys' fees, litigation costs, and expenses arising out of the Action, Defendant agrees
28 that Plaintiff's Counsel shall be paid a maximum amount of twenty thousand dollars and zero

1 cents (\$20,000.00) in attorneys' fees and up to five thousand dollars and zero cents (\$5,000.00)
2 in litigation costs and expenses ("Attorneys' Fees and Costs"), which shall be paid from the
3 Maximum Settlement Amount. The Settlement Administrator shall issue an IRS Form 1099
4 to Plaintiff's Counsel reflecting the awarded attorneys' fees, costs, and expenses. The Parties
5 understand that the Court makes the final determination on the award of Attorneys' Fees and
6 Costs, and that any portion of these amounts not awarded as Attorneys' Fees and Costs shall
7 be added to the PAGA Penalties Fund and distributed to Aggrieved Employees and LWDA
8 as provided in this Agreement.

9 10. Settlement Administration Costs. The Settlement Administrator shall be paid for
10 the reasonable costs of administration of the Settlement from the Maximum Settlement
11 Amount, currently estimated at one thousand seven hundred fifty dollars and zero cents
12 (\$1,750). These costs, which shall be paid from the Maximum Settlement Amount, shall
13 include, *inter alia*, the required tax reporting on the Individual Settlement Payments, the
14 issuance of Form 1099 IRS forms, establishing a Qualified Settlement Fund, administering and
15 distributing the Maximum Settlement Amount, and providing necessary reports and
16 declarations. Any portion of the Settlement Administration Costs not allowed shall be added to
17 the PAGA Penalties Fund and shall be distributed to Aggrieved Employees and the LWDA as
18 provided in this Agreement.

18 **E. ADMINISTRATION OF SETTLEMENT**

19 1. Approval of Amended PAGA Settlement. Plaintiff's Counsel shall request the
20 entry of an Order in the form attached as Exhibit C from the Court granting final approval,
21 which shall include findings and orders: (i) approving the settlement, (ii) adjudging the terms
22 to be fair, reasonable, and adequate and binding on the State of California, (iii) reciting the
23 release terms, (iv) directing that the settlement's terms and provisions be carried out; (v)
24 entering final judgment in accordance with this Agreement and without further fees or costs to
25 any party, except as expressly set forth in this Agreement; and (vi) retaining jurisdiction to
26 oversee administration and enforcement of the terms of this Agreement and the Court's orders.
27 Plaintiff's motion shall be unopposed by Defendant, unless Plaintiff's approval motion seeks

1 relief inconsistent with or not specified by this Agreement. In such event, Defendant reserves
2 the right to address any assertions that are not contained in this Agreement. Plaintiff will request
3 a hearing on the request for entry of the attached Order to the extent required by the applicable
4 local rules and on the earliest date available to the Court and the Parties.

5 a. Settlement Administration. The Parties agree to cooperate in the
6 administration of the Settlement and to make all reasonable efforts to control and minimize the
7 costs and expenses incurred in the administration of the Settlement. The Settlement
8 Administrator shall provide the following services: Establish and maintain a Qualified
9 Settlement Fund account;

10 b. Calculate the Individual Settlement Payments to be paid to Aggrieved
11 Employees in accordance with the terms and provisions of this Agreement;

12 c. Print and issue Individual Settlement Payment checks;

13 d. Verify the last known address for each Aggrieved Employee through a
14 generally utilized, national address update database prior to mailing the Individual Settlement
15 Payment check;

16 e. Issue and transmit payment to the California Labor and Workforce
17 Development Agency for its portion of the Settlement amount;

18 f. Disburse any awards of costs and attorneys' fees and the Enhancement
19 Payment;

20 g. Prepare and issue 1099 Forms; and

21 h. Perform such other tasks necessary to effectuate the terms of this
22 Agreement or as the Parties mutually agree or the Court orders the Parties to perform.
23
24
25
26
27

1 2. Delivery of the Aggrieved Employee List and Data. Within fifteen (15) calendar
2 days after the Effective Date, Defendant shall provide the Settlement Administrator with a
3 Microsoft Office Excel spreadsheet and shall include each Aggrieved Employee's: full name;
4 employee number; most recent mailing address; social security number; and the number of ~~pay~~
5 ~~periods~~Pivotal Pay Periods in which the employee received payment of wages during the ~~PAGA~~
6 ~~Period~~period from May 13, 2020, through October 31, 2021.

