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

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

Plaintiffs,

vs.

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

Defendants.

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

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION TO APPROVE THE SECOND
AMENDED JOINT STIPULATION OF
SETTLEMENT AND RELEASE UNDER
THE PRIVATE ATTORNEYS GENERAL
ACT**

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

Complaint Filed: May 19, 2021
Trial Date: None

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

2 **PLEASE TAKE NOTICE** that on June 7, 2024 at 1:30 p.m., or as soon thereafter as the
3 matter may be heard, before the Honorable Lon F. Hurwitz, judge presiding, in Department
4 CX103 of the above referenced Court, located at 751 West Santa Ana Boulevard, Santa Ana,
5 California 92701, Plaintiff Adewunmi Ojo (“Plaintiff”) will move for an Order approving the
6 Second Amended Joint Stipulation of Settlement and Release Under the Private Attorneys
7 General Act (“Second Amended Agreement” or “Second Amended Settlement Agreement”) in
8 this matter.

9 This Motion is made on the grounds that the original Joint Stipulation of Settlement and
10 Release Under the Private Attorneys General Act (“Settlement Agreement”) contained a material
11 error with respect to the method by which the administrator should calculate Individual
12 Settlement Payments to Aggrieved Employees and determining whether the agreed-upon
13 escalator clause had been (or should be) triggered.

14 Plaintiff and Defendant Pinnacle Light Industrial, LLC’s (“Defendant”) (collectively, the
15 “Parties”) negotiated the terms of the settlement with the mutual understanding that there was a
16 maximum of 875 pay periods in which employees could possibly have received the payment of
17 wages and/or expense reimbursement payments (“Pivotal Pay Periods”) during the period of *May*
18 *13, 2020 through October 31, 2021*. However, the original Settlement Agreement called for the
19 administrator to calculate the Individual Settlement Payments based on the number of Pivotal
20 Pay Periods assigned to each employee during the period of *May 13, 2020 through July 31,*
21 *2022*, consistent with the initial release period that the parties negotiated.

22 The Second Amended Settlement Agreement corrects this error. The Second Amended
23 Settlement Agreement provides that the release period is the same as the PAGA Period (May 13,
24 2020 through October 31, 2021), and calls for the Individual Settlement Payments to be
25 calculated using the number of Pivotal Pay Periods during the PAGA Period.

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1 This Motion will be based on this notice of motion, the attached memorandum of points
2 and authorities, the accompanying declarations of Kristen M. Agnew, Adewunmi Ojo and Josey
3 Lawrence of Phoenix Settlement Administrators, the records and file herein, and on such other
4 evidence as may be presented at the hearing of the motion.

5 DATED: May 8, 2024

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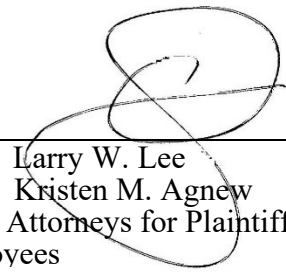
6
7 By: 
8 Larry W. Lee
9 Kristen M. Agnew
Attorneys for Plaintiff and Aggrieved
Employees

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I. INTRODUCTION & PROCEDURAL HISTORY¹

Plaintiff Adewunmi Ojo (“Plaintiff”) filed this representative Private Attorneys General Act (“PAGA”) against his former employer, Defendant Pinnacle Light Industrial, LLC (“Defendant”). As set forth in the operative Second Amended Complaint, Plaintiff alleges a single cause of action for violation of the PAGA predicated on Defendant’s alleged violation of Labor Code sections 204 and 2802. After extensive arm’s length negotiations, Plaintiff and Defendant (collectively, the “Parties”) reached a settlement in principle and entered into the Joint Stipulation of Settlement and Release Under the Private Attorneys General Act (“Settlement Agreement”).²

On June 14, 2023, the Court granted Plaintiff's Motion to Approve PAGA Settlement. [ROA # 99.] Subsequently, the Parties initiated the administration process, the first step of which was for Defendant to transmit the number of pay periods in which Aggrieved Employees received the payment of wages and/or expense reimbursements. Upon reviewing the data provided to the administrator, the Parties realized that they had made a material error in the Settlement Agreement. The Settlement Agreement incorrectly required the Administrator to assess penalties for pay periods outside of the time when the alleged violations could have occurred (May 13, 2020 through October 31, 2021), resulting in an incorrect triggering of the escalator clause that essentially doubled the agreed total settlement amount.³

¹ A comprehensive summary of the Action’s procedural posture is set forth in the concurrently filed Declaration of Kristen M. Agnew in Support of Plaintiff’s Motion to Approve the Second Amended Joint Stipulation of Settlement and Release Under the Private Attorneys General Act (“Agnew Declaration”) at paragraphs 2 to 27.

² The Court approved Settlement Agreement is attached as Exhibit A to the Declaration of Kristen M. Agnew, filed on October 21, 2022 [ROA # 59].

³ More specifically, the Settlement Agreement incorrectly provided that the Individual Settlement Payments to Aggrieved Employees would be premised on the number of Pivotal Pay Periods — pay periods in which the alleged aggrieved employees received the payment of wages and/or expense reimbursements—during the period of *May 13, 2020 through July 31, 2022*, as opposed to the maximum 875 pay periods during which potential violations could have occurred (May 13, 2020 through October 31, 2021). With the addition of the 950 pay periods well after the relevant policies had been changed, the escalator clause was triggered and would have required a 108.57% increase to the Maximum Settlement Amount. This was not the intention of the Parties. *See* Agnew Decl. ¶¶ 18, 19.

