

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

Attorneys for Plaintiff and the Class

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

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

Plaintiffs,

vs.

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

Defendants.

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

**DECLARATION OF KRISTEN M. AGNEW
IN SUPPORT OF PLAINTIFF'S NOTICE
OF MOTION AND MOTION TO APPROVE
SETTLEMENT AGREEMENT PURSUANT
TO THE PRIVATE ATTORNEYS
GENERAL ACT**

Date: November 18, 2022

Time: 8:30 a.m.

Dept.: CX101

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 **PROCEDURAL HISTORY**

7 2. From the inception of the case, Plaintiff’s counsel has zealously represented the
8 interests of the Aggrieved Employees.

9 3. On May 13, 2021, Plaintiff submitted his written notice under Labor Code section
10 2699.3 (the “PAGA Notice”) to the LWDA and Defendant. As set forth in the PAGA Notice,
11 Plaintiff alleged that Defendant violated California Labor Code sections 204 and 2802. More
12 specifically, Plaintiff alleged that Defendant regularly failed to reimburse and indemnify
13 employees for expenses incurred in the performance of their duties, including, but not limited to,
14 expenses associated with travel mileage. Defendant required employees to use their personal
15 vehicles to travel in the course of performing their duties. Defendant, however, failed to properly
16 reimburse for their vehicle expenses such as mileage, gas, and wear and tear to their vehicles.
17 Additionally, Plaintiff alleged that Defendant paid wages more than seven days after the close of
18 the payroll period, in violation of Labor Code section 204. Attached hereto as **Exhibit 1** is a true
19 and correct copy of the PAGA Notice.

20 4. On May 19, 2021, Plaintiff filed a putative class action lawsuit against Defendant
21 in the Superior Court of California, County of Orange. As alleged in the complaint, Plaintiff
22 asserted class claims for: (1) violation of Labor Code section 2802; and (2) violation of Business
23 and Professions Code section 17200, et seq., based on Defendant’s alleged failure to reimburse
24 employees for business expenses.

25 5. After approval by the Court, on July 16, 2021, Plaintiff filed the First Amended
26 Representative Action Complaint (“First Amended Complaint”). Plaintiff amended his complaint
27 to add a cause of action for violation of the California Private Attorneys General Act (“PAGA”),
28 Labor Code § 2698, et seq. The First Amended Complaint alleges claims based on the facts

described in Plaintiff's PAGA Notice. Plaintiff seeks civil penalties predicated on Defendant's alleged failure to reimburse business expenses and to comply with Labor Code section 204.

DISCOVERY AND INVESTIGATION

6. On or about June 21, 2021, defense counsel advised that Plaintiff had signed an arbitration agreement during the course of his employment with Defendant. Counsel subsequently provided a copy of the agreement. The agreement required Plaintiff to litigate his claims on an individual basis in arbitration. In light of the narrow claims at issue, the Parties agreed to redirect their resources to exploring the possibility of an early resolution on as broad a scale as possible consistent with applicable law.

7. Over the course of several months, the Parties extensively met and conferred engaged in the arms' length negotiations. In connection with the Parties' negotiations, Defendant produced, among other things, electronic documents and data related to the mileage reimbursement records for Plaintiff and the Aggrieved Employees, Defendant's mileage reimbursement policy, as well as data relating to the number of potential Aggrieved Employees and the number of pay periods worked by Aggrieved Employees during the period of May 13, 2020 through September 11, 2021. In total, twenty-four (24) Aggrieved Employees worked 835 pay periods during which the employees received the payment of wages and/or expense reimbursements (including for mileage) during the period of May 13, 2020 through September 11, 2021. Using the data provided by Defendant, I performed a comprehensive penalties analysis.

8. The Parties also extensively discussed underlying merits of the case. With respect to the alleged Labor Code section 2802 violation, Plaintiff contends that Defendant reimbursed mileage expenses at the standard IRS reimbursement rate for up to 225 miles in a pay period. However, when employees drove more than 225 miles in a pay period, Plaintiff contends that Defendant reimbursed the additional mileage at a reduced rate. Defendant maintains that it reimbursed most mileage requests at the standard IRS reimbursement rate. Defendant produced mileage reimbursement data for employees during the period of May 13, 2020 to September 11, 2021. The data shows that there are approximately 835 pay periods in which individuals sought

1 mileage reimbursements. In 260 out of the 835 pay periods, the records suggest that the
2 employees drove fewer than 225 miles. Thus, based on Defendant's records there are only
3 approximately 575 pay periods in which employees may have been reimbursed at a rate below
4 the standard IRS rate. Additionally, Defendant contends that, in some instances, it compensated
5 all mileage requests at the standard IRS rate. Thus, the number of potential violations is less than
6 575.

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

10 10. With respect to the alleged Section 204 violation, Plaintiff alleges that Defendant
11 had a policy of paying wages to employees on or after the eighth day following the close of the
12 pay period, in violation of Labor Code section 204. Although Defendant disputes that its policy
13 was ever unlawful, Defendant maintains that, in an abundance of caution and for business
14 reasons, it changed its payroll practices to pay employees within six days of the close of the pay
15 period, effective June 27, 2021. Defendant produced a copy of the weekly payroll reschedule to
16 establish this modification in policy.

17 11. On or about April 26, 2022, the Parties reach a settlement in principle of the entire
18 action.. The Parties thereafter worked to memorialize the terms of the settlement in a long-form
19 settlement agreement.

20 12. On or about September 16, 2022, the Parties executed a Joint Stipulation of
21 Settlement and Release Under the Private Attorneys General Act, California Labor Code § 2698,
22 *et seq.* ("Settlement Agreement"). Attached hereto as **Exhibit 2** is a true and correct copy of the
23 Settlement Agreement.

