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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

DEC 28 2020

BY 
LILIANA MARISCAL, DEPUTY

9
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **FOR THE COUNTY OF SAN BERNARDINO**

BY FAX

CIV SB 2029173

12 LADELL TAYLOR, as an individual, on
13 behalf of himself, and all persons similarly
situated,

14 Plaintiff,

15 v.

16
17 PENSKE LOGISTICS, LLC, a Delaware
limited liability company authorized to do
18 business in California; PENSKE TRUCK
LEASING CO., L.P., a Delaware limited
19 partnership authorized to do business in
California; and DOES 1 through 50 inclusive,

20 Defendants.
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Case No.: _____

**REPRESENTATIVE ACTION FOR CIVIL
PENALTIES PURSUANT TO THE
PRIVATE ATTORNEYS GENERAL ACT
OF 2004 (Labor Code §§ 2698 et seq.)**

- (1) **FAILURE TO PROVIDE LEGALLY
COMPLIANT MEAL PERIODS
AND/OR COMPENSATION IN LIEU
THEREOF**
(Labor Code §§ 204, 226.7, 512, 558
and 1198);
- (2) **FAILURE TO PROVIDE LEGALLY
COMPLIANT REST PERIODS
AND/OR COMPENSATION IN LIEU
THEREOF**
(Labor Code §§ 204, 226.7 and 1198);
- (3) **FAILURE TO TIMELY PAY
MINIMUM, REGULAR, AND/OR
OVERTIME WAGES**
(Labor Code §§ 204, 210, 510, 558,
1194, 1194.2, 1197, 1197.1, 1198 and
1199);
- (4) **FAILURE TO TIMELY PAY ALL
WAGES DUE AND OWED UPON
SEPARATION OF EMPLOYMENT**
(Labor Code §§ 201-204 and 210);

- (5) **FAILURE TO FURNISH ACCURATE ITEMIZED WAGE STATEMENTS (Labor Code §§ 226 and 226.3);**
- (6) **FAILURE TO MAINTAIN ACCURATE RECORDS (Labor Code §§ 226, 1174 and 1174.5); and**
- (7) **RETALIATION AGAINST EMPLOYEES WHO MAKE GOOD FAITH COMPLAINTS ABOUT UNPAID WAGES (Labor Code §§ 98.6, 1102.5 and 6310)**

Plaintiff Ladell N. Taylor (“Plaintiff”) brings this action in his representative capacity against Defendants Penske Logistics, LLC, Penske Truck Leasing Co., L.P., and DOES 1 through 50, inclusive (collectively, “Penske” or “Defendants”), on the following grounds:

INTRODUCTION

1. Plaintiff brings this representative action under the Private Attorneys General Act of 2004 (codified in California Labor Code §§ 2698 *et seq.*, “PAGA”) on behalf of himself and all other current or former non-exempt employees of Penske, individually and/or collectively, in California (referred to herein as “Penske Employees”).

2. Plaintiff alleges that during the relevant time period Penske engaged in a common pattern and practice of wage and hour violations under the California Labor Code (“Labor Code”) and the Industrial Welfare Commission (“IWC”) Wage Orders to decrease their employment related costs by, among other things:

- a. Failing to provide legally compliant meal periods and/or compensation in lieu thereof;
- b. Failing to provide legally compliant rest periods and/or compensation in lieu thereof;
- c. Failing to timely pay all minimum, regular, and/or overtime wages;
- d. Failing to timely pay all wages owed and due at the time of separation and/or the required waiting time penalties;

- e. Failing to furnish accurate itemized wage statements;
- f. Failing to maintain accurate records; and
- g. Engaging in retaliation against Penske Employees who make good faith complaints about unpaid wages.

3. By and through this representative action, Plaintiff seeks to recover all available remedies including, but not limited to, civil penalties, reasonable attorneys' fees and litigation costs, as provided under California law.

4. All allegations in this Compliant are based upon information and belief except those allegations specifically pertaining to Plaintiff and/or his counsel, which are based upon personal knowledge. Each allegation in this Compliant has evidentiary support and/or is likely to have evidentiary support after reasonable opportunity for further investigation and formal discovery.

JURISDICTION AND VENUE

5. This Court has jurisdiction over this action pursuant to California Code of Civil Procedure ("Code of Civil Procedure") section 410.10 and Labor Code §§ 2698 *et seq.* Pursuant to §§ 2698 *et seq.*, Plaintiff brings this action on behalf of himself and all other Penske Employees.

6. This Court has personal jurisdiction over Penske because Penske conducts business in the state of California and has caused injuries in the county of San Bernardino, as well as throughout the state of California, through its acts, omissions, and violations of the Labor Code and relevant IWC Wage Order.

7. Venue as to Penske is proper in this judicial district pursuant to Code of Civil Procedure section 395(a) and 395.5. Each individual defendant transacts business in San Bernardino County and is otherwise within this Court's jurisdiction for purposes of service of process. The unlawful acts alleged herein have a direct effect on Plaintiff and all other Penske Employees within the county of San Bernardino and throughout the state of California.

8. Pursuant to rule 3.400 of the California Rules of Court, this case may be deemed a complex action because it is filed as a representative action that involves specialized case management, extensive discovery and evidence, difficult and/or novel issues, and is likely to require extensive post-judgment supervision.

THE PARTIES

I. PLAINTIFF

9. Plaintiff Ladell N. Taylor at all material times mentioned herein:

- a. Was and is a resident of the county of San Bernardino, California;
- b. Was employed by and/or otherwise performed work for Penske as a driver from about June 25, 2018 through July 20, 2020;
- c. Was responsible for transporting and delivering Penske's customer's products from the warehouse in San Bernardino to various locations throughout Southern California in a timely manner;
- d. Engaged in work for Penske in various counties throughout California including, but not limited to, San Bernardino County, Los Angeles County, Orange County, Riverside County, San Diego County, Ventura County, Santa Barbara County, San Luis Obispo County, and Kern County;
- e. Was classified by Penske as a non-exempt employee for purposes of the Labor Code and the IWC Wage Orders;
- f. Earned an hourly wage and was paid on a weekly basis;
- g. Worked approximately 60-65 hours per week;
- h. Was not provided with the opportunity to take legally compliant meal periods or compensation in lieu thereof;
- i. Was not authorized and permitted to take legally compliant rest periods or provided with compensation in lieu thereof;
- j. Was not timely compensated the appropriate minimum, regular, and/or overtime wages for all time worked;
- k. Was not timely paid all wages due and payable upon separation of employment, or the necessary waiting time penalties;
- l. Was not furnished with itemized wage statements that showed all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee;

- 1 m. Contends his employee and payroll records were not accurately maintained by
2 Penske;
- 3 n. Was unlawfully discharged by Penske after making a good-faith complaint that
4 he was owed unpaid wages and making a claim for such wages with the
5 California Division of Labor Standards Enforcement;
- 6 o. Is an “aggrieved employee” within the meaning of Labor Code § 2699(c); and
7 p. Has complied with all requirements outlined in Labor Code §§ 2698 *et seq.*

8 **II. DEFENDANTS**

9 10. Defendant Penske Logistics, LLC (“Penske Logistics”) is a Delaware limited liability
10 corporation authorized to do business, and actually doing business, in the state of California. Penske
11 Logistics provides supply chain management, logistic services and solutions to various customers
12 throughout California. Penske Logistics is believed to be a wholly owned subsidiary of Penske Truck
13 Leasing Co., L.P.

14 11. Defendant Penske Truck Leasing Co., L.P. (“Penske Trucking”) is a Delaware limited
15 partnership authorized to do business, and actually doing business, in the state of California. Penske
16 Trucking provides commercial and consumer truck rentals, full-service truck leasing and maintenance,
17 logistic solutions, and used trucks to various customers throughout California.

18 12. The true names and capacities, whether individual, corporate, subsidiary, partnership,
19 associate, or otherwise of defendant Does 1 through 50, inclusive, are unknown to Plaintiff, who
20 therefore sues these defendants by such fictitious names pursuant to Code of Civil Procedure section
21 474. Plaintiff will amend this Complaint, setting forth the true names and capacities of these
22 fictitiously named defendants when their true names are ascertained. Plaintiff is informed and believes,
23 and on that basis alleges, that each of the fictitious defendants have participated in the acts and/or
24 omissions alleged in this Complaint.

25 13. At all times mentioned herein, the acts alleged to have been done and/or caused by the
26 named defendant is also alleged to have been done and/or caused by the fictitiously named defendants,
27 and by each of their agents and/or employees who acted within the scope of their agency and/or
28 employment.

1 14. At all times mentioned herein, each named defendant, including each fictitiously named
2 defendant, is believed to have acted individually or as an officer, agent, or employee of the other
3 defendants.

4 15. At all times mentioned herein, each named defendant, including each fictitiously named
5 defendant, acted as an agent, servant, employee, co-conspirator, alter-ego and/or joint venture of the
6 other defendants, and in doing the things alleged herein acted within the course and scope of such
7 agency, employment, alter-ego and/or in furtherance of the joint venture.

8 16. At all times mentioned herein, the acts and/or omissions of each of the named
9 defendants, including each fictitiously named defendant, concurrently contributed to the various acts
10 and/or omissions of each and every one of the other defendants, including each fictitiously named
11 defendant, in proximately causing the wrongful conduct, harm, and/or damages alleged herein. Each of
12 the named defendants, including each fictitiously named defendant, approved of, condoned, and/or
13 otherwise ratified each and every one of the acts and/or omissions complained herein. Each named
14 defendant, including each fictitiously named defendant, was and is acting with authority of each and
15 every other defendant and/or are acting as agents of each and every other defendant or Doe defendant.

16 17. At all times mentioned herein there was a unity of interest and ownership between each
17 named defendant, including each fictitiously named defendant, such that all defendants acted as a
18 single employer of Plaintiff and all other Penske Employees.

19 18. At all times mentioned herein, each named defendant, including each fictitiously named
20 defendant, exercised supervision and control over the wages, hours, and/or working conditions of
21 Plaintiff and all other Penske Employees, including, but not limited to, implementing standard policies
22 and procedures.

23 19. At all times mentioned herein, each named defendant, including each fictitiously named
24 defendant, caused Penske Employees, including Plaintiff, to work and/or prevented Plaintiff and other
25 Penske Employees from working

26 20. At all times mentioned herein, each named defendant, including each fictitiously named
27 defendant, had control over Penske Employees.

28 21. Each named defendant, including each fictitiously named defendant is alleged to have

1 caused each of the violations alleged herein.

2 22. Each named defendant, including each fictitiously named defendant, is jointly and
3 severally liable for each of the violations alleged herein.

4 **FACTUAL ALLEGATIONS**

5 23. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all
6 paragraphs of this Complaint.

7 24. Plaintiff was employed by, or otherwise performed work for, Penske as a driver based
8 out of the San Bernardino, California warehouse from approximately June 25, 2019 through and
9 including July 20, 2020. During his employment, Plaintiff performed work for Penske as a yard driver
10 and truck driver. As a yard driver, Plaintiff was responsible for moving trailers to and from various
11 docks in the yard so that they could be emptied and cleaned before being loaded with product, as well
12 as turning on the cooling system in the truck to ensure that the trailer was cool before the product is
13 loaded. As a truck driver, Plaintiff drove a big-rig truck for Penske's Sprouts account and was
14 responsible for transporting and delivering the customer's grocery products in a timely manner. During
15 his employment, Plaintiff was classified by Penske as a non-exempt employee, was to earn an hourly
16 wage, and was to be paid on a weekly basis. Plaintiff typically worked between 60-65 hours per week.

17 25. Plaintiff asserts that Penske has employed, and will continue to employ, several
18 individuals in a non-exempt capacity in San Bernardino County and throughout the state of California.
19 Plaintiff further asserts that throughout the relevant time period all Penske Employees earned an hourly
20 wage, were paid on a weekly basis, and worked at least eight (8) hours a day and/or forty (40) hours
21 per week.

22 26. Plaintiff contends that he and all other Penske Employees were subject to, and those
23 currently employed continue to be subject to, the same and/or similar policies, practices, procedures
24 guidelines and/or culture described herein.

25 27. Plaintiff further alleges that he and all other Penske Employees have suffered, and those
26 currently employed will continue to suffer, the same and/or similar violations of law described herein.

27 28. Plaintiff contends that Penske did not, and does not, have a policy, practice, procedure,
28 guideline and/or culture of providing all Penske Employees with the opportunity to take an

1 uninterrupted, thirty (30) minute off-duty meal period before the end of their fifth (5th) hour of work
2 when they worked five (5) or more hours in a day. Similarly, Plaintiff contends that Penske did not,
3 and does not have a policy, practice, procedure, guideline and/or culture of providing all Penske
4 Employees with the opportunity to take a second uninterrupted, thirty (30) minute off-duty meal period
5 when they worked more than ten (10) hours in a day.

6 29. Plaintiff alleges that he and other Penske Employees were not provided with the
7 opportunity to take lawful meal periods because Penske has a policy, practice, procedure, guideline
8 and/or culture of assigning routes, delivery requirements, and/or workloads that cannot reasonably be
9 completed within their scheduled hours, resulting in Penske Employees being directed, compelled
10 and/or otherwise coerced to work through their meal periods because they were required by Penske to
11 deliver their customer's products in a timely manner.

12 30. Plaintiff asserts that Penske knew or should have known that Plaintiff and other Penske
13 Employees were not provided with the opportunity to take legally compliant meal periods due in large
14 part to Penske's policy, practice, procedure, guideline and/or culture of assigning routes, delivery
15 requirements, and/or workloads that could not reasonably be completed within their scheduled hours.

16 31. Despite not being provided with legally compliant meal periods, Plaintiff alleges that
17 Penske did not, and does not, have a policy, practice, procedure, guideline and/or culture of paying
18 meal period premiums to Plaintiff and other Penske Employees for all meal periods that do not comply
19 with California law.

20 32. Plaintiff further alleges that Penske did not, and does not have a policy, practice,
21 procedure, guideline, and/or culture of authorizing and permitting Plaintiff and other Penske
22 Employees to take uninterrupted off-duty rest periods of at least ten (10) minutes for every four (4)
23 hours worked or major fraction thereof.

24 33. Plaintiff alleges that he and other Penske Employees were not provided with the
25 opportunity to take lawful rest periods because Penske has a policy, practice, procedure, guideline
26 and/or culture of assigning routes, delivery requirements, and/or workloads that cannot reasonably be
27 completed within their scheduled hours, resulting in Penske Employees being directed, compelled
28

1 and/or otherwise coerced to work through their rest periods because they were required by Penske to
2 deliver their customer's products in a timely manner.

3 34. Plaintiff asserts that Penske knew or should have known that Plaintiff and other Penske
4 Employees were not authorized and permitted to take legally compliant rest periods due in large part to
5 Penske's policy, practice, procedure, guideline and/or culture of assigning routes, delivery
6 requirements, and/or workloads that could not reasonably be completed within their scheduled hours.

7 35. Despite not being provided with legally compliant rest periods, Plaintiff alleges that
8 Penske did not, and does not, have a policy, practice, procedure, guideline and/or culture of
9 compensating Plaintiff and other Penske Employees for all unlawful rest periods.

10 36. Plaintiff further contends that Penske had, and continues to have a policy, practice,
11 procedure, guideline, and/or culture of not timely compensating him and all other Penske Employees
12 minimum, regular, and/or overtime wages for all time engaged in work on behalf of Penske.

13 37. Plaintiff contends that due in part to Penske's policy, practice, procedure, guideline
14 and/or culture of assigning routes, delivery requirements, and/or workloads that could not reasonably
15 be completed within their scheduled hours, he and other Penske Employees were directed, pressured,
16 compelled and/or otherwise coerced to regularly perform their job duties while clocked out for their
17 meal periods. Consequently, Penske improperly considered time spent by Penske Employees working
18 through meal periods as non-compensable and failed to provide any remuneration.

19 38. Plaintiff also contends that Penske has a policy, practice, procedure, guideline and/or
20 culture of not paying Penske Employees overtime wages for hours worked in excess of eight (8) hours
21 per day and/or forty (40) hours per week. Plaintiff asserts that Penske informed him and other Penske
22 Employees in or around Fall 2018 that they would no longer be paid overtime for hours worked in
23 excess of eight (8) hours per day and/or forty (40) hours per week. Plaintiff alleges that, despite
24 working in excess of eight (8) hours per day and/or forty (40) hours per week, he and other Penske
25 Employees were not paid overtime wages in excess of eight (8) hours per day and/or forty (40) hours
26 per week.

27 39. Plaintiff further contends that Penske has a policy, practice, procedure, guideline and/or
28 culture of offering and subsequently paying nondiscretionary bonuses (e.g., safety bonuses) to Penske

1 Employees. However, Plaintiff alleges that Penske has a policy, practice, procedure, guideline and/or
2 culture of not including the nondiscretionary bonuses into Penske Employees' regular rate of pay for
3 purposes of computing overtime. Thus, Penske Employees were not timely paid all overtime wages.