1 The Parties subsequently executed an Amended Joint Stipulation of Settlement and Release
2 Under the Private Attorneys General Act (“Amended Agreement” or “Amended Settlement
3 Agreement”) to remedy this error.⁴ Consistent with the data points used to negotiate the settlement,
4 the Amended Agreement: (1) limited the pay periods to be considered for purposes of calculating
5 the Individual Settlement Payments to the period of May 13, 2020, through October 31, 2021; and
6 (2) narrowed the definition of “Aggrieved Employees” to “current and former employees of
7 Defendant in the State of California who were paid wages at any time from May 13, 2020, through
8 October 31, 2021.” *See* Amended Settlement §§ B-2, C-2, C-5.

9 On October 25, 2023, Plaintiff filed a Motion to Approve the Amended Joint Stipulation
10 of Settlement and Release Under the Private Attorneys General Act [ROA #107]. In a Minute
11 Order dated February 2, 2024, the Court requested supplemental briefing on the scope of the
12 negotiated PAGA Period. More specifically, “why the original Settlement Agreement defined the
13 PAGA Period as ‘May 13, 2020, through July 31, 2022’ if the parties’ negotiation only
14 contemplated pay periods from May 13, 2020, through October 31, 2021.”

15 The Parties thereafter submitted a Joint Statement in Response to the Court’s February 2,
16 2024 Minute Order [ROA # 126]. In the Joint Statement, the Parties explained that “[a]ccording
17 to the documents produced during the informal exchange of discovery, Defendant altered its
18 payroll practices relative to the entirety of Plaintiff’s allegations, as of September 11, 2021.”
19 Therefore, no additional injuries or penalties could have accrued beyond September 11, 2021.
20 However, the Parties negotiated a PAGA Period—which also served as the release period—
21 beyond the date range that was used to determine the number of pay periods at issue. The Parties
22 provided legal authority for extending the PAGA Period beyond the liability period at issue.

23 In an abundance of caution, and to avoid any further confusion, the Parties, also entered a
24 Second Amended Joint Stipulation of Settlement and Release Under the Private Attorneys General

25
26 ⁴ A true and correct copy of the Amended Settlement Agreement is attached as Exhibit 1 to the
27 Declaration of Kristen M. Agnew in Support of Plaintiff’s Motion to Approve the Amended
28 Joint Stipulation of Settlement and Release Under the Private Attorneys General Act, filed on
October 25, 2023 [ROA # 108]. A detailed comparison of the Settlement Agreement and the
Amended Settlement Agreement is attached to the Agnew Declaration as Exhibit 2.

1 Act (“Second Amended Agreement” or “Second Amended Settlement Agreement”). The
2 following material changes appear in the Second Amended Settlement Agreement: (1) the “PAGA
3 Period” was narrowed to mean “May 13, 2020, through October 31, 2021”; (2) the temporal scope
4 of the “Released Claims” was limited to the PAGA Period; and (3) the Notice to Aggrieved
5 Employees incorporates the revisions to the “Released Claims.” With these modifications, the
6 PAGA Period would be the only applicable time period and would be used to identify Aggrieved
7 Employees, calculate Individual Settlement Payments to Aggrieved Employees, and determine the
8 temporal scope of the Released Claims.

9 The Parties respectfully request that the Court approve the Second Amended Joint
10 Stipulation of Settlement and Release Under the Private Attorneys General Act. A true and correct
11 copy of the executed Second Amended Settlement Agreement is attached to the Agnew
12 Declaration as Exhibit 3.

13 **II. OVERVIEW OF THE SETTLEMENT NEGOTIATIONS**

14 **A. Summary of the Alleged Labor Code Violations.**

15 As set forth in the PAGA Notice and the Operative Second Amended Complaint, Plaintiff
16 alleges that Defendant: (1) failed to pay wages in a timely matter, in violation of Labor Code
17 section 204; and (2) failed to reimburse mileage expenses incurred due to driving personal
18 vehicles for work related purposes, in violation of California Labor Code section 2802. *See*
19 *Agnew Decl.* ¶¶ 2, 7, 10, 15, Ex. 1.

20 **B. The Parties Engage in Informed Settlement Negotiations.**

21 On or about September 16, 2022, the Parties executed a Joint Stipulation of Settlement
22 and Release Under the Private Attorneys General Act, California Labor Code § 2698, et seq.
23 (“Settlement Agreement”). *See Agnew Decl.* ¶ 14. Prior to entering into the settlement, the
24 Parties met and conferred regarding the underlying merits of the case and engaged in arm’s
length negotiations. *See id* at ¶¶ 6-12.

25 **1. The Alleged Section 2802 Violation.**

26 Plaintiff contends that Defendant reimbursed mileage expenses at the standard IRS
27 reimbursement rate for up to 225 miles in a pay period. *See Agnew Decl.* ¶ 7. However, when
28 employees drove more than 225 miles in a pay period, Plaintiff contends that Defendant

1 reimbursed the additional mileage at a reduced rate. *See id.* Effective September 11, 2021,
2 Defendant reimbursed **all** mileage at the standard IRS reimbursement rate. *See id.* at ¶ 9.