24 **SUMMARY OF THE PROPOSED SETTLEMENT**

25 13. As part of the proposed settlement, Plaintiff agreed to the dismissal *without*
26 *prejudice* of the class allegations set forth in the First Amended Class and Representative Action
27 Complaint. Plaintiff further agreed to file a Second Amended Representative Action Complaint
28 for Violation of Labor Code § 2698, *et. seq.* (the "Operative Complaint"). The proposed

Operative Complaint contains a single cause of action for violation of the PAGA predicated on Defendant's alleged violation of Labor Code sections 204 and 2802. A true and correct copy of the proposed Operative Complaint is attached to the Settlement Agreement as Exhibit B. For the Court's convenience, a redline comparison of the First Amended Complaint and proposed Operative Complaint is attached hereto as **Exhibit 3**.

SUMMARY OF THE PROPOSED SETTLEMENT

14. As defined by the settlement, "Aggrieved Employees" means all current and former California non-exempt employees of Defendant who were paid wages by Defendant at any time during the PAGA Period. Settlement Agreement § B-2. The PAGA Period encompasses the period of May 13, 2020 through July 31, 2022. *Id.* at § B-11. Based upon Defendant's records, Aggrieved Employees received the payment of wages and/or expense reimbursements in approximately 875 pay periods during the PAGA Period. *Id.* at § D-2.

15. The Settlement Agreement requires Defendant to pay the gross amount of Sixty Thousand Dollars (\$60,000.00) (the "Maximum Settlement Amount"). Settlement Agreement § B-9.

16. The balance of the Maximum Settlement Amount remaining after deduction of the approved enhancement payment to Plaintiff, attorneys' fees and costs, and settlement administration costs (the "PAGA Penalties Fund"), will be available for distribution to the LWDA and Aggrieved Employees. Settlement Agreement §§ B-10, D-4, D-5. The PAGA Penalties Fund is estimated to be at least \$33,321.02. Seventy-five percent (75%) of the PAGA Penalties Fund, or approximately \$24,990.76, will be paid to the LWDA for PAGA penalties. *Id.* at § D-4.

17. The remaining twenty-five percent (25%) of the PAGA Penalties Fund, or approximately \$8,330.26, will be distributed to Aggrieved Employees. Settlement Agreement § 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. *Id.* at §E-4. Neither I nor Diversity Law Group has a relationship with Legal Aid at Work.

18. As part of the Settlement Agreement, Defendant does not object to Plaintiff's

1 Counsel's request for attorneys' fees of approximately thirty-three and one-third percent
2 (33.33%) of the Maximum Settlement Amount, *i.e.*, Twenty Thousand Dollars (\$20,000.00),
3 plus up to Five Thousand Dollars (\$5,000.00) for reimbursement of litigation costs, subject to the
4 Court approving this Settlement. Settlement Agreement § D-9. Plaintiff's Counsel's anticipated
5 actual litigation costs total \$1,928.98. The costs were all directly incurred in the prosecution of
6 this action, including filing fees, postage, copying, and service of process fees. Attached hereto
7 as **Exhibit 4** is a true and correct copy of my office's cost bill, which reflects costs incurred in
8 prosecuting this case. Any costs not awarded by the Court will revert to the PAGA Penalties
9 Fund for distribution to the LWDA and Aggrieved Employees.

10 19. Defendant has also agreed to not object to Plaintiff's request for an Enhancement
11 Payment of Three Thousand Dollars (\$3,000.00). Settlement Agreement § D-8.

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

17 **VALUE OF SETTLEMENT PER PAY PERIOD**

18 21. Based on the Maximum Settlement Amount, Defendant will pay approximately
19 \$68.57 per pay period ($\$60,000 \div 875$ pay periods) to resolve the claims in this case.

20 22. The amount any particular Aggrieved Employee will be entitled to recover will
21 depend on the number of pay periods in which he or she received the payment of wages and/or
22 expense reimbursements during the PAGA Period, with some entitled to receive more and others
23 less. Settlement Agreement § D-5. This is fair, as it directly allocates greater penalties to
24 individuals who have allegedly suffered greater harm.

25 **POTENTIAL CIVIL PENALTIES**

26 23. PAGA penalties are difficult to evaluate in a matter like this, but there are reasons
27 to believe that they would be limited. Defendant has indicated that there were approximately 875
28 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.

24. 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

25. However, I believe that is unrealistic to assume that the Court would permit the “stacking” of PAGA penalties in this manner. I am not aware of any PAGA award in which the trial court assessed more than one penalty per pay period.

26. The above penalty calculations further assume that Plaintiff will prevail on the merits. However, Plaintiff’s claims are contested.

27. Defendant contends that it maintained a compliant mileage reimbursement policy. Nonetheless, Defendant argues that, even if Plaintiff establishes that the policy is unlawful, Plaintiff will have a difficult time making a showing that *each* Aggrieved Employee experienced a violation of Labor Code section 2802. In this respect, Defendant contends that a finding of liability will necessarily require individualized proof that: (1) employees who drove more than 225 miles per week did so in furtherance of the discharge of his or her duties; (2) the additional mileage was necessary and reasonable; and (3) that the reduced reimbursement rate did not cover the employee’s actual expenses and wear and tear on their vehicles. Defendant contends that establishing a violation for each Aggrieved Employee will make trial unmanageable.

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

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

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

21 31. I am also aware that Courts routinely award far less than the statutory maximum
22 amount of civil penalties, even where an underlying violation of the Labor Code is found. As
23 shown in the Court of Appeal's decision in *Carrington v. Starbucks Corp.*, while the plaintiff
24 prevailed on his PAGA claim at trial, the trial court reduced the maximum PAGA penalty
25 amount by 90%, citing the employer's good faith attempt at complying with the law. 30 Cal.
26 App. 5th 504, 517 (2018). Upon review, the Court of Appeal found such reduction to be proper.
27 *Id.* at 539; see *O'Connor v. Uber Technologies, Inc.*, 201 F.Supp.3d 1110, 1133 (N.D. Cal.,
28 2016). Thus, assuming that the Court uses *Carrington* as a benchmark and assesses PAGA

1 penalties of approximately 10% of the total maximum, a more realistic estimate of the maximum
2 PAGA penalties at issue—even with “stacking”— is \$17,500.