4 40. Plaintiff alleges that Penske has a policy, practice, procedure, guideline and/or culture
5 of willfully failing to timely pay former Penske Employees, such as himself, with all wages due and
6 owing upon separation of employment and/or the mandated waiting time penalties for the late payment
7 of such wages. For instance, despite being terminated from his employment, Plaintiff was not
8 immediately paid all his wages due and owing including, but not limited to, unpaid minimum, regular
9 and/or overtime wages, as well as premium wages. Plaintiff has also not received the statutory waiting
10 time penalties for the late payment of wages. Plaintiff further alleges, based on information and belief,
11 that other former Penske Employees were not timely paid all wages due and owed upon separation of
12 employment or paid the required waiting time penalties, in large part due to Penske's policy, practice,
13 procedure, guideline and/or culture of failing to properly pay all minimum, regular, overtime and/or
14 premium wages.

15 41. Plaintiff asserts that Penske has a policy, practice, procedure, guideline and/or culture of
16 furnishing Penske Employees, including Plaintiff, with wage statements that do not comply with
17 California law. Claimant contends that the wage statements furnished to him and other Penske
18 Employees did not include, for instance, the total hours worked by the employee, all applicable hourly
19 rates in effect during the pay period and the corresponding number of hours worked at each hourly rate
20 by the employee, the actual gross and net wages earned, the pay period information for each wage
21 statement, and the appropriate name and address of the legal entity that employed Penske Employees.

22 42. Due to the lack of information on the furnished wage statements, Penske Employees,
23 such as Plaintiff, were unable to promptly and easily determine the total number of hours worked, the
24 applicable hourly rates in effect during the pay period and/or the corresponding number of hours
25 worked at each hourly rate, among other things.

26 43. Plaintiff contends that Penske has, and continues to have, a policy, practice, procedure
27 and/or guideline of failing to keep and maintain accurate records reflecting, for example, all of
28 Plaintiff's and other Penske Employees' actual hours worked, meal periods taken, and wages earned

1 and paid. For instance, Penske had, and continues to have, a policy, practice, procedure and/or
2 guideline of failing to record the actual hours worked by Penske Employees, including all meal
3 periods, resulting in non-payment of earned wages and inaccurate wage statements.

4 44. Plaintiff contends that Penske has, and continues to have, a policy, practice, procedure
5 and/or guideline of retaliating against Penske Employees, such as Plaintiff, who make good faith
6 complaints about unlawful working conditions, such as non-payment of wages, in the workplace. For
7 example, Plaintiff verbally expressed to his supervisors that he believed he and other Penske
8 Employees were to be paid overtime for work in excess of 8 hours per day/40 hours per week. After
9 Plaintiff's concerns went unacknowledged, Plaintiff filed a claim with the California Division of Labor
10 Standards and Enforcement ("DLSE") in April 2020. Thereafter, Penske began taking adverse action
11 against Plaintiff by writing him up for "safety violations." Penske, however, refused to provide
12 Plaintiff with any evidence of the alleged safety violations and refused to provide any guidance on how
13 to remedy the alleged safety concerns. Plaintiff was subsequently suspended and ultimately terminated
14 in July 2020. Plaintiff contends that Penske engaged in retaliation against him for his complaints and
15 claim to the DLSE for unpaid wages. Plaintiff further alleges, based on information and belief, that
16 other Penske Employees have been retaliated against for complaints about unlawful working
17 conditions in the workplace.

18 45. On September 25, 2020, Plaintiff submitted written notice to the California Labor and
19 Workforce Development Agency ("LWDA") and Penske as required by the PAGA informing them of
20 Penske's alleged violations of the Labor Code. A true and correct copy of the September 25, 2020,
21 written notice is attached hereto as **Exhibit 1** and is incorporated herein by reference. Subsequently, on
22 October 5, 2020, Plaintiff submitted an amended written notice to the LWDA and Penske as mandated
23 by the statute, notifying them of Penske's alleged violations of the Labor Code. A true and correct
24 copy of the October 5, 2020, written notice is attached hereto as **Exhibit 2** and is incorporated herein
25 by reference.

26 46. To date, the LWDA has not provided notice of whether it intends to investigate
27 Plaintiff's alleged violations of the Labor Code.
28

47. Plaintiff further believes that additional violations may be discovered and therefore reserves his right to allege additional violations of the law as investigation and discovery warrants. In the event Plaintiff discovers additional violations, Plaintiff will seek to amend the operative complaint as necessary.

PAGA CLASS DEFINITION

48. By and through this representative action, Plaintiff intends to represent the following class of putative aggrieved employees, which is defined as:

All current or former non-exempt employees of Defendants, individually and/or collectively, in California during the period commencing on the date that is within one year and sixty-five days prior to the filing of this Complaint through and including the last date of trial (hereinafter the “PAGA Period”). To the extent that California Rules of Court, Appendix I, Emergency Rule 9 and/or equitable tolling operates to toll the claims by the PAGA class against Defendants, the PAGA Period should be adjusted accordingly.

49. Members of the PAGA class are all “employees” as the term is used in the Labor Code and the IWC Wage Orders regulating wages, hours, and working conditions in the state of California.

50. A more precise definition of the class may be determined after further investigation and discovery. Plaintiff reserves his right to redefine the class and/or create additional sub-classes as permitted by California law.

PAGA DESIGNATION

51. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all paragraphs of this Complaint.

52. Pursuant to Labor Code § 2699, any provision of the Labor Code that provides for a civil penalty to be assessed and collected by the LWDA or any of its departments, divisions, commissions, boards, agencies or employees for violation of the code may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Labor Code § 2699.3. Such civil penalties are in addition to any other relief provided for under the Labor Code and must be allocated seventy-five percent (75%) to the LWDA and twenty-five percent (25%) to the aggrieved employees, pursuant to § 2699(i).

1 53. During all, or a portion of, the one-year and sixty-five day period before Plaintiff filed
2 notice of his claims with LWDA, Penske was Plaintiff's and all other Penske Employees' employer or
3 person acting on behalf of Penske Employees' employer either individually or as an officer, agent, or
4 employee of another person, within the meaning of Labor Code §§ 558(a) and 1197.1, who paid or
5 caused to be paid to any employee a wage less than the minimum fixed by California state law, and as
6 such, is subject to civil penalties for each underpaid employee, as well as liquidated damages pursuant
7 to Labor Code § 1194.2, and any applicable penalties imposed pursuant to Labor Code § 203.

8 54. Plaintiff is an "aggrieved employee" under the PAGA, because he was employed by the
9 alleged violator, Penske, and had one or more of the alleged violations committed against him, and
10 therefore is properly suited to represent the interests of other Penske Employees. (See *Huff v. Securitas*
11 *Security Services, USA, Inc.* (2018) 23 Cal.App.5th 745, 751, 761; *Carrington v. Starbucks Corp.*
12 (2018) 30 Cal.App.5th 504, 519.)

13 55. Plaintiff alleges that all other Penske Employees are also "aggrieved employees" under
14 the PAGA as Penske employed them and the Penske Employees experienced one or more of the
15 alleged violations outlined herein.

16 56. Pursuant to Labor Code §§ 2698 *et seq.*, Plaintiff has exhausted his administrative
17 remedies because he complied with the notice requirements outlined in Labor Code § 2699.3. On
18 September 25, 2020, Plaintiff submitted notice to the LWDA and Penske informing them of the
19 Penske's alleged Labor Code violations pursuant to the PAGA. (See Exh. 1.) On October 5, 2020,
20 Plaintiff submitted an amended notice to the LWDA and Penske informing them of Penske's alleged
21 Labor Code violations under the PAGA. (See Exh. 2.) Pursuant to the PAGA the LWDA had 65 days
22 to provide notice of whether it intended to investigate the alleged violations. To date, the LWDA has
23 not provided notice of whether it intends to investigate the alleged violations. Plaintiff thus has the
24 right to pursue, and does pursue, his claims under PAGA in a representative capacity pursuant to Labor
25 Code § 2699.

26 57. As set forth herein, Penske has committed, and continues to commit, numerous
27 violations for which the Labor Code and applicable IWC Wage Order entitles Plaintiff, in his
28 representative capacity, to recover, on behalf of himself, all other Penske Employees, the state of

1 California, and the general public, civil penalties as well as attorneys' fees and costs from Penske for
2 the alleged violations, described herein.

3 58. Plaintiff, in his representative capacity on behalf of himself and all other Penske
4 Employees, is entitled to and thus seeks to recover civil penalties through a representative action based
5 on violations of the following Labor Code and/or IWC Wage Order provisions:

- 6 a. Failure to provide legally compliant meal periods and/or compensation in lieu
7 thereof in violation of Labor Code §§ 204, 226.7, 512, 558 and 1198 and the
8 "Meal Periods" section of the IWC Wage Order 9-2001;
- 9 b. Failure to provide legally compliant rest periods and/or compensation in lieu
10 thereof in violation of Labor Code §§ 204, 226.7 and 1198 and the "Rest Period"
11 section of the IWC Wage Order 9-2001;
- 12 c. Failure to timely pay minimum, regular, and/or overtime wages in violation of
13 Labor Code §§ 204, 210, 510, 1194, 1194.2, 1197, 1197.1, 1198 and 1199 and the
14 "Minimum Wages" and "Hours and Days of Work" sections of the IWC Wage
15 Order 9-2001;
- 16 d. Failure to timely pay all wages due and owing upon separation of employment
17 and/or the necessary waiting time penalties in violation of Labor Code §§ 201-
18 204 and 210;
- 19 e. Failure to furnish accurate itemized wage statements in violation of Labor Code
20 §§ 226 and 226.3 and the "Records" section of the IWC Wage Order 9-2001;
- 21 f. Failure to maintain accurate records in violation of Labor Code §§ 226, 1174 and
22 1174.5 and the "Records" section of the IWC Wage Order 9-2001;
- 23 g. Retaliation against employees for making good-faith complaints about working
24 conditions in violation of Labor Code §§ 98.6, 1102.5 and 6310.

25 59. Labor Code § 2699(f) imposes a civil penalty of \$100 per pay period, per employee for
26 the initial violation, and \$200 per pay period, per employee for each subsequent violation for all Labor
27 Code provisions for which a civil penalty is not specifically provided, including, but not limited to, Labor
28 Code §§ 98.6, 201, 202, 203, 204, 226(a), 226.7, 510, 512, 1102.5, 1174(d), 1194, 1197, 1197.1, 1198,

1 and 6310. Plaintiff and other PAGA Employees are entitled to, and therefore seek, the civil penalties
2 described in Labor Code § 2699(f) for the violations of law described herein.

3 60. Labor Code § 2699(g)(1) provides that an employee who prevails in a civil action brought
4 pursuant to PAGA shall be entitled to an award of reasonable attorneys' fees and costs. As such, Plaintiff,
5 in his representative capacity on behalf of himself and all other PAGA Employees, is entitled to, and
6 therefore seeks, attorneys' fees and costs.

7 **CAUSES OF ACTION**

8 **FIRST CAUSE OF ACTION**

9 **(By Plaintiff in his Representative Capacity Against Defendants and Does 1-50)**

10 **FAILURE TO PROVIDE LEGALLY COMPLIANT MEAL PERIODS**

11 **AND/OR COMPENSATION IN LIEU THEREOF**

12 **[Labor Code §§ 204, 226.7, 512, 558 and 1198 and the "Meal Periods" section of IWC Wage**
13 **Order No. 9-2001]**

14 61. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all
15 paragraphs of this Complaint.

16 62. Labor Code § 512(a) states,

17 An employer may not employ an employee for a work period of more
18 than five hours per day without providing the employee with a meal
19 period of not less than 30 minutes, except that if the total work period
20 per day of the employee is no more than six hours, the meal period may
21 be waived by mutual consent of both the employer and employee. An
22 employer may not employ an employee for a work period of more than
23 10 hours per day without providing the employee with a second meal
24 period of not less than 30 minutes, except that if the total hours worked
25 is no more than 12 hours, the second meal period may be waived by
26 mutual consent of the employer and the employee only if the first meal
27 period was not waived. (Emphasis added.)

28 63. The "Meal Periods" section of IWC Wage Order No. 9-2001 provides, in pertinent part,

(A) No employer shall employ any person for a work period of more than
five (5) hours without a meal period of not less than 30 minutes, except
that when a work period of not more than six (6) hours will complete the
day's work the meal period may be waived by mutual consent of the
employer and the employee. Unless the employee is relieved of all duty
during a 30-minute meal period, the meal period shall be considered an
"on duty" meal period and counted as time worked. An "on duty" meal
period shall be permitted only when the nature of the work prevents an

employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal is agreed to.

(B) An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 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....

(D) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided. (Emphasis added.)

64. A meal period generally comports with the requirements under California law if the employee has at least 30 minutes uninterrupted, is free to leave the premises, and is relieved of all duty for the entire period. (See *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1036.) Additionally, “an employer may not undermine formal policy of providing meal breaks by pressuring employees to perform their duties in ways that omit breaks.” (*Id.* at 1040 [internal citations omitted].)

65. Labor Code section 226.7(b) states, “[a]n employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission...” Labor Code section 226.7(c) further provides,

[i]f an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law... the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

66. Labor Code § 204 establishes an employee’s fundamental right in the state of California to be paid wages in a timely manner for their work. Premium wages under Labor Code § 226.7 are wages that are due and payable in accordance with Labor Code § 204. (*Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1103-1114.)

67. Plaintiff alleges that Penske did not, and does not, have a policy, practice, procedure, guideline and/or culture of offering all Penske Employees with the opportunity to take a thirty (30) minute uninterrupted, off-duty meal period before the end of their fifth (5th) hour of work when they

1 worked five (5) or more hours in a day and/or the opportunity to take a second thirty (30) minute
2 uninterrupted, off-duty meal period when they worked more than ten (10) hours in a day.

3 68. Plaintiff also alleges Penske has a policy, practice, procedure, guideline and/or culture
4 of assigning routes, delivery requirements, and/or workloads that cannot reasonably be completed
5 within their scheduled hours resulting in Penske Employees being directed, compelled and/or
6 otherwise coerced to work through their meal periods because they were mandated by Penske to
7 deliver their customer's products in a timely manner.

8 69. Plaintiff further alleges that Penske knew or should have known that Penske
9 Employees, including Plaintiff, were not provided with the opportunity to take legally compliant meal
10 periods due in large part to Penske's policy, practice, procedure, guideline and/or culture of assigning
11 routes, delivery requirements, and/or workloads that could not reasonably be completed within their
12 scheduled hours.

13 70. Plaintiff asserts that Penske had, and continues to have, a policy, practice, procedure,
14 guideline and/or culture of not paying the required meal period premiums when a lawful meal period
15 was not provided. Plaintiff contends that despite not being provided with legally compliant meal
16 periods, he and other Penske Employees did not receive premium wages for unlawful meal periods.

17 71. Penske's unlawful conduct caused Penske Employees, including Plaintiff, to suffer, and
18 current Penske Employees will continue to suffer, the aforementioned violations of law.

19 72. Labor Code § 210 provides that any person who fails to pay wages as provided in Labor
20 Code §§ 201.3, 204, 204(b), 204.1, 204.2, 205, 205.5 and 1197.5 shall be subject to a civil penalty of
21 \$100 for any initial violation for each failure to pay each employee and for each subsequent violation,
22 or any willful or intentional violation \$200 for each failure to pay each employee, plus 25% of the
23 amount unlawfully withheld, in addition to any other penalty. Plaintiff and all other Penske Employees
24 are entitled to and therefore seek the civil penalties outlined in Labor Code § 210.

25 73. For violations of Labor Code §§ 510 and 512, in addition to any other recovery
26 provided by law, Labor Code § 558 imposes a civil penalty of \$50 per pay period for each underpaid
27 employee for the each pay period for which the employee was underpaid. For each subsequent
28 violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the

1 employee was underpaid. Plaintiff and all other Penske Employees are entitled to and thus seek the
2 civil penalties outlined in Labor Code § 558.

3 74. Labor Code § 2699(f) imposes a civil penalty of \$100 per pay period, per employee for
4 the initial violation, and \$200 per pay period, per employee for each subsequent violation for all Labor
5 Code provisions for which a civil penalty is not specifically provided including, but not limited to,
6 Labor Code §§ 204, 226.7, 512, 558 and 1198. Plaintiff and other Penske Employees are entitled to,
7 and therefore seek, the civil penalties outlined in Labor Code § 2699(f).

8 75. Labor Code § 2699(g)(1) provides that an employee who prevails in a civil action
9 brought pursuant to PAGA shall be entitled to an award of reasonable attorneys' fees and costs. As
10 such, Plaintiff, in his representative capacity on behalf of himself and all other Penske Employees, is
11 entitled to, and therefore seeks, attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

12 76. Plaintiff, in his representative capacity on behalf of himself and all other Penske
13 Employees, is entitled to and therefore seeks recovery of reasonable attorneys' fees, costs, and interest
14 as provided by Labor Code §§ 210, 218.5, 218.6 and 558, as well as under the "common fund" theory,
15 the "substantial benefit" theory.

16 77. Plaintiff, on behalf of himself and other Penske Employees, requests further relief as
17 described in the below prayer.