7 3. Timing of Distribution. Within ten (10) calendar days after the payment of the
8 entire Maximum Settlement Amount, the Settlement Administrator will issue payments to: (a)
9 Aggrieved Employees; (b) the California Labor and Workforce Development Agency; (c)
10 Plaintiff; and (d) Plaintiff's Counsel. The Settlement Administrator will issue the appropriate
11 tax forms for all payments issued under this Settlement by the due date to provide such tax
12 forms for the ~~2021~~2023 calendar year.

13 4. Mailing of Individual Settlement Payments to Aggrieved Employees: The
14 Settlement Administrator will issue each Aggrieved Employee a check for his or her share of
15 the PAGA Penalties Fund, along with an explanatory letter attached hereto as Exhibit A. Checks
16 will remain negotiable for 180 days. Any checks returned as non-deliverable on or before the
17 check cashing deadline will be sent promptly via regular First-Class U.S. Mail to the forwarding
18 address affixed thereto. Funds represented by settlement checks that remained un-cashed for
19 more than 180 days after issuance shall be paid out pursuant to California Code of Civil
20 Procedure section 384 to the following *cy pres* recipient: Legal Aid at Work. Neither the Parties
21 nor their respective counsel have a relationship with the designated *cy pres*.

21 **F. RELEASE OF CLAIMS**

22 5. Release of Claims by Aggrieved Employees. Upon the payment of the Maximum
23 Settlement Amount by Defendant, Plaintiff and all Aggrieved Employees, hereby do and shall
24 be deemed to have fully, finally and forever released, settled, compromised, relinquished and
25 discharged, to the fullest extent possible, any and all of the Released Parties of and from any
26 and all Released Claims. With respect to the Released Claims only, the Aggrieved Employees
27 waive any and all rights and benefits under California Civil Code Section 1542, which reads:

28 -12-

SECOND AMENDED JOINT STIPULATION OF SETTLEMENT AND RELEASE UNDER THE PRIVATE
ATTORNEYS GENERAL ACT, CALIFORNIA LABOR CODE § 2698, ET SEQ.

1 **“A general release does not extend to claims that the creditor or releasing party does not**
2 **know or suspect to exist in his or her favor at the time of executing the release and that, if**
3 **known by him or her, would have materially affected his or her settlement with the debtor**
4 **or released party.”**

5 6. No Right to Opt-Out. The Parties agree there is no statutory right for any
6 Aggrieved Employee to opt out or otherwise exclude himself or herself from the Settlement.
7 As such, no notice of the settlement, providing the opportunity to opt out or object, is required.

8 7. General Release and Waiver of Claims by Plaintiff. As a condition to obtaining
9 the Enhancement Payment provided for herein, and as part of the consideration for that
10 payment, Plaintiff (on behalf of himself and his spouse, heirs, executors, administrators,
11 trustees, and/or permitted assigns) also agrees to a general release of any and all claims or causes
12 of action against Defendant and Released Parties—which shall include without limitation any
13 and all claims which in any way relate to his employment with Defendant, as well as his
14 termination from that employment (if any), under California or federal law, in tort, common
15 law, statute, contract, or equity, whether pled in the Complaint or not, including, but not limited
16 to any claims under the Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1991,
17 the Americans With Disabilities Act, the Genetic Information Nondiscrimination Act, the Age
18 Discrimination in Employment Act, the Families First Coronavirus Response Act, the Fair
19 Labor Standards Act, the California Fair Employment and Housing Act, the California Labor
20 Code, the California Fair Employment and Housing Act, or any California Industrial Welfare
21 Commission wage order, based on any act, omission, event, occurrence, or nonoccurrence by
22 Defendant or Released Parties to the date of Plaintiff’s execution of the Agreement, except for
23 any law that prohibit waiver or release of such claims without Court or agency approval.
24 Plaintiff further expressly waives and relinquishes, to the fullest extent permitted by law, the
25 provisions, rights and benefits of Section 1542 of the California Civil Code, which provides:
26 **“A general release does not extend to claims that the creditor or releasing party does not**
27 **know or suspect to exist in his or her favor at the time of executing the release and that, if**
28 **known by him or her, would have materially affected his or her settlement with the debtor**