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

4 32. In exchange for the payments described above, Plaintiff and Aggrieved
5 Employees will release Defendant and Released Parties from:

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

16 Settlement Agreement § B-14. The Settlement is not intended to release does not extend to
17 violations of any predicate statutes other than PAGA. The release also does not constitute a
18 waiver of claims by Aggrieved Employees for any individual wage and hour claims.

19 33. I believe that Plaintiff could prevail at trial. However, I also believe in the fairness
20 of the settlement, which is based on factoring in the uncertainty and risks attendant to not
21 prevailing on one or more theories of liability, the possibility of losing at trial and potential for
22 appeals. Moreover, as Defendant adamantly denies that it should be liable for the full extent of
23 the alleged penalties, there is a possibility that Plaintiff and the Aggrieved Employees would be
24 awarded less or recover nothing at trial. Thus, after taking into account sharply disputed legal
25 issues involved in this litigation, the risks associated with further prosecution, delays caused by
26 potential appeals, and the substantial benefits to be received pursuant to the Settlement, I believe
27 that the proposed settlement is fair, reasonable, and adequate and is in the best interests of
28 Plaintiff and the Aggrieved Employees.

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26 **ATTORNEY’S EXPERIENCE**

27 34. My firm has a great deal of experience in wage and hour class action litigation

1 and has been approved as class counsel in a number of class actions.

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

9 36. Since 2009, my primary area of practice has been employment litigation. I have
10 practiced law at two preeminent employment defense firms. From May 2009 to June 2011, I was
11 an associate at Ogletree, Deakins, Nash, Smoak & Stewart, P.C. I was also an associate, and then
12 senior associate, in the labor and employment practice group of Seyfarth Shaw, LLP from June
13 2011 to May 2016. At both Ogletree and Seyfarth, I represented a wide array of fortune 500
14 companies in employment litigation in both state and federal courts, as well as before
15 government agencies, including the California Department of Labor. My practice included the
16 defense of single plaintiff and multi-plaintiff lawsuits involving claims under the California Fair
17 Employment and Housing Act, the California Labor Code and the Fair Labor Standards Act. I
18 also handled a number of wage and hour class actions.

19 37. While at Ogletree and Seyfarth, I served as the lead associate on a number of
20 wage and hour class actions, including *Martha Cardenas v. Gold's Gym*, Los Angeles County
21 Superior Court Case No. BC445112; *Nathaniel Werner v. Crown Equipment Corporation*, Los
22 Angeles County Superior Court Case No. BC439428; *Christopher Williams v. Allstate Insurance*
23 *Co.*, Los Angeles County Superior Court Case No. BC382577; *Hwang v. Caltech*, Los Angeles
24 County Superior Court Case No. BC464894; *Melissa Roberts v. Zale Delaware, Inc.*, Los
25 Angeles Superior Court Case No. BC523610; *Michael Oliver v. Konica Minolta Business*
26 *Solutions U.S.A., Inc.*, Santa Clara County Superior Court Case No. 114-CV-263183; *Tessa*
27 *Hodge v. Zale Delaware, Inc., d/b/a Piercing Pagoda*, San Bernardino Superior Court Case No
28 CIVVS1301632; *Warren v. Paychex, Inc.*, N.D. Cal. Case No. 3:10-cv-02006; *Tapia v. Zale*

1 *Delaware Inc. et al*, S.D. Cal. Case No. 3:13-cv-01565; and *Benjamin Burgess et al v. Tesoro*
2 *Refining and Marketing Company et al*, C.D. Cal. Case No. 2:10-cv-05870.

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

5 39. I have been approved as class counsel in numerous other wage/hour class actions
6 that have been granted class certification and final approval, including: *Antonio Becerra-Mata v.*
7 *PSC Industrial Outsourcing, LP*, San Benito County Superior Court Case No. CU-15-00030;
8 *Kosal So v. Owens-Brockway Glass Container, Inc.*, Los Angeles County Superior Court Case
9 No. BC608609; *Sarah Rodriguez v. Manpower, Inc.*, Santa Clara County Superior Court Case
10 No. 1-16-CV-294904; *Shannon Sanchez v. American Para Professional Systems, Inc.*, Santa
11 Clara County Superior Court Case No. 17CV306751; *Foaad Hanna v. Equinix, LLC*, Santa Clara
12 County Superior Court Case No. 18CV339365; *Alicia Harris v. 24 Seven LLC*, Los Angeles
13 County Superior Court Case No. BC720144; *Mary Della Maggiora v. Watsonville Community*
14 *Hospital*, Santa Cruz Superior Court Case No. 18CV00191; *Michael Randolph v. Pacific Racing*
15 *Association*, Alameda County Superior Court Case No. RG18908139; *Cody Wirbick v. Sundt*
16 *Construction, Inc.*, U.S. District Court for the Eastern District of California Case No. 2:19-cv-
17 02067-MCE-CKD; *Jose Vasquez Ruiz v. Perdue Foods, LLC*, Sonoma County Superior Court
18 Case No. SCV 264649; *Delmer Wood III v. Reeve Trucking Company Inc.*, San Joaquin
19 Superior Court Case No. STK-CV-UOE-2018-0004414; *Eric Chavez v. Converse, Inc.*, U.S.
20 District Court for the Northern District of California Case No. 15-cv-03746-NC; *Jharett Siron v.*
21 *Raypak, Inc.*, Ventura County Superior Court Case No. 56-2019-00527959-CU-OE-VTA;
22 *Prexxie Pascual and Arturo Fonseca v. Satellite Healthcare, Inc.*, Santa Clara Superior Court
23 Case No. 19CV345211; and *Markham v. Quik Stop Markets, Inc.*, Santa Clara Superior Court
24 Case No. 19CV341582.