18 SECOND CAUSE OF ACTION

19 (By Plaintiff in his Representative Capacity Against Defendants and Does 1-50)

20 FAILURE TO PROVIDE LEGALLY COMPLIANT REST PERIODS

21 AND/OR COMPENSATION IN LIEU THEREOF

22 [Labor Code §§ 204, 226.7 and 1198 and the "Rest Periods" section of

23 IWC Wage Order No. 9-2001]

24 78. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all
25 paragraphs of this Complaint.

26 79. The "Rest Periods" section of IWC Order No. 9-2001, states:

27 (A) Every employer shall authorize and permit all employees to take
28 rest periods, which insofar as practicable shall be in the middle of each
work period. The authorized rest period time shall be based on the

1 total hours worked daily at the rate of ten (10) minutes of net rest time
2 per four (4) hours or major fraction thereof. However, a rest period
3 need not be authorized for employees whose total daily work time is
less than three and one-half (3 ½) hours. Authorized rest period time
shall be counted as hours worked for which there shall be no deduction
from wages.

4 (B) If an employer fails to provide an employee a rest period in
5 accordance with the applicable provisions of this order, the employer
6 shall pay the employee one (1) hour of pay at the employee's regular
rate of compensation for each workday that the rest period is not
provided. (Emphasis added.)

7
8 80. Unless an employer relieves its employees of any and all work-related duties and also
9 relinquishes all control over how its employees spent their time during rest periods, the employer has
10 not authorized and permitted lawful off-duty rest periods. (*Augustus v. ABM Security Services, Inc.*
11 (2016) 2 Cal.5th 267, 269.)

12 81. In pertinent part, Labor Code § 226.7 provides:

13 (b) An employer shall not require an employee to work during a meal
14 or rest or recovery period mandated pursuant to an applicable statute,
or applicable regulation, standard, or order of the Industrial Welfare
Commission, the Occupational Safety and Health Standards Board, or
the Division of Occupational Safety and health.

15 (c) If an employer fails to provide an employee a meal or rest or recovery
16 period in accordance with a state law, including but not limited to, an
applicable statute or applicable regulation, standard, or order of the
17 Industrial Welfare Commission, the Occupational Safety and Health
Standards Board, or the Division of Occupational Safety and Health, the
18 employer shall pay the employee one additional hour of pay at the
employee's regular rate of compensation for workday that the meal or rest
or recovery period is not provided.

19 82. Plaintiff contends that Penske did not, and does not have a policy, practice, procedure,
20 guideline, and/or culture of authorizing and permitting Penske Employees, including Plaintiff, to take a
21 ten (10) minute, uninterrupted, off-duty rest period for every four (4) hours worked or major fraction
22 thereof.

23 83. Plaintiff also contends that he and other Penske Employees were not authorized and
24 permitted to take lawful rest periods because Penske has a policy, practice, procedure, guideline and/or
25 culture of assigning routes, delivery requirements, and/or workloads that cannot reasonably be
26 completed within their scheduled hours resulting in Penske Employees being directed, compelled
27
28

1 and/or otherwise coerced to work through their rest periods in order to deliver their customer's
2 products in a timely manner.

3 84. Plaintiff further contends that Penske knew or should have known that Plaintiff and
4 other Penske Employees were not authorized and permitted to take lawful rest periods due in large part
5 to Penske's policy, practice, procedure, guideline and/or culture of assigning routes, delivery
6 requirements, and/or workloads that could not reasonably be completed within their scheduled hours.

7 85. Plaintiff alleges that Penske does not have, and did not have, a policy, practice,
8 procedure, guideline and/or culture of paying premium wages for non-compliant rest periods. Plaintiff
9 asserts that despite not being provided with lawful rest periods, he and other Penske Employees did not
10 receive premium wages for unlawful rest periods.

11 86. Due to Penske's unlawful conduct, Plaintiff and other Penske Employees have suffered,
12 and will continue to suffer, the aforementioned violations of law.

13 87. Labor Code § 210 provides that any person who fails to pay wages as provided in Labor
14 Code §§ 201.3, 204, 204(b), 204.1, 204.2, 205, 205.5 and 1197.5 shall be subject to a civil penalty of
15 \$100 for any initial violation for each failure to pay each employee and for each subsequent violation,
16 or any willful or intentional violation \$200 for each failure to pay each employee, plus 25% of the
17 amount unlawfully withheld, in addition to any other penalty. Plaintiff and all other Penske Employees
18 are entitled to and therefore seek the civil penalties outlined in Labor Code § 210.

19 88. Labor Code § 2699(f) imposes a civil penalty of \$100 per pay period, per employee for
20 the initial violation, and \$200 per pay period, per employee for each subsequent violation for all Labor
21 Code provisions for which a civil penalty is not specifically provided, including, but not limited to,
22 Labor Code §§ 204, 226.7 and 1198. Plaintiff and other Penske Employees are entitled to, and
23 therefore seek, the civil penalties outlined in Labor Code § 2699(f).

24 89. Labor Code § 2699(g)(1) provides that an employee who prevails in a civil action
25 brought pursuant to PAGA shall be entitled to an award of reasonable attorneys' fees and costs. As
26 such, Plaintiff, in his representative capacity on behalf of himself and all other Penske Employees, is
27 entitled to, and therefore seeks, attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

28 90. Plaintiff, in his representative capacity on behalf of himself and all other Penske

1 Employees, is entitled to and therefore seeks recovery of reasonable attorneys' fees, costs and interest
2 as provided by Labor Code §§ 210, 218.5, and 218.6, as well as under the "common fund" theory, the
3 "substantial benefit" theory.

4 91. Plaintiff, on behalf of himself and other Penske Employees, requests further relief as
5 described in the below prayer.

6 **THIRD CAUSE OF ACTION**

7 **(By Plaintiff in his Representative Capacity Against Defendants and Does 1-50)**

8 **FAILURE TO TIMELY PAY MINIMUM, REGULAR, AND/OR OVERTIME WAGES**

9 **[Labor Code §§ 204, 210, 510, 558, 1194, 1194.2, 1197, 1197.1, 1198 and 1199 and the "Minimum**
10 **Wages" and "Hours and Days of Work" sections of IWC Wage Order No. 9-2001]**

11 92. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all
12 paragraphs of this Complaint.

13 93. Labor Code § 204 establishes an employee's fundamental right in the state of California
14 to be paid wages in a timely manner for their work.

15 94. Labor Code § 1197 states "[t]he minimum wage for employees fixed by the commission
16 is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so
17 fixed is unlawful." (See also *Gonzalez v. Downtown LA Motors, LP* (2013) 215 Cal.App.4th 36, 44
18 [providing that an employer may not pay "less than the applicable minimum wage for all hours worked
19 in the payroll period, whether the remuneration is measured by time, piece, commission, or
20 otherwise"].)

21 95. Labor Code section 1198 mandates,

22 [t]he maximum hours of work and the standard conditions of labor fixed
23 by the commission shall be the maximum hours of work and the standard
24 conditions of labor for employees. The employment of any employee for
25 longer hours than those fixed by the order or under conditions of labor
26 prohibited by the order is unlawful.

27 96. The "Minimum Wages" section of IWC Wage Order No. 9-2001 also states that,
28 "[e]very employer shall pay to each employee, on the established payday for the period involved, not

1 less than the applicable minimum wage for all hours worked in the payroll period, whether the
2 remuneration is measured by time, piece, commission, or otherwise.”

3 97. Labor Code § 510(a), which codifies an employee’s right to overtime compensation,
4 provides:

5 Eight hours of labor constitutes a day’s work. Any work in excess of eight
6 hours in one workday and any work in excess of 40 hours in any one
7 workweek and the first eight hours worked on the seventh day of work in
8 any one workweek shall be compensated at the rate of no less than one and
9 one-half times the regular rate of pay for an employee. In addition, any
10 work in excess of eight hours on any seventh day of a workweek shall be
11 compensated at the rate of no less than twice the regular rate of pay.
12 Nothing in this section requires an employer to combine more than one
13 rate of overtime compensation in order to calculate the amount to be paid
14 to an employee for any hour of overtime work. (Emphasis added.)

15 98. The “Hours and Days of Work” and “Minimum Wages” sections of the IWC Wage
16 Order No. 9-2001 mandate the same requirements as Labor Code section 510.

17 99. Under California law, an employee may not waive his or her right to overtime
18 compensation. (*Early v. Superior Court* (2000) 79 Cal.App.4th 1420, 1430.)

19 100. Labor Code § 558 provides that “any employer or other person acting on behalf of an
20 employer who violates, or causes to be violated, a section of this chapter or any provision regulating
21 hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil
22 penalty” of \$50 for each underpaid employee for each pay period for which the employee was
23 underpaid plus an amount sufficient to recover underpaid wages for any initial violation, and \$100 for
24 each underpaid employee for each pay period for which the employee was underpaid in addition to an
25 amount sufficient to recover underpaid wages for each subsequent violation.

26 101. Labor Code § 1194(a) states:

27 Notwithstanding any agreement to work for a lesser wage, any
28 employee receiving less than the legal minimum wage or the legal
overtime compensation applicable to the employee is entitled to
recover in a civil action the unpaid balance of the full amount of this
minimum wage or overtime compensation, including interest thereon,
reasonable attorney’s fees, and costs of suit.

102. Labor Code section 1197.1 further provides,

[a]ny employer or other person acting either individually or as an officer,
agent, or employee of another person, who pays or causes to be paid to any
employee a wage less than the minimum fixed by an applicable state or local

law or by an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to Section 203...

103. In pertinent part Labor Code section 1194.2 states,

In any action under Section 98, 1193.6, 1194, or 1197.1 to recover wages because of the payment of a wage less than the minimum wage fixed by an order of the commission or by statute, an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

104. Labor Code section 1199 imposes “a fine of not less than one hundred dollars (\$100)” for any employer who violates the provisions set forth in Labor Code section 1198.

105. Labor Code section 210 provides that, “every person who fails to pay the wages of an employee as provided in Section...204...shall be subject to a civil penalty of \$100 for an initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation.”

106. Plaintiff alleges that he and all Penske Employees regularly worked at least eight (8) hours per day and/or forty (40) hours per week during the relevant time period, earned an hourly wage, and were to be paid once per week.

107. Plaintiff also alleges that Penske had, and continues to have, a policy, practice, procedure, guideline, and/or culture of not timely compensating Penske Employees, including Plaintiff, minimum, regular, and/or overtime wages for all time engaged in work on behalf of Penske.

108. Plaintiff asserts that as a result of Penske’s policy, practice, procedure, guideline and/or culture of assigning routes, delivery requirements, and/or workloads that could not reasonably be completed within their scheduled hours, he and other Penske Employees were directed, pressured, compelled and/or otherwise coerced to regularly perform their job duties while clocked out for their meal periods. Subsequently, Penske incorrectly considered the time spent by Penske Employees working through meal periods as non-compensable and failed to provide any renumeration.

109. Plaintiff also asserts that Penske has, and continues to have, a policy, practice, procedure, guideline and/or culture of not timely paying Penske Employees overtime wages for hours worked in excess of eight (8) hours per day and/or forty (40) hours per week. Plaintiff contends that Penske informed Plaintiff and other Penske Employees that it would no longer pay overtime for work done in excess of eight (8) hours per day and/or forty (40) hours per week. Plaintiff contends that even

1 though he and other Penske Employees continued to work in excess of eight (8) hours per day and/or
2 forty (40) hours per week, Penske Employees, including himself, were not paid overtime wages.

3 110. Plaintiff further asserts that Penske has a policy, practice, procedure, guideline and/or
4 culture of offering and paying nondiscretionary bonuses (e.g., safety bonuses) to Penske Employees.
5 Plaintiff contends that despite paying nondiscretionary bonuses to Plaintiff and other Penske
6 Employees, Penske has a policy, practice, procedure, guideline and/or culture of not including the
7 nondiscretionary bonuses into Penske Employees' regular rate of pay for purposes of computing
8 overtime. As a result, Penske Employees were not timely paid all overtime wages.

9 111. By virtue of Penske's unlawful failure to compensate Plaintiff and other Penske
10 Employees minimum, regular, and/or overtime wages for all of their time worked, Penske Employees
11 have suffered, and will continue to suffer, the violations of law alleged herein.

12 112. Labor Code § 210 provides that any person who fails to pay wages as provided in Labor
13 Code §§ 201.3, 204, 204(b), 204.1, 204.2, 205, 205.5 and 1197.5 shall be subject to a civil penalty of
14 \$100 for any initial violation for each failure to pay each employee and for each subsequent violation,
15 or any willful or intentional violation \$200 for each failure to pay each employee, plus 25% of the
16 amount unlawfully withheld, in addition to any other penalty. Plaintiff and all other Penske Employees
17 are entitled to and therefore seek the civil penalties outlined in Labor Code § 210.

18 113. For violations of Labor Code §§ 510 and 512, in addition to any other recovery
19 provided by law, Labor Code § 558 imposes a civil penalty of \$50 per pay period for each underpaid
20 employee for the each pay period for which the employee was underpaid. For each subsequent
21 violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the
22 employee was underpaid. Plaintiff and all other Penske Employees are entitled to and thus seek the
23 civil penalties outlined in Labor Code § 558.

24 114. Labor Code § 1197.1 imposes upon Defendants, for each initial violation of wage and
25 hour laws, a penalty of \$100.00 for each underpaid employee for each pay period for which the
26 employee is underpaid. This amount shall be in addition to an amount sufficient to recover underpaid
27 wages and liquidated damages pursuant to Labor Code § 1194.2, which states: "[i]n any action under
28 Section 98, 1193.6, 1194, or 1197.1 to recover wages because of the payment of a wage less than the

1 minimum wage fixed by an order of the commission or by statute, an employee shall be entitled to
2 recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.”
3 Plaintiff and all other Penske Employees are entitled to and therefore seek the civil penalties outlined
4 in Labor Code §§ 1197.1 and 1194.2.

5 115. Labor Code § 2699(f) imposes a civil penalty of \$100 per pay period, per employee for
6 the initial violation, and \$200 per pay period, per employee for each subsequent violation for all Labor
7 Code provisions for which a civil penalty is not specifically provided, including, but not limited to,
8 Labor Code §§ 204, 210, 510, 1194, 1194.2, 1197, 1197.1, 1198 and 1199. Plaintiff and other Penske
9 Employees are entitled to, and therefore seek, the civil penalties outlined in Labor Code § 2699(f).

10 116. Labor Code § 2699(g)(1) provides that an employee who prevails in a civil action
11 brought pursuant to PAGA shall be entitled to an award of reasonable attorneys’ fees and costs. As
12 such, Plaintiff, in his representative capacity on behalf of himself and all other Penske Employees, is
13 entitled to, and therefore seeks, attorneys’ fees and costs pursuant to Labor Code § 2699(g)(1).

14 117. Plaintiff, in his representative capacity on behalf of himself and all other Penske
15 Employees, is entitled to and therefore seeks recovery of reasonable attorneys’ fees, costs and interest
16 as provided by Labor Code §§ 210, 218.5, 218.6, 558, 1194, 1194.2 and 1197.1, as well as under the
17 “common fund” theory, the “substantial benefit” theory.

18 118. Plaintiff, on behalf of himself and other Penske Employees, requests further relief as
19 described in the below prayer.

20 **FOURTH CAUSE OF ACTION**

21 **(By Plaintiff in his Representative Capacity Against Defendants and Does 1-50)**

22 **FAILURE TO TIMELY PAY ALL WAGES DUE AND OWED**

23 **UPON SEPARATION OF EMPLOYMENT**

24 **[Labor Code §§ 201-203, 204 and 210]**

25 119. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all
26 paragraphs of this Complaint.

27 120. Labor Code § 204 establishes an employee’s fundamental right in the state of California
28 to be paid wages in a timely manner for their work.

1 121. Labor Code § 200(a) defines “wages” to include “all amounts for labor performed by
2 employees...whether the amount is fixed or ascertained by the standard of time...commission basis, or
3 other method of calculation.” The term “labor” is further defined in subsection (b) to include “labor,
4 work, or service whether rendered or performed under contract, subcontract, partnership...or other
5 agreement if the labor...is performed personally by the person demanding payment.”

6 122. Pursuant to Labor Code § 201(a), when an employer discharges an employee, all earned
7 wages that remain unpaid at the time of discharge are due and payable immediately.

8 123. According to Labor Code § 202(a):

9 If an employee not having a written contract for a definite period quits
10 his or her employment, his or her wages shall become due and payable
11 not later than 72 hours thereafter, unless the employee has given 72
12 hours previous notice of his or her intention to quit, in which case the
13 employee is entitled to his or her wages at the time of quitting.
14 Notwithstanding any other provision of law, an employee who quits
without providing a 72-hour notice shall be entitled to receive payment
by mail if he or she so requests and designates a mailing address. The
date of mailing shall constitute the date of payment for purposes of the
requirement to provide payment within 72 hours of the notice of
quitting.

15 124. In pertinent part, Labor Code § 203(a) further provides:

16 If an employer willfully fails to pay, without abatement or reduction,
17 in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5,
18 any wages of an employee who is discharged or who quits, the wages
19 of the employee shall continue as a penalty from the due date thereof
at the same rate until paid or until an action thereof is commenced; but
the wages shall not continue for more than 30 days.