3 Defendant produced mileage reimbursement data for employees during the period of May
4 13, 2020 to September 11, 2021. *See Agnew Decl.* ¶ 8. The data shows that there are
5 approximately 835 pay periods in which individuals sought mileage reimbursements. *See id.* In
6 260 out of the 835 pay periods, the records suggest that the employees drove fewer than 225
7 miles. *See id.* Thus, based on Defendant's records there are only approximately 575 pay periods
8 in which employees may have been reimbursed at a rate below the standard IRS rate. *See id.*
9 However, Defendant further contends that, in some instances during these 575 pay periods, it
10 actually compensated all mileage requests at the standard IRS rate. *See id.* Thus, the number of
11 potential violations is less than 575. *See id.*

12 **2. The Alleged Section 204 Violation.**

13 Plaintiff alleges that Defendant had a policy of paying wages to employees on or after the
14 eighth day following the close of the pay period, in violation of Labor Code section 204. *See*
15 *Agnew Decl.* ¶ 10. Although Defendant disputes that its policy was ever unlawful, Defendant
16 maintains that, in an abundance of caution and for business reasons, it changed its payroll
17 practices to pay employees within six days of the close of the pay period, effective June 27,
18 2021. *See id.* Defendant produced a copy of the weekly payroll reschedule to establish this
19 modification in policy. *See id.*

20 **3. Due to Defendant's Change in Payroll Policies, There Are, in Fact, Fewer than 875 Potential Pay Periods at Issue.**

21 According to the documents produced during the informal exchange of discovery,
22 Defendant altered its payroll practices relative to the entirety of Plaintiff's allegations. *See*
23 *Agnew Decl.* ¶¶ 9-11. Thus, as argued by Defendant, any award of civil PAGA penalties would
24 be limited to the period of May 13, 2020 through September 11, 2021 at the latest. *See id.* at ¶
25 11.

26 Although Defendant cured the alleged violations as of September 11, 2021, for the
27 purpose of settlement negotiations, the Parties agreed to negotiate a settlement based on the
28 number of pay periods in which the alleged aggrieved employees received the payment of wages
and/or expense reimbursements ("Pivotal Pay Periods") during the period of May 13, 2020

through October 31, 2021. *See* Agnew Decl. ¶ 12. By extending the relevant time period through October 31, 2021, the maximum number of possible pay periods increased from 835 to 875. *See id.* Thus, the Parties negotiated the terms of the settlement with the understanding that there was a maximum of 875 pay periods at issue. *See id.*

III. SUMMARY OF THE PROPOSED REVISIONS TO THE SETTLEMENT

Under the terms of the Second Amended Settlement Agreement, the Maximum Settlement Amount remains Sixty Thousand Dollars (\$60,000.00). *See* Agnew Decl., Ex. 3 (Second Amended Settlement) at § B-9. Below is a summary of the material revisions made in the Second Amended Settlement Agreement. A detailed comparison of the Settlement Agreement and the Second Amended Settlement Agreement is attached to the Agnew Declaration as Ex. 4 (Redline Settlement Agreement).

	Settlement Agreement	Second Amended Settlement Agreement
PAGA Period	May 13, 2020 through July 31, 2022. <i>See</i> Agnew Decl., Ex. 4 (Redline Settlement Agreement) at § B-11.	May 13, 2020, <i>through October 31, 2021</i> . <i>See</i> Agnew Decl., Ex. 3 (Second Amended Settlement) at § B-11. ⁵
Definition of Aggrieved Employees	The Court approved the settlement as to the following group of employees, “all current and former California non-exempt employees of Defendant who were paid wages by Defendant at any time during the [period of May 13, 2020 through July 31, 2022]” (collectively, “Aggrieved Employees”). [ROA # 99.] As defined in the original Settlement Agreement, Defendant’s records reflect that there are thirty-six (36) Aggrieved Employees.	Narrows the definition of “Aggrieved Employees” to “current and former employees of Defendant in the State of California who were paid wages at any time from May 13, 2020 <i>through October 31, 2021</i>.” <i>See</i> Agnew Decl., Ex. 3 (Second Amended Settlement) at § B-2. As narrowed in the Second Amended Settlement Agreement, there are a maximum of twenty-four (24) possible Aggrieved Employees. <i>See</i> Agnew Decl. ¶ 32.

⁵ The October 31, 2021 end-date is significant because Defendant modified its payroll policies and practices over a month *prior* to this date. *See* Section II-B, *supra*. Thus, as argued by Defendant, even if Plaintiff prevailed on the merits, Aggrieved Employees could not recover civil penalties past the date the policies were actually changed. *See* Agnew Decl. ¶ 11.

