

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

APR 06 2022

BY 
JESSICA MORALES, DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO

ERIC D. MCDOWELL, an individual; AARON
L. STUBBS, an individual; LEON C. WILLS,
and individual, and on behalf of all persons
similarly situated,

Plaintiffs,

v.

PENSKE TRUCK LEASING CO., L.P.; and
DOES 1 through 10 inclusive,

Defendants.

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

Plaintiff,

v.

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

Defendants.

ANGEL ZAMORA, GABRIEL LOAIZA and
JORGE GUILLEN, individuals, on behalf of
themselves and on behalf of all persons similarly
situated,

Case No. CIVDS2012273

~~[PROPOSED]~~ PRELIMINARY
APPROVAL ORDER

Hearing Date: April 6, 2022
Hearing Time: 10:00 a.m.

Judge: Hon. David Cohn
Dept: S26

Action Filed: May 29, 2020
Trial Date: None

PRELIMINARY APPROVAL ORDER

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

Plaintiffs,

vs.

PENSKE TRUCK LEASING CO., L.P., a
Limited Partnership,

Defendant.
MARK LUNA, an individual, on behalf of
himself and on behalf of all persons similarly
situated,

Plaintiff,

v.

PENSKE LOGISTICS LLC, a Limited Liability
Company; and DOES 1 through 50, Inclusive,

Defendants.
PHIL POSTON, individually, and on behalf of
other members of the general public similarly
situated;

Plaintiff,

vs.

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

Defendants.

This matter, having come before the Honorable David Cohn of the Superior Court of the State of California, in and for the County San Bernardino, on April 6, 2022, for the motion by Plaintiffs Eric D. McDowell, Aaron L. Stubbs, Leon C. Willis, Angel Zamora, Gabriel Loaiza, Jorge Guillen, Ladell Taylor, Mark Luna, and Phil Poston (collectively, "Plaintiffs") for preliminary approval of the class settlement with Defendants Penske Truck Leasing Co., L.P. and Penske Logistics LLC (collectively "Defendants"). The Court, having considered the briefs, argument of counsel and all matters presented to the Court and good cause appearing, hereby GRANTS Plaintiffs' Motion for Preliminary Approval of Class Action Settlement.

PRELIMINARY APPROVAL ORDER

IT IS HEREBY ORDERED:

1. The Court preliminarily approves the class action settlements as set forth in the Joint Stipulation of Class Action and PAGA Settlement and Release of Claims ("McDowell Agreement") attached as Exhibit A to the Declaration of Geralyn L. Skapik and the Class Action Settlement Agreement ("Zamora/Taylor/Luna/Poston Agreement") attached as Exhibit 1 to the Declaration of Kyle Nordrehaug in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement. Collectively, the McDowell Agreement and the Zamora/Taylor/Luna/Poston Agreement are referred to herein as the "Settlement". The granting of the motion is based on the Court's determination that the Settlement is within the range of possible final approval, pursuant to the provisions of Section 382 of the California Code of Civil Procedure and California Rules of Court, rule 3.769.

2. This Order incorporates by reference the definitions in the McDowell Agreement and the Zamora/Taylor/Luna/Poston Agreement, and all terms defined therein shall have the same meaning in this Order.

3. The Maximum Settlement Amount in the McDowell Agreement is One Million Dollars (\$1,000,000) and Gross Settlement Amount in the Zamora/Taylor/Luna/Poston Agreement is One Million Four Hundred Fifty-Five Thousand Dollars (\$1,455,000), which is a combined amount of Two Million Four Hundred Fifty-Five Thousand Dollars (\$2,455,000) ("Settlement Fund"). It appears to the Court on a preliminary basis that the settlement amount and terms are fair, adequate and reasonable as to all potential Class Members when balanced against the probable outcome of further litigation and the significant risks relating to certification, liability and damages issues. It further appears that investigation and research have been conducted such that counsel for the Parties are able to reasonably evaluate their respective positions. It further appears to the Court that settlement at this time will avoid substantial additional costs by all Parties, as well as avoid the delay and risks that would be presented by the further prosecution of the Action. It further appears that the Settlement has been reached as the result of serious and non-collusive, arms-length negotiations. The Court therefore preliminarily finds that the Settlement is fair,

PRELIMINARY APPROVAL ORDER

adequate, and reasonable when balanced against the probable outcome of further litigation and the significant risks relating to certification, liability, and damages issues.

4. The Settlement specifies for an attorneys' fees award not to exceed one-third (1/3) of the Settlement Fund, an award of litigation expenses incurred, not to exceed \$82,000.00, and proposed Class Representative Service Payments to the Plaintiffs in an amount not to exceed \$10,000 to each Plaintiff. The Court will not approve the amount of attorneys' fees and costs, nor the amount of any service award, until the Final Approval Hearing. Plaintiffs will be required to present evidence supporting these requests, including lodestar, prior to final approval.