1 or released party.” Having been informed of this provision and his rights under it, Plaintiff
2 waives and relinquishes the provisions of California Civil Code section 1542 with respect to
3 this Agreement and his release of any and all of his individual claims and causes of action as
4 provided herein.²

5 **G. MISCELLANEOUS**

6 1. Tax Liability. Defendant, Defendant’s counsel, the Settlement Administrator, and
7 Plaintiff’s Counsel make no representation as to the tax treatment or legal effect of the payments
8 called for hereunder, and Plaintiff and Aggrieved Employees are not relying on any statement,
9 representation, or calculation by Defendant, Defendant’s counsel, Plaintiff’s Counsel, or by the
10 Settlement Administrator in this regard. Plaintiff and Aggrieved Employees understand and
11 agree that they will be solely responsible for the payment of any and all taxes and penalties
12 assessed on their respective payments described herein and will defend, indemnify, and hold
13 Defendant, Defendant’s counsel, Plaintiff’s Counsel and the Settlement Administrator free and
14 harmless from and against any claims resulting from treatment of such payments as non-taxable
15 penalties/damages.

16 2. Circular 230 Disclaimer. EACH PARTY TO THIS AGREEMENT (FOR
17 PURPOSES OF THIS SECTION, THE “ACKNOWLEDGING PARTY” AND EACH
18 PARTY TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN
19 “OTHER PARTY”) ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF
20 THIS AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE

21 ² By entering into this Agreement, Plaintiff further understands and agrees that he: (a)
22 has read this Agreement carefully and completely; (b) understands and knowingly and
23 voluntarily agrees to the terms, conditions, and waivers set forth in this Agreement;
24 (c) is hereby advised in writing to consult with an attorney of his/her choice prior to
25 executing this Agreement and has had ample opportunity and sufficient time to seek
26 such advice; (d) agrees that the Payment provided in this Agreement is in addition to
27 any consideration to which he/she may already be entitled; (e) agrees that claims for age
28 discrimination that arise after the executive of this Agreement are not waived by this
Agreement; (f) may take up to twenty-one (21) days to consider whether he/she desires
to execute this Agreement; and (g) has a period of seven (7) days after executing this
Agreement to revoke this Agreement. Any such revocation must be in writing and
delivered to (and received by) counsel for Defendant on or before the seventh day.

1 BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER
2 ADVISERS, IS OR WAS INTENDED TO BE, NOR SHALL ANY SUCH
3 COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE
4 RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES
5 TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED);
6 (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS OR
7 ITS OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING
8 TAX ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED
9 INTO THIS AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER
10 PARTY OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT
11 ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY
12 ATTORNEY OR ADVISER TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY
13 THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO
14 ATTORNEY OR ADVISER TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION
15 THAT PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY'S OR
16 ADVISER'S TAX STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS
17 LEGALLY BINDING) UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF
18 THE TAX TREATMENT OR TAX STRUCTURE OF ANY TRANSACTION, INCLUDING
19 ANY TRANSACTION CONTEMPLATED BY THIS AGREEMENT.

20 3. No Prior Assignments. The Parties and their counsel represent, covenant, and
21 warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported
22 to assign, transfer, or encumber to any person or entity any portion of any liability, claim,
23 demand, action, cause of action or right herein released and discharged.

