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8 LEASING, CO. L.P.

9
10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**

12 PHIL POSTON, individually, and on
behalf of other members of the general
13 public similarly situated,

14 Plaintiff,

15 v.

16 PENSKE LOGISTICS LLC, an
unknown business entity; PENSKE
17 TRUCK LEASING, CO. L.P., an
unknown business entity; and DOES 1
18 through 100, inclusive,

19 Defendants.
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Case No. 2:21-cv-03939

**DEFENDANTS PENSKE LOGISTICS
LLC AND PENSKE TRUCK LEASING,
CO. L.P.'S NOTICE OF REMOVAL OF
CIVIL ACTION TO UNITED STATES
DISTRICT COURT**

[Filed concurrently with Civil Cover Sheet;
Certification of Interested Parties and
Disclosure Statement; Notice of Related
Cases; Declarations of Jennifer
Diercksmeier, Santos Vicuna, and Evan
Moses in Support of Removal]

Complaint Filed: February 25, 2021
Trial Date: None

1 **TO THE UNITED STATES DISTRICT COURT FOR THE CENTRAL**
2 **DISTRICT OF CALIFORNIA AND TO PLAINTIFF PHIL POSTON AND**
3 **HIS ATTORNEYS OF RECORD:**

4 **PLEASE TAKE NOTICE THAT** Defendants Penske Logistics LLC (“PL”) and Penske Truck Leasing, Co. L.P. (“PTL”) (collectively referred to as “Defendants”), by and through the undersigned counsel, hereby remove the above-entitled action from the Superior Court of the State of California for the County of Los Angeles to the United States District Court for the Central District of California pursuant to 28 U.S.C. Sections 1332, 1441, 1446, and 1453. As discussed below, this Court has original jurisdiction over this matter pursuant to the Class Action Fairness Act (“CAFA”).

12 **I. THE STATE COURT ACTION**

13 1. On February 25, 2021, Plaintiff Phil Poston filed a Class Action
14 Complaint in the Superior Court of the State of California, County of Los Angeles,
15 entitled *Phil Poston, individually, and on behalf of other members of the general*
16 *public similarly situated, Plaintiff v. Penske Logistics, LLC, an unknown business*
17 *entity; Penske Truck Leasing, Co., L.P., an unknown business entity; and Does 1*
18 *through 100, inclusive, Defendants*, which was assigned case number 21STCV07387
19 (the “State Court Action”).

20 2. On April 9, 2021, Plaintiff served Defendants with a copy of the
21 Complaint. (Declaration of Evan Moses (“Moses Decl.”) ¶ 3.) A true and correct
22 copy of the Complaint is attached as **Exhibit A** to this Notice of Removal. (*Id.* ¶ 2.)

23 **II. THE NOTICE IF TIMELY**

24 3. Under 28 U.S.C. § 1446(b)(1), “[t]he notice of removal of a civil action
25 or proceeding shall be filed within 30 days after the receipt by the defendant, through
26 service or otherwise, of a copy of the initial pleading[.]” But “if the case stated by
27 the initial pleading is not removable,” it may be removed to federal court within 30
28 days of receiving an “amended pleading, motion, order or other paper from which it

1 may first be ascertained that the case is one which is or has become removable.” 28
2 U.S.C. § 1446(b)(3).

3 4. “The 30-day time periods under 28 U.S.C. §§ 1446(b)(1) and (b)(3) are
4 not triggered unless the initial pleading or another document provided by Plaintiff
5 affirmatively reveals on its face” that the case is removable under CAFA. *Grigoryan*
6 *v. Cemex Constr. Materials Pac., LLC*, 2018 WL 5081159, at *2 (C.D. Cal. Oct. 16,
7 2018) (quotation marks and ellipses omitted). Accordingly, “[a]s long as the
8 complaint or an amended pleading, motion, order or other paper does not reveal that
9 the case is removable, the 30-day time period never starts to run and the defendant
10 may remove at any time.” *Id.* (quotation marks omitted).

11 5. Here, neither the Complaint nor any other document provided by
12 Plaintiff reveals on its face that the case is removable. For example, the Complaint
13 does not state the number of putative class members or an amount in controversy for
14 any of the alleged causes of action. Thus, the 30-day clock has not even started
15 running. *See, e.g., id.* (finding that the 30-day time periods had not been triggered
16 because “the pleading does not reveal on its face that the amount in controversy met
17 CAFA’s threshold”).

18 6. In any event, this Notice of Removal was filed within 30 days of the
19 service of the Complaint.

20 **III. JURISDICTION UNDER CAFA**

21 7. The Court has original jurisdiction over this action under CAFA
22 because the number of potential class members is at least 100, the citizenship of at
23 least one putative class member is diverse from that of at least one defendant, and the
24 amount in controversy exceeds the aggregate value of \$5,000,000.

25 **A. The size of the putative class is at least 100.**

26 8. 28 U.S.C. § 1332(d)(5)(B) requires that the number of members of all
27 proposed classes in the aggregate be at least 100.

28 9. In the Complaint, Plaintiff defines the “Proposed Class” as “[a]ll current

1 and former hourly-paid or non-exempt employees who worked for any of the
2 Defendants within the State of California at any time during the period from four
3 years preceding the filing of this Complaint to final judgment and who reside in
4 California.” (Ex. A ¶ 13.)

5 10. Thus, the Proposed Class includes employees of both PTL and PL.

6 11. PTL’s employment records alone show that it has at least 1,104 current
7 and former employees who fall within Plaintiff’s Proposed Class. (Declaration of
8 Jennifer Diercksmeier (“Diercksmeier Decl.”) ¶ 12.)

9 12. PL’s employment records show that it has at least 2,100 current and
10 former employees who fall within Plaintiff’s Proposed Class. (Declaration of Santos
11 Vicuna (“Vicuna Decl.”) ¶ 9.)

12 **B. The citizenship of at least one putative class member is different**
13 **from the citizenship of at least one Defendant.**

14 13. Under 28 U.S.C. § 1332(d)(2)(A), “[t]he district courts shall have
15 original jurisdiction of any civil action in which the matter . . . is a class action in
16 which . . . any member of a class of plaintiffs is a citizen of a State different from
17 any defendant[.]”

18 14. Citizenship of Defendants. Pursuant to 28 U.S.C. § 1332(c)(1), “a
19 corporation shall be deemed to be a citizen of every State and foreign state by which
20 it has been incorporated and of the State or foreign state where it has its principal
21 place of business.” The “‘principal place of business’ is best read as referring to the
22 place where a corporation’s officers direct, control, and coordinate the corporation’s
23 activities.” *The Hertz Corp. v. Friend*, 130 S. Ct. 1181, 1184 (2010). In other words,
24 the principal place of business is the place where the corporation “maintains its
25 headquarters—provided that the headquarters is the actual center of direction,
26 control, and coordination.” *Id.*

27 15. Here, PTL is a limited partnership. To determine the citizenship of a
28 limited partnership, “courts look through the form of such a business entity to the

1 citizenship of all the members of the partnership.” *Carden v. Arkonma Assocs.*, 494
2 U.S. 185, 187-96 (1990).

3 16. PTL was formed under the laws of the State of Delaware and its
4 principal place of business was, at the time of the filing of this action, and still is, in
5 the State of Pennsylvania because that is where its headquarters and its executive and
6 senior management personnel, as well as its primary management operations, are
7 located. (Diercksmeier Decl. ¶¶ 2-7.) *See, e.g., Davis v. HSBC Bank Nevada, N.A.*,
8 557 F.3d 1026 (9th Cir. 2009) (stating that a limited partnership is a citizen of (1) the
9 state under whose laws it is organized; and (2) the state of its principal place of
10 business).

11 17. Here, PL is a limited liability company. Courts have applied two
12 different standards to determine the citizenship of limited liability companies under
13 CAFA. Some have held that the citizenship of a limited liability company is based on
14 the citizenship of its members. *See, e.g., Hobson v. Linde, LLC*, 2016 WL 6679488,
15 at *2 (C.D. Cal. Nov. 14, 2016). Others have held that a limited liability company,
16 like a corporation, is a citizen of the State where it has its principal place of business
17 and the State under whose laws it is organized. *See, e.g., Ramirez v. Carefusion Res.,*
18 *LLC*, 2019 WL 2897902, at *2 (S.D. Cal. July 5, 2019). Regardless of which
19 standard the Court applies, there is minimal diversity in this case.

20 18. PL was formed under the laws of the State of Delaware and its principal
21 place of business is located in Reading, Pennsylvania. (Vicuna Decl. ¶¶ 2-7.)

22 19. PL’s only member is PTL. (*Id.* ¶ 8.)

23 20. PTL has one general partner: PTL GP, LLC. (Diercksmeier Decl.
24 ¶ 8.) In turn, PTL GP, LLC’s sole member is LJ VP Holdings, LLC. (*Id.*) LJ VP
25 Holdings, LLC’s sole member is Penske Truck Leasing Corporation. (*Id.*) Penske
26 Truck Leasing Corporation is incorporated under the laws of the State of Delaware
27 and its headquarters—and principal place of business—is in Reading, Pennsylvania,
28 where its operations are coordinated. (*Id.*) Therefore, Penske Truck Leasing

1 Corporation is a citizen of Delaware and Pennsylvania.

2 21. PTL has three limited partners: (1) Penske Truck Leasing Corporation;
3 (2) Penske Automotive Group, Inc.; and (3) MBK USA Commercial Vehicles, Inc.
4 (*Id.* ¶ 9.)

5 22. Penske Automotive Group, Inc. is a corporation organized under the
6 laws of the State of Delaware. (*Id.* ¶ 10.) Penske Automotive Group, Inc.’s
7 headquarters—and principal place of business—is in Bloomfield Hills, Michigan,
8 where its operations are coordinated. (*Id.*) Therefore, Penske Automotive Group, Inc.
9 is a citizen of Delaware and Michigan.

10 23. MBK USA Commercial Vehicles, Inc. is a corporation organized under
11 the laws of the State of Delaware. (*Id.* ¶ 11.) MBK USA Commercial Vehicles, Inc.’s
12 headquarters—and principal place of business—is in Japan, where its operations are
13 coordinated. (*Id.*) Therefore, MBK USA Commercial Vehicles, Inc. is a citizen of
14 Delaware and Japan.

15 24. Accordingly, at most, Defendants are a citizen of Delaware,
16 Pennsylvania, Michigan, and Japan.