	Settlement Agreement	Second Amended Settlement Agreement
Temporal Scope of Release⁶	May 13, 2020 to July 31, 2022. <i>See</i> Agnew Decl., Ex. 4 (Redline Settlement Agreement) at § B-14.	May 13, 2020, <i>through October 31, 2021</i> . <i>See</i> Agnew Decl., Ex. 3 (Second Amended Settlement) at § B-14.
The Individual Settlement Payments to Aggrieved Employees	Individual Settlement Payment to be calculated using the number of Pivotal Pay Periods during the period of May 13, 2020, through July 31, 2022. <i>See</i> Agnew Decl., Ex. 4 (Redline Settlement Agreement) at § D-5.	Individual Settlement Payments to be calculated using the number of Pivotal Pay Periods during the period of May 13, 2020, <i>through October 31, 2021</i> . <i>See</i> Agnew Decl., Ex. 3 (Second Amended Settlement) at § D-5.
The Escalator Clause	The Maximum Settlement Amount is premised on “Defendant’s representation that certain Aggrieved Employees received the payment of wages and/or expense reimbursements (including for mileage, some of which were paid at a rate lower than the applicable IRS standard rate), in a maximum of 875 pay periods” during the period of May 13, 2020, through July 31, 2022. <i>See</i> Agnew Decl., Ex. 4 (Redline Settlement Agreement) at § D-2.	The Maximum Settlement Amount is premised on “Defendant’s representation that certain Aggrieved Employees received the payment of wages and/or expense reimbursements (including for mileage, some of which were paid at a rate lower than the applicable IRS standard rate), in a maximum of 875 pay periods during the period from May 13, 2020, <i>through October 31, 2021</i> .” <i>See</i> Agnew Decl., Ex. 3 (Second Amended Settlement) at § D-2.
Enhancement Payment	Calls for Plaintiff to receive an Enhancement Payment up to Three Thousand Dollars. <i>See</i> Agnew Decl., Ex. 4 (Redline Settlement Agreement) at § B-7.	Reduced the Enhancement Payment to Two Thousand Dollars. <i>See</i> Agnew Decl., Ex. 3 (Second Amended Settlement) at § B-7.

The settlement also calls for an explanatory letter to be mailed to Aggrieved Employees. The Parties modified the proposed letter to incorporate the revised definition of “Aggrieved Employees” and “Released Claims.” *See* Agnew Decl., Ex. 3 (Second Amended Settlement) at Ex. A. The revised notice also contains the definition of “Pivotal Pay Periods.” *See id.* A detailed comparison of the original notice and the revised notice is attached to the Agnew Declaration as

⁶ This is the only modification that was made to the release language previously approved by the Court.

Exhibit 4. There is no increase to settlement the administration costs. *See id.* at ¶ 39.

IV. THE SECOND AMENDED PAGA SETTLEMENT IS REASONABLE AND SHOULD BE APPROVED

A. Summary of the Proposed Second Amended Settlement Agreement.

1. The Aggrieved Employees.

The settlement covers all current and former employees of Defendant in the State of California who were paid wages at any time from May 13, 2020, through October 31, 2021 (the “Aggrieved Employees”). *See* Agnew Decl., Ex. 3 (Second Amended Settlement) at § B-2. There are a maximum of twenty-four (24) possible Aggrieved Employees. *See* Agnew Decl. ¶ 32. Based upon Defendant’s records, Aggrieved Employees received the payment of wages and/or expense reimbursements in a maximum of 875 pay periods during the period of May 13, 2020 through October 31, 2021 (the “PAGA Period”). *See* Agnew Decl., Ex. 3 (Second Amended Settlement) at §§ B-11, D-2; Agnew Decl. ¶ 41.

2. Settlement Sum and Allocation.

The Second Amended Settlement requires Defendant to pay the gross amount of Sixty Thousand Dollars (\$60,000.00) (the “Maximum Settlement Amount”). *See* Agnew Decl., Ex. 3 (Second Amended Settlement) at § B-9. Based on the Maximum Settlement Amount, Defendant will pay approximately \$68.57 per pay period to resolve the claims in this case. *See* Agnew Decl. ¶ 48.

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. *See* Agnew Decl., Ex. 3 (Second Amended Settlement) at §§ B-10, D-4, D-5. The PAGA Penalties Fund is estimated to be at least \$34,321.02. Agnew Decl. ¶ 43. Seventy-five percent (75%) of the PAGA Penalties Fund, or approximately \$25,740.77, will be paid to the LWDA for PAGA penalties. *See* Agnew Decl., Ex. 3 (Second Amended Settlement) at § D-4; Agnew Decl. ¶ 43. The remaining twenty-five percent (25%), or approximately \$8,580.25, will be distributed to Aggrieved Employees. *See* Agnew Decl., Ex. 3 (Second Amended Settlement) at § D-5; Agnew Decl. ¶ 44.

The amount any particular Aggrieved Employee will be entitled to recover will depend

1 on the number of pay periods in which he or she received the payment of wages and/or expense
2 reimbursements during the PAGA Period, with some entitled to receive more and others less. *See*
3 Agnew Decl., Ex. 3 (Second Amended Settlement) at § D-5; Agnew Decl. ¶49. This is fair, as it
4 directly allocates greater penalties to individuals who have allegedly suffered greater harm. *See*
5 Agnew Decl. ¶49. Any uncashed checks will be paid out pursuant to California Code of Civil
6 Procedure section 384 to the *cy pres* recipient, Legal Aid at Work. *See* Agnew Decl., Ex. 3
7 (Second Amended Settlement) at §E-4. Neither the Parties nor their respective counsel have a
8 relationship with the designated *cy pres*. *See id.*

9 As part of the settlement, Defendant does not object to Plaintiff's Counsel's request for
10 attorneys' fees of approximately thirty-three and one-third percent (33.33%) of the Maximum
11 Settlement Amount, *i.e.*, Twenty Thousand Dollars (\$20,000.00), plus up to Five Thousand
12 Dollars (\$5,000.00) for reimbursement of litigation costs, subject to the Court approving this
13 Second Amended Settlement.⁷ *See* Agnew Decl., Ex. 3 (Second Amended Settlement) at § D-9.
14 Also, as part of the settlement, Defendant does not object to Plaintiff's request for an
15 enhancement payment of Two Thousand Dollars (\$2,000.00). *See id.* at § D-8.