24 4. Nullification of Settlement Agreement. In the event that: (i) the Court does not
25 approve the Settlement as provided herein; or (ii) the Settlement does not become final for any
26 other reason, then this Settlement Agreement, and any documents generated to bring it into
27 effect, will be null and void, and the Parties will be returned to their original respective
28 positions. Notwithstanding the above, in such event, the Parties will meet and confer to address

1 any concerns raised by the Court to determine whether and to what extent the Action may be
2 resolved in a manner consistent with the Parties' intent and consistent with the Court's
3 concerns.

4 5. Continued Jurisdiction. After entry of the judgment, the Court will have
5 continuing jurisdiction solely for purposes of addressing: (i) the interpretation and enforcement
6 of the terms of the Settlement, (ii) settlement administration matters, and (iii) such post-Court
7 Approval matters as may be appropriate under court rules or as set forth in this Settlement.

8 6. Entire Agreement. This Settlement Agreement constitutes the entirety of the
9 Parties' settlement terms. No other prior or contemporaneous written or oral agreements may
10 be deemed binding on the Parties.

11 7. Amendment or Modification. This Settlement Agreement may be amended or
12 modified only by a written instrument, signed by either the Parties or their successors-in-interest
13 or counsel for all Parties.

14 8. Authorization to Enter Into Settlement Agreement. Counsel for all Parties
15 warrant and represent they are expressly authorized by the Parties whom they represent to
16 negotiate this Settlement Agreement and to take all appropriate action required or permitted to
17 be taken by such Parties pursuant to this Settlement Agreement to effectuate its terms and to
18 execute any other documents required to effectuate the terms of this Settlement Agreement. The
19 Parties and their counsel will cooperate with each other and use their best efforts to effect the
20 implementation of the Settlement. If the Parties are unable to reach agreement on the form or
21 content of any document needed to implement the Settlement, or on any supplemental
22 provisions that may become necessary to effectuate the terms of this Settlement, the Parties
23 may seek the assistance of the Court to resolve such disagreement.

24 9. Binding on Successors and Assigns. This Settlement Agreement will be binding
25 upon, and inure to the benefit of, the successors or assigns of the Parties hereto.

26 10. California Law Governs. All terms of this Settlement Agreement and Exhibit A
27 will be governed by and interpreted according to the laws of the State of California.

1 11. Execution and Counterparts. This Settlement Agreement is subject only to the
2 execution of all Parties. However, the Settlement Agreement may be executed in one or more
3 counterparts. All executed counterparts and each of them, including facsimile and scanned
4 copies of the signature page, will be deemed to be one and the same instrument provided that
5 counsel for the Parties will exchange among themselves original signed counterparts.

6 12. Acknowledgement that the Settlement is Fair and Reasonable. The Parties
7 believe this Settlement Agreement is a fair, adequate, and reasonable settlement of the Action
8 and have arrived at this Settlement after arm's-length negotiations. The Parties further
9 acknowledge that they are each represented by competent counsel and that they have had an
10 opportunity to consult with their counsel regarding the fairness and reasonableness of this
11 Settlement.

12 13. Invalidity of Any Provision. Before declaring any provision of this Settlement
13 Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest
14 extent possible consistent with applicable precedents so as to define all provisions of this
15 Settlement Agreement valid and enforceable. If any provision of this Settlement Agreement is
16 or becomes invalid or unenforceable in any respect, the validity and enforceability of the
17 remaining provisions contained herein shall not be affected.

18 14. Captions. The captions and section numbers in this Settlement Agreement are
19 inserted for the reader's convenience, and in no way define, limit, construe or describe the scope
20 or intent of the provisions of this Settlement Agreement.

21 15. Waiver. No waiver of any condition or covenant contained in this Settlement
22 Agreement or failure to exercise a right or remedy by any of the Parties hereto will be
23 considered to imply or constitute a further waiver by such party of the same or any other
24 condition, covenant, right, or remedy.