17 25. Citizenship of Plaintiff and putative class members. Plaintiff was
18 employed by Defendants within the State of California. (Ex. A ¶ 17.) Thus, during
19 the relevant period, Plaintiff lived and worked in California. Plaintiff does not allege
20 that he was, or is currently, a citizen of Delaware, Pennsylvania, Michigan, or Japan.
21 Indeed, he has not alleged a connection to any of those locations.

22 26. In addition, putative class members, who by definition are or were
23 employed in California and residents of California, like Plaintiff, are presumed to be
24 primarily citizens of the State of California. *See, e.g., Lew v. Moss*, 797 F.2d 747,
25 750 (9th Cir. 1986) (“place of employment” an important factor weighing in favor of
26 citizenship). Thus, even if Plaintiff was somehow a citizen of Delaware,
27 Pennsylvania, Michigan, or Japan (and there is no evidence that he was or is), there
28 is no possible way that the thousands of putative class members, all of whom worked

1 in California, were also citizens of Delaware, Pennsylvania, Michigan, or Japan.

2 27. Accordingly, the minimal diversity of citizenship requirement under 28
3 U.S.C. § 1332(d)(2)(A) is met.

4 **C. The amount in controversy exceeds an aggregate of \$5,000,000.**

5 28. Under 28 U.S.C. § 1332(d)(2), “[t]he district courts shall have original
6 jurisdiction of any civil action in which the matter in controversy exceeds the sum or
7 value of \$5,000,000, exclusive of interest and costs[.]” The claims of individual class
8 members are aggregated when determining whether CAFA’s \$5,000,000
9 jurisdictional threshold is met. See 28 U.S.C. § 1332(d)(6).

10 29. In alleging the amount in controversy for purposes of removal,
11 Defendants do not concede in any way that the allegations in the Complaint are
12 accurate or that Plaintiff is entitled to any of the penalties alleged in the Complaint.
13 Nor do Defendants concede that any or all current or former employees are entitled
14 to any recovery in this case or are appropriately included in the putative class.

15 30. It is the removing party’s burden to establish, “by a preponderance of
16 evidence, that the aggregate amount in controversy exceeds the jurisdictional
17 minimum.” *Rodriguez v. AT&T Mobility Servs. LLC*, 728 F.3d 975, 981 (9th Cir.
18 2013). To do so, the removing party must “produce underlying facts showing only
19 that it is more likely than not that the amount in controversy exceeds \$5,000,000[],
20 assuming the truth of the allegations plead in the Complaint.” *Muniz v. Pilot Travel*
21 *Ctrs. LLC*, 2007 WL 1302504, at *5 (E.D. Cal. May 1, 2007) (emphasis in original).

22 31. In determining the amount in controversy under CAFA, all potential
23 damages based on the claims in the complaint are considered. *See, e.g., Korn v. Polo*
24 *Ralph Lauren Corp.*, 536 F. Supp. 2d 1199, 1205 (E.D. Cal. 2008) (“The ultimate
25 inquiry is what amount is put ‘in controversy’ by the plaintiff’s complaint, not what a
26 defendant will actually owe”).

27 32. That includes attorney’s fees. *See, e.g., Guglielmino v. McKee Foods*
28 *Corp.*, 506 F.3d 696, 701 (9th Cir. 2007) (attorney’s fees are appropriately counted

1 toward the amount in controversy in CAFA removal actions); *Sanchez v. Wal-Mart*
2 *Stores, Inc.*, 2007 WL 1345706, at *2 (E.D. Cal. May 8, 2007) (same).

3 33. Furthermore, “[i]n considering whether the amount in controversy is
4 clear from the face of the complaint, a court must assume that the allegations of the
5 complaint are true and that a jury will return a verdict for the plaintiff on all claims
6 made in the complaint.” *Altamirano v. Shaw Indus., Inc.*, 2013 WL 2950600, at *4
7 (N.D. Cal. June 14, 2013) (citing *Korn*, 536 F. Supp. 2d at 1205). *See also Muniz*,
8 2007 WL 1302504, at *3 (“In measuring the amount in controversy, a court must
9 assume that the allegations of the complaint are true and that a jury will return a
10 verdict for the plaintiff on all claims made in the complaint.”).

11 34. While Defendants deny the validity of Plaintiff’s claims and requests for
12 relief, and does not concede in any way that the allegations in the Complaint are
13 accurate, that Plaintiff’s claims are amenable to class-wide treatment, or that Plaintiff
14 or putative class members are entitled to any of the requested relief, the allegations in
15 the Complaint, as well as in the evidence presented in the Diercksmeier and Vicuna
16 declarations,¹ show that the amount in controversy exceeds the jurisdictional
17 minimum of \$5,000,000.

18
19
20 ¹ For purposes of effecting removal, declarations from defendants and their counsel
21 constitute sufficient evidence to establish the amount in controversy. *See, e.g.,*
22 *Muniz*, 2007 WL 1302504, at *2, *5 (relying on evidence submitted by defendant in
23 the form of a declaration from its employee relations manager, which “set forth the
24 underlying facts needed to calculate the amount in controversy,” and a declaration
25 from its counsel, which calculated the amount in controversy based on the
26 underlying facts and in light of the laws governing plaintiff’s claims, and finding that
27 defendant had shown that “it is more likely than not that the jurisdictional threshold
28 of \$5,000,000[] is met”); *Jasso v. Money Mart Express, Inc.*, 2012 WL 699465, at *4
(N.D. Cal. Mar. 1, 2012) (finding there was “adequate foundation” for the
declaration submitted by defendant’s human resources director regarding “the
numbers of employees, payperiods [sic] and average rates of pay during the
applicable limitations periods,” which was derived from a compilation of
“information that is kept in the normal course of business,” and relying on the
declaration to find that defendant had met its burden to establish that the amount in
controversy exceeds CAFA’s jurisdictional threshold).

1 **1. Defendants’ estimate of the amount in controversy considers**
2 **only a subset of Plaintiff’s claims for only a portion of the**
3 **putative class.**

4 35. In determining the amount in controversy, Defendants rely on a
5 conservative estimate based only on damages sought by Plaintiff as a result of the
6 alleged claims for (1) unpaid overtime; (2) non-compliant wage statements; (3) final
7 wages not timely paid; (4) wages not timely paid during employment; and (5) unpaid
8 meal and rest break period premiums. Significantly, Defendants calculate these
9 damages for only those putative class members who are former and current full-time
10 employees of Defendants. If part-time employees of Defendants were also
11 considered, the calculated damages would be significantly higher.

12 36. Because the amounts in controversy for these claims and putative class
13 members alone satisfy the jurisdictional minimum requirement of \$5,000,000,
14 Defendants do not include additional analyses of the amounts placed in controversy
15 by Plaintiff’s other alleged claims, including for (1) unpaid minimum wages; (2)
16 failure to keep requisite payroll records; (3) unreimbursed business expenses; and (4)
17 violation of California’s Unfair Competition Law.

18 37. If necessary, Defendants could and would supplement this Notice of
19 Removal to include estimates of the additional amounts in controversy based on the
20 other causes of action contained in the Complaint, as well as for putative class
21 members who are part-time and temporary former and current employees of
22 Defendants.

23 **2. PTL’s estimate of the amount of controversy, alone, exceeds**
24 **\$14,000,000.**

25 **(a) The amount placed in controversy by the overtime**
26 **claim easily exceeds \$4,000,000.**

27 38. According to Plaintiff, “Defendants engaged in a pattern and practice of
28 wage abuse against their hourly-paid or non-exempt employees...” and “fail[ed] to
pay them for all...overtime wages earned...” (Ex. A ¶ 25. See also *id.* ¶¶ 47-55

1 (allegations supporting first cause of action for failure to pay overtime wages.)

2 39. Labor Code § 1194(a) provides that “any employee receiving less than
3 the legal minimum wage or the legal overtime compensation applicable to the
4 employee is entitled to recover in a civil action the unpaid balance of the full amount
5 of this minimum wage or overtime compensation, including interest thereon,
6 reasonable attorney’s fees, and costs of suit.”

7 40. Based on PTL’s records, the number of its current and former non-
8 exempt employees in California from February 25, 2017, to February 25, 2021, is
9 1,104. (Diercksmeier Decl. ¶ 12.) The minimum hourly rate of the putative class
10 members was at least \$14.25 per hour.² (*Id.* ¶ 13.)

11 41. PTL’s calculation of damages for Plaintiff’s overtime claim is
12 **\$4,204,056.38** (\$21.375 x 1 x 196,681). The computation of the amount in
13 controversy is based on data reflecting (a) that non-exempt California employees
14 worked 196,681 weeks from February 25, 2017, to February 25, 2021; (b) that each
15 putative class member earned a regular rate of at least \$14.25 per hour (so that time-
16 and-a-half is equal to \$21.375); and (c) that each putative class member incurred
17 only one hour of unpaid overtime for every week of work. (Diercksmeier Decl. ¶¶
18 12, 13.)

19 42. Courts have accepted an estimate of one hour of unpaid overtime for
20 every week of work as a reasonable and conservative figure. *See, e.g., Jasso*, 2012
21 WL 699465, at *5-6 (finding that calculating at least one violation per week was a
22 “sensible reading of the alleged amount in controversy”).³

23 _____
24 ² The average base rate for full-time non exempt California employees was \$23.83
25 per hour. (Diercksmeier Decl. ¶ 13.) For purposes of these calculations, PTL has
conservatively used the lowest hourly rate of \$14.25.

26 ³ In light of Plaintiff’s allegation that Defendants’ purported failure to pay overtime
27 wages was extensive, *i.e.*, that Penske had a “pattern and practice of wage abuse
28 against their hourly-paid or non-exempt employees...” and “fail[ed] to pay them for
all...overtime wages earned...” (Ex. A ¶ 25), “it is reasonable to assume a 100%
violation rate in calculating the amount in controversy for this cause of action.”
Altamirano, 2013 WL 2950600, *11.

1 43. Consequently, a very conservative calculation of the amount placed in
2 controversy by the overtime claim alone exceeds \$4,000,000.⁴

3 **(b) The amount placed in controversy by the non-**
4 **compliant wage statement claim alone easily exceeds**
5 **\$7,000,000.**

6 44. According to Plaintiff, “Defendants failed to provide complete or
7 accurate wage statements to Plaintiff and other class members.” (Ex. A ¶ 42.)
8 Specifically, Plaintiff contends that the wage statements furnished to him and other
9 putative class members did not include, “but are not limited to, ...the total number of
10 hours worked...” (*Id. See also id.* ¶¶ 94-100 (allegations supporting seventh cause of
11 action for non-compliant wage statements).)