20 125. Labor Code section 210 provides that, “every person who fails to pay the wages of an
21 employee as provided in Sections 201.3, 204, ... shall be subject to a civil penalty” of \$100 for an
22 initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation.

23 126. Penske had, and continues to have, a policy, practice, procedure, guideline and/or
24 culture of failing to timely pay all wages due and owing upon separation of employment to all Penske
25 Employees. For instance, despite being terminated, Penske did not immediately pay Plaintiff his final
26 wages nor has Plaintiff received the required waiting time penalties.

27 127. As a result of Penske’s failure to timely and appropriately compensate Penske
28 Employees, including Plaintiff, for all minimum, regular, overtime and premium wages, Plaintiff

1 contends that Penske has a policy, practice, procedure, guideline and/or culture of willfully failing to
2 timely pay all wages due and owed to Plaintiff and other former Penske Employees who separated
3 from their employment during the relevant statutory period.

4 128. Plaintiff further contends that Penske had, and continues to have, a policy, practice,
5 procedure, guideline, and/or culture of failing to pay the appropriate waiting time penalties to Penske
6 Employees as provided under California law.

7 129. Penske knowingly failed to timely and appropriately compensate Penske Employees,
8 including Plaintiff, for all minimum, regular, and overtime wages and meal and/or rest period premium
9 wages, as described herein.

10 130. Although Penske no longer employs a number of Penske Employees, including
11 Plaintiff, Penske has yet to pay all wages owed to former Penske Employees, including Plaintiff, as
12 required under California law, as well as the required waiting time penalties.

13 131. Penske's unlawful conduct caused former Penske Employees, including Plaintiff, to
14 suffer the aforementioned violations of law.

15 132. Labor Code § 210 provides that any person who fails to pay wages as provided in Labor
16 Code §§ 201.3, 204, 204(b), 204.1, 204.2, 205, 205.5 and 1197.5 shall be subject to a civil penalty of
17 \$100 for any initial violation for each failure to pay each employee and for each subsequent violation,
18 or any willful or intentional violation \$200 for each failure to pay each employee, plus 25% of the
19 amount unlawfully withheld, in addition to any other penalty. Plaintiff and all other Penske Employees
20 are entitled to and therefore seek the civil penalties outlined in Labor Code § 210.

21 133. Labor Code § 2699(f) imposes a civil penalty of \$100 per pay period, per employee for
22 the initial violation, and \$200 per pay period, per employee for each subsequent violation for all Labor
23 Code provisions for which a civil penalty is not specifically provided, including, but not limited to,
24 Labor Code §§ 201-204. Plaintiff and other Penske Employees are entitled to, and therefore seek, the
25 civil penalties outlined in Labor Code § 2699(f).

26 134. Labor Code § 2699(g)(1) provides that an employee who prevails in a civil action
27 brought pursuant to PAGA shall be entitled to an award of reasonable attorneys' fees and costs. As
28

1 such, Plaintiff, in his representative capacity on behalf of himself and all other Penske Employees, is
2 entitled to, and therefore seeks, attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

3 135. Plaintiff, in his representative capacity on behalf of himself and all other Penske
4 Employees, is entitled to and therefore seeks recovery of reasonable attorneys' fees, costs and interest
5 as provided by Labor Code §§ 210, 218.5, and 218.6, as well as under the "common fund" theory, the
6 "substantial benefit" theory.

7 136. Plaintiff, on behalf of himself and other former Penske Employees, requests further
8 relief as described in the below prayer.

9 **FIFTH CAUSE OF ACTION**

10 **(By Plaintiff in his Representative Capacity Against Defendants and Does 1-50)**

11 **FAILURE TO FURNISH ACCURATE ITEMIZED WAGE STATEMENTS**

12 **[Labor Code §§ 226 and 226.3 and the "Records" section of IWC Wage Order No. 9-2001]**

13 137. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all
14 paragraphs of this Complaint.

15 138. Labor Code § 226 states in pertinent part:

16 Every employer shall, semimonthly or at the time of each payment of
17 wages, furnish each of his or her employees, either as detachable part of
18 the check, draft, or voucher paying the employee's wages, or separately
19 when wages are paid by personal check or cash, an accurate itemized
20 statement in writing showing (1) gross wages earned, (2) total hours
21 worked by the employee... (5) net wages earned, (6) the inclusive dates
22 of the period for which the employee is paid... (7) the name of the
23 employee and only the last four digits of his or her social security number
24 or an employee identification number...(8) the name and address of the
25 legal entity that is the employer, and (9) all applicable hourly rates in effect
26 during each period and the corresponding number of hours worked at each
27 hourly rate by the employee...

28 139. The "Records" section of IWC Wage Order No. 9-2001 states in pertinent part,

[e]very employer shall semimonthly or at the time of each payment of
wages furnish to each employee...an itemized wage statement in writing
showing (1) all deductions; (2) the inclusive dates of the period for which
the employee is paid; (3) the name of the employee and the employee's
social security number; and (4) the name of the employer, provided all
deductions made on written orders of the employee may be aggregate and
shown as one item.

1 140. An injury occurs where the employer fails to provide accurate information and the
2 employee cannot “promptly and easily determine” the total number of hours worked or the “applicable
3 hourly rates in effect during the pay period and the corresponding number of hours worked at each
4 hourly rate.” (Labor Code § 226(a)(9)-(e)(2)(B)(i).)

5 141. Labor Code § 226(e)(2)(c) explains that the phrase “promptly and easily determine”
6 means that “a reasonable person would be able to readily ascertain the information without reference to
7 documents or information.”

8 142. Labor Code section 226(e)(1) further provides,

9 [a]n employee suffering injury as a result of knowing and intentional failure
10 by an employer to comply with subdivision (a) is entitled to recover the
11 greater of all actual damages or fifty dollars (\$50) for the initial pay period
12 in which a violation occurs and one hundred dollars (\$100) per employee
 for each violation in a subsequent pay period, not to exceed an aggregate
 penalty of four thousand (\$4,000), and is entitled to an award of costs and
 reasonable attorneys’ fees.

13 143. According to Labor Code section 226(h), “an employee may also bring an action for
14 injunctive relief to ensure compliance with this section and is entitled to an award of costs and
15 reasonable attorneys’ fees.”

16 144. Labor Code section 226.3 imposes an additional civil penalty on the employer of
17 \$250.00 per employee per violation of Labor Code section 226(a) in an initial citation and \$1,000 per
18 employee for each violation in a subsequent citation.

19 145. Plaintiff asserts that Penske has a policy, practice, procedure, guideline and/or culture of
20 furnishing Penske Employees, including Plaintiff, with wage statements that do not comply with
21 California law. Plaintiff contends that the wage statements furnished to him and other Penske
22 Employees did not include, for instance, the total hours worked by the employee, all applicable hourly
23 rates in effect during the pay period and the corresponding number of hours worked at each hourly rate
24 by the employee, and the actual gross and net wages earned.

25 146. Plaintiff further asserts the wage statements furnished to Penske Employees were
26 inaccurate. The wage statements, for example, did not include all applicable hourly rates that were
27 actually in effect during the pay period, the corresponding number of hours actually worked at each
28 hourly rate by the employee, and the actual gross and/or net wages earned and paid. Plaintiff alleges

1 that the inaccuracies were largely due to Penske’s failure to appropriately pay minimum, regular,
2 and/or overtime wages and failure to pay meal and/or rest period premiums.

3 147. Due to the lack of information on the furnished wage statements, Penske Employees,
4 such as Plaintiff, were unable to promptly and easily determine the total number of hours worked, the
5 applicable hourly rates in effect during the pay period and/or the corresponding number of hours
6 worked at each hourly rate, among other things.

7 148. Penske’s unlawful conduct caused Penske Employees, including Plaintiff, to suffer, and
8 current Penske Employees will continue to suffer, the aforementioned violations of law.

9 149. Plaintiff and other Penske Employees are entitled to, and seek to recover, civil penalties
10 pursuant to Labor Code section 226.3 for violations of Labor Code section 226(a).

11 150. Labor Code § 2699(f) imposes a civil penalty of \$100 per pay period, per employee for
12 the initial violation, and \$200 per pay period, per employee for each subsequent violation for all Labor
13 Code provisions for which a civil penalty is not specifically provided, including, but not limited to,
14 Labor Code §§ 226, 226.3, and 246. Plaintiff and other Penske Employees are entitled to, and therefore
15 seek, the civil penalties outlined in Labor Code § 2699(f).

16 151. Furthermore, pursuant to Labor Code section 226(h), Plaintiff and all other Penske
17 Employees are entitled to, and therefore seek injunctive relief in order to ensure that Penske complies
18 with Labor Code section 266.

19 152. Labor Code § 2699(g)(1) provides that an employee who prevails in a civil action
20 brought pursuant to PAGA shall be entitled to an award of reasonable attorneys’ fees and costs.
21 Plaintiff, in his representative capacity on behalf of himself and all other Penske Employees, is entitled
22 to, and therefore seeks, attorneys’ fees and costs pursuant to Labor Code § 2699(g)(1).

23 153. Plaintiff, in his representative capacity on behalf of himself and all other Penske
24 Employees, is entitled to and therefore seeks recovery of reasonable attorneys’ fees, costs and interest
25 as provided by Labor Code §§ 218.5, 218.6 226(e), 226(h), as well as under the “common fund”
26 theory, the “substantial benefit” theory.

27 154. Plaintiff, on behalf of himself and all other Penske Employees, requests further relief as
28 described in the below prayer.

1 **SIXTH CAUSE OF ACTION**

2 **(By Plaintiff in his Representative Capacity Against Defendants and Does 1-50)**

3 **FAILURE TO MAINTAIN ACCURATE RECORDS**

4 **[Labor Code §§ 226, 1174 and 1174.5 and the “Records” section of**
5 **IWC Wage Order No. 9-2001]**

6 155. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all
7 paragraphs of this Complaint.

8 156. Labor Code section 1174(d) states in pertinent part,

9 [e]very person employing labor in this state shall keep, at a central
10 location in the state or at the plants or establishments at which employees
11 are employed, payroll records showing the hours worked daily by and the
12 wages paid to, and the number of piece-rate units earned by and any
13 applicable piece rate paid to, employees employed at the respective plants
14 or establishments. These records shall be kept in accordance with rules
established for this purpose by commission, but in case shall be kept on
file for not less than three years. An employer shall not prohibit an
employee from maintaining a personal record of hours worked, or, if paid
on a piece-rate basis, piece-rate units earned.

15 157. The “Records” section of IWC Wage Order No. 9-2001 states that every employer shall
16 keep accurate information with respect to each one of its employees, including time records showing
17 when the employee begins and ends each work period, meal periods, total daily hours worked, total
18 wages paid each payroll period, and total hours worked in the payroll period and applicable rates of
19 pay.

20 158. Pursuant to Labor Code section 226(a) and the “Records” section of IWC Wage Order
21 No. 9-2001, an employer must keep a copy of the wage statements furnished and the record of
22 deductions on file for at least three years.

23 159. Labor Code section 1174.5 imposes a civil penalty of \$500 for an employer’s failure to
24 maintain accurate and complete records. This civil penalty is in addition to the civil penalty of \$100
25 per pay period, per aggrieved employee that would be imposed pursuant to Labor Code section 2699
26 for a violation of Labor Code section 1174(d).

27 ///

28 ///

1 160. Labor Code section 226(e)(1) further provides,

2 [a]n employee suffering injury as a result of a knowing and intentional
3 failure by an employer to comply with subdivision (a) [of Labor Code §
4 226] is entitled to recover the greater of all actual damages or fifty dollars
5 (\$50) for the initial pay period in which a violation occurs and one hundred
6 dollars (\$100) per employee for each violation in a subsequent pay period,
7 not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is
8 entitled to an award of costs and reasonable attorney's fees.

9 161. Plaintiff alleges that Penske, as described herein, had, and continues to have a policy,
10 practice, procedure, guideline, and/or culture of intentionally and willfully failing to maintain accurate
11 payroll and/or employee records that properly show, among other things, the total number of hours
12 worked, the proper beginning and end of each work period, the beginning and end of each meal period,
13 all earned wages, and all wages paid to Plaintiff and other Penske Employees.

14 162. Plaintiff and other Penske Employees have suffered, and continue to suffer, violations
15 of California law as a consequence of Penske's deliberate failure to maintain accurate records as
16 required by the Labor Code. Specifically, Plaintiff and other Penske Employees have been, and will
17 continue to be, denied their legal right and protected interest in having accurate and complete payroll
18 and employment records available to them.

19 163. Labor Code § 1174.5 imposes a civil penalty of \$500 for an employer's failure to
20 maintain accurate and complete records. This civil penalty is in addition to the civil penalty of \$100
21 per pay period, per aggrieved employee that would be imposed pursuant to Labor Code § 2699 for a
22 violation of Labor Code § 1174(d). Plaintiff, in his representative capacity, seeks the civil penalty
23 imposed by Labor Code § 1174.5 on behalf of himself and all other Penske Employees.

24 164. Labor Code § 2699(f) imposes a civil penalty of \$100 per pay period, per employee for
25 the initial violation, and \$200 per pay period, per employee for each subsequent violation for all Labor
26 Code provisions for which a civil penalty is not specifically provided, including, but not limited to,
27 Labor Code §§ 226(a), 1174 and 1174.5. Plaintiff and other Penske Employees are entitled to, and
28 therefore seek, the civil penalties outlined in Labor Code § 2699(f).

 165. Labor Code § 2699(g)(1) provides that an employee who prevails in a civil action
brought pursuant to PAGA shall be entitled to an award of reasonable attorneys' fees and costs. As

1 such, Plaintiff, in his representative capacity on behalf of himself and all other Penske Employees, is
2 entitled to, and therefore seeks, attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

3 166. Plaintiff, in his representative capacity on behalf of himself and all other Penske
4 Employees, is entitled to and therefore seeks recovery of reasonable attorneys' fees, costs and interest
5 as provided by Labor Code §§ 218.5, 218.6, 226(h), as well as under the "common fund" theory, the
6 "substantial benefit" theory.

7 167. Plaintiff, on behalf of himself and all other Penske Employees, requests further relief as
8 described in the below prayer.

9 SEVENTH CAUSE OF ACTION

10 (By Plaintiff in his Representative Capacity Against Defendants and Does 1-50)

11 RETALIATION AGAINST EMPLOYEES WHO MAKE GOOD FAITH

12 COMPLAINTS ABOUT UNPAID WAGES

13 [Labor Code §§ 98.6, 1102.5 and 6310]

14 168. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all
15 paragraphs of this Complaint.

16 169. Labor Code § 98.6(a) mandates,

17 [a] person shall not discharge an employee or in any manner discriminate,
18 retaliate, or take any adverse action against any employee or applicant for
19 employment because the employee or applicant engaged in any conduct
20 delineated in this chapter, including the conduct described in subdivision
21 (k) of Section 96, and Chapter 5 (commencing with Section 1101) of Part
22 3 of Division 2, or because the employee or applicant for employment has
23 filed a bona fide complaint or claim or instituted or caused to be instituted
24 any proceeding under or relating to his or her rights that are under the
jurisdiction of the Labor Commissioner, made a written or oral complaint
that he or she is owed unpaid wages, or because the employee has initiated
any action or notice pursuant to Section 2699, or has testified or is about
to testify in a proceeding pursuant to that section, or because of the
exercise by the employee or applicant for employment on behalf of
himself, herself, or others of any rights afforded him or her.

25 170. Labor Code § 1102.5(b) states,

26 [a]n employer, or any person acting on behalf of the employer, shall not
27 retaliate against an employee for disclosing information, or because the
28 employer believes that the employee disclosed or may disclose
information, to a government or law enforcement agency, to a person with
authority over the employee or another employee who has the authority to

investigate, discover, or correct the violation or noncompliance, or for providing information to, or testifying before, any public body conducting an investigation, hearing, or inquiry, if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing the information is part of the employee's job duties.

171. Labor Code § 6310(a) provides, in pertinent part,
[n]o person shall discharge or in any manner discriminate against any employee because the employee has done any of the following: (1) Made any oral or written complaint to the division, other governmental agencies having statutory responsibility for or assisting the division with reference to employee safety or health, his or her employer, or his or her representative. (2) Instituted or caused to be instituted any proceeding under or relating to his or her rights or has testified or is about to testify in the proceeding or because of the exercise by the employee on behalf of himself, herself, or others of any rights afforded him or her...

172. Labor Code § 6310(b) further states,
[a]ny employee who is discharged . . . because the employee has made a bona fide oral or written complaint to the division, other governmental agencies having statutory responsibility for or assisting the division with reference to employee safety or health, his or her employer, or his or her representative, of . . . work practices, in his or her employment or place of employment . . . shall be entitled to reinstatement and reimbursement for lost wages and work benefits caused by the acts of the employer. Any employer who willfully refuses to rehire, promote, or otherwise restore an employee or former employee who has been determined to be eligible for rehiring or promotion by a grievance procedure, arbitration, or hearing authorized by law, is guilty of a misdemeanor.