16 Finally, the Second Amended Settlement provides for the payment of the fees and
17 expenses reasonably incurred by the Settlement Administrator. *See* Agnew Decl., Ex. 3
18 (Second Amended Settlement) at § D-10. The Parties have agreed to utilize Phoenix Settlement
19 Administrators to administer the settlement, with the administration costs estimated to be
20 \$1,750.00. *See* Declaration of Jodey Lawrence, Ex. B.

21 **3. Scope of the Released Claims.**

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

24 [A]ll claims for civil penalties under the California Labor Code
25 Private Attorneys General Act, including costs and attorneys' fees
26 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

27
28 ⁷ As set forth below, Plaintiff's Counsel seeks reimbursement for its anticipated actual litigation costs in the amount of \$1,928.98. Agnew Decl. ¶ 45, Ex. 5.

1 California Labor Code and/or applicable Industrial Welfare
2 Commission Wage Orders, as well any resulting claim for attorneys'
3 fees and costs that accrued during the period of May 13, 2020,
through October 31, 2021.

4 *See* Agnew Decl., Ex. 3 (Second Amended Settlement) at § B-14. The settlement is not intended
5 to release does not extend to violations of any predicate statutes other than PAGA. *See* Agnew
6 Decl. ¶ 58. The release also does not constitute a waiver of claims by Aggrieved Employees for
7 any individual wage and hour claims. *See id.*

8 **B. PAGA Overview.**

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

20 Labor Code section 2699(a) states that any Labor Code provision “that provides for a
21 civil penalty to be assessed and collected by the [LWDA] may, as an alternative, be recovered
22 through a civil action brought by an aggrieved employee on behalf of himself or herself and
23 other current or former employees pursuant to the procedures specified in Section 2699.3.” An
24 “aggrieved employee” means “any person who was employed by the alleged violator and against
25 whom one or more of the alleged violations was committed.” Lab. Code § 2699(c). Prior to
26 commencing an action, the allegedly aggrieved employee must provide notice to the LWDA and
27 the employer setting forth the “specific provisions of [the Labor Code] alleged to have been
28 violated, including the facts and theories to support the alleged violation.” Lab. Code §

1 2699.3(a)(1). If the LWDA decides not to investigate the allegations or issue a citation to the
2 employer, the proposed representative plaintiff is entitled to commence a PAGA action after 65
3 days. Lab. Code § 2699.3(a)(2).

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

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

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

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

1 sought as part of a proposed settlement agreement pursuant to this part.” The parties are not
2 obligated to “satisfy class action requirements,” including the standards for class action
3 settlement approval. ⁸ *Arias*, 46 Cal. 4th at 980-988 (affirming lower court’s holding that
4 “plaintiff need not satisfy class action requirements” to assert a PAGA claim).

5 Notably, unlike the class action settlement approval process, there is also no statutory
6 mechanism for this Court to conduct a two-step settlement approval review. Lab. Code §
7 2699(1). In addition, “[u]nnamed employees need not be given notice of the PAGA claim, nor do
8 they have the ability to opt-out of the representative PAGA claim” or “contest a settlement, if
9 any, reached between the parties.” *Ochoa-Hernandez*, 2010 WL 1340777 at *13.

10 **D. The Settlement is Reasonable and Effectuates PAGA’s Objectives.**

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

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

23 **E. The Scope of the Release is Appropriately Limited.**

24 Because an aggrieved employee’s PAGA action is a substitute for an action brought by
25

26 ⁸ PAGA also does not require class action procedures, such as notice and opt-out rights.
27 *O’Connor v. Uber Technologies, Inc.*, 201 F.Supp.3d 1110, 1133 (N.D. Cal., 2016) (explaining
28 that “in a lawsuit which asserts a PAGA claims and seeks class certification for labor/wage
claims, even class members who opt out of the class would be bound by an
adverse PAGA judgment or settlement”).

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

9 Here, if approved, the settlement would release Defendant and other releasees from civil
10 penalties under PAGA predicated on alleged violations of Labor Code sections 204 and 2802
11 during the PAGA Period. *See* Agnew Decl., Ex. 3 (Second Amended Settlement) at § B-14. The
12 settlement would not impact Aggrieved Employees’ ability to pursue PAGA claims predicated
13 on other Labor Code violations. *See id.* at ¶ 58. Nor does the settlement release individual wage
14 and hour claims that Aggrieved Employees may have against Defendant. *See id.* Therefore, the
15 limited scope of the release also supports approval.