12 45. Labor Code § 226(e)(1) provides the available damages for this cause of
13 action:

14 An employee suffering injury as a result of a knowing and intentional
15 failure by an employer to comply with subdivision (a) is entitled to
16 recover the greater of all actual damages or fifty dollars (\$50) for the
17 initial pay period in which a violation occurs and one hundred dollars
18 (\$100) per employee for each violation in a subsequent pay period, not
19 to exceed an aggregate penalty of four thousand dollars (\$4,000), and is
20 entitled to an award of costs and reasonable attorney’s fees.

21 46. The statute of limitations for a claim for wage statement penalties is one
22 year. *See* Cal. Civ. Proc. Code § 340(a).

23 47. PTL’s calculation of Plaintiff’s claim for non-compliant wage
24 statements is **\$7,171,100**, which is based on an assumed rate of one violation for
25 each putative class member per pay period for which the employee was issued a
26 paycheck during the statute-of-limitations period. (Diercksmeier Decl. ¶¶ 14-16.)

27 ⁴ In reality, the amount placed in controversy by the overtime claim is much higher
28 for two key reasons: (a) PTL’s methodology completely excludes all part-time and
temporary employees from the calculation, while at least some of those workers
undoubtedly worked overtime during the class period; and (b) the average base pay
rate of the full-time employees was almost two times the minimum pay rate of
\$14.25 that PTL used.

1 48. An estimate of one wage statement violation for every pay period is
2 reasonable, based on the allegations in Plaintiff’s Complaint. For example, in
3 *Altamirano*, the court held that it was “reasonable to assume that each putative class
4 member suffered at least one violation during any given pay period, resulting in an
5 inaccurate wage statement[.]” 2013 WL 2950600, *11.

6 49. Consequently, the amount placed in controversy by the wage statement
7 claim alone easily exceeds \$7,000,000.

8 **(c) Very conservatively, the amount placed in controversy**
9 **by Plaintiff’s claim for waiting time penalties is over**
10 **\$300,000.**

11 50. According to Plaintiff, “Defendants failed to pay Plaintiff and other
12 class members all wages owed to them upon discharge or resignation” by
13 “intentionally and willfully fail[ing] to pay Plaintiff and other class members who
14 are no longer employed by Defendants their wages, earned and unpaid, within
15 seventy-two (72) hours of their leaving Defendants’ employ.” (Ex. A ¶¶ 40; 82-87
16 (allegations supporting fifth cause of action for final wages not timely paid during
17 employment).)

18 51. California Labor Code § 203(a) provides that “[i]f an employer willfully
19 fails to pay . . . any wages of an employee who is discharged or who quits, the wages
20 of the employee shall continue as a penalty from the due date thereof at the same rate
21 until paid or until an action therefor is commenced; but the wages shall not continue
22 for more than 30 days.”

23 52. Section 203 penalties “accrue not only on the days that the employee
24 might have worked, but also on non[-]workdays,” for up to 30 days, and the accrual
25 of these penalties “has nothing to do with the number of days an employee works
26 during the month.” *Mamika v. Barca*, 68 Cal. App. 4th 487, 492-93 (1998). As the
27 “targeted wrong” addressed by section 203 is “the delay in payment” of wages, it
28 “continues so long as payment is not made”; therefore, “[a] proper reading of section

1 203 mandates a penalty equivalent to the employee’s daily wages for each day he or
2 she remained unpaid up to a total of 30 days.” *Id.* at 493.

3 53. Here, Plaintiff’s section 203 claim is not premised on only the theory
4 that Defendants failed to timely deliver final paychecks to separated employees.
5 Rather, Plaintiff contends that Defendants owe penalties at least in part as a result of
6 their purported failure to pay all wages owed during employment, including, but not
7 limited to, unpaid minimum and overtime wages, meal period premiums, and rest
8 break premiums. (Ex. A ¶¶ 37-41.) As such, Plaintiff’s theory is that such alleged
9 unpaid wages still have not been paid to Plaintiff and putative class members.
10 Accordingly, it is proper to base the amount in controversy for this claim on a 30-day
11 penalty calculated at each former employee’s daily wage rate. *See, e.g., Quintana v.*
12 *Claire’s Stores, Inc.*, 2013 WL 1736671, at *6 (N.D. Cal. Apr. 22, 2013) (finding
13 that defendants’ waiting time penalties calculation was “supported by [p]laintiffs’
14 allegations” and was “a reasonable estimate of the potential value of the claims”
15 where the complaint alleged that defendants “regularly required” putative class
16 members to work off-the-clock without compensation and defendants estimated that
17 each putative class member “potentially suffered at least one violation that continues
18 to be unpaid”) (quotation marks omitted); *Stevenson v. Dollar Tree Stores, Inc.*, 2011
19 WL 4928753, at *4 (E.D. Cal. Oct. 17, 2011) (finding it reasonable for defendant to
20 assume, in light of the allegations in the complaint, that members of the putative
21 class “routinely” missed meal periods and that “all members of the proposed class
22 . . . would have missed a meal period as described in the complaint at least once and
23 were thus entitled to the waiting time penalty”) (quotation marks omitted).

24 54. PTL’s very conservative calculation of Plaintiff’s claim for waiting time
25 penalties for failure to timely pay all wages upon termination is **\$315,495** (30 x
26 \$14.25 x 2 x 369). The computation of the amount in controversy is based on data
27 reflecting that from February 25, 2018, to February 25, 2021, at least 369 non-
28 exempt California employees were separated from employment with PTL, Plaintiff’s

1 contention that each of these 369 putative class members is qualified to receive
2 waiting time penalties, data reflecting that each putative class member earned a
3 minimum regular rate of at least \$14.25 per hour, and an extremely conservative
4 estimate that a “day” for the purpose of the waiting time penalty constitutes only two
5 work hours. (Diercksmeier Decl. ¶¶ 13, 17.)

6 55. Consequently, the amount placed in controversy by the claim for
7 waiting time penalties alone is nearly \$1,000,000.

8 **(d) The amount placed in controversy by Plaintiff’s claims**
9 **for failure to provide meal and rest periods alone is**
10 **nearly \$3,000,000.**

11 56. Plaintiff alleges “Defendants failed to provide all requisite uninterrupted
12 meal and rest periods to Plaintiff and other class members.” (Ex. A ¶ 38. *See also id.*
13 ¶¶ 56-66 (allegations supporting second cause of action for unpaid meal period
14 premiums).)

15 57. In addition, Plaintiff alleges “Defendant willfully required Plaintiff and
16 other class members to work during rest periods and failed to pay Plaintiff and other
17 class members the full rest period premium for work performed during the rest
18 periods.” (*Id.* ¶ 72. *See also id.* ¶¶ 67-75 (allegations supporting third cause of action
19 for unpaid rest period premiums).)

20 58. The statute of limitations for a cause of action for failure to provide
21 legally required meal and rest periods is three years. *See* Cal. Lab. Code §§ 203, 338.
22 This statute of limitations is extended to four years, however, where the cause of
23 action is brought as part of a claim under California Business and Professions Code
24 § 17200. (Ex. A ¶¶ 111-117 (allegations supporting tenth cause of action for
25 violation of section 17200).)

26 59. Plaintiff does not allege the number of meal periods or rest periods that
27 were not provided to Plaintiff or putative class members. But Plaintiff alleges
28 Defendant intentionally and willfully required Plaintiff and other class members to

1 work during meal and rest periods and failed to pay Plaintiff and other class
2 members the full meal and rest period premiums for work performed during the meal
3 and rest periods. (Ex. A ¶¶ 63, 72.)

4 60. For purposes of calculating the amount in controversy on Plaintiff's
5 meal and rest break claims, the Court may apply a violation rate of at least one meal
6 period violation per week and one rest period violation per week worked in the four-
7 year statute-of-limitations period. *See, e.g., Quintana v. Claire's Stores, Inc.*, 2013
8 WL 1736671 at *6 (N.D. Cal.) (finding that it is reasonable to assume that each
9 putative class member is entitled to premium pay for one missed meal period and
10 one missed rest period per week worked); *Jasso*, 2012 WL 699465, at *4-6 (same).

11 61. As a conservative basis for its calculations, PTL is applying a violation
12 rate of only one meal and one rest break violation *every other week*. Applying this
13 violation rate to only full-time employees,⁵ the putative class members would be
14 entitled to recover at least the amount of **\$2,802,704.25** ($\$14.25 \times 0.5 \times 196,681$) +
15 ($\$14.25 \times 0.5 \times 196,681$). The computation of this amount is based on the lowest
16 minimum hourly wage for non-exempt California employees during the alleged class
17 period ($\$13.00$), multiplied by 0.5 hours of pay, multiplied by the total number of
18 weeks in which full-time non-exempt employees performed work between Febraury
19 25, 2017, and February 25, 2021 (196,681). (Diercksmeier Decl. ¶¶ 12, 13.)

20 **3. PL's estimate of the amount of controversy exceeds**
21 **\$8,000,000.**

22 **(a) The amount placed in controversy by the overtime**
23 **claim alone easily exceeds \$2,000,000.**

24 62. According to Plaintiff, "Defendants engaged in a pattern and practice of
25 wage abuse against their hourly-paid or non-exempt employees..." and "fail[ed] to
26 pay them for all...overtime wages earned..." (Ex. A ¶ 25. See also *id.* ¶¶ 47-55

27 ⁵ Continuing to calculate the amount in controversy as conservatively as possible,
28 PTL has excluded part-time employees from this calculation.

1 (allegations supporting first cause of action for failure to pay overtime wages.)

2 63. As detailed above, Labor Code § 1194(a) provides that “any employee
3 receiving less than the legal minimum wage or the legal overtime compensation
4 applicable to the employee is entitled to recover in a civil action the unpaid balance
5 of the full amount of this minimum wage or overtime compensation, including
6 interest thereon, reasonable attorney’s fees, and costs of suit.”