173. Plaintiff alleges that Penske has, and continues to have, a policy, practice, procedure, and/or culture of retaliating against Penske Employees, such as Plaintiff, who make good faith complaints about unlawful working conditions, such as non-payment of wages, in the workplace. For example, Plaintiff verbally expressed to his supervisors that he believed he and other Penske Employees were to be paid overtime for work in excess 8 hours per day/40 hours per week. After Plaintiff's concerns went unacknowledged, Plaintiff filed a claim with the DLSE in April 2020. Thereafter, Penske began taking adverse action against Plaintiff by writing him up for "safety violations." Penske, however, refused to provide Plaintiff with any evidence of the alleged safety violations and refused to provide any guidance on how to remedy the alleged safety concerns. Plaintiff

1 was subsequently suspended and ultimately terminated in July 2020. Plaintiff contends that Penske
2 engaged in retaliation against him for his complaints and claim to the DLSE for unpaid wages.

3 174. Plaintiff further alleges, based on information and belief, that other Penske Employees
4 have been retaliated against for complaint about unlawful working conditions in the workplace.

5 175. Penske's unlawful conduct caused Penske Employees, such as Plaintiff, to suffer the
6 aforementioned violations of law.

7 176. Labor Code § 98.6(a)(3) provides that, "[i]n addition to other remedies available, an
8 employer who violates this section is liable for a civil penalty not exceeding ten thousand dollars
9 (\$10,000) per employee for each violation of this section, to be awarded to the employee or employees
10 who suffered the violation." Plaintiff, in his representative capacity, seeks the civil penalty outlined in
11 Labor Code § 98.6(a)(3) on behalf of himself and all other Penske Employees.

12 177. Labor Code § 1102.5 provides "[i]n addition to other penalties, an employer that is a
13 corporation or limited liability company is liable for a civil penalty not exceeding ten thousand dollars
14 (\$10,000) for each violation of this section". Plaintiff, in his representative capacity, seeks the civil
15 penalty outlined in Labor Code § 1102.5 on behalf of himself and all other Penske Employees.

16 178. Labor Code § 2699(f) imposes a civil penalty of \$100 per pay period, per employee for
17 the initial violation, and \$200 per pay period, per employee for each subsequent violation for all Labor
18 Code provisions for which a civil penalty is not specifically provided, including, but not limited to,
19 Labor Code §§ 98.6, 1102.5 and 6310. Plaintiff and other Penske Employees are entitled to, and
20 therefore seek, the civil penalties outlined in Labor Code § 2699(f).

21 179. Labor Code § 2699(g)(1) provides that an employee who prevails in a civil action
22 brought pursuant to PAGA shall be entitled to an award of reasonable attorneys' fees and costs. As
23 such, Plaintiff, in his representative capacity on behalf of himself and all other Penske Employees, is
24 entitled to, and therefore seeks, attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

25 180. Plaintiff, in his representative capacity on behalf of himself and all other Penske
26 Employees, is entitled to and therefore seeks recovery of reasonable attorneys' fees, costs and interest
27 as provided by Labor Code §§ 218.5 and 218.6, as well as under the "common fund" theory, the
28 "substantial benefit" theory.

181. Plaintiff, in his representative capacity, requests further relief as described in the below prayer.

PRAYER FOR RELIEF

Plaintiff, in his representative capacity prays for judgment against Defendants and in favor of a representative action as follows:

- a. For any and all civil penalties available for the Labor Code violations alleged herein including, but not limited to, civil penalties under Labor Code §§ 98.6(a)(3), 210, 226.3, 558, 1102.5, 1174.5, 1197.1 and 2698 *et seq.*, and/or other applicable law;
- b. For an order determining that Plaintiff is entitled to recover a civil penalty of \$100 for each aggrieved employee per pay period for the initial violation and \$200 for each aggrieved employee per pay period for each subsequent violation as provided in Labor Code § 2699(f);
- c. For any pre- or post- judgment interest as provided under California law;
- d. For reasonable attorneys' fees, costs of suit, and interest to the extent permitted by law, including Labor Code §§ 210, 218.5, 218.6, 226(e), 226(h), 558, 1194, 1194.2, 1197.1, and 2699(g)(1) and the "common fund" theory, the "substantial benefit" theory, and/or other applicable law;
- e. For appropriate equitable relief pursuant to California law; and
- f. For any and all other relief as this Court deems proper and just.

Dated: December 23, 2020

GRAHAMHOLLIS APC

By: 
Graham S.P. Hollis
Vilmarie Cordero
Hali M. Anderson
Monique R. Rodriguez
Attorneys for Plaintiff Ladell Taylor

EXHIBIT 1

September 25, 2020

Attorneys at Law

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VIA ONLINE ELECTRONIC FILING

California Labor and Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Suite 801
Oakland, CA 94612

CERTIFIED MAIL (RETURN RECEIPT)

Penske Logistics, LLC
RT 10 Green Hills Box 563
Reading, PA 19603

Penske Logistics, LLC
c/o CSC – Lawyers Incorporating Service,
Agent for Service of Process
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833-3505

Penske Truck Leasing Co., L.P.
P.O. Box 563
Reading, PA 19603-0563

Penske Truck Leasing Co., L.P.
c/o CSC – Lawyers Incorporating Service,
Agent for Service of Process
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833-3505

Graham S.P. Hollis

Vilmarie Cordero

Nathan Reese

Hali Anderson

David Lin

Erick Dos Santos

Alex Kuner

Monique Rodriguez

Re: Ladell N. Taylor’s Wage and Hour Claims Against Penske Logistics, LLC and Penske Truck Leasing Co., L.P.

Dear Labor and Workforce Development Agency, Penske Logistics, LLC and Penske Truck Leasing Co., L.P.:

Please be advised that Ladell N. Taylor (“Claimant”) has retained our firm, Graham**Hollis** APC, to represent him for various claims against Penske Logistics, LLC and Penske Truck Leasing Co., L.P. (collectively, the “Companies”).

Please take note that this letter shall serve as Claimant’s written notice to the California Labor and Workforce Development Agency (“LWDA”) and the Companies of the alleged California Labor Code (“Labor Code”) violations Claimant claims that the

Companies, individually and/or collectively, committed against him and all other current or former employees of the Companies, individually and/or collectively, who worked in California during the relevant time period. Claimant provides this written notice, which includes the facts and theories to support his Labor Code violations alleged herein, in accordance with the Private Attorneys General Act of 2004 (codified in Labor Code §§ 2698 *et seq.*, “PAGA”), Labor Code § 2699.3.

Pursuant to Labor Code § 2699(a), and by way of this written notice, Claimant intends to represent himself and all other current or former employees of the Companies, individually and/or collectively, who worked in California during the relevant time period (referred to herein as “Penske Employees”). All Penske Employees, including Claimant, are believed to have suffered at least one of the Labor Code violations described herein. Claimant contends that he and all other Penske Employees are “aggrieved employees” as defined by the PAGA.

FACTUAL BACKGROUND

Penske Logistics, LLC is a Delaware limited liability corporation that is authorized to do business in California. Penske Logistics, LLC provides supply chain management, logistic services and solutions to various customers throughout the United States of America, including throughout the state of California. Penske Logistics, LLC is believed to be a wholly owned subsidiary of Penske Truck Leasing Co., L.P.

Penske Truck Leasing Co., L.P. is a Delaware limited partnership that is authorized to do business in California. Penske Truck Leasing Co., L.P. provides commercial and consumer truck rentals, full-service truck leasing and maintenance, logistic solutions, and used trucks to various customers throughout the United States of America, including the state of California.

Claimant was employed, or otherwise performed worked for, the Companies, individually and/or collectively, as a driver from approximately June 28, 2018 through and including July 20, 2020, when he was wrongfully terminated in retaliation for filing a complaint with the California Department of Labor Standards Enforcement (“DLSE”) for failing to pay overtime and unlawful meal and rest periods. As a driver, Claimant drove a big rig truck for the Companies’ Sprouts account and was responsible for transporting and delivering the customer’s products on time. During his employment, Claimant typically worked between 60-65 hours per week and was paid an hourly wage on a weekly basis.

Claimant contends that at all relevant times, the Companies, individually and/or collectively, employed, and continues to employ, Penske Employees in California in various positions including, but not limited to, truck drivers, technicians, mechanics, warehouse employees, customer service representatives, sales, operations, and management who regularly worked at least 8 hours per day. Claimant also contends, based on information and belief, that all policies, practices, procedures and/or guidelines of the Companies applicable to Claimant were also applicable to all other Penske Employees. Claimant further contends, based on information and belief, that he and all other Penske Employees suffered, and will continue to suffer, the same and/or similar violations of law described herein. Furthermore, Claimant contends that Penske Logistics, LLC and Penske Truck Leasing Co., L.P. are jointly and severally liable for the claims asserted herein since at all relevant times, Penske Logistics,

LLC and Penske Truck Leasing Co., L.P. exercised control over the wages, hours and/or working conditions of all Penske Employees, including Claimant; caused Penske Employees to work and/or prevented Penske Employees from working; and had control over Penske Employees.

Claimant alleges that the Companies denied, and continue to deny, Claimant and other Penske Employees the specific rights afforded to them under the Labor Code and the applicable Industrial Welfare Commission (“IWC”) Wage Order. Specifically, the Companies, individually and/or collectively, failed, and continue to fail, to provide Claimant and other Penske Employees with legally compliant meal and/or rest periods or pay them compensation in lieu thereof; failed to timely pay all minimum, regular, and/or overtime wages to all Penske Employees, including Claimant, for all time worked; failed to timely pay Claimant and other former Penske Employees all wages due and owing upon separation of employment and/or pay the required waiting time penalties; failed, and continue to fail, all other Penske Employees, including Claimant, with accurate itemized wage statements; failed, and continue to fail, to maintain accurate employment records; and engaged in retaliation against Penske Employees, including Claimant, who exercised their legal rights to complain about unlawful working conditions.

Claimant alleges that the Companies, individually and/or collectively, have a policy, practice, procedure and/or guideline of not providing Penske Employees, including Claimant, with the opportunity to take 30-minute, off-duty, uninterrupted meal periods that were free from the employer’s control when they worked more than six hours in a day. Claimant also alleges that the Companies have a policy, practice, procedure and/or guideline of not providing Claimant and other Penske Employees with the opportunity to take a second 30-minute, off-duty, uninterrupted meal period that was free from the employer’s control when they worked more than ten hours in a day. Claimant asserts that he and other Penske Employees were not provided with the opportunity to take lawful meal periods because the Companies, individually and/or collectively, have a policy, practice, procedure and/or guideline of assigning routes and/or workloads, that cannot be reasonably completed within their scheduled hours. Claimant further asserts that Penske Employees, such as himself, were directed, compelled and/or otherwise coerced to work through their meal periods because they were required by the Companies to deliver customer’s products in a timely manner. Despite not receiving legally compliant meal periods, Claimant, and on information and belief other Penske Employees, were not paid premium wages as required by California law.

Claimant contends that the Companies, individually and/or collectively, have a policy, practice, procedure and/or guideline of not authorizing and permitting Penske Employees to take an off-duty, uninterrupted, ten-minute rest period for every four hours worked or major fraction thereof. Claimant alleges that Penske Employees, such as himself, were not authorized and permitted to take lawful rest periods because the Companies, individually and/or collectively, have a policy, practice, procedure and/or guideline of assigning routes and/or workloads that cannot be reasonably completed within their scheduled hours while taking rest periods. Claimant also alleges that he and other Penske Employees were directed, compelled and/or otherwise coerced to work through their meal periods in part because they were required by the Companies to deliver customer’s products in a timely manner. Although, Penske Employees, such as Claimant, did not receive legally compliant rest periods, Claimant and, on information and belief, other Penske Employees did not receive premium wages.

Claimant asserts that the Companies, individually and/or collectively, have a policy, practice, procedure and/or guideline of not timely paying Penske Employees all minimum, regular, and/or overtime wages for all time actually worked. Claimant alleges that despite working between 60 to 65 hours per week, he, and on information and belief, other Penske Employees, were not paid their overtime wages for hours worked in excess of 8 hours per day and/or forty-hours per week. Claimant contends that he, and on information and belief, other Penske employees were not timely paid all minimum, regular, and/or overtime wages for all hours worked.

Claimant alleges that the Companies, individually and/or collectively, have a policy, practice, procedure and/or guideline of not paying former Penske Employees, such as himself, all wages due and owing upon separation of employment and/or paid the required waiting time penalties for the late payment of wages. For instance, Claimant contends that despite being terminated from his employment on July 20, 2020, he was not immediately paid all of his wages due and owing including, but not limited to, unpaid overtime and premium wages. Claimant also contends that to date he has not received all wages owed nor the required waiting time penalties. Claimant further contends based on information and belief, that other Penske Employees, including Claimant, were not timely paid all wages due and owing upon separation of employment or the required waiting time penalties.

Claimant contends that the Companies, individually and/or collectively, have a policy, practice, procedure and/or guideline of furnishing Penske Employees, including Claimant, with wage statements that do not comply with California Law. Claimant alleges that the wage statements furnished to Claimant and other Penske Employees did not include, and still do not include, the information required by California law including, but not limited to, the total hours worked by the employee, 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 gross wages earned, the net wages earned, the pay period information for each wage statement, the appropriate name and address of the legal entity that employed Penske Employees. Due to the lack of information, Claimant and other Penske Employees were unable to promptly and easily determine the total number of hours worked or the applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate.

Claimant asserts that the Companies, individually and/or collectively, have a policy, practice, procedure and/or guideline of not maintaining accurate employment records. The Companies' illegal policies, practices, procedures and/or guidelines, such as those described herein, have resulted in the Companies' failure to maintain accurate records reflecting Penske Employees' actual time worked and actual wages earned and paid, among other things, in violation of California law.

Claimant alleges that the Companies, individually and/or collectively, have a policy, practice, procedure and/or guideline of retaliating against employees who make a good faith complaint about unlawful working conditions. For example, Claimant complained to his supervisor in late February/early March of 2020 about not being paid overtime despite working 60-65 hours per week. In April 2020, Claimant filed a claim with the DLSE for the Companies' failure to pay overtime and not providing lawful meal and rest periods because the Companies did not remedy his concerns. Shortly after Claimant filed his claim with the DLSE, he was brought into the office multiple times to discuss alleged safety violations. However, the Companies failed to explain to Claimant what he was allegedly doing wrong and

did not provide any guidance on how to remedy the alleged safety concerns, as Claimant was doing everything he had previously been doing. Claimant was subsequently suspended in mid-July 2020 and ultimately terminated. Claimant contends that the Companies, individually and/or collectively, terminated his employment in retaliation for filing a claim with the DLSE. Claimant further contends, based on information and belief, that other Penske Employees have been retaliated against for complaining about unlawful working conditions.

Due to the foregoing Labor Code violations, the Companies, individually and/or collectively, denied, and continue to deny, Claimant and other Penske Employees certain rights afforded to them under the Labor Code and the applicable IWC Wage Order. Claimant makes these claims against the Companies, individually and/or collectively, on behalf of himself and all other Penske Employees.

Also, in a separate, but not necessarily mutually exclusive, alternative theory of liability, Penske Logistics, LLC, Penske Truck Leasing Co., L.P., and/or the Senior Vice President David J. Battisti, are liable for the PAGA civil penalties under Labor Code §§ 558 and 1197.1 as “other person(s)” who caused the violations alleged herein. (See *Atempa v. Pedrazzani* (2018) 27 Cal.App.5th 809, 820 [“if there is evidence and a finding that a party *other than the employer* ‘violates, or causes of be violated’ the overtime laws (§ 558(a)), or ‘pays or causes to be paid to an employee’ less than minimum wage (§ 1197.1(a)), then that party is liable for certain civil penalties *regardless of the identity or business structure of the employer*”]; see also *Moua v. IBM* (N.D. Cal. 2019) 2019 U.S. Dist. LEXIS 40851 [holding the same].)

The facts and/or claims contained herein are based on the information available at the time of this writing. Since Claimant’s investigation is ongoing, Claimant reserves his right to assert any and all related facts, claims, and/or theories of liability discovered after the sending of this letter on behalf of himself and other current or former Penske Employees against the Companies, individually and/or collectively, and/or other persons that may be discovered after the sending of this letter. Such other persons may include, but are not limited to, those persons who have acted as an agent, subsidiary, servant, employee, co-conspirator, alter-ego, and/or joint venture of the Companies, as well as those persons who caused and/or concurrently contributed to the various acts and/or admissions of each and every one of the others, including the Companies, in proximately causing the wrongful conduct, harm, and/or damages alleged herein or otherwise participated in or ratified any or all of the acts and/or omissions complained herein, and those who were acting within the authority and/or scope of the Companies. Claimant reserves the right to revise these facts and/or add any new claims by amending this letter and/or by adding facts and/or claims to his civil complaint.

**FAILURE TO PROVIDE LEGALLY COMPLIANT MEAL
OR COMPENSATION IN LIEU THEREOF**

(Labor Code §§ 204, 226.7, and 512, and the “Meal Periods” section of the Applicable Wage Order)

Section 512(a) of the Labor Code provides:

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An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 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. (Emphasis added.)