16 **F. The Settlement is Fair and Reasonable as it Recognizes the Inherent
17 Risk of Litigation.**

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

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

22 Plaintiff contends that Defendant reimbursed mileage expenses at the standard IRS
23 reimbursement rate for up to 225 miles in a pay period. Agnew Decl. ¶ 7. However, when
24 employees drove more than 225 miles in a pay period, Plaintiff contends that Defendant
25 reimbursed the additional mileage at a reduced rate. *See id.*

26 Defendant argues, and provided supporting documentation, that the use of a discounted
27 rate ceased on September 11, 2021. *See* Agnew Decl. at ¶ 9. Defendant, however, contends that
28 even if its prior practice violated any legal requirement, any violations that may have occurred
prior to the date of correction are limited. In support of this argument, Defendant produced
mileage reimbursement data for employees during the period of May 13, 2020 to September 11,

2021. Agnew Decl. at ¶ 8. The data shows that there are approximately 835 pay periods in which individuals sought mileage reimbursements. *See id.* In 260 out of the 835 pay periods, the records suggest that the employees drove fewer than 225 miles. *See id.* Thus, based on Defendant's records there are only approximately 575 pay periods in which employees may have been partially reimbursed at a rate below the standard IRS rate.⁹ *See id.*

Defendant further argues that, even if Plaintiff establishes that Defendant's reimbursement policy is unlawful, Plaintiff will have a difficult time making a showing that *each* Aggrieved Employee experienced a violation of Labor Code section 2802. *See* Agnew Decl. ¶ 53. 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. *See id.* Defendant further maintains that there are only approximately 575 pay periods in which employees may have been reimbursed at a rate below the standard IRS rate. *See id.*

Defendant also contests Plaintiff's allegation that it had a policy of paying wages to employees on or after the eighth day following the close of the pay period, in violation of Labor Code section 204. Agnew Decl. ¶ 54. Nonetheless, Defendant maintains that, in an abundance of caution and for business reasons, it changed its payroll practices to pay employees within six days of the close of the pay period, effective June 27, 2021. *See id.* Defendant produced a copy of the weekly payroll reschedule to establish this modification in policy. *See id.* at ¶ 10.

However, even if Plaintiff were to prevail on the merits of the PAGA claim, the potential recovery is uncertain. Defendant contends that it made a good faith effort to comply with the law. *See* Agnew Decl. ¶ 56. As argued by Defendant, in deciding whether to award the maximum penalty amount, courts may focus on whether the employer made a good faith effort to follow the law. For example, in *Thurman v. Bayshore Transit Management, Inc.*, the Court of Appeal

⁹ Defendant contends that, in some instances, it compensated all mileage requests at the standard IRS rate. Agnew Decl. ¶ 8.

upheld the trial court’s significant reduction of PAGA penalties by 30% because the employer was not initially on notice that it was in violation of the law and because it would have been unfair to award penalties where the employer was unaware of the violations. 203 Cal. App. 4th 1112, 1136 (2012). When the employer made aware of the violations, it timely took steps to come into compliance. *Id.* By contrast, the imposition of full penalties was justified when an employer took a “cavalier approach to fulfilling its contractual and statutory obligations” and demonstrated “reckless disregard.” *Id.* Furthermore, as the California Court of Appeal has affirmed, trial courts are well within their discretion to reduce PAGA penalties “for technical violations that cause no injury,” especially where the “violation was inadvertent.” *Raines v. Coastal Pac. Food Distributors, Inc.*, 23 Cal. App. 5th 667, 681 (2018).

In this case, Defendant asserted that a substantial reduction in potential PAGA penalties was warranted because: (1) the alleged violations were inadvertent; (2) after Defendant received Plaintiff’s PAGA Notice, it changed its payroll system to pay wages within six days of the close of the pay periods and began reimbursing all mileage at the standard IRS rate; and (3) Aggrieved Employees suffered nominal, if any, economic harm as a result of the alleged violations of Labor Code sections 204 and 2802.. *See* Agnew Decl. ¶ 56. Thus, Defendant contends that no PAGA penalties were needed to punish or deter Defendant for its inadvertent behavior, much less to deter it from committing any future violations that were completely foreclosed by its new payroll practices. *See id.*

2. Recovery of Penalties After Trial.

Defendant has indicated that there are a maximum of 875 pay periods in which Aggrieved Employees received the payment of wages and/or expense reimbursements during the PAGA Period (May 13, 2020 to October 31, 2021). *See* Agnew Decl. ¶ 41; Agnew Decl., Ex. 3 (Second Amended Settlement) at § D-2. Therefore, pursuant to the PAGA, if the Court were to award penalties for each violation alleged, Defendant’s maximum exposure could total as high as \$175,000. *See* Agnew Decl. ¶ 51. This, however, assumes that the Court would “stack” penalties —*ie* award multiple PAGA penalties for the same pay period based on different violations of the Labor Code.