7 64. Courts have accepted an estimate of one hour of unpaid overtime for
8 every week of work as a reasonable and conservative figure. *See, e.g., Jasso*, 2012
9 WL 699465, at *5-6 (finding that calculating at least one violation per week was a
10 “sensible reading of the alleged amount in controversy”).⁶

11 65. Based on PL’s records, the number of its current and former non-
12 exempt employees in California from February 25, 2017, to February 25, 2021, is at
13 least 2,100. (Vicuna Decl. ¶ 9.) The minimum hourly rate of the putative class
14 members was at least \$13.00 per hour.⁷ (*Id.* ¶ 10.)

15 66. PL’s calculation of damages for Plaintiff’s overtime claim is
16 **\$2,591,335.50** (\$19.50 x 1 x 132,889). The computation of the amount in
17 controversy is based on data reflecting (a) that non-exempt California employees
18 worked 132,889 weeks from February 25, 2017, to February 25, 2021; (b) that each
19 putative class member earned a regular rate of at least \$13.00 per hour (so that time-
20 and-a-half is equal to \$19.50); and (c) that each putative class member incurred only
21 one hour of unpaid overtime for every week of work. (Vicuna Decl. ¶¶ 9, 10.)

22 67. Courts have accepted an estimate of one hour of unpaid overtime for

23 _____
24 ⁶ In light of Plaintiff’s allegation that Defendants’ purported failure to pay overtime
25 wages was extensive, *i.e.*, that Penske had a “pattern and practice of wage abuse
26 against their hourly-paid or non-exempt employees...” and “fail[ed] to pay them for
all...overtime wages earned...” (Ex. A ¶ 25), “it is reasonable to assume a 100%
violation rate in calculating the amount in controversy for this cause of action.”
Altamirano, 2013 WL 2950600, *11.

27 ⁷ The average base rate for California employees was \$19.51 per hour. (Vicuna Decl.
28 ¶ 10.) For purposes of these calculations, PL has conservatively used the lowest
hourly rate of \$13.00.

1 every week of work as a reasonable and conservative figure. *See, e.g., Jasso*, 2012
 2 WL 699465, at *5-6 (finding that calculating at least one violation per week was a
 3 “sensible reading of the alleged amount in controversy”).⁸

4 68. Consequently, a very conservative calculation of the amount placed in
 5 controversy by the overtime claim alone exceeds \$2,000,000.⁹

6 **(b) The amount placed in controversy by the non-**
 7 **compliant wage statement claim alone easily exceeds**
 8 **\$4,000,000.**

9 69. According to Plaintiff, “Defendants failed to provide complete or
 10 accurate wage statements to Plaintiff and other class members.” (Ex. A ¶ 42.)
 11 Specifically, Plaintiff contends that the wage statements furnished to him and other
 12 putative class members did not include, “but are not limited to, ...the total number of
 13 hours worked...” (*Id. See also id.* ¶¶ 94-100 (allegations supporting seventh cause of
 14 action for non-compliant wage statements).)

15 70. As set forth above, Labor Code § 226(e)(1) provides the available
 16 damages for this cause of action:

17 An employee suffering injury as a result of a knowing and intentional
 18 failure by an employer to comply with subdivision (a) is entitled to
 19 recover the greater of all actual damages or fifty dollars (\$50) for the
 20 initial pay period in which a violation occurs and one hundred dollars
 21 (\$100) per employee for each violation in a subsequent pay period, not
 22 to exceed an aggregate penalty of four thousand dollars (\$4,000), and is
 23 entitled to an award of costs and reasonable attorney’s fees.

22 ⁸ In light of Plaintiff’s allegation that Defendants’ purported failure to pay overtime
 23 wages was extensive, *i.e.*, that Penske had a “pattern and practice of wage abuse
 24 against their hourly-paid or non-exempt employees...” and “fail[ed] to pay them for
 25 all...overtime wages earned...” (Ex. A ¶ 25), “it is reasonable to assume a 100%
 26 violation rate in calculating the amount in controversy for this cause of action.”
 27 *Altamirano*, 2013 WL 2950600, *11.

28 ⁹ In reality, the amount placed in controversy by the overtime claim is much higher
 for two key reasons: (a) PL’s methodology completely excludes all part-time and
 temporary employees from the calculation, while at least some of those workers
 undoubtedly worked overtime during the class period; and (b) the average base pay
 rate of the full-time employees was more than two times the minimum pay rate of
 \$13.00 that PL used.

1 71. The statute of limitations for a claim for wage statement penalties is one
2 year. *See* Cal. Civ. Proc. Code § 340(a).

3 72. PL’s calculation of Plaintiff’s claim for non-compliant wage statements
4 is **\$4,305,900**, which is based on an assumed rate of one violation for each putative
5 class member per pay period for which the employee was issued a paycheck during
6 the statute-of-limitations period. (Vicuna Decl. ¶¶ 12-13.)

7 73. Consequently, the amount placed in controversy by the wage statement
8 claim alone easily exceeds \$4,000,000.

9 **(c) Very conservatively, the amount placed in controversy**
10 **by Plaintiff’s claim for waiting time penalties exceeds**
11 **\$300,000.**

12 74. According to Plaintiff, “Defendants failed to pay Plaintiff and other
13 class members all wages owed to them upon discharge or resignation” by
14 “intentionally and willfully fail[ing] to pay Plaintiff and other class members who
15 are no longer employed by Defendants their wages, earned and unpaid, within
16 seventy-two (72) hours of their leaving Defendants’ employ.” (Ex. A ¶¶ 40; 82-87
17 (allegations supporting fifth cause of action for final wages not timely paid during
18 employment).)

19 75. California Labor Code § 203(a) provides that “[i]f an employer willfully
20 fails to pay . . . any wages of an employee who is discharged or who quits, the wages
21 of the employee shall continue as a penalty from the due date thereof at the same rate
22 until paid or until an action therefor is commenced; but the wages shall not continue
23 for more than 30 days.”

24 76. Section 203 penalties “accrue not only on the days that the employee
25 might have worked, but also on non[-]workdays,” for up to 30 days, and the accrual
26 of these penalties “has nothing to do with the number of days an employee works
27 during the month.” *Mamika, supra*, 68 Cal. App. 4th at 492-93. As the “targeted
28 wrong” addressed by section 203 is “the delay in payment” of wages, it “continues

1 so long as payment is not made”; therefore, “[a] proper reading of section 203
2 mandates a penalty equivalent to the employee’s daily wages for each day he or she
3 remained unpaid up to a total of 30 days.” *Id.* at 493.

4 77. Here, Plaintiff’s section 203 claim is not premised on only the theory
5 that Defendants failed to timely deliver final paychecks to separated employees.
6 Rather, Plaintiff contends that Defendants owe penalties at least in part as a result of
7 their purported failure to pay all wages owed during employment, including, but not
8 limited to, unpaid minimum and overtime wages, meal period premiums, and rest
9 break premiums. (Ex. A ¶¶ 37-41.) As such, Plaintiff’s theory is that such alleged
10 unpaid wages still have not been paid to Plaintiff and putative class members.
11 Accordingly, it is proper to base the amount in controversy for this claim on a 30-day
12 penalty calculated at each former employee’s daily wage rate. *See, e.g., Quintana,*
13 *supra*, 2013 WL 1736671, at *6 (finding that defendants’ waiting time penalties
14 calculation was “supported by [p]laintiffs’ allegations” and was “a reasonable
15 estimate of the potential value of the claims” where the complaint alleged that
16 defendants “regularly required” putative class members to work off-the-clock
17 without compensation and defendants estimated that each putative class member
18 “potentially suffered at least one violation that continues to be unpaid”) (quotation
19 marks omitted); *Stevenson, supra*, 2011 WL 4928753, at *4 (finding it reasonable for
20 defendant to assume, in light of the allegations in the complaint, that members of the
21 putative class “routinely” missed meal periods and that “all members of the proposed
22 class . . . would have missed a meal period as described in the complaint at least
23 once and were thus entitled to the waiting time penalty”) (quotation marks omitted).

24 78. PL’s very conservative calculation of Plaintiff’s claim for waiting time
25 penalties for failure to timely pay all wages upon termination is **\$336,180** (30 x
26 \$13.00 x 2 x 431). The computation of the amount in controversy is based on data
27 reflecting that from February 25, 2018, to February 25, 2021, at least 431 non-
28 exempt California employees were separated from employment with PL, Plaintiff’s

1 contention that each of these 431 putative class members is qualified to receive
2 waiting time penalties, data reflecting that each putative class member earned a
3 regular rate of at least \$13.00 per hour, and an extremely conservative estimate that a
4 “day” for the purpose of the waiting time penalty constitutes only two work hours.
5 (Vicuna Decl. ¶¶ 10, 14.)

6 79. Consequently, the amount placed in controversy by the claim for
7 waiting time penalties alone is over \$300,000.

8 **(d) The amount placed in controversy by Plaintiff’s claims**
9 **for failure to provide meal and rest periods alone is**
10 **over \$1,000,000.**

11 80. Plaintiff alleges “Defendants failed to provide all requisite uninterrupted
12 meal and rest periods to Plaintiff and other class members.” (Ex. A ¶ 38. *See also id.*
13 ¶¶ 56-66 (allegations supporting second cause of action for unpaid meal period
14 premiums).)

15 81. In addition, Plaintiff alleges “Defendant willfully required Plaintiff and
16 other class members to work during rest periods and failed to pay Plaintiff and other
17 class members the full rest period premium for work performed during the rest
18 periods.” (*Id.* ¶ 72. *See also id.* ¶¶ 67-75 (allegations supporting third cause of action
19 for unpaid rest period premiums).)

20 82. The statute of limitations for a cause of action for failure to provide
21 legally required meal and rest periods is three years. *See* Cal. Lab. Code §§ 203, 338.
22 This statute of limitations is extended to four years, however, where the cause of
23 action is brought as part of a claim under California Business and Professions Code
24 § 17200. (Ex. A ¶¶ 111-117 (allegations supporting tenth cause of action for
25 violation of section 17200).)

26 83. Plaintiff does not allege the number of meal periods or rest periods that
27 were not provided to Plaintiff or putative class members. But Plaintiff alleges
28 Defendant intentionally and willfully required Plaintiff and other class members to

1 work during meal and rest periods and failed to pay Plaintiff and other class
2 members the full meal and rest period premiums for work performed during the meal
3 and rest periods. (Ex. A ¶¶ 63, 72.)