In pertinent part, the “Meal Periods” section of the relevant IWC Order states:

(A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee. Unless the employee is relieved of all duty during a 30-minute meal period, the meal period shall be considered an “on duty” meal period and counted as time worked. An “on duty” meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal is agreed to.

(B) An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 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....

(D) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided. (Emphasis added.)

A meal period generally comports with the requirements of California law if the employee has at least 30 minutes uninterrupted and the employee is relieved of any and all duty and is free to leave the premises during such time. (*Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1036.) California law further prohibits employers from “...undermining [its] formal policy of providing meal

breaks by pressuring employees to perform their duties in ways that omit breaks.” (*Id.* at 1040 [internal citations omitted].)

Pursuant to Labor Code § 226.7(c):

If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

Labor Code § 204 establishes an employee’s fundamental right in the state of California to be paid wages in a timely manner for their work. Premium wages under Labor Code § 226.7 are wages that are due payable in accordance with the Labor Code § 204. (*Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1103-1114.)

As set forth above, the Companies failed to provide Claimant and, on information and belief, other Penske Employees with the opportunity to take uninterrupted, off-duty meal periods of at least 30-minutes before the start of their sixth hour of work and/or a second off-duty 30-minute meal period when they worked in excess of 10 hours. Consequently, Claimant and other Penske Employees are entitled to receive one-hour of premium wages for each day a compliant meal period was not provided. Claimant will pursue all available remedies against the Companies, individually and/or collectively, for their violations of the Labor Code on behalf of himself and all Penske Employees to the extent permitted by law.

**FAILURE TO PROVIDE LEGALLY COMPLIANT REST PERIODS
OR COMPENSATION IN LIEU THEREOF**

(Labor Code §§ 204, 226.7, and the “Rest Periods” section of the Applicable Wage Order)

The “Rest Periods” section of the applicable IWC Wage Order provides:

(A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes of net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

(B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided. (Emphasis added.)

During rest periods, California law requires employers to relinquish all control over their employees and relieve their employees of all duties. (*Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, 273.)

In pertinent part, Labor Code § 226.7 provides:

(b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and health.

(c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for workday that the meal or rest or recovery period is not provided.

Labor Code § 204 establishes an employee's fundamental right in the state of California to be paid wages in a timely manner for their work. Premium wages under Labor Code § 226.7 are wages that are due payable in accordance with the Labor Code § 204. (*Murphy, supra*, 40 Cal.4th at 1103-1114.)

As discussed herein, the Companies, individually and/or collectively, failed to authorize and permit Claimant and, on information and belief, other Penske Employees with an off-duty uninterrupted 10-minute rest period for every four hours worked or major fraction thereof. Therefore, Claimant and other Penske Employees are entitled to receive one-hour of premium wages for each day a legally compliant rest period was not provided. Claimant will pursue all available remedies against the Companies, individually and/or collectively, for their violations of law on behalf of himself and all Penske Employees to the extent allowed by law.

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FAILURE TO PAY MINIMUM, REGULAR, AND/OR OVERTIME WAGES

(Labor Code §§ 204, 210, 510, 1194, 1197, 1197.1, 1198, and 1199, and the “Minimum Wages” and “Hours and Days of Work” sections of the Applicable IWC Wage Order)

Labor Code § 204 establishes an employee’s fundamental right in the state of California to be paid wages in a timely manner for their work. Labor Code § 1197 states, “[t]he minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful.” (See *Gonzalez v. Downtown LA Motors, LP* (2013) 215 Cal.App.4th 36, 44 [providing that an employer may not pay “less than the applicable minimum wage for all hours worked in the payroll period, whether the remunerations is measured by time, piece, commission, or otherwise”].) The “Minimum Wages” section of the applicable IWC Wage Order further provides that “[e]very employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise.”

Labor Code § 1198 states,

[t]he maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

Labor Code § 1199 imposes “a fine of not less than one hundred dollars (\$100)” for any employer who violates the provisions set forth in Labor Code § 1198.

Labor Code § 510(a), which codifies an employee’s right to overtime compensation, provides:

Eight hours of labor constitutes a day’s work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay. Nothing in this section requires an employer to combine more than one rate of overtime compensation in order to calculate the amount to be paid to an employee for any hour of overtime work. (Emphasis added.)

The “Hours and Days of Work” and “Minimum Wages” sections of the Applicable Wage Order mandates the same requirements as Labor Code § 510. Under California law, an employee may not waive his or her right to overtime compensation. (*Early v. Superior Court* (2000) 79 Cal.App.4th 1420, 1430.)

Labor Code § 1197.1 states that,

[a]ny employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law or by an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to Section 203...

Labor Code § 1194(a) states,

Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit.

Labor Code § 1194.2 allows for the recovery of liquidated damages in an amount equal to the minimum wages unlawfully unpaid and interest thereon.

Labor Code § 210 states that, "every person who fails to pay the wages of an employee as provided in Section...204...shall be subject to a civil penalty" of \$100 for an initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation."

As set forth above, the Companies, individually and/or collectively, have a policy, practice, procedure and/or guideline of failing to timely pay all minimum, regular and/or overtime wages to Claimant and other Penske Employees for all hours actually worked. Specifically, the Companies did not timely pay Claimant and, on information and belief, other Penske Employees, overtime wages despite working in excess of 8 hours per day and/or 40 hours per week. Claimant will pursue all available remedies against the Companies, individually and/or collectively, for their Labor Code violations on behalf of himself and all Penske Employees to the extent permitted by law.

FAILURE TO TIMELY PAY ALL WAGES OWED UPON SEPARATION OF EMPLOYMENT

(Labor Code §§ 201, 202, 203, 204, and 210)

Labor Code § 204 establishes an employee's fundamental right in the state of California to be paid wages in a timely manner for their work. Labor Code § 201 states, in pertinent part, "[i]f an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately." Labor Code § 202 provides, in pertinent part, "[i]f an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous 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."

In pertinent part, Labor Code § 203(a) states,

[i]f an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, 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 therefore is commenced; but the wages shall not continue for more than 30 days.

Labor Code § 210 provides that, “every person who fails to pay the wages of an employee as provided in Sections 201.3...shall be subject to a civil penalty” of \$100 for an initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation.”

As discussed herein, the Companies violated these Labor Code sections by not timely paying to Claimant and other former Penske Employees all minimum, regular, and/or overtime wages and/or meal and/or rest period premium wages, within the required time upon separation of their employment. The Companies also did not pay the required waiting time penalties for the late payment of wages. Thus, the Companies violated California law. Claimant will pursue all available remedies against the Companies, individually and/or collectively, for their violations of California law on behalf of himself and all former Penske Employees to the extent allowed by law.

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS
(Labor Code §§ 226 and 226.3, and the “Records” section of the Applicable IWC Wage Order)

Labor Code § 226 states in pertinent part:

Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as detachable part of the check, draft, or voucher paying the employee’s wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee... (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid... (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number...(8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during each period and the corresponding number of hours worked at each hourly rate by the employee...

Labor Code § 226(e)(1) provides:

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

Labor Code § 226(h) states, "an employee may also bring an action for injunctive relief to ensure compliance with this section and is entitled to an award of costs and reasonable attorneys' fees." Labor Code § 226.3 imposes an additional civil penalty of \$250 per employee per violation in an initial citation and \$1,000 per employee per violation for any subsequent violation on the employer for violations of Labor Code § 226(a).

As discussed above, the Companies, individually and/or collectively, failed to furnish Claimant and other Penske Employees with accurate itemized wage statements that comply with the requirements of the Labor Code because the wage statements did not, among other things, include the total hours worked by the employee, 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 gross wages earned, and the net wages earned. Claimant will pursue all available remedies against the Companies, individually and/or collectively, for their Labor Code violations on behalf of himself and all Penske Employees to the extent permitted by law.

FAILURE TO MAINTAIN ACCURATE RECORDS

(Labor Code §§ 226, 1174 and 1174.5, and the "Records" section of the Applicable IWC Wage Order)

Labor Code § 1174 requires every employer to "keep a recording showing the names and addresses of all employees employed..." Labor Code § 1174 further requires "[e]very person employing labor in this state [to] keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily [] and the wages paid. Such records are to be kept according to the rules establish by the commission for such purpose and must be kept on file for no less than three years." An employer is further obliged under Labor Code § 226(b) to keep the information required by Labor Code § 226(a) and afford current or former employees the right to inspect or copy records pertaining to their employment. The "Records" section of the applicable IWC Wage Order also provides that every employer shall keep accurate information with respect to each one of its employees, including time records showing when the employee begins and ends each work period, meal periods, total daily hours worked, total wages paid each payroll period, and total hours worked in the payroll period and applicable rates of pay.

Labor Code § 1174.5 imposes a civil penalty of \$500 for an employer's failure to maintain accurate and complete records. This civil penalty is in addition to the civil penalty of \$100 per pay period, per aggrieved employee that would be imposed pursuant to Labor Code § 2699 for a violation of Labor Code § 1174(d).

Labor Code § 226(e)(1) provides,

[a]n employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) [of Labor Code § 226] is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees.

As set forth above, the Companies, individually and/or collectively, violated their record keeping requirements by failing to accurately record employee hours actually worked including, but not limited to, the Companies, individually and/or collectively, failing to record the proper beginning and end of each work period, the meal periods, the total hours worked during the pay period, the applicable rates of pay, and the actual wages earned and paid. Claimant will pursue all available remedies against the Companies, individually and/or collectively, for their violations of the law on behalf of himself and all Penske Employees to the extent allowed by law.

RETALIATION

(Labor Code §§ 98.6, 1102.5 and 6310)

Labor Code § 98.6(a) mandates,

[a] person shall not discharge an employee or in any manner discriminate, retaliate, or take any adverse action against any employee or applicant for employment because the employee or applicant engaged in any conduct delineated in this chapter, including the conduct described in subdivision (k) of Section 96, and Chapter 5 (commencing with Section 1101) of Part 3 of Division 2, or because the employee or applicant for employment has filed a bona fide complaint or claim or instituted or caused to be instituted any proceeding under or relating to his or her rights that are under the jurisdiction of the Labor Commissioner, made a written or oral complaint that he or she is owed unpaid wages, or because the employee has initiated any action or notice pursuant to Section 2699, or has testified or is about to testify in a proceeding pursuant to that section, or because of the exercise by the employee or applicant for employment on behalf of himself, herself, or others of any rights afforded him or her.

Labor Code § 98.6(a)(3) further states that, “[i]n addition to other remedies available, an employer who violates this section is liable for a civil penalty not exceeding ten thousand dollars (\$10,000) per employee for each violation of this section, to be awarded to the employee or employees who suffered the violation.”

Labor Code § 1102.5(b) provides,

[a]n employer, or any person acting on behalf of the employer, shall not retaliate against an employee for disclosing information, or because the employer believes that the employee disclosed or may disclose information, to a government or law enforcement agency, to a person with authority over the employee or another employee who has the authority to investigate, discover, or correct the violation or noncompliance, or for providing information to, or testifying before, any public body conducting an investigation, hearing, or inquiry, if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing the information is part of the employee's job duties.

In addition to other penalties, “an employer that is a corporation or limited liability company is liable for a civil penalty not exceeding ten thousand dollars (\$10,000) for each violation” of Labor Code § 1102.5(b).

In pertinent part, Labor Code § 6310(a) states,

[n]o person shall discharge or in any manner discriminate against any employee because the employee has done any of the following: (1) Made any oral or written complaint to the division, other governmental agencies having statutory responsibility for or assisting the division with reference to employee safety or health, his or her employer, or his or her representative. (2) Instituted or caused to be instituted any proceeding under or relating to his or her rights or has testified or is about to testify in the proceeding or because of the exercise by the employee on behalf of himself, herself, or others of any rights afforded him or her. . . .

Labor Code § 6310(b) also provides,

“[a]ny employee who is discharged . . . because the employee has made a bona fide oral or written complaint to the division, other governmental agencies having statutory responsibility for or assisting the division with reference to employee safety or health, his or her employer, or his or her representative, of . . . work practices, in his or her employment or place of employment . . . shall be entitled to reinstatement and reimbursement for lost wages and work benefits caused by the acts of the employer. Any employer who willfully refuses to rehire, promote, or otherwise restore an employee or former employee who has been determined to be eligible for

rehiring or promotion by a grievance procedure, arbitration, or hearing authorized by law, is guilty of a misdemeanor.”

As set forth herein, the Companies, individually and/or collectively, have a policy, practice, procedure and/or guideline of engaging in retaliation against employees who exercise their legal rights to complain about unlawful working conditions. For instance, Claimant was terminated from his employment after filing a claim with the DLSE for the Companies’ failure to pay him overtime and failure to provide him with lawful meal and/or rest periods or compensation in lieu thereof. The Companies thus engaged in retaliation against Claimant in violation of Labor Code §§ 98.6, 1102.5 and 6310. Claimant will pursue all available remedies against the Companies, individually and/or collectively, for their Labor Code violations on behalf of himself and all Penske Employees to the extent permitted by law.

**CIVIL PENALTIES FOR VIOLATION OF THE LABOR CODE AND
APPLICABLE IWC WAGE ORDER**

(Labor Code §§ 98.6(b)(3), 210, 226.3, 558, 558.1, 1174.5, 1197.1 and 2699(f))

Labor Code § 98.6(b)(3) states an employer who violates Labor Code § 98.6 is liable for a civil penalty not exceeding \$10,000 per employee for each violation of this section. The civil penalty is to be awarded to the individuals who were improperly discharged.

Labor Code § 210 provides that any person who fails to pay wages as provided in sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5 and 1197.5 shall be subject to a civil penalty of \$100 for any initial violation for each failure to pay each employee and for each subsequent violation, or any willful or intentional violation \$200 for each failure to pay each employee, plus 25 % if the amount unlawfully withheld, in addition to any other penalty.

For violations of Labor Code § 226(a), Labor Code § 226.3 imposes a civil penalty of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation.

Labor Code § 558 subjects any employer or any person acting on behalf of an employer who violates Labor Code Part 2, Chapter 1, of the Labor Code (Labor Code §§ 500-558) or any provision regulating the hours and days of work in any IWC Wage Order to a civil penalty as follows: “[f]or any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid. For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid.” Labor Code § 558.1(a) states that

“[a]ny employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wage or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226,

226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.”

Pursuant to Labor Code § 558.1(b), Labor Code § 558.1(a) is applicable to the owners, officers, directors, or managing agents of the employer.

For violations of Labor Code § 1174 subdivisions (b), (c), and (d), Labor Code § 1174.5 imposes a civil penalty of \$500.

Labor Code § 1197.1 subjects any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by an order of the commission to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to § 203 as follows:

(1) For any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to § 1194.2, and any applicable penalties imposed pursuant to § 203. (2) For each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to § 1194.2, and any applicable penalties imposed pursuant to § 203. (3) Wages, liquidated damages, and any applicable penalties imposed pursuant to § 203, recovered pursuant to this section shall be paid to the affected employee.

Labor Code § 2699(f) imposes a civil penalty of \$100 per pay period, per employee, for the initial violation and \$200 per pay period, per employee, for each subsequent violation for all Labor Code provisions for which a civil penalty is not specifically provided, including, but not limited to, Labor Code §§ 98.6, 201, 202, 203, 204, 210, 226(a), 226.3, 226.7, 510, 512, 1174(c), 1174(d), 1194, 1197, 1197.1, 1102.5, 1198, 1199, 6310 and relevant IWC Wage Orders.

As set forth above, the Companies, individually and/or collectively, violated the Labor Code and the applicable IWC Wage Order by failing to provide legally compliant meal and/or rest periods or compensation in lieu thereof; failing to timely pay all regular, minimum, and/or overtime wages; failing to timely pay all wages due and owing upon separation of employment and/or the required waiting time penalties; failing to furnish accurate itemized wage statements; failing to maintain accurate records; and retaliating against employees who exercised their right to complain about unlawful working conditions. As a result, the Companies, individually and/or collectively, are liable for civil penalties under Labor

Code §§ 98.6(b)(3), 210, 226.3, 558, 558.1, 1174.5, 1197.1 and 2699(f). Claimant will pursue all available remedies against the Companies, individually and/or collectively, for their violations of California law on behalf of himself and all other Penske Employees to the extent allowed by law.

ATTORNEY'S FEES, COSTS, INTEREST, LIQUIDATED DAMAGES AND PENALTIES

(Labor Code §§ 210, 218.5, 218.6, 225.5, 226(e), 558, 1194, 1194.2, 1197.1, 1198.5 and 2698, *et seq.*)

Labor Code §§ 210, 218.5, 218.6, 226(e), 558, 1194, 1194.2, 1197.1, 1198.5 and 2698, *et seq.*, among others, give employees the right to recover in a civil action the full amount of damages, liquidated damages and penalties, including interest thereon, as well as reasonable attorney's fees and costs.