25 16. Enforcement Action. In the event that one or more of the Parties institutes any
26 legal action or other proceeding against any other Party or Parties to enforce the provisions of
27 this Settlement or to declare rights and/or obligations under this Settlement, the successful Party
28 or Parties will be entitled to recover from the unsuccessful Party or Parties reasonable attorneys'

1 fees and costs, including expert witness fees incurred in connection with any enforcement
2 actions.

3 17. Mutual Preparation. The Parties have had a full opportunity to negotiate the terms
4 and conditions of this Settlement Agreement. Accordingly, this Settlement Agreement will not
5 be construed more strictly against one party than another merely by virtue of the fact that it may
6 have been prepared by counsel for one of the Parties. The Parties further acknowledge and
7 agree that, because of the arms-length negotiations between the Parties, all Parties have
8 contributed to the preparation of this Settlement Agreement.

9 18. Representation by Counsel. The Parties acknowledge that they have been
10 represented by counsel throughout all negotiations that preceded the execution of this
11 Settlement Agreement, and that this Settlement Agreement has been executed with the consent
12 and advice of counsel, and reviewed in full.

13 19. Binding Agreement. The Parties warrant that they understand and have full
14 authority to enter into this Settlement, and further intend that this Settlement Agreement will
15 be fully enforceable and binding on all parties, and agree that it will be admissible and subject
16 to disclosure in any proceeding to enforce its terms, notwithstanding any settlement
17 confidentiality provisions that otherwise might apply under federal or state law.

18 20. Denial of Liability. The Parties expressly recognize that the making of this
19 agreement does not in any way constitute an admission or concession of wrongdoing on the
20 part of Defendant. Nothing in this Settlement, nor any action taken in implementation thereof,
21 nor any statements, discussions or communications, nor any materials prepared, exchanged,
22 issued or used during the course of this Action, is intended by the Parties to, nor will any of the
23 foregoing constitute, be introduced, be used or be admissible in any way in any other judicial,
24 arbitral, administrative, investigative, or other forum or proceeding, as evidence of any violation
25 of any federal, state, or local law, statute, ordinance, regulation, rule or executive order, or any
26 obligation or duty at law or in equity. Notwithstanding the foregoing, this agreement may be
27 used in any proceeding in the Court that has as its purpose the interpretation, implementation,

1 or enforcement of the Settlement or any orders or judgments of the Court entered into in
2 connection therewith.

3 **IN WITNESS WHEREOF**, the undersigned Settling Parties and their duly authorized
4 representatives accept and agree to the terms of this Agreement and hereby execute it
5 voluntarily and with a full understanding of its consequences.

6
7 DATED: _____ **PLAINTIFF ADEWUNMI OJO**

8
9
10 _____
Plaintiff Adewunmi Ojo

11 DATED: _____ **DEFENDANT PINNACLE LIGHT**
12 **INDUSTRIAL, LLC**

13
14 _____
By: Erin Stewart

15 **APPROVED AS TO FORM:**

16
17 DATED: _____ **DIVERSITY LAW GROUP, P.C.**

18
19 _____
Kristen M. Agnew
20 Attorneys for Plaintiff and the Aggrieved
Employees

21 DATED: _____ **WICK PHILLIPS GOULD & MARTIN LLP**

22
23 _____
Marcia Jackson
24 Attorneys for Defendant
25 Pinnacle Light Industrial, LLC

EXHIBIT A

<<DATE>>

<<FIRST NAME>> <<LAST NAME>>
<<ADDRESS>>

Re: *Adewunmi Ojo v. Pinnacle Light Industrial, LLC*,
Orange County Superior Court Case No. 30-2021-01201515-CU-OE-CXC

Dear <<FIRST NAME>> <<LAST NAME>>:

Enclosed you will find a check made payable to you. This is your payment from the settlement of the lawsuit entitled *Adewunmi Ojo v. Pinnacle Light Industrial, LLC*, Case No. 30-2021-01201515-CU-OE-CXC (Orange County Superior Court) (the “Action”).