4 84. For purposes of calculating the amount in controversy on Plaintiff's
5 meal and rest break claims, the Court may apply a violation rate of at least one meal
6 period violation per week and one rest period violation per week worked in the four-
7 year statute-of-limitations period. *See, e.g., Quintana, supra*, 2013 WL 1736671 at
8 *6 (finding that it is reasonable to assume that each putative class member is entitled
9 to premium pay for one missed meal period and one missed rest period per week
10 worked); *Jasso*, 2012 WL 699465, at *4-6 (same).

11 85. As a conservative basis for its calculations, PL is applying a violation
12 rate of only one meal and one rest break violation *every other week*. Applying this
13 violation rate to only full-time employees,¹⁰ the putative class members would be
14 entitled to recover at least the amount of **\$1,727,557** ($\$13.00 \times 0.5 \times 132,889$) +
15 ($\$13.00 \times 0.5 \times 132,889$). The computation of this amount is based on the lowest
16 minimum hourly wage for non-exempt California employees during the alleged class
17 period ($\$13.00$), multiplied by 0.5 hours of pay, multiplied by the total number of
18 weeks in which full-time non-exempt employees performed work between February
19 25, 2017 to February 25, 2021 (132,889). (Vicuna Decl. ¶¶ 9, 10.)

20 **4. Summary of Defendants' calculations**

21 86. As described above, a reasonable and conservative estimate of the
22 amount in controversy presented by Plaintiff's overtime, wage statement, waiting
23 time penalty, and meal and rest period claims substantially exceeds \$5,000,000.
24 Indeed, these four claims alone have placed at least **\$ 23,454,328.10** in controversy:

25

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27

28

¹⁰ Continuing to calculate the amount in controversy as conservatively as possible, PL has excluded part-time employees from this calculation.

Claim	PTL's Estimated Exposure	PL's Estimated Exposure	Total Estimated Exposure
Overtime	\$ 4,204,056.38	\$ 2,591,335.50	\$ 6,795,391.88
Wage Statement	\$ 7,171,100.00	\$ 4,305,900.00	\$ 11,477,000.00
Waiting Time Penalties	\$ 315,495.00	\$ 336,180.00	\$ 651,675.00
Meal and Rest Period	\$ 2,802,704.25	\$1,727,557.00	\$ 4,530,261.25
TOTAL	\$ 14,493,355.60	\$ 8,960,972.50	\$ 23,454,328.10

87. In addition, Plaintiff is seeking to recover attorney's fees. (See, e.g., Ex. A ¶¶ 1, 55, 79, 117, and Prayer For Relief ¶¶ 8, 15, 27, 51, 56.) "Ninth Circuit cases have set twenty-five percent as the 'benchmark' level for reasonable attorneys' fees in class action cases." *Garcia v. Wal-Mart Stores, Inc.*, 2016 WL 6068104, at *6 (C.D. Cal. Oct. 14, 2016). Thus, potential attorney's fees are **\$5,863,852.02**.

88. Consequently, the amount placed in controversy by Plaintiff's claims exceeds the \$5,000,000 jurisdictional threshold of 28 U.S.C. § 1332(d).

IV. DEFENDANTS HAVE SATISFIED THE REMAINING REMOVAL REQUIREMENTS

89. Venue is proper. The Superior Court of California, County of Los Angeles, is located within the Central District of California. Therefore, venue for the purposes of removal is proper because the Central District of California is the "district and division embracing the place where such action is pending." 28 U.S.C. § 1441(a).

90. As further required by 28 U.S.C. § 1446(a), Defendants provide this Court with true and correct copies of all process, pleadings, and orders served on Defendants in this action. (Moses Decl. ¶¶ 2, 4-6.) As discussed above, a true and correct copy of the Complaint is attached as Exhibit A to this Notice of Removal. (*Id.* ¶ 2.) A true and correct copy of Defendants' Answer is attached as Exhibit B to this Notice of Removal. (*Id.* ¶ 4.) True and correct copies of the other documents are attached as Exhibit C to this Notice of Removal. (*Id.* ¶ 5.) Defendants have not been

1 served with any pleadings, process, or orders besides those attached. (*Id.* ¶ 6.)

2 91. In accordance with 28 U.S.C. § 1446(d), Defendants will promptly give
3 written notice to Plaintiff of the filing of this Notice of Removal and will file a copy
4 of the Notice with the clerk of the Superior Court of the State of California, County
5 of Los Angeles. Further, in accordance with Federal Rule of Civil Procedure 7.1 and
6 Central District of California Local Rule 7-1.1, Defendants concurrently file their
7 Corporate Disclosure Statement and Certification of Interested Entities or Persons.
8 Finally, in the event that this Court has any question regarding the propriety of this
9 Notice of Removal, Defendants request that the Court issue an Order to Show Cause
10 so that Defendants may have an opportunity to more fully brief the basis for this
11 removal.

12 WHEREFORE, Defendants remove this action to this Court.

13 DATED: May 10, 2021

OGLETREE, DEAKINS, NASH, SMOAK &
STEWART, P.C.

16 By: /s/ Evan R. Moses

Evan R. Moses
Noel M. Hicks

18 Attorneys for Defendants
19 PENSKE LOGISTICS LLC and PENSKE
20 TRUCK LEASING, CO. L.P.

EXHIBIT A

ORIGINAL

1 Edwin Aiwazian (SBN 232943)
2 **LAWYERS for JUSTICE, PC**
3 410 West Arden Avenue, Suite 203
4 Glendale, California 91203
5 Tel: (818) 265-1020 / Fax: (818) 265-1021

FILED
Superior Court of California
County of Los Angeles

FEB 25 2021

Sherri R. Carter, Executive Officer/Clerk of Court
By Tanya Herrera Deputy
Tanya Herrera

6 *Attorneys for Plaintiff*

7
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF LOS ANGELES**

10 PHIL POSTON, individually, and on behalf of
11 other members of the general public similarly
12 situated;

Case No.: **21STCV07387**

CLASS ACTION COMPLAINT FOR DAMAGES

13 Plaintiff,

14 vs.

15 PENSKE LOGISTICS, LLC, an unknown
16 business entity; PENSKE TRUCK LEASING,
17 CO. L.P., an unknown business entity; and
18 DOES 1 through 100, inclusive,

19 Defendants.

- (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code §§ 226.7 and 512(a) (Unpaid Meal Period Premiums);
- (3) Violation of California Labor Code § 226.7 (Unpaid Rest Period Premiums);
- (4) Violation of California Labor Code §§ 1194, 1197, and 1197.1 (Unpaid Minimum Wages);
- (5) Violation of California Labor Code §§ 201 and 202 (Final Wages Not Timely Paid);
- (6) Violation of California Labor Code § 204 (Wages Not Timely Paid During Employment);
- (7) Violation of California Labor Code § 226(a) (Non-Compliant Wage Statements);
- (8) Violation of California Labor Code § 1174(d) (Failure To Keep Requisite Payroll Records);
- (9) Violation of California Labor Code §§ 2800 and 2802 (Unreimbursed Business Expenses);
- (10) Violation of California Business & Professions Code §§ 17200, et seq.

DEMAND FOR JURY TRIAL

LAWYERS for JUSTICE, PC
410 West Arden Avenue, Suite 203
Glendale, California 91203

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Glendale, California 91203

1 COMES NOW, Plaintiff PHIL POSTON (“Plaintiff”), individually, and on behalf of
2 other members of the general public similarly situated, and alleges as follows:

3 **JURISDICTION AND VENUE**

4 1. This class action is brought pursuant to the California Code of Civil Procedure
5 section 382. The monetary damages and restitution sought by Plaintiff exceeds the minimal
6 jurisdiction limits of the Superior Court and will be established according to proof at trial. The
7 “amount in controversy” for the named Plaintiff, including but not limited to claims for
8 compensatory damages, restitution, penalties, wages, premium pay, and pro rata share of
9 attorneys’ fees, is less than seventy-five thousand dollars (\$75,000).

10 2. This Court has jurisdiction over this action pursuant to the California
11 Constitution, Article VI, Section 10, which grants the superior court “original jurisdiction in all
12 other causes” except those given by statute to other courts. The statutes under which this
13 action is brought do not specify any other basis for jurisdiction.

14 3. This Court has jurisdiction over Defendants because, upon information and
15 belief, Defendants are citizens of California, have sufficient minimum contacts in California,
16 or otherwise intentionally avail themselves of the California market so as to render the exercise
17 of jurisdiction over them by California courts consistent with traditional notions of fair play
18 and substantial justice.

19 4. Venue is proper in this Court because, upon information and belief, Defendants
20 maintain offices, have agents, employ individuals, and/or transact business in the State of
21 California, County of Los Angeles.

22 **PARTIES**

23 5. Defendant PENSKE LOGISTICS, LLC, at all times herein mentioned, was and
24 is, an employer whose employees are engaged throughout the State of California, including the
25 County of Los Angeles.

26 6. Defendant PENSKE TRUCK LEASING, CO. L.P., at all times herein mentioned,
27 was and is, an employer whose employees are engaged throughout the State of California,
28 including the County of Los Angeles.

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1 7. At all relevant times, Defendant PENSKE LOGISTICS, LLC and Defendant
2 PENSKE TRUCK LEASING, CO. L.P., were the “employer” of Plaintiff within the meaning of
3 all applicable California laws and statutes.

4 8. At all times herein relevant, Defendants PENSKE LOGISTICS, LLC, PENSKE
5 TRUCK LEASING, CO. L.P., and DOES 1 through 100, and each of them, were the agents,
6 partners, joint venturers, joint employers, representatives, servants, employees, successors-in-
7 interest, co-conspirators and/or assigns, each of the other, and at all times relevant hereto were
8 acting within the course and scope of their authority as such agents, partners, joint venturers,
9 joint employers, representatives, servants, employees, successors, co-conspirators and/or
10 assigns, and all acts or omissions alleged herein were duly committed with the ratification,
11 knowledge, permission, encouragement, authorization and/or consent of each defendant
12 designated as a DOE herein.

13 9. The true names and capacities, whether corporate, associate, individual or
14 otherwise, of defendants DOES 1 through 100, inclusive, are unknown to Plaintiff who sue
15 said defendants by such fictitious names. Plaintiff is informed and believes, and based on that
16 information and belief alleges, that each of the defendants designated as a DOE is legally
17 responsible for the events and happenings referred to in this Complaint, and unlawfully caused
18 the injuries and damages to Plaintiff and the other class members as alleged in this Complaint.
19 Plaintiff will seek leave of court to amend this Complaint to show the true names and
20 capacities when the same have been ascertained.