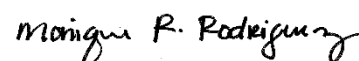
Pursuant to Labor Code § 2699(i) an aggrieved employee is entitled to collect 25% of the penalty assessment. Under Labor Code § 2699(g)(1) an aggrieved employee, such as Claimant, is entitled to an award of reasonable attorney's fees and costs. Accordingly, the Companies, individually and/or collectively, are liable for these items. Claimant has already incurred actual damages, costs and attorney's fees and he will continue to incur such costs as a result of the Companies' unlawful actions. Claimant will pursue all available remedies against the Companies, individually and/or collectively, including those provided by PAGA, on behalf of himself and other Penske Employees to the extent permitted by California law for the violations of law described herein and those that may be later discovered.

CONCLUSION

Based on the foregoing, the Companies, individually and/or collectively, have violated the Labor Code and the relevant IWC Wage Order, thereby depriving Claimant and other PAGA Employees of the rights and protections afforded to them. Claimant has satisfied the prerequisites of the PAGA to serve as a representative of all current or former employees of the Companies, individually and/or collectively, who worked in California, the general public, and the state of California in order to enforce California labor laws and to seek civil penalties for the provisions set forth herein, as well as those which may be later discovered.

Accordingly, if the LWDA declines to intervene or act within time prescribed by the Labor Code, Claimant may elect to initiate and/or amend a civil action, on behalf of himself and all current or former employees of the Companies, individually and/or collectively, who worked in California, as permitted by the PAGA.

Sincerely,



Monique R. Rodriguez

EXHIBIT 2

October 5, 2020

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VIA ONLINE ELECTRONIC FILING

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Agent for Service of Process
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Sacramento, CA 95833-3505

**Re: Amendment to Ladell N. Taylor’s Wage and Hour Claims Against
Penske Logistics, LLC and Penske Truck Leasing Co., L.P.
LWDA-CM-807774-20**

Dear Labor and Workforce Development Agency, Penske Logistics, LLC and Penske Truck Leasing Co., L.P.:

Please be advised that Ladell N. Taylor (“Claimant”) has retained our firm, GrahamHollis APC, to represent him for various claims against Penske Logistics, LLC and Penske Truck Leasing Co., L.P. (collectively, the “Companies”).

Please take note that this letter shall serve as Claimant’s amended written notice to the California Labor and Workforce Development Agency (“LWDA”) and the Companies of the alleged California Labor Code (“Labor Code”) violations Claimant

Graham S.P. Hollis
Vilmarie Cordero
Nathan Reese
Hali Anderson
David Lin
Erick Dos Santos
Alex Kuner
Monique Rodriguez

claims that the Companies, individually and/or collectively, committed against him and all other current or former non-exempt employees of the Companies, individually and/or collectively, who worked in California during the relevant time period. Claimant provides this amended written notice, which includes the facts and theories to support his Labor Code violations alleged herein, in accordance with the Private Attorneys General Act of 2004 (codified in Labor Code §§ 2698 *et seq.*, “PAGA”), Labor Code § 2699.3.

Pursuant to Labor Code § 2699(a), and by way of this amended written notice, Claimant intends to represent himself and all other current or former non-exempt employees of the Companies, individually and/or collectively, who worked in California during the relevant time period (referred to herein as “Penske Employees”). All Penske Employees, including Claimant, are believed to have suffered at least one of the Labor Code violations described herein. Claimant contends that he and all other Penske Employees are “aggrieved employees” as defined by the PAGA.

FACTUAL BACKGROUND

Penske Logistics, LLC is a Delaware limited liability corporation that is authorized to do business in California. Penske Logistics, LLC provides supply chain management, logistic services and solutions to various customers throughout the United States of America, including throughout the state of California. Penske Logistics, LLC is believed to be a wholly owned subsidiary of Penske Truck Leasing Co., L.P.

Penske Truck Leasing Co., L.P. is a Delaware limited partnership that is authorized to do business in California. Penske Truck Leasing Co., L.P. provides commercial and consumer truck rentals, full-service truck leasing and maintenance, logistic solutions, and used trucks to various customers throughout the United States of America, including the state of California.

Claimant was employed, or otherwise performed worked for, the Companies, individually and/or collectively, as a driver from approximately June 28, 2018 through and including July 20, 2020, when he was wrongfully terminated in retaliation for filing a complaint with the California Department of Labor Standards Enforcement (“DLSE”) for the Companies’ failure to pay overtime and unlawful meal and rest periods. Claimant performed work for the Companies as a yard driver and truck driver. As a yard driver, Claimant was responsible for moving trailers to and from the different docks in the yard so that they could be emptied and cleaned before being loaded with product for the next run. Claimant also had to turn on the refuses to ensure that the trailer was cool before the product loaded. As a truck driver, Claimant drove a big rig truck for the Companies’ Sprouts account and was responsible for transporting and delivering the customer’s products in a timely fashion. For instance, Claimant often delivered grocery products to various Sprouts locations throughout Southern California¹. During his employment, Claimant typically worked between 60-65 hours per week and was paid an hourly wage on a weekly basis.

Claimant contends that at all relevant times, the Companies, individually and/or collectively, employed, and continue to employ, Penske Employees in California in various non-exempt positions including, but not limited to, truck drivers, yard drivers, technicians, mechanics, warehouse employees,

¹ The Companies divided California into regions. Southern California is generally referred to the area as far north as Bakersfield/San Luis Obispo, and as far south as Otay Mesa, and as far east as Indio.

customer service representatives, sales, operations, and management. Claimant also contends, based on information and belief, that all policies, practices, procedures and/or guidelines of the Companies applicable to Claimant were also applicable to all other Penske Employees throughout the relevant time period. Claimant further contends, based on information and belief, that he and all other Penske Employees suffered, and will continue to suffer, the same and/or similar violations of law described herein. Furthermore, Claimant contends that Penske Logistics, LLC and Penske Truck Leasing Co., L.P. are jointly and severally liable for the claims asserted herein since at all relevant times, Penske Logistics, LLC and Penske Truck Leasing Co., L.P. exercised control over the wages, hours and/or working conditions of all Penske Employees, including Claimant; caused Penske Employees to work and/or prevented Penske Employees from working; and had control over Penske Employees.

Claimant alleges that the Companies denied, and continue to deny, Claimant and other Penske Employees the specific rights afforded to them under the Labor Code and the applicable Industrial Welfare Commission (“IWC”) Wage Order. Specifically, the Companies, individually and/or collectively, failed, and continue to fail, to provide Claimant and other Penske Employees with legally compliant meal and/or rest periods or pay them compensation in lieu thereof; failed to timely pay all minimum, regular, and/or overtime wages to all Penske Employees, including Claimant, for all time worked; failed to timely pay Claimant and other former Penske Employees all wages due and owing upon separation of employment and/or pay the required waiting time penalties; failed, and continue to fail, to provide all Penske Employees, including Claimant, with accurate itemized wage statements; failed, and continue to fail, to maintain accurate employment records; and engaged in retaliation against Penske Employees, including Claimant, who exercised their legal rights to complain about unlawful working conditions.

Claimant alleges that the Companies, individually and/or collectively, have a policy, practice, procedure and/or guideline of not providing Penske Employees, including Claimant, with the opportunity to take 30-minute, off-duty, uninterrupted meal periods that were free from the employer’s control when they worked more than six (6) hours in a day. Claimant also alleges that the Companies have a policy, practice, procedure and/or guideline of not providing Claimant and other Penske Employees with the opportunity to take a second 30-minute, off-duty, uninterrupted meal period that was free from the employer’s control when they worked more than ten (10) hours in a day. Claimant asserts that he and other Penske Employees were not provided with the opportunity to take lawful meal periods because the Companies, individually and/or collectively, have a policy, practice, procedure and/or guideline of assigning routes and/or workloads, that cannot be reasonably completed within their scheduled hours. Claimant further asserts that Penske Employees, such as himself, were directed, compelled and/or otherwise coerced to work through their meal periods because they were required by the Companies to deliver customer’s products in a timely manner. Despite not receiving legally compliant meal periods, Claimant, and on information and belief other Penske Employees, were not paid premium wages as required by California law.

Claimant contends that the Companies, individually and/or collectively, have a policy, practice, procedure and/or guideline of not authorizing and permitting Penske Employees to take an off-duty, uninterrupted, 10-minute rest period for every four hours worked or major fraction thereof. Claimant alleges that Penske Employees, such as himself, were not authorized and permitted to take lawful rest periods because the Companies, individually and/or collectively, have a policy, practice, procedure and/or

guideline of assigning routes and/or workloads that cannot be reasonably completed within their scheduled hours while taking rest periods. Claimant also alleges that he and other Penske Employees were directed, compelled and/or otherwise coerced to work through their rest periods in part because they were required by the Companies to deliver products in a timely manner. Although, Penske Employees, such as Claimant, did not receive legally compliant rest periods, Claimant and, on information and belief, other Penske Employees did not receive premium wages.

Claimant asserts that the Companies, individually and/or collectively, have a policy, practice, procedure and/or guideline of not timely paying Penske Employees all minimum, regular, and/or overtime wages for all time actually worked. Claimant and other Penske Employees were informed by management in the Fall of 2018 that the Companies would no longer pay any overtime for work performed in excess of 8-hours per day and/or 40-hours per week. Claimant alleges that despite working between 60 to 65 hours per week, he, and on information and belief, other Penske Employees, were not timely paid minimum and/or their regular wages for all time worked and that they were not timely paid overtime wages for hours worked in excess of 8 hours per day and/or 40 hours per week. Additionally, the Companies had a policy, practice, procedure and/or guideline of paying nondiscretionary bonuses (i.e. "safety bonuses"), however, the Companies failed, and continue to fail, to include the nondiscretionary bonuses into Penske Employees' regular rate for purposes of computing overtime. Claimant contends that he, and on information and belief, other Penske employees were not timely paid all minimum, regular, and/or overtime wages for all hours worked.

Claimant alleges that the Companies, individually and/or collectively, have a policy, practice, procedure and/or guideline of not timely paying former Penske Employees, such as himself, all wages due and owing upon separation of employment and/or the required waiting time penalties for the late payment of wages. For instance, Claimant contends that despite being terminated from his employment on July 20, 2020, he was not immediately paid all of his wages due and owing including, but not limited to, unpaid minimum, regular, overtime and premium wages. Claimant also contends that to date he has not received all wages owed nor the required waiting time penalties. Claimant further contends based on information and belief, that other Penske Employees, including Claimant, were not timely paid all wages due and owing upon separation of employment or the required waiting time penalties.

Claimant contends that the Companies, individually and/or collectively, have a policy, practice, procedure and/or guideline of furnishing Penske Employees, including Claimant, with wage statements that do not comply with California Law. Claimant alleges that the wage statements furnished to Claimant and other Penske Employees did not include, and still do not include, the information required by California law including, but not limited to, the total hours worked by the employee, 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 gross wages earned, the net wages earned, the pay period information for each wage statement, the appropriate name and address of the legal entity that employed Penske Employees. Due to the lack of information, Claimant and other Penske Employees were unable to promptly and easily determine the total number of hours worked or the applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate.

Claimant asserts that the Companies, individually and/or collectively, have a policy, practice, procedure and/or guideline of not maintaining accurate employment records. The Companies' illegal

policies, practices, procedures and/or guidelines, such as those described herein, have resulted in the Companies' failure to maintain accurate records reflecting Penske Employees' actual time worked and actual wages earned and paid, among other things, in violation of California law.

Claimant alleges that the Companies, individually and/or collectively, have a policy, practice, procedure and/or guideline of retaliating against employees who make a good faith complaint about unlawful working conditions. For example, Claimant first complained to his supervisor, Jason, shortly after being informed by management that the Companies were no longer going to be paid overtime wages for time worked in excess of 8-hours per day and/or 40-hours per week. Claimant expressed to Jason on a number of occasions that he believed the Companies' policy and practice of not paying overtime was wrong and that he was considering filing a complaint with the DLSE. Jason asked Claimant to not make a complaint to the DLSE and that he would work with Claimant to get him overtime. In early 2020, Jason was transferred to Stockton. Claimant made similar complaints to his new supervisor in late February/early March of 2020 about not being paid overtime despite working 60-65 hours per week. In April 2020, after Claimant's supervisors and the Companies failed to acknowledge his complaints and change their policies and practices, Claimant filed a claim with the DLSE for the Companies' failure to pay overtime and not provide lawful meal and rest periods because the Companies did not remedy his concerns. Shortly after Claimant filed his claim with the DLSE, he was brought into the office multiple times to discuss alleged safety violations. However, the Companies failed to explain to Claimant what he was allegedly doing wrong, provide any evidence of the alleged safety violations, and did not provide any guidance on how to remedy the alleged safety concerns, as Claimant was doing everything he had previously been doing. Claimant was subsequently suspended in mid-July 2020 and ultimately terminated in late July 2020. Claimant contends that the Companies, individually and/or collectively, terminated his employment in retaliation for filing a claim with the DLSE. Claimant further contends, based on information and belief, that other Penske Employees have been retaliated against for complaining about unlawful working conditions.

Due to the foregoing Labor Code violations, the Companies, individually and/or collectively, denied, and continue to deny, Claimant and other Penske Employees certain rights afforded to them under the Labor Code and the applicable IWC Wage Order. Claimant makes these claims against the Companies, individually and/or collectively, on behalf of himself and all other Penske Employees.

The original written notice, dated September 25, 2020 ("Original Notice"), is incorporated herein by reference. The claims in the Original Notice are asserted on behalf of Claimant and all current or former non-exempt employees of the Companies, individually and/or collectively, who worked in California during the relevant time period against the Companies, individually and collectively. The Original Notice was submitted to the LWDA via online upload on September 25, 2020 and sent to the Companies via certified mail.

Also, in a separate, but not necessarily mutually exclusive, alternative theory of liability, Penske Logistics, LLC, Penske Truck Leasing Co., L.P., and/or the Senior Vice President David J. Battisti, are liable for the PAGA civil penalties under Labor Code §§ 558 and 1197.1 as "other person(s)" who caused the violations alleged herein. (See *Atempa v. Pedrazzani* (2018) 27 Cal.App.5th 809, 820 ["if there is evidence and a finding that a party *other than the employer* 'violates, or causes of be violated' the overtime laws (§ 558(a)), or 'pays or causes to be paid to an employee' less than minimum wage (§

1197.1(a)), then that party is liable for certain civil penalties *regardless of the identity or business structure of the employer*”]; see also *Moua v. IBM* (N.D. Cal. 2019) 2019 U.S. Dist. LEXIS 40851 [holding the same].)

The facts and/or claims contained in this amended written notice, as well as the Original Notice, are based on the information available at the time of this writing. Since Claimant’s investigation is ongoing, Claimant reserves his right to assert any and all related facts, claims, and/or theories of liability discovered after the sending of this letter on behalf of himself and other current or former employees of the Companies, individually and/or collectively, who worked in California during the relevant time period against the Companies, individually and/or collectively, and/or other persons that may be discovered after the sending of this letter. Such other persons may include, but are not limited to, those persons who have acted as an agent, subsidiary, servant, employee, co-conspirator, alter-ego, and/or joint venture of the Companies, as well as those persons who caused and/or concurrently contributed to the various acts and/or admissions of each and every one of the others, including the Companies, in proximately causing the wrongful conduct, harm, and/or damages alleged herein or otherwise participated in or ratified any or all of the acts and/or omissions complained herein, and those who were acting within the authority and/or scope of the Companies. Claimant reserves the right to revise these facts and/or add any new claims by amending this letter and/or by adding facts and/or claims to his civil complaint.

**FAILURE TO PROVIDE LEGALLY COMPLIANT MEAL
OR COMPENSATION IN LIEU THEREOF**

(Labor Code §§ 204, 226.7, and 512, and the “Meal Periods” section of the Applicable Wage Order)

Section 512(a) of the Labor Code provides:

An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 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. (Emphasis added.)

In pertinent part, the “Meal Periods” section of the relevant IWC Order states:

(A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day’s work the meal period may be waived by mutual consent of the employer and the employee. Unless the employee is relieved of all duty

during a 30-minute meal period, the meal period shall be considered an “on duty” meal period and counted as time worked. An “on duty” meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal is agreed to.

(B) An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 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....

(D) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided. (Emphasis added.)

A meal period generally comports with the requirements of California law if the employee has at least 30 minutes uninterrupted and the employee is relieved of any and all duty and is free to leave the premises during such time. (*Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1036.) California law further prohibits employers from “...undermining [its] formal policy of providing meal breaks by pressuring employees to perform their duties in ways that omit breaks.” (*Id.* at 1040 [internal citations omitted].)

Pursuant to Labor Code § 226.7(c):

If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

Labor Code § 204 establishes an employee's fundamental right in the state of California to be paid wages in a timely manner for their work. Premium wages under Labor Code § 226.7 are wages that are due payable in accordance with the Labor Code § 204. (*Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1103-1114.)

As set forth above, the Companies failed to provide Claimant and, on information and belief, other Penske Employees with the opportunity to take uninterrupted, off-duty meal periods of at least 30-

minutes before the start of their sixth hour of work and/or a second off-duty 30-minute meal period when they worked in excess of 10 hours. Consequently, Claimant and other Penske Employees are entitled to receive one-hour of premium wages for each day a compliant meal period was not provided. Claimant will pursue all available remedies against the Companies, individually and/or collectively, for their violations of the Labor Code on behalf of himself and all Penske Employees to the extent permitted by law.