25 40. I also second chaired two jury trials where I represented the prevailing defendant.
26 Both cases involved employees who brought claims against their former employers pursuant to
27 the Fair Employment & Housing Act. The cases are: *Jeff Cowell v. Eaton Aerospace LLC et al*,
28 Los Angeles County Superior Court Case No. BC401543; and *Richard Gulden v. Pratt &*

1 *Whitney Rocketdyne Inc. et al.*, Los Angeles County Superior Court Case No. BC468909. More
2 recently, I was lead trial counsel on a PAGA bench trial, in which the plaintiff was the prevailing
3 party.

4 41. To date, I have incurred approximately 33.10 hours in connection with the
5 litigation of this lawsuit. Attached hereto as **Exhibit 5** is a summary of the hours I have spent on
6 this case to date. This figure does not include the estimated hours for appearing at the fairness
7 hearing, conferring and reviewing e-mails with defense counsel and the Settlement
8 Administrator, and answering questions from Aggrieved Employees regarding payments and
9 related issues. I anticipate I will expend approximately five (5) hours working on these matters,
10 in addition to the hours described in Exhibit 5.

11 42. The total lodestar for my hours will be approximately \$23,170 based on an hourly
12 rate of \$700.00 per hour ([33.10 hours + 5 hours] x \$700). I have been approved at an hourly rate
13 of \$700.00 per hour by various Courts, including: *Foaad Hanna v. Equinix, LLC*, Santa Clara
14 County Superior Court Case No. 18CV339365; *Alicia Harris v. 24 Seven LLC*, Los Angeles
15 County Superior Court Case No. BC720144; *Mary Della Maggiora v. Watsonville Community*
16 *Hospital*, Santa Cruz Superior Court Case No. 18CV00191; *Michael Randolph v. Pacific Racing*
17 *Association*, Alameda County Superior Court Case No. RG18908139; *Prexxie Pascual and*
18 *Arturo Fonseca v. Satellite Healthcare, Inc.*, Santa Clara Superior Court Case No. 19CV345211;
19 *Chavez v. Converse, Inc.*, United States District Court, Northern District of California Case No.
20 15-cv-03746-NC; and *Carrillo v. New Balance Athletics, Inc.*, Santa Clara Superior Court Case
21 No. 19CV352469.

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

at Los Angeles, California.

Kristen M. Agnew

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

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]

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

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

7 **A. FACTUAL BACKGROUND AND RECITALS**

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

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

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

27 4. On July 16, 2021, Plaintiff amended his complaint to add a cause of action for
28

1 violation of the California Private Attorneys General Act ("PAGA"), Labor Code § 2898, *et*
2 *seq.* Ojo premised his PAGA claim on Defendant's alleged failure to reimburse business
3 expenses and to comply with Labor Code section 204. Plaintiff sought civil penalties and an
4 award of reasonable attorneys' fees and costs as permitted by the PAGA, Labor Code § 2698, *et*
5 *seq.*

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

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

13 7. Over the course of several months, the Parties conducted arm's length
14 negotiations that resulted in the current settlement. In connection with the Parties' negotiations,
15 Defendant produced, among other things, electronic documents and data related to the mileage
16 reimbursement records for Plaintiff and the Aggrieved Employees, Defendant's mileage
17 reimbursement policy, as well as data relating to the number of potential Aggrieved Employees
18 and the number of pay periods worked by Aggrieved Employees during the applicable PAGA
19 Period.¹ Defendant has confirmed that it altered its payroll practices relative to the entirety of
20 Plaintiff's allegations on or before September 11, 2021, and that not all Aggrieved
21 Employees were impacted by either or both allegedly improper pay practice on each pay period
22 during the PAGA Period.

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

9. The Parties are unaware of any class or other representative action in any other 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 July 31, 2022.

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 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 thousand dollars and zero cents (\$3,000.00) 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, Settlement Administration Costs, and Attorneys Fees and Costs.

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

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

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

13. "Plaintiff" means Plaintiff Adewunmi Ojo.

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

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

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

17. "Settlement Administrator" means Phoenix Settlement Administrators.

C. AMENDMENTS TO COMPLAINT

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

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

D. PAYMENT OF CONSIDERATION

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

2. Escalator Clause. The Maximum Settlement Amount was calculated with, and is

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

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

1 other income earned by the QSF, and (3) satisfy out of the QSF all (i) taxes (including any
2 estimated taxes, interest, or penalties) with respect to the interest or other interest earned by the
3 QSF, and (ii) fees, expenses and costs incurred in connection with the opening and
4 administration of the QSF and the performance of its duties and functions as described in this
5 Agreement. The aforementioned taxes, fees, costs, and expenses shall be treated as, and shall
6 be, included in the costs of administering the QSF and as Claims Administration Expenses. The
7 Parties and the Settlement Administrator shall treat the QSF as coming into existence as a
8 Qualified Settlement Fund on the earliest date permitted as set forth in 26 C.F.R. § 1.468B-
9 1(j)(2)(i), and such election statement shall be attached to the appropriate returns as required by
10 26 C.F.R. § 1.468B-1(j)(e)(ii). The Parties agree to cooperate with the Settlement Administrator
11 and one another to the extent reasonably necessary to carry out the provisions of this Section.

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

21 5. Calculation of Individual Settlement Payment. The Net PAGA Payment shall be
22 used to satisfy Individual Settlement Payments to Aggrieved Employees in accordance with the
23 terms of this Agreement. The Settlement Administrator shall allocate the Individual
24 Settlement Payments by first dividing the Net PAGA Payment by the number of Pivotal Pay
25 Periods in which Aggrieved Employees received the payment of wages during the PAGA
26 Period. That value will then be multiplied by the number of pay periods in which each
27 respective Aggrieved employee received the payment of wages during the PAGA Period.