21 10. Defendant PENSKE LOGISTICS, LLC, PENSKE TRUCK LEASING, CO. L.P.,
22 and DOES 1 through 100 will hereinafter collectively be referred to as “Defendants.”

23 11. Plaintiff further alleges that Defendants directly or indirectly controlled or
24 affected the working conditions, wages, working hours, and conditions of employment of
25 Plaintiff and the other class members so as to make each of said Defendants employers liable
26 under the statutory provisions set forth herein.

27 ///

28 ///

CLASS ACTION ALLEGATIONS

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12. Plaintiff bring this action on his own behalf and on behalf of all other members of the general public similarly situated, and, thus, seeks class certification under California Code of Civil Procedure section 382.

13. The proposed class is defined as follows:

All current and former hourly-paid or non-exempt employees who worked for any of the Defendants within the State of California at any time during the period from four years preceding the filing of this Complaint to final judgment and who reside in California.

14. Plaintiff reserves the right to establish subclasses as appropriate.

15. The class is ascertainable and there is a well-defined community of interest in the litigation:

- a. Numerosity: The class members are so numerous that joinder of all class members is impracticable. The membership of the entire class is unknown to Plaintiff at this time; however, the class is estimated to be greater than fifty (50) individuals and the identity of such membership is readily ascertainable by inspection of Defendants' employment records.
- b. Typicality: Plaintiff's claims are typical of all other class members' as demonstrated herein. Plaintiff will fairly and adequately protect the interests of the other class members with whom he has a well-defined community of interest.
- c. Adequacy: Plaintiff will fairly and adequately protect the interests of each class member, with whom he has a well-defined community of interest and typicality of claims, as demonstrated herein. Plaintiff has no interest that is antagonistic to the other class members. Plaintiff's attorneys, the proposed class counsel, are versed in the rules governing class action discovery, certification, and settlement. Plaintiff has incurred, and during the pendency of this action will continue to incur,

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EXHIBIT A Page 26

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costs and attorneys' fees, that have been, are, and will be necessarily expended for the prosecution of this action for the substantial benefit of each class member.

d. Superiority: A class action is superior to other available methods for the fair and efficient adjudication of this litigation because individual joinder of all class members is impractical.

e. Public Policy Considerations: Certification of this lawsuit as a class action will advance public policy objectives. Employers of this great state violate employment and labor laws every day. Current employees are often afraid to assert their rights out of fear of direct or indirect retaliation. However, class actions provide the class members who are not named in the complaint anonymity that allows for the vindication of their rights.

16. There are common questions of law and fact as to the class members that predominate over questions affecting only individual members. The following common questions of law or fact, among others, exist as to the members of the class:

- a. Whether Defendants' failure to pay wages, without abatement or reduction, in accordance with the California Labor Code, was willful;
- b. Whether Defendants' had a corporate policy and practice of failing to pay their hourly-paid or non-exempt employees within the State of California for all hours worked and missed (short, late, interrupted, and/or missed altogether) meal periods and rest breaks in violation of California law;
- c. Whether Defendants required Plaintiff and the other class members to work over eight (8) hours per day and/or over forty (40) hours per week and failed to pay the legally required overtime compensation to Plaintiff and the other class members;

///

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- 1 d. Whether Defendants deprived Plaintiff and the other class members of
- 2 meal and/or rest periods or required Plaintiff and the other class
- 3 members to work during meal and/or rest periods without compensation;
- 4 e. Whether Defendants failed to pay minimum wages to Plaintiff and the
- 5 other class members for all hours worked;
- 6 f. Whether Defendants failed to pay all wages due to Plaintiff and the other
- 7 class members within the required time upon their discharge or
- 8 resignation;
- 9 g. Whether Defendants failed to timely pay all wages due to Plaintiff and
- 10 the other class members during their employment;
- 11 h. Whether Defendants complied with wage reporting as required by the
- 12 California Labor Code; including, *inter alia*, section 226;
- 13 i. Whether Defendants kept complete and accurate payroll records as
- 14 required by the California Labor Code, including, *inter alia*, section
- 15 1174(d);
- 16 j. Whether Defendants failed to reimburse Plaintiff and the other class
- 17 members for necessary business-related expenses and costs;
- 18 k. Whether Defendants' conduct was willful or reckless;
- 19 l. Whether Defendants engaged in unfair business practices in violation of
- 20 California Business & Professions Code section 17200, et seq.;
- 21 m. The appropriate amount of damages, restitution, and/or monetary
- 22 penalties resulting from Defendants' violation of California law; and
- 23 n. Whether Plaintiff and the other class members are entitled to
- 24 compensatory damages pursuant to the California Labor Code.

GENERAL ALLEGATIONS

25
26 17. At all relevant times set forth herein, Defendants employed Plaintiff and other
27 persons as hourly-paid or non-exempt employees within the State of California, including the
28 County of Los Angeles.

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1 18. Defendants, jointly and severally, employed Plaintiff as an hourly-paid, non-
2 exempt employee, from approximately August 2018 to approximately October 2020, in the
3 State of California, County of Los Angeles.

4 19. Defendants hired Plaintiff and the other class members, classified them as
5 hourly-paid or non-exempt employees, and failed to compensate them for all hours worked and
6 missed meal periods and/or rest breaks.

7 20. Defendants had the authority to hire and terminate Plaintiff and the other class
8 members, to set work rules and conditions governing Plaintiff's and the other class members'
9 employment, and to supervise their daily employment activities.

10 21. Defendants exercised sufficient authority over the terms and conditions of
11 Plaintiff's and the other class members' employment for them to be joint employers of Plaintiff
12 and the other class members.

13 22. Defendants directly hired and paid wages and benefits to Plaintiff and the other
14 class members.

15 23. Defendants continue to employ hourly-paid or non-exempt employees within the
16 State of California.

17 24. Plaintiff and the other class members worked over eight (8) hours in a day,
18 and/or forty (40) hours in a week during their employment with Defendants.

19 25. Plaintiff is informed and believes, and based thereon alleges, that Defendants
20 engaged in a pattern and practice of wage abuse against their hourly-paid or non-exempt
21 employees within the State of California. This pattern and practice involved, *inter alia*, failing
22 to pay them for all regular and/or overtime wages earned and for missed meal periods and rest
23 breaks in violation of California law.

24 26. Plaintiff is informed and believes, and based thereon alleges, that Defendants
25 knew or should have known that Plaintiff and the other class members were entitled to receive
26 certain wages for overtime compensation and that they were not receiving accurate overtime
27 compensation for all overtime hours worked.

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1 27. Plaintiff is informed and believes, and based thereon alleges, that Defendants
2 failed to provide Plaintiff and the other class members all required rest and meal periods during
3 the relevant time period as required under the Industrial Welfare Commission Wage Orders
4 and thus they are entitled to any and all applicable penalties.

5 28. Plaintiff is informed and believes, and based thereon alleges, that Defendants
6 knew or should have known that Plaintiff and the other class members were entitled to receive
7 all meal periods or payment of one additional hour of pay at Plaintiff's and the other class
8 member's regular rate of pay when a meal period was missed, and they did not receive all meal
9 periods or payment of one additional hour of pay at Plaintiff's and the other class member's
10 regular rate of pay when a meal period was missed.

11 29. Plaintiff is informed and believes, and based thereon alleges, that Defendants
12 knew or should have known that Plaintiff and the other class members were entitled to receive
13 all rest periods or payment of one additional hour of pay at Plaintiff's and the other class
14 member's regular rate of pay when a rest period was missed, and they did not receive all rest
15 periods or payment of one additional hour of pay at Plaintiff's and the other class members'
16 regular rate of pay when a rest period was missed.

17 30. Plaintiff is informed and believes, and based thereon alleges, that Defendants
18 knew or should have known that Plaintiff and the other class members were entitled to receive
19 at least minimum wages for compensation and that they were not receiving at least minimum
20 wages for all hours worked.

21 31. Plaintiff is informed and believes, and based thereon alleges, that Defendants
22 knew or should have known that Plaintiff and the other class members were entitled to receive
23 all wages owed to them upon discharge or resignation, including overtime and minimum wages
24 and meal and rest period premiums, and they did not, in fact, receive all such wages owed to
25 them at the time of their discharge or resignation.

26 32. Plaintiff is informed and believes, and based thereon alleges, that Defendants
27 knew or should have known that Plaintiff and the other class members were entitled to receive
28 all wages owed to them during their employment. Plaintiff and the other class members did

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1 not receive payment of all wages, including overtime and minimum wages and meal and rest
2 period premiums, within any time permissible under California Labor Code section 204.

3 33. Plaintiff is informed and believes, and based thereon alleges, that Defendants
4 knew or should have known that Plaintiff and the other class members were entitled to receive
5 complete and accurate wage statements in accordance with California law, but, in fact, they did
6 not receive complete and accurate wage statements from Defendants. The deficiencies
7 included, *inter alia*, the failure to include the total number of hours worked by Plaintiff and the
8 other class members.

9 34. Plaintiff is informed and believes, and based thereon alleges, that Defendants
10 knew or should have known that Defendants had to keep complete and accurate payroll records
11 for Plaintiff and the other class members in accordance with California law, but, in fact, did
12 not keep complete and accurate payroll records.

13 35. Plaintiff is informed and believes, and based thereon alleges, that Defendants
14 knew or should have known that Plaintiff and the other class members were entitled to
15 reimbursement for necessary business-related expenses.

16 36. Plaintiff is informed and believes, and based thereon alleges, that Defendants
17 knew or should have known that they had a duty to compensate Plaintiff and the other class
18 members pursuant to California law, and that Defendants had the financial ability to pay such
19 compensation, but willfully, knowingly, and intentionally failed to do so, and falsely
20 represented to Plaintiff and the other class members that they were properly denied wages, all
21 in order to increase Defendants' profits.

22 37. During the relevant time period, Defendants failed to pay overtime wages to
23 Plaintiff and the other class members for all overtime hours worked. Plaintiff and the other
24 class members were required to work more than eight (8) hours per day and/or forty (40) hours
25 per week without overtime compensation for all overtime hours worked.

26 38. During the relevant time period, Defendants failed to provide all requisite
27 uninterrupted meal and rest periods to Plaintiff and the other class members.

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1 39. During the relevant time period, Defendants failed to pay Plaintiff and the other
2 class members at least minimum wages for all hours worked.

3 40. During the relevant time period, Defendants failed to pay Plaintiff and the other
4 class members all wages owed to them upon discharge or resignation.