If the Court only awarded a maximum penalty for a single violation per pay period, the

1 total penalties would only be approximately \$87,500. *See* Agnew Decl. ¶ 50. Even then, pursuant
2 to Labor Code § 2699(f)(2) the Court can decline to award the full amount of PAGA penalties
3 “if, based on the facts and circumstances of the particular case, to do otherwise, would result in
4 an award that is unjust, arbitrary and oppressive, or confiscatory.” Courts routinely award far less
5 than the statutory maximum amount of civil penalties, even where an underlying violation of the
6 Labor Code is found. Indeed, as shown in the Court of Appeal’s decision in *Carrington v.*
7 *Starbucks Corp.*, while the plaintiff prevailed on his PAGA claim at trial, the trial court reduced
8 the maximum PAGA penalty amount by 90%, citing the employer’s good faith attempt at
9 complying with the law. 30 Cal. App. 5th 504, 517 (2018). Upon review, the Court of Appeal
10 found such reduction to be proper. *Id.* at 539; *see O’Connor*, 201 F.Supp.3d 1110 at 1133 (noting
11 that even if PAGA penalties amounted to \$1 billion, such award “could well be reduced, as a
12 court may reduce the penalty when to do otherwise would result in an award that is unjust,
13 arbitrary and oppressive, or confiscatory”); *Magadia v. Wal-Mart Assocs. et al.*, 2019 U.S. Dist.
14 Lexis 91792 at *87-*100 (N.D. Cal. May 31, 2019) (while the trial court imposed substantial
15 PAGA penalties upon the defendant, such amount still represented reductions of 67% and 80%
16 of the potential PAGA penalties at issue).

17 Here, Plaintiff maintains that there does not exist any reason for reducing PAGA
18 penalties. However, Plaintiff is aware that Defendant could make a compelling argument to the
19 contrary.

20 **3. Settlement is Reasonable When Compared to the Value of the** 21 **Underlying Labor Code Claim.**

22 The Court’s assessment of the proposed settlement must take into account that any
23 penalties awarded may be subject to substantial reduction. When this is considered, in
24 conjunction with the history of PAGA settlements, and the fact that Plaintiff may recover
25 nothing, the proposed settlement is patently reasonable. Indeed, the Maximum Settlement
26 Amount is approximately 34.28% of the maximum amount of penalties at issue, if the Court
27 permitted an award of multiple violations per pay period. Agnew Decl. ¶ 51. Settlement for this
28 reduced value allows for the distribution of penalties in an amount which accounts for the risk of
continued litigation and Defendant’s likely arguments that higher penalties would have been
confiscatory. It also sufficiently deters Defendant from engaging in similar conduct in the future,

1 which is one of the primary goals of PAGA.

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

19 **G. The Attorneys’ Fees and Costs Should Be Approved.**

20 **1. The Attorneys’ Fees Are Reasonable.**

21 Labor Code § 2699(g)(1) provides for the recovery of attorneys’ fees and costs in any
22 successful action brought under PAGA. Although this is not a class action, in class actions
23 California state and federal courts have recognized that an appropriate method for determining
24 award of attorneys’ fees is based on a percentage of the total value of benefits to class members
25 by the settlement. *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 254 (2001); *Serrano*
26 *v. Priest*, 20 Cal. 3d 25, 34 (1977) (“*Serrano III*”); *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478
27 (1980); *Vincent v. Hughes Air West, Inc.*, 557 F. 2d 759, 769 (9th Cir. 1997). The purpose of this
28 equitable doctrine is to avoid unjust enrichment of counsel and to “spread litigation costs
proportionally among all the beneficiaries so that the active beneficiary does not bear the entire

1 burden alone.” *Vincent*, 557 F. 2d at 769.

2 The common fund doctrine is predicated on the principle of preventing unjust
3 enrichment. When a litigant’s efforts create or preserve a fund from which others derive benefits,
4 he may require the passive beneficiaries to compensate those who created the fund. Both
5 California state and federal courts have embraced this doctrine. *Serrano III*, 20 Cal. 3d at 35;
6 *Vincent*, 557 F. 2d at 769. Similarly, in *City and County of San Francisco v. Sweet*, 12 Cal. 4th
7 105, 110 (1995), the California Supreme Court recognized that the common fund doctrine has
8 been applied “consistently in California when an action brought by one party creates a fund in
9 which other persons are entitled to share.” The reasons for applying the common fund doctrine
10 include: “fairness to the successful litigant, who might otherwise receive no benefit because his
11 recovery might be consumed by the expenses; correlative prevention of an unfair advantage to
12 the others who are entitled to share in the fund and who should bear their share of the burden of
13 its recovery; encouragement of the attorney for the successful litigant who will be more willing
14 to undertake and diligently prosecute proper litigation for the protection or recovery of the fund
15 if he is assured that he will be properly and directly compensated should his efforts be
16 successful.” *Id.*

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

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

Here, as set forth in the Agnew Declaration, Plaintiff’s attorneys have invested a

1 significant amount of attorney hours in litigating this current action. Agnew Decl. ¶¶ 67-68.
2 Through June 14, 2023 (the date of approval of the Settlement Agreement), counsel spent at least
3 33.10 hours in connection with the litigation of this lawsuit. *See id.* at ¶ 67, Ex. 6. Based thereon
4 and based on counsel’s hourly rate of \$700, the lodestar equates to approximately \$23,170 based
5 on an hourly rate of \$700.00 per hour ([33.10 hours] x \$700), which exceeds the amount of the
6 requested fees. Agnew Decl. ¶ 67. Thus, the requested fee amount of \$20,000.00 is fair and
7 reasonable.