1 Aggrieved Employees are entitled to 100% of the Net PAGA Payment. Defendant maintains
2 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
8 plans to which any Aggrieved Employee may be eligible, including, but not limited to profit-
9 sharing plans, bonus plans, 401(k) plans, stock purchase plans, vacation plans, sick leave plans,
10 PTO 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 three thousand dollars
15 and zero cents (\$3,000.00) to Plaintiff. The Enhancement Payment shall be paid from the
16 Maximum Settlement Amount, and shall be paid in addition to Plaintiff's Individual Settlement
17 Payment as an Aggrieved Employee. It is understood by Plaintiff that the Court has final
18 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) in litigation costs and expenses ("Attorneys' Fees and Costs"), which shall be paid from the Maximum Settlement Amount. The Settlement Administrator shall issue an IRS Form 1099 to Plaintiff's Counsel reflecting the awarded attorneys' fees, costs, and expenses. The Parties understand that the Court makes the final determination on the award of Attorneys' Fees and Costs, and that any portion of these amounts not awarded as Attorneys' Fees and Costs shall be added to the PAGA Penalties Fund and distributed to Aggrieved Employees and LWDA as provided in this Agreement.

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

E. ADMINISTRATION OF SETTLEMENT

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

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

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

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

13 c. Print and issue Individual Settlement Payment checks;

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

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

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

21 g. Prepare and issue 1099 Forms; and

22 h. Perform such other tasks necessary to effectuate the terms of this
23 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 in which the employee received payment of wages during the PAGA Period.

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

12 4. Mailing of Individual Settlement Payments to Aggrieved Employees: The
13 Settlement Administrator will issue each Aggrieved Employee a check for his or her share of
14 the PAGA Penalties Fund, along with an explanatory letter attached hereto as Exhibit A.
15 Checks will remain negotiable for 180 days. Any checks returned as non-deliverable on or
16 before the check cashing deadline will be sent promptly via regular First-Class U.S. Mail to the
17 forwarding address affixed thereto. Funds represented by settlement checks that remained un-
18 cashed for more than 180 days after issuance shall be paid out pursuant to California Code of
19 Civil Procedure section 384 to the following *cy pres* recipient: Legal Aid at Work. Neither the
20 Parties 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
23 Maximum Settlement Amount by Defendant, Plaintiff and all Aggrieved Employees, hereby do
24 and shall be deemed to have fully, finally and forever released, settled, compromised,
25 relinquished and discharged, to the fullest extent possible, any and all of the Released Parties of
26 and from any and all Released Claims. With respect to the Released Claims only, the
27 Aggrieved Employees waive any and all rights and benefits under California Civil Code

1 Section 1542, which reads: "A general release does not extend to claims that the creditor or
2 releasing party does not know or suspect to exist in his or her favor at the time of
3 executing the release and that, if known by him or her, would have materially affected his
4 or her settlement with the debtor 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
12 causes of action against Defendant and Released Parties—which shall include without
13 limitation any and all claims which in any way relate to his employment with Defendant, as
14 well as his termination from that employment (if any), under California or federal law, in tort,
15 common law, statute, contract, or equity, whether pled in the Complaint or not, including, but
16 not limited to any claims under the Title VII of the Civil Rights Act of 1964, the Civil Rights
17 Act of 1991, the Americans With Disabilities Act, the Genetic Information Nondiscrimination
18 Act, the Age Discrimination in Employment Act, the Families First Coronavirus Response Act,
19 the Fair Labor Standards Act, the California Fair Employment and Housing Act, the California
20 Labor Code, the California Fair Employment and Housing Act, or any California Industrial
21 Welfare Commission wage order, based on any act, omission, event, occurrence, or
22 nonoccurrence by Defendant or Released Parties to the date of Plaintiff's execution of the
23 Agreement, except for any law that prohibit waiver or release of such claims without Court or
24 agency approval. Plaintiff further expressly waives and relinquishes, to the fullest extent
25 permitted by law, the provisions, rights and benefits of Section 1542 of the California Civil
26 Code, which provides: "A general release does not extend to claims that the creditor or
27 releasing party does not know or suspect to exist in his or her favor at the time of

1 executing the release and that, if known by him or her, would have materially affected his
2 or her settlement with the debtor or released party.” Having been informed of this
3 provision and his rights under it, Plaintiff waives and relinquishes the provisions of California
4 Civil Code section 1542 with respect to this Agreement and his release of any and all of his
5 individual claims and causes of action as provided herein.²

6 **G. MISCELLANEOUS**

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

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

22 ² By entering into this Agreement, Plaintiff further understands and agrees that he: (a) has read
23 this Agreement carefully and completely; (b) understands and knowingly and voluntarily agrees
24 to the terms, conditions, and waivers set forth in this Agreement; (c) is hereby advised in writing
25 to consult with an attorney of his/her choice prior to executing this Agreement and has had
26 ample opportunity and sufficient time to seek such advice; (d) agrees that the Payment provided
27 in this Agreement is in addition to any consideration to which he/she may already be entitled;
28 (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 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 OR AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR
2 WAS INTENDED TO BE, NOR SHALL ANY SUCH COMMUNICATION OR
3 DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX
4 ADVICE WITHIN THE MEANING OF UNITED STATES TREASURY DEPARTMENT
5 CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING
6 PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS OR ITS OWN, INDEPENDENT
7 LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN
8 CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO THIS
9 AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY OR
10 ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT ENTITLED
11 TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR
12 ADVISER TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE
13 IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR
14 ADVISER TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION THAT
15 PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY'S OR ADVISER'S
16 TAX STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY
17 BINDING) UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX
18 TREATMENT OR TAX STRUCTURE OF ANY TRANSACTION, INCLUDING ANY
19 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

1 positions. Notwithstanding the above, in such event, the Parties will meet and confer to address
2 any concerns raised by the Court to determine whether and to what extent the Action may be
3 resolved in a manner consistent with the Parties' intent and consistent with the Court's
4 concerns.