Adewunmi Ojo (“Named Plaintiff”) filed the Action against Pinnacle Light Industrial, LLC, (“Defendant” or the “Company”) pursuant to the California Private Attorneys General Act of 2004, California Labor Code section 2698 *et seq.* (“PAGA”). Named Plaintiff brought the Action on behalf of the State of California and all employees who received the payment of wages and/or mileage reimbursement under one or more former Company policies during the period of May 13, 2020-~~onward~~, through October 31, 2021. You have been identified as one of the individuals on whose behalf the case was brought.

The Named Plaintiff in the Action claimed that Defendant owed penalties under PAGA for alleged violations of the California Labor Code. More specifically, the Named Plaintiff alleged that Defendant failed to pay wages within seven days of the close of the pay period, in violation of Labor Code section 204. The Named Plaintiff further alleged that Defendant failed to reimburse employees for all or part of their mileage-related expenses, in violation of Labor Code section 2802. Defendant maintains that all employees were timely paid wages and reimbursements, and Defendant further denies that it owes any penalties.

The Court has not ruled on the merits of the lawsuit, but it has approved the settlement amount the parties agreed to. That settlement provides for a cash payment by Defendant in the amount of \$60,000 (“Maximum Settlement Amount”). After deducting the service award to Plaintiff (\$32,000), attorneys’ fees (\$20,000), actual litigation costs (up to \$5,000) and the Settlement Administrator’s costs (\$1,750) from the Maximum Settlement Amount, the remaining balance represents the PAGA Penalties Fund.

The Court has approved a PAGA Penalties Fund in the amount of \$ TBD. By statute, seventy-five percent of the PAGA Penalties Fund (\$TBD) goes to the State of California’s Labor and Workforce Development Agency. The remaining twenty-five percent (\$TBD) will be paid to the individuals who were allegedly affected by the Labor Code violations at issue in the case.

Formatted: Not Highlight

Formatted: Not Highlight

Formatted: Not Highlight

1 Pursuant to the settlement, enclosed is a check for your share of a portion of the civil
2 penalties. Your portion was calculated based on the number of pay ~~periods~~ “Pivotal Pay
3 Periods” you worked during the relevant time period. As defined by the Settlement, “Pivotal
4 Pay Periods” means any pay period in which you received the payment of wages and/or
5 expense reimbursements (including for mileage, some of which were paid at a rate lower than
6 the applicable IRS standard rate) during the period from May 13, 2020, through October 31,
7 2021.

8 You are not a party to this lawsuit, but you and the government are bound by the judgment in
9 this matter as to civil penalties. As such, you will be giving up or “releasing” Defendant from
10 all PAGA claims predicated on the alleged violation of Labor Code sections 204 and 2802
11 that accrued during the period of May 13, 2020, through ~~July~~ October 31, ~~2022~~ 2021.

12 As set forth above, in agreeing to this settlement, Defendant does not admit that it is liable in
13 any way to its current or former employees.

14 Should you have any questions regarding the settlement, the contact information for the
15 Settlement Administrator is included below:

16
17 Contact information for Settlement Administrator:

18 Sincerely,

19 [NAME AND TITLE OF SIGNATORY]
20
21
22
23
24
25
26
27

EXHIBIT 5

10/24/2022
3:04 PM

DIVERSITY LAW GROUP
Slip Listing

Page 1

Selection Criteria

Slip Classification Open
Client (hand select) Include: Ojo, Adewunmi v. Pinnacle
Slip.Transaction Ty 2 - 2