**FAILURE TO PROVIDE LEGALLY COMPLIANT REST PERIODS
OR COMPENSATION IN LIEU THEREOF**

(Labor Code §§ 204, 226.7, and the “Rest Periods” section of the Applicable Wage Order)

The “Rest Periods” section of the applicable IWC Wage Order provides:

(A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes of net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

(B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the rest period is not provided. (Emphasis added.)

During rest periods, California law requires employers to relinquish all control over their employees and relieve their employees of all duties. (*Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, 273.)

In pertinent part, Labor Code § 226.7 provides:

(b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and health.

(c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health

Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for workday that the meal or rest or recovery period is not provided.

Labor Code § 204 establishes an employee's fundamental right in the state of California to be paid wages in a timely manner for their work. Premium wages under Labor Code § 226.7 are wages that are due payable in accordance with the Labor Code § 204. (*Murphy, supra*, 40 Cal.4th at 1103-1114.)

As discussed herein, the Companies, individually and/or collectively, failed to authorize and permit Claimant and, on information and belief, other Penske Employees with an off-duty uninterrupted 10-minute rest period for every four hours worked or major fraction thereof. Therefore, Claimant and other Penske Employees are entitled to receive one-hour of premium wages for each day a legally compliant rest period was not provided. Claimant will pursue all available remedies against the Companies, individually and/or collectively, for their violations of law on behalf of himself and all Penske Employees to the extent allowed by law.

FAILURE TO TIMELY PAY MINIMUM, REGULAR, AND/OR OVERTIME WAGES

(Labor Code §§ 204, 210, 510, 1194, 1197, 1197.1, 1198, and 1199, and the "Minimum Wages" and "Hours and Days of Work" sections of the Applicable IWC Wage Order)

Labor Code § 204 establishes an employee's fundamental right in the state of California to be paid wages in a timely manner for their work. Labor Code § 1197 states, "[t]he minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful." (See *Gonzalez v. Downtown LA Motors, LP* (2013) 215 Cal.App.4th 36, 44 [providing that an employer may not pay "less than the applicable minimum wage for all hours worked in the payroll period, whether the remunerations is measured by time, piece, commission, or otherwise"].) The "Minimum Wages" section of the applicable IWC Wage Order further provides that "[e]very employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise."

Labor Code § 1198 states,

[t]he maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

Labor Code § 1199 imposes "a fine of not less than one hundred dollars (\$100)" for any employer who violates the provisions set forth in Labor Code § 1198.

Labor Code § 510(a), which codifies an employee's right to overtime compensation, provides:

Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay. Nothing in this section requires an employer to combine more than one rate of overtime compensation in order to calculate the amount to be paid to an employee for any hour of overtime work. (Emphasis added.)

The "Hours and Days of Work" and "Minimum Wages" sections of the Applicable Wage Order mandates the same requirements as Labor Code § 510. Under California law, an employee may not waive his or her right to overtime compensation. (*Early v. Superior Court* (2000) 79 Cal.App.4th 1420, 1430.)

Labor Code § 1197.1 states that,

[a]ny employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law or by an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to Section 203...

Labor Code § 1194(a) states,

Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit.

Labor Code § 1194.2 allows for the recovery of liquidated damages in an amount equal to the minimum wages unlawfully unpaid and interest thereon.

Labor Code § 210 states that, "every person who fails to pay the wages of an employee as provided in Section...204...shall be subject to a civil penalty" of \$100 for an initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation."

As set forth above, the Companies, individually and/or collectively, have a policy, practice, procedure and/or guideline of failing to timely pay all minimum, regular and/or overtime wages to

Claimant and other Penske Employees for all hours actually worked. Specifically, the Companies did not timely pay Claimant and, on information and belief, other Penske Employees, overtime wages despite working in excess of 8 hours per day and/or 40 hours per week. The Companies also did not include nondiscretionary bonuses into Penske Employees' regular rate for purposes of overtime compensation. Claimant will pursue all available remedies against the Companies, individually and/or collectively, for their Labor Code violations on behalf of himself and all Penske Employees to the extent permitted by law.

FAILURE TO TIMELY PAY ALL WAGES OWED UPON SEPARATION OF EMPLOYMENT
(Labor Code §§ 201, 202, 203, 204, and 210)

Labor Code § 204 establishes an employee's fundamental right in the state of California to be paid wages in a timely manner for their work. Labor Code § 201 states, in pertinent part, "[i]f an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately." Labor Code § 202 provides, in pertinent part, "[i]f an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous 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."

In pertinent part, Labor Code § 203(a) states,

[i]f an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, 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 therefore is commenced; but the wages shall not continue for more than 30 days.

Labor Code § 210 provides that, "every person who fails to pay the wages of an employee as provided in Sections 201.3...shall be subject to a civil penalty" of \$100 for an initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation."

As discussed herein, the Companies violated these Labor Code sections by not timely paying to Claimant and other former Penske Employees all minimum, regular, and/or overtime wages and/or meal and/or rest period premium wages, within the required time upon separation of their employment. The Companies also did not pay the required waiting time penalties for the late payment of wages. Thus, the Companies violated California law. Claimant will pursue all available remedies against the Companies, individually and/or collectively, for their violations of California law on behalf of himself and all former Penske Employees to the extent allowed by law.

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FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS
(Labor Code §§ 226 and 226.3, and the “Records” section of the Applicable IWC Wage Order)

Labor Code § 226 states in pertinent part:

Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as detachable part of the check, draft, or voucher paying the employee’s wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee... (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid... (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number...(8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during each period and the corresponding number of hours worked at each hourly rate by the employee...

Labor Code § 226(e)(1) provides:

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

Labor Code § 226(h) states, “an employee may also bring an action for injunctive relief to ensure compliance with this section and is entitled to an award of costs and reasonable attorneys’ fees.” Labor Code § 226.3 imposes an additional civil penalty of \$250 per employee per violation in an initial citation and \$1,000 per employee per violation for any subsequent violation on the employer for violations of Labor Code § 226(a).

As discussed above, the Companies, individually and/or collectively, failed to furnish Claimant and other Penske Employees with accurate itemized wage statements that comply with the requirements of the Labor Code because the wage statements did not, among other things, include the total hours worked by the employee, 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 gross wages earned, and the net wages earned. Claimant will pursue all available remedies against the Companies, individually and/or collectively, for their Labor Code violations on behalf of himself and all Penske Employees to the extent permitted by law.

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FAILURE TO MAINTAIN ACCURATE RECORDS

(Labor Code §§ 226, 1174 and 1174.5, and the “Records” section of the Applicable IWC Wage Order)

Labor Code § 1174 requires every employer to “keep a recording showing the names and addresses of all employees employed...” Labor Code § 1174 further requires “[e]very person employing labor in this state [to] keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily [] and the wages paid. Such records are to be kept according to the rules establish by the commission for such purpose and must be kept on file for no less than three years.” An employer is further obliged under Labor Code § 226(b) to keep the information required by Labor Code § 226(a) and afford current or former employees the right to inspect or copy records pertaining to their employment. The “Records” section of the applicable IWC Wage Order also provides that every employer shall keep accurate information with respect to each one of its employees, including time records showing when the employee begins and ends each work period, meal periods, total daily hours worked, total wages paid each payroll period, and total hours worked in the payroll period and applicable rates of pay.

Labor Code § 1174.5 imposes a civil penalty of \$500 for an employer’s failure to maintain accurate and complete records. This civil penalty is in addition to the civil penalty of \$100 per pay period, per aggrieved employee that would be imposed pursuant to Labor Code § 2699 for a violation of Labor Code § 1174(d).

Labor Code § 226(e)(1) provides,

[a]n employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) [of Labor Code § 226] is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney’s fees.

As set forth above, the Companies, individually and/or collectively, violated their record keeping requirements by failing to accurately record employee hours actually worked including, but not limited to, the Companies, individually and/or collectively, failing to record the proper beginning and end of each work period, the meal periods, the total hours worked during the pay period, the applicable rates of pay, and the actual wages earned and paid. Claimant will pursue all available remedies against the Companies, individually and/or collectively, for their violations of the law on behalf of himself and all Penske Employees to the extent allowed by law.

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RETALIATION

(Labor Code §§ 98.6, 1102.5 and 6310)

Labor Code § 98.6(a) mandates,

[a] person shall not discharge an employee or in any manner discriminate, retaliate, or take any adverse action against any employee or applicant for employment because the employee or applicant engaged in any conduct delineated in this chapter, including the conduct described in subdivision (k) of Section 96, and Chapter 5 (commencing with Section 1101) of Part 3 of Division 2, or because the employee or applicant for employment has filed a bona fide complaint or claim or instituted or caused to be instituted any proceeding under or relating to his or her rights that are under the jurisdiction of the Labor Commissioner, made a written or oral complaint that he or she is owed unpaid wages, or because the employee has initiated any action or notice pursuant to Section 2699, or has testified or is about to testify in a proceeding pursuant to that section, or because of the exercise by the employee or applicant for employment on behalf of himself, herself, or others of any rights afforded him or her.

Labor Code § 98.6(a)(3) further states that, “[i]n addition to other remedies available, an employer who violates this section is liable for a civil penalty not exceeding ten thousand dollars (\$10,000) per employee for each violation of this section, to be awarded to the employee or employees who suffered the violation.”

Labor Code § 1102.5(b) provides,

[a]n employer, or any person acting on behalf of the employer, shall not retaliate against an employee for disclosing information, or because the employer believes that the employee disclosed or may disclose information, to a government or law enforcement agency, to a person with authority over the employee or another employee who has the authority to investigate, discover, or correct the violation or noncompliance, or for providing information to, or testifying before, any public body conducting an investigation, hearing, or inquiry, if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing the information is part of the employee’s job duties.

In addition to other penalties, “an employer that is a corporation or limited liability company is liable for a civil penalty not exceeding ten thousand dollars (\$10,000) for each violation” of Labor Code § 1102.5(b).

In pertinent part, Labor Code § 6310(a) states,

[n]o person shall discharge or in any manner discriminate against any employee because the employee has done any of the following: (1) Made any oral or written complaint to the division, other governmental agencies having statutory responsibility for or assisting the division with reference to employee safety or health, his or her employer, or his or her representative. (2) Instituted or caused to be instituted any proceeding under or relating to his or her rights or has testified or is about to testify in the proceeding or because of the exercise by the employee on behalf of himself, herself, or others of any rights afforded him or her. . . .

Labor Code § 6310(b) also provides,

“[a]ny employee who is discharged . . . because the employee has made a bona fide oral or written complaint to the division, other governmental agencies having statutory responsibility for or assisting the division with reference to employee safety or health, his or her employer, or his or her representative, of . . . work practices, in his or her employment or place of employment . . . shall be entitled to reinstatement and reimbursement for lost wages and work benefits caused by the acts of the employer. Any employer who willfully refuses to rehire, promote, or otherwise restore an employee or former employee who has been determined to be eligible for rehiring or promotion by a grievance procedure, arbitration, or hearing authorized by law, is guilty of a misdemeanor.”

As set forth herein, the Companies, individually and/or collectively, have a policy, practice, procedure and/or guideline of engaging in retaliation against employees who exercise their legal rights to complain about unlawful working conditions. For instance, Claimant was terminated from his employment after filing a claim with the DLSE for the Companies’ failure to pay him overtime and failure to provide him with lawful meal and/or rest periods or compensation in lieu thereof. The Companies thus engaged in retaliation against Claimant in violation of Labor Code §§ 98.6, 1102.5 and 6310. Claimant will pursue all available remedies against the Companies, individually and/or collectively, for their Labor Code violations on behalf of himself and all Penske Employees to the extent permitted by law.

**CIVIL PENALTIES FOR VIOLATION OF THE LABOR CODE AND
APPLICABLE IWC WAGE ORDER**

(Labor Code §§ 98.6(b)(3), 210, 226.3, 558, 558.1, 1174.5, 1197.1 and 2699(f))

Labor Code § 98.6(b)(3) states an employer who violates Labor Code § 98.6 is liable for a civil penalty not exceeding \$10,000 per employee for each violation of this section. The civil penalty is to be awarded to the individuals who were improperly discharged.

Labor Code § 210 provides that any person who fails to pay wages as provided in sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5 and 1197.5 shall be subject to a civil penalty of \$100 for any initial violation for each failure to pay each employee and for each subsequent violation, or any willful or intentional violation \$200 for each failure to pay each employee, plus 25 % if the amount unlawfully withheld, in addition to any other penalty.

For violations of Labor Code § 226(a), Labor Code § 226.3 imposes a civil penalty of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation.

Labor Code § 558 subjects any employer or any person acting on behalf of an employer who violates Labor Code Part 2, Chapter 1, of the Labor Code (Labor Code §§ 500-558) or any provision regulating the hours and days of work in any IWC Wage Order to a civil penalty as follows: “[f]or any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid. For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid.” Labor Code § 558.1(a) states that

“[a]ny employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wage or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.”

Pursuant to Labor Code § 558.1(b), Labor Code § 558.1(a) is applicable to the owners, officers, directors, or managing agents of the employer.

For violations of Labor Code § 1174 subdivisions (b), (c), and (d), Labor Code § 1174.5 imposes a civil penalty of \$500.

Labor Code § 1197.1 subjects any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by an order of the commission to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to § 203 as follows:

(1) For any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to § 1194.2, and any applicable penalties imposed pursuant to § 203. (2) For each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is

intentionally committed. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to § 1194.2, and any applicable penalties imposed pursuant to § 203. (3) Wages, liquidated damages, and any applicable penalties imposed pursuant to § 203, recovered pursuant to this section shall be paid to the affected employee.

Labor Code § 2699(f) imposes a civil penalty of \$100 per pay period, per employee, for the initial violation and \$200 per pay period, per employee, for each subsequent violation for all Labor Code provisions for which a civil penalty is not specifically provided, including, but not limited to, Labor Code §§ 98.6, 201, 202, 203, 204, 210, 226(a), 226.3, 226.7, 510, 512, 1174(c), 1174(d), 1194, 1197, 1197.1, 1102.5, 1198, 1199, 6310 and relevant IWC Wage Orders.

As set forth above, the Companies, individually and/or collectively, violated the Labor Code and the applicable IWC Wage Order by failing to provide legally compliant meal and/or rest periods or compensation in lieu thereof; failing to timely pay all regular, minimum, and/or overtime wages; failing to timely pay all wages due and owing upon separation of employment and/or the required waiting time penalties; failing to furnish accurate itemized wage statements; failing to maintain accurate records; and retaliating against employees who exercised their right to complain about unlawful working conditions. As a result, the Companies, individually and/or collectively, are liable for civil penalties under Labor Code §§ 98.6(b)(3), 210, 226.3, 558, 558.1, 1174.5, 1197.1 and 2699(f). Claimant will pursue all available remedies against the Companies, individually and/or collectively, for their violations of California law on behalf of himself and all other Penske Employees to the extent allowed by law.

ATTORNEY'S FEES, COSTS, INTEREST, LIQUIDATED DAMAGES AND PENALTIES
(Labor Code §§ 210, 218.5, 218.6, 225.5, 226(e), 558, 1194, 1194.2, 1197.1, 1198.5 and 2698, *et seq.*)

Labor Code §§ 210, 218.5, 218.6, 226(e), 558, 1194, 1194.2, 1197.1, 1198.5 and 2698, *et seq.*, among others, give employees the right to recover in a civil action the full amount of damages, liquidated damages and penalties, including interest thereon, as well as reasonable attorney's fees and costs.

Pursuant to Labor Code § 2699(i) an aggrieved employee is entitled to collect 25% of the penalty assessment. Under Labor Code § 2699(g)(1) an aggrieved employee, such as Claimant, is entitled to an award of reasonable attorney's fees and costs. Accordingly, the Companies, individually and/or collectively, are liable for these items. Claimant has already incurred actual damages, costs and attorney's fees and he will continue to incur such costs as a result of the Companies' unlawful actions. Claimant will pursue all available remedies against the Companies, individually and/or collectively, including those provided by PAGA, on behalf of himself and other Penske Employees to the extent permitted by California law for the violations of law described herein and those that may be later discovered.

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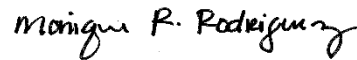
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CONCLUSION

Based on this amended written notice and the Original Notice, the Companies, individually and/or collectively, have violated the Labor Code and the relevant IWC Wage Order, thereby depriving Claimant and other Penske Employees of the rights and protections afforded to them. Claimant has satisfied the prerequisites of the PAGA to serve as a representative of all Penske Employees, the general public, and the state of California in order to enforce California labor laws and to seek civil penalties for the provisions set forth herein, as well as those which may be later discovered.

Accordingly, if the LWDA declines to intervene or act within time prescribed by the Labor Code, Claimant may elect to initiate and/or amend a civil action, on behalf of himself and all other Penske Employees, as permitted by the PAGA.

Sincerely,



Monique R. Rodriguez