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

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

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

15 8. Authorization to Enter Into Settlement Agreement. Counsel for all Parties
16 warrant and represent they are expressly authorized by the Parties whom they represent to
17 negotiate this Settlement Agreement and to take all appropriate action required or permitted to
18 be taken by such Parties pursuant to this Settlement Agreement to effectuate its terms and to
19 execute any other documents required to effectuate the terms of this Settlement Agreement. The
20 Parties and their counsel will cooperate with each other and use their best efforts to effect the
21 implementation of the Settlement. If the Parties are unable to reach agreement on the form or
22 content of any document needed to implement the Settlement, or on any supplemental
23 provisions that may become necessary to effectuate the terms of this Settlement, the Parties
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.
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12. Acknowledgement that the Settlement is Fair and Reasonable. The Parties believe this Settlement Agreement is a fair, adequate, and reasonable settlement of the Action and have arrived at this Settlement after arm's-length negotiations. The Parties further acknowledge that they are each represented by competent counsel and that they have had an opportunity to consult with their counsel regarding the fairness and reasonableness of this Settlement.

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

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

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

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

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

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

22 20. Denial of Liability. The Parties expressly recognize that the making of this
23 agreement does not in any way constitute an admission or concession of wrongdoing on the part
24 of Defendant. Nothing in this Settlement, nor any action taken in implementation thereof, nor
25 any statements, discussions or communications, nor any materials prepared, exchanged, issued
26 or used during the course of this Action, is intended by the Parties to, nor will any of the
27 foregoing constitute, be introduced, be used or be admissible in any way in any other judicial,
28

1 arbitral, administrative, investigative, or other forum or proceeding, as evidence of any
2 violation of any federal, state, or local law, statute, ordinance, regulation, rule or executive
3 order, or any obligation or duty at law or in equity. Notwithstanding the foregoing, this
4 agreement may be used in any proceeding in the Court that has as its purpose the interpretation,
5 implementation, or enforcement of the Settlement or any orders or judgments of the Court
6 entered into in connection therewith.

7
8 **IN WITNESS WHEREOF**, the undersigned Settling Parties and their duly authorized
9 representatives accept and agree to the terms of this Agreement and hereby execute it
10 voluntarily and with a full understanding of its consequences.

11 DATED: 9/6/2022

PLAINTIFF ADEWUNMI OJO

DocuSigned by:

Adewunmi Ojo

Plaintiff Adewunmi Ojo

15 DATED: 09/16/2022

**DEFENDANT PINNACLE LIGHT
INDUSTRIAL, LLC**

Erin Stewart

By: Erin Stewart

APPROVED AS TO FORM:

21 DATED: 9/6/2022

DIVERSITY LAW GROUP, P.C.

Kristen M. Agnew

Attorneys for Plaintiff and the Aggrieved
Employees

1 DATED: 10/10/2022

WICK PHILLIPS GOULD & MARTIN LLP

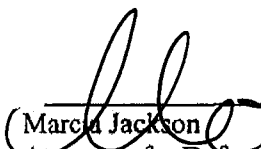
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5 Attorneys for Defendant
6 Pinnacle Light Industrial, LLC
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EXHIBIT A

<<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. 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 (\$3,000), 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 penalties.
2 Your portion was calculated based on the number of pay periods you worked during the
relevant time period.

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

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

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

15 Sincerely,
16

17 [NAME AND TITLE OF SIGNATORY]
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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.
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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 3

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 ~~Class~~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]

**FIRST ~~SECOND~~ AMENDED CLASS AND
REPRESENTATIVE ACTION COMPLAINT
FOR VIOLATION OF LABOR CODE § 2698
ET SEQ.:**

~~VIOLATION OF LABOR CODE § 2802~~

**~~VIOLATION OF BUSINESS AND
PROFESSIONS CODE § 17200 ET SEQ.~~**

**~~VIOLATION OF LABOR CODE § 2698 ET.
SEQ.~~**

DEMAND OVER \$25,000.00

1 Plaintiff Adewunmi Ojo (“Plaintiff”), hereby submits this ~~First~~Second Amended ~~Class~~
2 ~~and~~ 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 ~~the class of all other~~ similarly situated current and former aggrieved employees of
5 Defendant for all ~~damages and~~ penalties arising from Defendant’s violations of the California
6 Labor Code as follows:

7 INTRODUCTION

8 1. This ~~class and~~ representative action is within the Court’s jurisdiction under
9 California Labor Code sections 204, 2802 and 2698 *et seq.*, and the California Industrial
10 Welfare Commission’s (“IWC”) Wage Orders, ~~and Business and Professions Code § 17200 et~~
11 ~~seq. (“UCL”).~~

12 2. This Complaint challenges systemic illegal employment practices resulting in
13 violations of the California Labor Code ~~and the UCL~~ against employees of Defendant.

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

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

22 ~~5.4. The policies, practices, and customs of Defendant described above and below~~
23 ~~have resulted in unjust enrichment of Defendant and an unfair business advantage over~~
24 ~~businesses that routinely adhere to the strictures of the California Labor Code and the UCL.~~

25 JURISDICTION AND VENUE

26 ~~6.5.~~ The Court has jurisdiction over the violations of the California Labor Code
27 sections 204, 2802 and 2698 *et seq.* ~~and the UCL.~~

28 ~~7.6.~~ Venue is proper in Orange County because Defendant maintains operations in

Orange County.

PARTIES

8.7. Plaintiff is a current employee of Defendant.

9.8. Plaintiff was and is the victim of the policies, practices, and customs of Defendant complained of in this action in ways that have deprived him of the rights guaranteed by California Labor Code sections 204, 2802 and 2698 *et seq.* and the applicable IWC Wage Orders ~~and the UCL~~.

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

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

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

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

14.13. At all times herein mentioned, each of said Defendants participated in the doing of the acts hereinafter alleged to have been done by the named Defendant; and furthermore, the Defendants, and each of them, were the agents, servants and employees of each of the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned, were

1 acting within the course and scope of said agency and employment.