Rate Info - identifies rate source and level

Slip ID		Timekeeper	Units	Rate	Slip Value
Dates and Time		Activity	DNB Time	Rate Info	
Posting Status		Client	Est. Time	Bill Status	
Description		Reference	Variance		
67238	EXP	Linda Lee	1	75.00	75.00
5/13/2021		Court fees			
WIP		Ojo, Adewunmi v. Pinnacle			
LWDA					
67357	EXP	Erika Mejia	1	1492.00	1492.00
5/20/2021		Court fees			
WIP		Ojo, Adewunmi v. Pinnacle			
One Legal - Complaint					
67515	EXP	Olympia	1	97.29	97.29
5/28/2021		Atty Service			
WIP		Ojo, Adewunmi v. Pinnacle			
Attorney Service - Complaint Service					
67705	EXP	Olympia	1	6.96	6.96
5/31/2021		Postage			
WIP		Ojo, Adewunmi v. Pinnacle			
Postage					
67526	EXP	Erika Mejia	1	14.67	14.67
6/7/2021		Court fees			
WIP		Ojo, Adewunmi v. Pinnacle			
OneLegal - POS of Summons					
68155	EXP	Olympia	1	22.91	22.91
7/20/2021		Court fees			
WIP		Ojo, Adewunmi v. Pinnacle			
One Legal - FAC					
68504	EXP	Olympia	22	0.25	5.50
7/31/2021		Photocopies			
WIP		Ojo, Adewunmi v. Pinnacle			
Photocopies					
68505	EXP	Olympia	1	2.40	2.40
7/31/2021		Postage			
WIP		Ojo, Adewunmi v. Pinnacle			
Postage					

10/24/2022
3:04 PM

DIVERSITY LAW GROUP
Slip Listing

Page 2

Slip ID		Timekeeper	Units	Rate	Slip Value
Dates and Time		Activity	DNB Time	Rate Info	
Posting Status		Client	Est. Time	Bill Status	
Description		Reference	Variance		
68812	EXP	Olympia	1	1.02	1.02
8/31/2021		Postage			
WIP		Ojo, Adewunmi v. Pinnacle			
Postage					
68811	EXP	Olympia	6	0.25	1.50
8/31/2021		Photocopies			
WIP		Ojo, Adewunmi v. Pinnacle			
Photocopies					
69532	EXP	Christine Choo	1	22.91	22.91
11/2/2021		Court fees			
WIP		Ojo, Adewunmi v. Pinnacle			
One Legal - Notice					
70040	EXP	Olympia	12	0.25	3.00
11/30/2021		Photocopies			
WIP		Ojo, Adewunmi v. Pinnacle			
Photocopies					
70041	EXP	Olympia	1	1.06	1.06
11/30/2021		Postage			
WIP		Ojo, Adewunmi v. Pinnacle			
Postage					
70176	EXP	Linda Lee	1	21.62	21.62
12/28/2021		Court fees			
WIP		Ojo, Adewunmi v. Pinnacle			
OneLegal - CMS					
71538	EXP	Erika Mejia	1	19.30	19.30
4/19/2022		Court fees			
WIP		Ojo, Adewunmi v. Pinnacle			
OneLegal - CMS					
72238	EXP	Kristen Agnew	1	21.36	21.36
6/23/2022		Court fees			
WIP		Ojo, Adewunmi v. Pinnacle			
OneLegal - CMS					
72344	EXP	Valeria Tril	1	25.48	25.48
7/6/2022		Online researc			
WIP		Ojo, Adewunmi v. Pinnacle			
OneLegal - Notice of Hearing					
73412	EXP	Erika Mejia	1	17.50	17.50
10/24/2022		Court fees			
WIP		Ojo, Adewunmi v. Pinnacle			
OneLegal - Joint Report					

10/24/2022
3:04 PM

DIVERSITY LAW GROUP
Slip Listing

Page 3

Slip ID		Timekeeper	Units	Rate	Slip Value
Dates and Time		Activity	DNB Time	Rate Info	
Posting Status		Client	Est. Time	Bill Status	
Description		Reference	Variance		
73413	EXP	Erika Mejia	1	77.50	77.50
10/24/2022		Court fees			
WIP		Ojo, Adewunmi v. Pinnacle			
OneLegal - Motion					
Grand Total					
			Billable	0.00	1928.98
			Unbillable	0.00	0.00
			Total	0.00	1928.98

EXHIBIT 6

Adewunmi Ojo v. Pinnacle Light Industrial, LLC
Time and Task Chart for Kristen M. Agnew