5 41. During the relevant time period, Defendants failed to pay Plaintiff and the other
6 class members all wages within any time permissible under California law, including, *inter*
7 *alia*, California Labor Code section 204.

8 42. During the relevant time period, Defendants failed to provide complete or
9 accurate wage statements to Plaintiff and the other class members.

10 43. During the relevant time period, Defendants failed to keep complete or accurate
11 payroll records for Plaintiff and the other class members.

12 44. During the relevant time period, Defendants failed to reimburse Plaintiff and the
13 other class members for all necessary business-related expenses and costs.

14 45. During the relevant time period, Defendants failed to properly compensate
15 Plaintiff and the other class members pursuant to California law in order to increase
16 Defendants' profits.

17 46. California Labor Code section 218 states that nothing in Article 1 of the Labor
18 Code shall limit the right of any wage claimant to "sue directly . . . for any wages or penalty
19 due to him [or her] under this article."

20 **FIRST CAUSE OF ACTION**

21 **(Violation of California Labor Code §§ 510 and 1198)**

22 **(Against PENSKE LOGISTICS, LLC, PENSKE TRUCK LEASING, CO. L.P.,**

23 **and DOES 1 through 100)**

24 47. Plaintiff incorporates by reference the allegations contained in Paragraphs 1
25 through 46, and each and every part thereof with the same force and effect as though fully set
26 forth herein.

27 48. California Labor Code section 1198 and the applicable Industrial Welfare
28 Commission ("IWC") Wage Order provide that it is unlawful to employ persons without

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1 compensating them at a rate of pay either time-and-one-half or two-times that person's regular
2 rate of pay, depending on the number of hours worked by the person on a daily or weekly
3 basis.

4 49. Specifically, the applicable IWC Wage Order provides that Defendants are and
5 were required to pay Plaintiff and the other class members employed by Defendants, and
6 working more than eight (8) hours in a day or more than forty (40) hours in a workweek, at the
7 rate of time-and-one-half for all hours worked in excess of eight (8) hours in a day or more
8 than forty (40) hours in a workweek.

9 50. The applicable IWC Wage Order further provides that Defendants are and were
10 required to pay Plaintiff and the other class members overtime compensation at a rate of two
11 times their regular rate of pay for all hours worked in excess of twelve (12) hours in a day.

12 51. California Labor Code section 510 codifies the right to overtime compensation
13 at one-and-one-half times the regular hourly rate for hours worked in excess of eight (8) hours
14 in a day or forty (40) hours in a week or for the first eight (8) hours worked on the seventh day
15 of work, and to overtime compensation at twice the regular hourly rate for hours worked in
16 excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the seventh day
17 of work.

18 52. During the relevant time period, Plaintiff and the other class members worked in
19 excess of eight (8) hours in a day, and/or in excess of forty (40) hours in a week.

20 53. During the relevant time period, Defendants intentionally and willfully failed to
21 pay overtime wages owed to Plaintiff and the other class members.

22 54. Defendants' failure to pay Plaintiff and the other class members the unpaid
23 balance of overtime compensation, as required by California laws, violates the provisions of
24 California Labor Code sections 510 and 1198, and is therefore unlawful.

25 55. Pursuant to California Labor Code section 1194, Plaintiff and the other class
26 members are entitled to recover unpaid overtime compensation, as well as interest, costs, and
27 attorneys' fees.

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SECOND CAUSE OF ACTION

(Violation of California Labor Code §§ 226.7 and 512(a))

**(Against PENSKE LOGISTICS, LLC, PENSKE TRUCK LEASING, CO. L.P.,
and DOES 1 through 100)**

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56. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 55, and each and every part thereof with the same force and effect as though fully set forth herein.

57. At all relevant times, the IWC Order and California Labor Code sections 226.7 and 512(a) were applicable to Plaintiff's and the other class members' employment by Defendants.

58. At all relevant times, California Labor Code section 226.7 provides that no employer shall require an employee to work during any meal or rest period mandated by an applicable order of the California IWC.

59. At all relevant times, the applicable IWC Wage Order and California Labor Code section 512(a) provide that an employer may not require, cause or permit an employee to work for a work period of more than five (5) hours per day without providing the employee with a meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is no more than six (6) hours, the meal period may be waived by mutual consent of both the employer and employee.

60. At all relevant times, the applicable IWC Wage Order and California Labor Code section 512(a) further provide that an employer may not require, cause or permit an employee to work for a work period of more than ten (10) hours per day without providing the employee with a second uninterrupted meal period of not less than thirty (30) minutes, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

61. During the relevant time period, Plaintiff and the other class members who were scheduled to work for a period of time no longer than six (6) hours, and who did not waive

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1 their legally-mandated meal periods by mutual consent, were required to work for periods
2 longer than five (5) hours without an uninterrupted meal period of not less than thirty (30)
3 minutes and/or rest period.

4 62. During the relevant time period, Plaintiff and the other class members who were
5 scheduled to work for a period of time in excess of six (6) hours were required to work for
6 periods longer than five (5) hours without an uninterrupted meal period of not less than thirty
7 (30) minutes and/or rest period.

8 63. During the relevant time period, Defendants intentionally and willfully required
9 Plaintiff and the other class members to work during meal periods and failed to compensate
10 Plaintiff and the other class members the full meal period premium for work performed during
11 meal periods.

12 64. During the relevant time period, Defendants failed to pay Plaintiff and the other
13 class members the full meal period premium due pursuant to California Labor Code section
14 226.7.

15 65. Defendants' conduct violates applicable IWC Wage Order and California Labor
16 Code sections 226.7 and 512(a).

17 66. Pursuant to applicable IWC Wage Order and California Labor Code section
18 226.7(c), Plaintiff and the other class members are entitled to recover from Defendants one
19 additional hour of pay at the employee's regular rate of compensation for each work day that
20 the meal or rest period is not provided.

21 **THIRD CAUSE OF ACTION**

22 **(Violation of California Labor Code § 226.7)**

23 **(Against PENSKE LOGISTICS, LLC, PENSKE TRUCK LEASING, CO. L.P.,**
24 **and DOES 1 through 100)**

25 67. Plaintiff incorporates by reference the allegations contained in paragraphs 1
26 through 66, and each and every part thereof with the same force and effect as though fully set
27 forth herein.

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1 68. At all times herein set forth, the applicable IWC Wage Order and California
2 Labor Code section 226.7 were applicable to Plaintiff's and the other class members'
3 employment by Defendants.

4 69. At all relevant times, California Labor Code section 226.7 provides that no
5 employer shall require an employee to work during any rest period mandated by an applicable
6 order of the California IWC.

7 70. At all relevant times, the applicable IWC Wage Order provides that "[e]very
8 employer shall authorize and permit all employees to take rest periods, which insofar as
9 practicable shall be in the middle of each work period" and that the "rest period time shall be
10 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
11 hours or major fraction thereof" unless the total daily work time is less than three and one-half
12 (3 ½) hours.

13 71. During the relevant time period, Defendants required Plaintiff and other class
14 members to work four (4) or more hours without authorizing or permitting a ten (10) minute
15 rest period per each four (4) hour period worked.

16 72. During the relevant time period, Defendants willfully required Plaintiff and the
17 other class members to work during rest periods and failed to pay Plaintiff and the other class
18 members the full rest period premium for work performed during rest periods.

19 73. During the relevant time period, Defendants failed to pay Plaintiff and the other
20 class members the full rest period premium due pursuant to California Labor Code section
21 226.7

22 74. Defendants' conduct violates applicable IWC Wage Orders and California
23 Labor Code section 226.7.

24 75. Pursuant to the applicable IWC Wage Orders and California Labor Code section
25 226.7(c), Plaintiff and the other class members are entitled to recover from Defendants one
26 additional hour of pay at the employees' regular hourly rate of compensation for each work
27 day that the rest period was not provided.

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FIFTH CAUSE OF ACTION

(Violation of California Labor Code §§ 201 and 202)

**(Against PENSKE LOGISTICS, LLC, PENSKE TRUCK LEASING, CO. L.P.,
and DOES 1 through 100)**

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82. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 81, and each and every part thereof with the same force and effect as though fully set forth herein.

83. At all relevant times herein set forth, California Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and if an employee quits his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours' notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

84. During the relevant time period, Defendants intentionally and willfully failed to pay Plaintiff and the other class members who are no longer employed by Defendants their wages, earned and unpaid, within seventy-two (72) hours of their leaving Defendants' employ.

85. Defendants' failure to pay Plaintiff and the other class members who are no longer employed by Defendants' their wages, earned and unpaid, within seventy-two (72) hours of their leaving Defendants' employ, is in violation of California Labor Code sections 201 and 202.

86. California Labor Code section 203 provides that if an employer willfully fails to pay wages owed, in accordance with sections 201 and 202, then the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

87. Plaintiff and the other class members are entitled to recover from Defendants the statutory penalty wages for each day they were not paid, up to a thirty (30) day maximum pursuant to California Labor Code section 203.

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SIXTH CAUSE OF ACTION

(Violation of California Labor Code § 204)

**(Against PENSKE LOGISTICS, LLC, PENSKE TRUCK LEASING, CO. L.P.,
and DOES 1 through 100)**

88. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 87, and each and every part thereof with the same force and effect as though fully set forth herein.

89. At all times herein set forth, California Labor Code section 204 provides that all wages earned by any person in any employment between the 1st and 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed.

90. At all times herein set forth, California Labor Code section 204 provides that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month.

91. At all times herein set forth, California Labor Code section 204 provides that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period.

92. During the relevant time period, Defendants intentionally and willfully failed to pay Plaintiff and the other class members all wages due to them, within any time period permissible under California Labor Code section 204.

93. Plaintiff and the other class members are entitled to recover all remedies available for violations of California Labor Code section 204.

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SEVENTH CAUSE OF ACTION

(Violation of California Labor Code § 226(a))

**(Against PENSKE LOGISTICS, LLC, PENSKE TRUCK LEASING, CO. L.P.,
and DOES 1 through 100)**

94. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 93, and each and every part thereof with the same force and effect as though fully set forth herein.

95. At all material times set forth herein, California Labor Code section 226(a) provides that every employer shall furnish each of his or her employees an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and his or her social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. The deductions made from payments of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement or a record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.

96. Defendants have intentionally and willfully failed to provide Plaintiff and the other class members with complete and accurate wage statements. The deficiencies include, but are not limited to: the failure to include the total number of hours worked by Plaintiff and the other class members.