2 ~~15.14.~~ Plaintiff is informed and believes and based thereon alleges that at all times
3 material hereto, each of the Defendants named herein was the agent, employee, alter ego and/or
4 joint venturer of, or working in concert with each of the other co-defendants and was acting
5 within the course and scope of such agency, employment, joint venture, or concerted activity.
6 To the extent said acts, conduct, and omissions were perpetrated by certain Defendants, each of
7 the remaining Defendants confirmed and ratified said acts, conduct, and omissions of the acting
8 Defendants.

9 ~~16.15.~~ At all times herein mentioned, Defendants, and each of them, were members of,
10 and engaged in, a joint venture, partnership and common enterprise, and acting within the course
11 and scope of, and in pursuance of, said joint venture, partnership and common enterprise.

12 ~~17.16.~~ At all times herein mentioned, the acts and omissions of various Defendants, and
13 each of them, concurred and contributed to the various acts and omissions of each and all of the
14 other Defendants in proximately causing the injuries and damages as herein alleged. At all times
15 herein mentioned, Defendants, and each of them, ratified each and every act or omission
16 complained of herein. At all times herein mentioned, the Defendants, and each of them, aided
17 and abetted the acts and omissions of each and all of the other Defendants in proximately causing
18 the damages as herein alleged.

19 **CLASS ACTION ALLEGATIONS**

20 ~~18.—**Definition:** The named individual Plaintiff seeks class certification, pursuant to~~
21 ~~California Code of Civil Procedure section 382, of the following class: all current and former~~
22 ~~employees of Defendant in the State of California who were employed by Defendant and sought~~
23 ~~reimbursement for mileage expenses from Defendant at any time between May 19, 2017,~~
24 ~~through the present (“Class” or “Class Members”).~~

25 ~~19.—**Numerosity and Ascertainability:** The members of the Class are so numerous~~
26 ~~that joinder of all members would be impractical, if not impossible. The identity of the members~~
27 ~~of the Class is readily ascertainable by review of Defendant’s records, including payroll records.~~
28 ~~Plaintiff alleges that Defendant failed to reimburse employees for all business-related expenses,~~

1 including the costs associated with use of their personal vehicles for work related purposes, in
2 violation of Labor Code section 2802.

3 20. — ~~**Adequacy of Representation:**~~ The named Plaintiff is fully prepared to take all
4 necessary steps to represent fairly and adequately the interests of the Class defined above.
5 Plaintiff's attorneys are ready, willing and able to fully and adequately represent the Class and
6 individual Plaintiff. Plaintiff's attorneys have prosecuted and settled wage and hour class actions
7 in the past and currently have a number of wage and hour class actions pending in California
8 courts.

9 21. — ~~**Common Question of Law and Fact:**~~ There are predominant common questions
10 of law and fact and a community of interest amongst Plaintiff and the claims of the Class
11 concerning Defendant's policy and practice of failing to reimburse employees for all business-
12 related expenses, including the costs associated with use of their personal vehicles for work
13 related purposes, in violation of Labor Code section 2802.

14 22. — ~~**Typicality:**~~ The claims of Plaintiff are typical of the claims of all members of the
15 Class in that Plaintiff has suffered the harm alleged in this Complaint in a similar and typical
16 manner as the Class Members. As a matter of policy and procedure, Defendant required Plaintiff
17 to use his personal vehicle for work related purposes. Defendant, however, failed to properly
18 reimburse Plaintiff for his vehicle expenses, such as mileage, gas, and wear and tear to his
19 vehicle. More specifically, while Defendant reimbursed Plaintiff for some miles at \$0.54 cents
20 per mile, other miles were reimbursed at a much lower rate. Accordingly, Plaintiff is a member
21 of the Class and has suffered the alleged violations of California Labor Code section 2802.

22 23. — The California Labor Code and upon which Plaintiff bases these claims is broadly
23 remedial in nature. These laws and labor standards serve an important public interest in
24 establishing minimum working conditions and standards in California. These laws and labor
25 standards protect the average working employee from exploitation by employers who may seek
26 to take advantage of superior economic and bargaining power in setting onerous terms and
27 conditions of employment.

28 24. — The nature of this action and the format of laws available to Plaintiff and

1 ~~members of the Class identified herein make the class action format a particularly efficient and~~
2 ~~appropriate procedure to redress the wrongs alleged herein. If each employee were required to~~
3 ~~file an individual lawsuit, the corporate Defendant would necessarily gain an unconscionable~~
4 ~~advantage since it would be able to exploit and overwhelm the limited resources of each~~
5 ~~individual Plaintiff with Defendant's vastly superior financial and legal resources. Requiring~~
6 ~~each Class member to pursue an individual remedy would also discourage the assertion of lawful~~
7 ~~claims by employees who would be disinclined to file an action against their former and/or~~
8 ~~current employer for real and justifiable fear of retaliation and permanent damage to their careers~~
9 ~~at subsequent employment.~~

10 25. — ~~The prosecution of separate actions by the individual class members, even if~~
11 ~~possible, would create a substantial risk of (a) inconsistent or varying adjudications with respect~~
12 ~~to individual Class members against Defendant and which would establish potentially~~
13 ~~incompatible standards of conduct for Defendant, and/or (b) adjudications with respect to~~
14 ~~individual Class members which would, as a practical matter, be dispositive of the interest of the~~
15 ~~other Class members not parties to the adjudications or which would substantially impair or~~
16 ~~impede the ability of the Class members to protect their interests. Further, the claims of the~~
17 ~~individual members of the Class are not sufficiently large to warrant vigorous individual~~
18 ~~prosecution considering all of the concomitant costs and expenses.~~

19 26. — ~~Such a pattern, practice and uniform administration of corporate policy regarding~~
20 ~~illegal employee compensation described herein is unlawful and creates an entitlement to~~
21 ~~recovery by the Plaintiff and the Class identified herein, in a civil action, for unpaid wages,~~
22 ~~including interest thereon, applicable penalties, reasonable attorneys' fees, and costs of suit~~
23 ~~according to the mandate of California Labor Code section 2802, the applicable IWC Wage~~
24 ~~Orders and Code of Civil Procedure section 1021.5.~~

25 27. — ~~Proof of a common business practice or factual pattern, which the named Plaintiff~~
26 ~~experienced and is representative of, will establish the right of each of the members of the Class~~
27 ~~to recovery on the causes of action alleged herein.~~

28 28. — ~~The Class is commonly entitled to a specific fund with respect to the~~

1 compensation illegally and unfairly retained by Defendant. The Class is commonly entitled to
2 restitution of those funds being improperly withheld by Defendant. This action is brought for the
3 benefit of the entire class and will result in the creation of a common fund.