Hours	Description of Work
2.20	Initial research and review of background facts in preparation for filing of complaint; confer with co-counsel re theories of liability.
1.90	Draft PAGA letter and Complaint.
1.10	Draft first amended complaint.
1.70	Conference calls with defense counsel re factual basis for allegations and framework for potential resolution; draft joint motion for stay; review and respond to email re same.
3.60	Review Defendant's arbitration agreement and research re same; confer with co-counsel re same; conference calls with defense counsel re dismissal of class allegations; review and respond to email re same.
1.30	Analysis and research re information required from Defendant to engage in settlement negotiations; draft and revise data requests for defense counsel.
2.80	Review and analyze mileage reimbursement records for Plaintiff and the employees; calculate potential damages and penalties; confer with co-counsel re same.
1.50	Conference calls with defense counsel re settlement; review and respond to email re same; confer with co-counsel re same.
9.90	Draft Joint Stipulation of Settlement and Release Under the Private Attorneys General Act and proposed Second Amended Complaint; conference calls with defense counsel re revisions to settlement agreement.
7.10	Prepare Motion for Approval of PAGA Settlement and supporting declarations.
33.10	TOTAL HOURS

EXHIBIT 7

Adewunmi Ojo v. Pinnacle Light Industrial, LLC
Supplemental Time and Task Chart for Kristen M. Agnew

Hours	Description of Work
1.40	Confer with settlement administrator re calculation of payments to aggrieved employees and notice process; confer with defense counsel re escalator clause.
1.70	Draft Amended Joint Stipulation of Settlement and Release Under the Private Attorneys General Act (“Amended Settlement”); confer with defense counsel re revisions to Amended Settlement; further revise and finalize Amended Settlement.
5.30	Draft motion to approve Amended Settlement and supporting declaration; confer with defense counsel re revisions to approval motion.
.70	Review Court’s February 2, 2024 tentative order; confer with defense counsel re same.
.50	Draft Second Amended Joint Stipulation of Settlement and Release Under the Private Attorneys General Act (“Second Amended Settlement”); confer with defense counsel re same.
2.30	Draft joint statement in support of motion to approve the Amended Settlement; confer with defense counsel re joint statement; finalize joint statement for filing.
1.50	Review Court’s March 29, 2024 tentative order; confer with defense counsel re same; prepare for and appear at hearing.
8.80	Draft motion to approve Second Amended Settlement; confer with defense counsel re revisions; further revise and finalize motion for filing.
22.20	TOTAL HOURS

EXHIBIT 8

From: [DIR PAGA Unit](#)
To: [Olympia Pena](#)
Subject: Thank you for your Court Order or Judgment Submission
Date: Friday, June 16, 2023 12:22:42 PM

06/16/2023 12:22:27 PM

Thank you for your submission to the Labor and Workforce Development Agency.

Item submitted: Court Order or Judgment

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm

EXHIBIT 9

Erika Mejia

From: DIR PAGA Unit <lwdadonotreply@dir.ca.gov>
Sent: Wednesday, October 25, 2023 3:12 PM
To: Erika Mejia
Subject: Thank you for your Proposed Settlement Submission

10/25/2023 03:11:25 PM

Thank you for your submission to the Labor and Workforce Development Agency.

Item submitted: Proposed Settlement

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm

EXHIBIT 10

From: [DIR PAGA Unit](#)
To: [Olympia Pena](#)
Subject: Thank you for your Other Response or Document Submission
Date: Friday, February 2, 2024 11:43:20 AM

02/02/2024 11:43:01 AM

Thank you for your submission to the Labor and Workforce Development Agency.

Item submitted: Other Response or Document Submission

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm

EXHIBIT 11

Erika Mejia

From: DIR PAGA Unit <lwdadonotreply@dir.ca.gov>
Sent: Friday, March 15, 2024 3:43 PM
To: Erika Mejia
Subject: Thank you for your Other Response or Document Submission

03/15/2024 03:42:47 PM

Thank you for your submission to the Labor and Workforce Development Agency.

Item submitted: Other Response or Document Submission If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm

EXHIBIT 12