97. As a result of Defendants' violation of California Labor Code section 226(a), Plaintiff and the other class members have suffered injury and damage to their statutorily-protected rights.

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1 98. More specifically, Plaintiff and the other class members have been injured by
2 Defendants' intentional and willful violation of California Labor Code section 226(a) because
3 they were denied both their legal right to receive, and their protected interest in receiving,
4 accurate and itemized wage statements pursuant to California Labor Code section 226(a).

5 99. Plaintiff and the other class members are entitled to recover from Defendants the
6 greater of their actual damages caused by Defendants' failure to comply with California Labor
7 Code section 226(a), or an aggregate penalty not exceeding four thousand dollars per
8 employee.

9 100. Plaintiff and the other class members are also entitled to injunctive relief to
10 ensure compliance with this section, pursuant to California Labor Code section 226(h).

11 **EIGHTH CAUSE OF ACTION**

12 **(Violation of California Labor Code § 1174(d))**

13 **(Against PENSKE LOGISTICS, LLC, PENSKE TRUCK LEASING, CO. L.P.,**
14 **and DOES 1 through 100)**

15 101. Plaintiff incorporates by reference the allegations contained in paragraphs 1
16 through 100, and each and every part thereof with the same force and effect as though fully set
17 forth herein.

18 102. Pursuant to California Labor Code section 1174(d), an employer shall keep, at a
19 central location in the state or at the plants or establishments at which employees are
20 employed, payroll records showing the hours worked daily by and the wages paid to, and the
21 number of piece-rate units earned by and any applicable piece rate paid to, employees
22 employed at the respective plants or establishments. These records shall be kept in accordance
23 with rules established for this purpose by the commission, but in any case shall be kept on file
24 for not less than two years.

25 103. Defendants have intentionally and willfully failed to keep accurate and complete
26 payroll records showing the hours worked daily and the wages paid, to Plaintiff and the other
27 class members.

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TENTH CAUSE OF ACTION

(Violation of California Business & Professions Code §§ 17200, et seq.)

**(Against PENSKE LOGISTICS, LLC, PENSKE TRUCK LEASING, CO. L.P.,
and DOES 1 through 100)**

111. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 110, and each and every part thereof with the same force and effect as though fully set forth herein.

112. Defendants' conduct, as alleged herein, has been, and continues to be, unfair, unlawful and harmful to Plaintiff, other class members, to the general public, and Defendants' competitors. Accordingly, Plaintiff seek to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure section 1021.5.

113. Defendants' activities as alleged herein are violations of California law, and constitute unlawful business acts and practices in violation of California Business & Professions Code section 17200, et seq.

114. A violation of California Business & Professions Code section 17200, et seq. may be predicated on the violation of any state or federal law. In this instant case, Defendants' policies and practices of requiring employees, including Plaintiff and the other class members, to work overtime without paying them proper compensation violate California Labor Code sections 510 and 1198. Additionally, Defendants' policies and practices of requiring employees, including Plaintiff and the other class members, to work through their meal and rest periods without paying them proper compensation violate California Labor Code sections 226.7 and 512(a). Defendants' policies and practices of failing to pay minimum wages violate California Labor Code sections 1194, 1197, and 1197.1. Moreover, Defendants' policies and practices of failing to timely pay wages to Plaintiff and the other class members violate California Labor Code sections 201, 202 and 204. Defendants also violated California Labor Code sections 226(a), 1174(d), 2800 and 2802.

115. As a result of the herein described violations of California law, Defendants unlawfully gained an unfair advantage over other businesses.

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1 116. Plaintiff and the other class members have been personally injured by
2 Defendants' unlawful business acts and practices as alleged herein, including but not
3 necessarily limited to the loss of money and/or property.

4 117. Pursuant to California Business & Professions Code sections 17200, et seq.,
5 Plaintiff and the other class members are entitled to restitution of the wages withheld and
6 retained by Defendants during a period that commences four years preceding the filing of this
7 Complaint; an award of attorneys' fees pursuant to California Code of Civil procedure section
8 1021.5 and other applicable laws; and an award of costs.

9 **DEMAND FOR JURY TRIAL**

10 Plaintiff, individually, and on behalf of other members of the general public similarly
11 situated, requests a trial by jury.

12 **PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiff, individually, and on behalf of other members of the general
14 public similarly situated, prays for relief and judgment against Defendants, jointly and
15 severally, as follows:

16 **Class Certification**

- 17 1. That this action be certified as a class action;
- 18 2. That Plaintiff be appointed as the representative of the Class;
- 19 3. That counsel for Plaintiff be appointed as Class Counsel; and
- 20 4. That Defendants provide to Class Counsel immediately the names and most
21 current/last known contact information (address, e-mail and telephone numbers) of all class
22 members.

23 **As to the First Cause of Action**

24 5. That the Court declare, adjudge and decree that Defendants violated California
25 Labor Code sections 510 and 1198 and applicable IWC Wage Orders by willfully failing to pay
26 all overtime wages due to Plaintiff and the other class members;

27 6. For general unpaid wages at overtime wage rates and such general and special
28 damages as may be appropriate;

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1 19. For all actual, consequential, and incidental losses and damages, according to
2 proof;

3 20. For premium wages pursuant to California Labor Code section 226.7(c);

4 21. For pre-judgment interest on any unpaid wages from the date such amounts
5 were due; and

6 22. For such other and further relief as the Court may deem just and proper.

7 **As to the Fourth Cause of Action**

8 23. That the Court declare, adjudge and decree that Defendants violated California
9 Labor Code sections 1194, 1197, and 1197.1 by willfully failing to pay minimum wages to
10 Plaintiff and the other class members;

11 24. For general unpaid wages and such general and special damages as may be
12 appropriate;

13 25. For statutory wage penalties pursuant to California Labor Code section 1197.1
14 for Plaintiff and the other class members in the amount as may be established according to
15 proof at trial;

16 26. For pre-judgment interest on any unpaid compensation from the date such
17 amounts were due;

18 27. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
19 California Labor Code section 1194(a);

20 28. For liquidated damages pursuant to California Labor Code section 1194.2; and

21 29. For such other and further relief as the Court may deem just and proper.

22 **As to the Fifth Cause of Action**

23 30. That the Court declare, adjudge and decree that Defendants violated California
24 Labor Code sections 201, 202, and 203 by willfully failing to pay all compensation owed at the
25 time of termination of the employment of Plaintiff and the other class members no longer
26 employed by Defendants;

27 31. For all actual, consequential, and incidental losses and damages, according to
28 proof;

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1 32. For statutory wage penalties pursuant to California Labor Code section 203 for
2 Plaintiff and the other class members who have left Defendants' employ;

3 33. For pre-judgment interest on any unpaid compensation from the date such
4 amounts were due; and

5 34. For such other and further relief as the Court may deem just and proper.

6 **As to the Sixth Cause of Action**

7 35. That the Court declare, adjudge and decree that Defendants violated California
8 Labor Code section 204 by willfully failing to pay all compensation owed at the time required
9 by California Labor Code section 204 to Plaintiff and the other class members;

10 36. For all actual, consequential, and incidental losses and damages, according to
11 proof;

12 37. For pre-judgment interest on any unpaid compensation from the date such
13 amounts were due; and

14 38. For such other and further relief as the Court may deem just and proper.

15 **As to the Seventh Cause of Action**

16 39. That the Court declare, adjudge and decree that Defendants violated the record
17 keeping provisions of California Labor Code section 226(a) and applicable IWC Wage Orders
18 as to Plaintiff and the other class members, and willfully failed to provide accurate itemized
19 wage statements thereto;

20 40. For actual, consequential and incidental losses and damages, according to proof;

21 41. For statutory penalties pursuant to California Labor Code section 226(e);

22 42. For injunctive relief to ensure compliance with this section, pursuant to
23 California Labor Code section 226(h); and

24 43. For such other and further relief as the Court may deem just and proper.

25 **As to the Eighth Cause of Action**

26 44. That the Court declare, adjudge and decree that Defendants violated California
27 Labor Code section 1174(d) by willfully failing to keep accurate and complete payroll records

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1 for Plaintiff and the other class members as required by California Labor Code section
2 1174(d);

3 45. For actual, consequential and incidental losses and damages, according to proof;

4 46. For statutory penalties pursuant to California Labor Code section 1174.5; and

5 47. For such other and further relief as the Court may deem just and proper.

6 **As to the Ninth Cause of Action**

7 48. That the Court declare, adjudge and decree that Defendants violated California
8 Labor Code sections 2800 and 2802 by willfully failing to reimburse Plaintiff and the other
9 class members for all necessary business-related expenses as required by California Labor
10 Code sections 2800 and 2802;

11 49. For actual, consequential and incidental losses and damages, according to proof;

12 50. For the imposition of civil penalties and/or statutory penalties;

13 51. For reasonable attorneys' fees and costs of suit incurred herein; and

14 52. For such other and further relief as the Court may deem just and proper.

15 **As to the Tenth Cause of Action**

16 53. That the Court decree, adjudge and decree that Defendants violated California
17 Business and Professions Code sections 17200, et seq. by failing to provide Plaintiff and the
18 other class members all overtime compensation due to them, failing to provide all meal and
19 rest periods to Plaintiff and the other class members, failing to pay at least minimum wages to
20 Plaintiff and the other class members, failing to pay Plaintiff's and the other class members'
21 wages timely as required by California Labor Code section 201, 202 and 204 and by violating
22 California Labor Code sections 226(a), 1174(d), 2800 and 2802.

23 54. For restitution of unpaid wages to Plaintiff and all the other class members and
24 all pre-judgment interest from the day such amounts were due and payable;

25 55. For the appointment of a receiver to receive, manage and distribute any and all
26 funds disgorged from Defendants and determined to have been wrongfully acquired by
27 Defendants as a result of violation of California Business and Professions Code sections
28 17200, et seq.;

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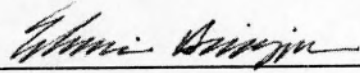
56. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Code of Civil Procedure section 1021.5;

57. For injunctive relief to ensure compliance with this section, pursuant to California Business and Professions Code sections 17200, et seq.; and

58. For such other and further relief as the Court may deem just and proper.

Dated: February 24, 2021

LAWYERS for JUSTICE, PC

By: 
Edwin Aiwazian
Attorneys for Plaintiff

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