8 Since the Court approved the Settlement, counsel has expended approximately 22.20
9 additional hours on this case, including corresponding with the Settlement Administrator and
10 Defendant’s counsel regarding administration of the settlement, negotiating and drafting the
11 Amended Agreement and Second Amended Agreement, and obtaining Court approval of the
12 proposed amendments. Agnew Decl. ¶ 68, Ex. 7. Counsel acknowledges that this additional
13 attorney time is the product of errors in the Settlement Agreement that should have been caught
14 prior to Court approval and apologize for the inconvenience imposed on the Court. *See id.* at ¶
15 69. The Parties, however, believed that the mistakes in Settlement could be addressed with a
16 single submission to the Court and limited revisions to the Settlement Agreement, namely (1)
17 limiting the relevant temporal parameters of the Pivotal Pay Periods to the period of May 13,
18 2020 to October 31, 2021; and (2) narrowing the scope of the Aggrieved Employees to
19 individuals who worked during this time (without this change some employees may have been
20 covered by the release, but would not have received an Individual Settlement Payment). *See id.*¹⁰

21 **2. The Litigation Costs Are Reasonable.**

22 Additionally, Plaintiff’s Counsel’s cost reimbursement request in the amount of
23 \$1,928.98 is also reasonable. *See* Agnew Decl. ¶ 45, Ex. 5. The costs were all directly incurred in
24 the prosecution of this action, including filing fees, postage, copying, and service of process fees.
25 *See id.* As such, the requested costs should be awarded as fair and reasonable.

26
27 ¹⁰ The Parties elected not to modify the definition of “PAGA Period” in the Amended Settlement
28 Agreement. *See* Agnew Decl. at ¶ 70. As explained in the Joint Statement in Response to the
Court’s February 2, 2024 Minute Order [ROA # 126], some courts have approved settlements
where the release period extends beyond the liability period at issue.

1 **H. The Settlement Administrator’s Fees Should be Approved.**

2 The Parties have agreed to pay actual costs of administration, or \$1,750.00, to the
3 Settlement Administrator, Phoenix Settlement Administrators, to administer this settlement. *See*
4 Agnew Decl., Ex. 3 (Second Amended Settlement) at § B-16; Lawrence Decl. ¶ 8, Ex. B. The
5 Parties believe that the administration fee is reasonable and should be approved. Agnew Decl. ¶
6 47.

7 **I. Representative Plaintiff’s Payment Should be Approved**

8 Courts have held that named plaintiffs in class, or private attorney general actions can
9 request a service award. *Rodriguez v. W. Publ’g Corp.*, 563 F.3d 948, 958-59 (9th Cir. 2009)
10 (explaining that service awards “are intended to compensate class representatives for work done
11 on behalf of the class, to make up for financial or reputational risk undertaken in bringing the
12 action, and, sometimes, to recognize their willingness to act as a private attorney general”)
13 (emphasis added). Here, Plaintiff seeks \$2,000 for his service award, which is intended to
14 compensate Plaintiff for the time spent on this case, including reviewing pleadings, the potential
15 for hesitation from later prospective employers that might find out he brought this claim, and for
16 executing a general release, including for all known and unknown claims under Civil Code §
17 1542. Declaration of Adewunmi Ojo ¶¶ 6-9. This requested enhancement is consistent with
18 awards approved in other common fund cases. *See Van Vranken v. Atlantic Richfield Co.*, 901 F.
19 Supp. 294, 299-300 (N.D. Cal. 1995) (incentive award of \$50,000); *In re Dun & Bradstreet*
20 *Credit Servs. Customer Litig.*, 130 F.R.D. 366, 374 (S.D. Ohio 1990) (two incentive awards of \$
21 55,000, and three incentive awards of \$35,000); *Brotherton v. Cleveland*, 141 F. Supp. 2d 907,
22 913-14 (S.D. Ohio 2001) (granting a \$50,000 incentive award); *Enter. Energy Corp. v. Columbia*
23 *Gas Transmission Corp.*, 137 F.R.D. 240, 251-52 (S.D. Ohio 1991) (\$50,000 awarded to each
24 class representative); *Glass v. UBS Fin. Servs.*, No. C-06-4068, 2007 U.S. Dist. LEXIS 8476, at
25 *51-52 (N.D. Cal. Jan. 27, 2007) (awarding \$25,000 incentive award in FLSA overtime wages
26 class action); *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998) (affirming \$25,000 Incentive
award to class representative in ERISA case).

27 **J. Notice to the LWDA Hass Been Provided.**

28 Concurrent with the filing of this motion, Plaintiff uploaded the instant motion to the

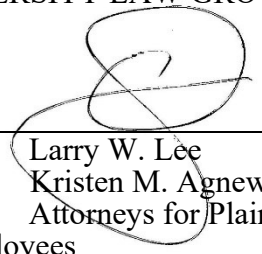
1 LWDA's website. Agnew Decl. ¶ 76, Ex. 12.

2 **V. CONCLUSION**

3 Based on the above, Plaintiff respectfully requests the Court approve the Second
4 Amended Joint Stipulation of Settlement and Release Under the Private Attorneys General Act.

5
6 DATED: May 8, 2024

DIVERSITY LAW GROUP, P.C.

7
8 By: 
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