4 **FIRST CAUSE OF ACTION**

5 **VIOLATION OF LABOR CODE § 2802**

6 **(BY PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS)**

7 29. — Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
8 though fully set forth herein.

9 30. — This cause of action is brought pursuant to Labor Code section 2802. At all
10 relevant times, Defendant regularly failed to reimburse and indemnify Plaintiff and Class
11 Members for expenses incurred in the performance of their duties, including, but not limited to,
12 expenses associated with travel mileage. Defendant required Plaintiff and Class Members to use
13 their personal vehicles to travel in the course of performing their duties. Defendant, however,
14 failed to properly reimburse Plaintiff and Class Members for their vehicle expenses such as
15 mileage, gas, and wear and tear to their vehicles.

16 31. — Defendant had a uniform corporate pattern, practice and procedure regarding the
17 above practices in violation of Labor Code section 2802.

18 32. — Such a pattern, practice and uniform administration of corporate policy regarding
19 illegal employee compensation as described herein is unlawful and creates an entitlement to
20 recovery by Plaintiff and the Class in a civil action, for the unpaid balance of the full amount of
21 damages owed, including interest thereon, penalties, attorneys' fees, and costs of suit according
22 to the mandate of California Labor Code section 2802.

23 **SECOND CAUSE OF ACTION**

24 **VIOLATION OF BUSINESS AND PROFESSIONS CODE § 17200 ET SEQ.**

25 **(BY PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS)**

26 33. — Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
27 though fully set forth herein.

28 34. — Defendant engaged and continues to engage in unfair and unlawful business

practices in California by practicing, employing, and utilizing the employment practices outlined above, inclusive, to wit, by failing to reimburse employees for all business-related expenses, including the costs associated with use of their personal vehicles for work related purposes, in violation of Labor Code section 2802.

35. Defendant's utilization of such unfair and unlawful business practices constitutes unfair, unlawful competition and provides an unfair advantage over Defendant's competitors.

36. Plaintiff seeks, on behalf of himself and other similarly situated members of the Class, full restitution of monies, as necessary and according to proof, to restore any and all monies withheld, acquired and/or converted by the Defendant by means of the unfair practices complained of herein.

37. Plaintiff is informed and believes, and on that basis alleges, that at all times herein mentioned Defendant has engaged in unlawful, deceptive and unfair business practices, as proscribed by California Business and Professions Code section 17200, *et seq.*, including those set forth herein above thereby depriving Plaintiff and other members of the Class the minimum working condition standards and conditions due to them under the California laws as specifically described therein.

THIRD CAUSE OF ACTION

Violation of Labor Code §§ 2698 Et Seq.

(By Plaintiff and Aggrieved Employees Against All Defendants)

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

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

wages to employees, in violation of Labor Code section 204.

40.19. At all relevant times, Defendant regularly failed to reimburse and indemnify Plaintiff and Aggrieved Employees for expenses incurred in the performance of their duties, including, but not limited to, expenses associated with travel mileage. Defendant required Plaintiff and Aggrieved Employees to use their personal vehicles to travel in the course of performing their duties. Defendant, however, failed to properly reimburse Plaintiff and Aggrieved Employees for their vehicle expenses such as mileage, gas, and wear and tear to their vehicles.

41.20. Additionally, Defendant failed to pay earned wages to Plaintiff and Aggrieved Employees in a timely manner. More specifically, wages were paid more than seven days after the close of the payroll period, in violation of Labor Code section 204. 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 ten days after the end of the pay period.

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

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

PRAYER FOR RELIEF

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

~~1. — For an order certifying the proposed Class;~~

~~2. — For an order appointing Plaintiff as the representative of the Class as described herein;~~

~~3. — For an order appointing counsel for Plaintiff as Class counsel;~~

~~4. — Upon the First Cause of Action, for damages pursuant to California Labor Code~~

1 ~~section 2802 and for costs and attorneys' fees;~~

2 ~~5. Upon the Second Cause of Action, for restitution to Plaintiff and other similarly~~
3 ~~affected members of the general public of all funds unlawfully acquired by Defendants by means~~
4 ~~of any acts or practices declared by this Court to be in violation of California Business &~~
5 ~~Professions Code section 17200 et seq.;~~

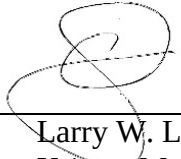
6 ~~6.1. Upon the Third Cause of Action,~~ for civil penalties according to proof pursuant to
7 Labor Code section 2698, et seq., and for costs and attorneys' fees;

8 ~~7.2.~~ On all causes of action, for attorneys' fees and costs as provided by California
9 Labor Code sections 2699 and 2802, and Code of Civil Procedure section 1021.5; and

10 ~~8.3.~~ For such other and further relief as the Court may deem just and proper.
11

12 DATED: ~~July 16, 2021~~ June 7, 2022

DIVERSITY LAW GROUP, P.C.

13
14 By: 

Larry W. Lee

Kristen M. Agnew

Nicholas Rosenthal

Attorneys for Plaintiff and the ~~Class~~ Aggrieved
Employees

EXHIBIT 4

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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					

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Slip Listing

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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					

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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 5

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 6