5. The Court recognizes that Plaintiffs and Defendants stipulate and agree to certification of a class for settlement purposes only. This stipulation will not be deemed admissible in this or any other proceeding should this Settlement not become final. For settlement purposes only, the Court conditionally certifies the following Class: "all current and former non-exempt employees of Defendant Penske Logistics LLC and/or Defendant Penske Truck Leasing Co., L.P. employed at any time during the Class Period." The Class Period is from January 31, 2016 through and including April 6, 2022.

6. The Court concludes that, for settlement purposes only, the Class meets the requirements for certification under section 382 of the California Code of Civil Procedure in that: (a) the Class is ascertainable and so numerous that joinder of all members of the Class is impracticable; (b) common questions of law and fact predominate, and there is a well-defined community of interest amongst the members of the Class with respect to the subject matter of the litigation; (c) the claims of the Plaintiffs are typical of the claims of the members of the Class; (d) the Plaintiffs can fairly and adequately protect the interests of the members of the Class; (e) a class action is superior to other available methods for the efficient resolution of this controversy; and (f) counsel for the Class is qualified to act as counsel for the Class and the Plaintiffs are adequate representatives of the Class.

7. The Court provisionally appoints Plaintiffs as the representatives of the Class. The Court provisionally appoints the law firms of the Skapik Law Group, Blumenthal Nordrehaug

1 Bhowmik De Blouw LLP, GrahamHollis, APC, and Lawyer for Justice, PC to serve as Class
2 Counsel for the Class.

3 8. The Court hereby approves, as to form and content, the Notice of Proposed
4 Settlement of Class Action and Hearing Date for Final Court Approval ("Class Notice") attached
5 to the Zamora/Taylor/Luna/Poston Agreement as Exhibit A and to the McDowell Agreement as
6 Exhibit 1. The Class Notice is intended to be a consolidated Class Notice to the Class regarding
7 the Settlement. The Court finds that the Class Notice appears to fully and accurately inform the
8 Class of all material elements of the proposed Settlement, of the Class Members' right to be
9 excluded from the Class by submitting a written opt-out request, and of each member's right and
10 opportunity to object to the Settlement. The Court further finds that the distribution of the Class
11 Notice substantially in the manner and form set forth in the Settlement and this Order meets the
12 requirements of due process, is the best notice practicable under the circumstances, and shall
13 constitute due and sufficient notice to all persons entitled thereto. The form and method of giving
14 notice complies fully with the requirements of California Code of Civil Procedure § 382,
15 California Rules of Court §§ 3.766 and 3.769, the California and United States Constitutions, and
16 other applicable law. The Court orders the mailing of the Class Notice by first class mail,
17 pursuant to the terms set forth in the Settlement.

18 9. The Court hereby appoints Simpluris as Settlement Administrator. No later than
19 fourteen (14) calendar days after preliminary approval of the Settlement by the Court, Defendants
20 shall provide the Settlement Administrator with the Class Data. The Settlement Administrator will
21 perform address updates and verifications as necessary prior to the mailing of the Class Notice.
22 Using best efforts to mail it as soon as possible, and in no event later than 14 days after receiving
23 the Class information spreadsheet, the Settlement Administrator will mail the Class Notice to all
24 Class Members via first-class U.S. Mail.

25 10. The Court hereby preliminarily approves the proposed procedure for exclusion
26 from the Settlement. Any Class Member may individually choose to opt out of and be excluded
27 from the Class as provided in the Class Notice by following the instructions for requesting

28
PRELIMINARY APPROVAL ORDER

1 exclusion from the Class that are set forth in the Class Notice. All requests for exclusion must be
2 postmarked by no later than the Response Deadline, which shall be forty-five (45) days after the
3 mailing of the Class Notice. Any such person who chooses to opt out of and be excluded from the
4 Class will not be entitled to any recovery under the Settlement and will not be bound by the
5 Settlement or have any right to object, appeal or comment thereon, except that all Aggrieved
6 Employees will be subject to the release of the Released PAGA Claims. Class Members who have
7 not requested exclusion shall be bound by all determinations of the Court, the Settlement and the
8 Judgment. A request for exclusion may only opt out that particular individual, and any attempt to
9 affect an opt out of a group, class, or subclass of individuals is not permitted and will be deemed
10 invalid.

11 11. Any Class Member who has not opted out may object or express the Class
12 Member's views regarding the Settlement, and may present evidence and file briefs or other papers
13 that may be proper and relevant to the issues to be heard and determined by the Court as provided
14 in the Notice. Class Members will have until the Response Deadline to submit their written
15 objections and/or a notice of intention to appear at the hearing to the Settlement Administrator in
16 accordance with the instructions in the Class Notice. Any Class Member who does not timely and
17 validly file written Objections and a notice of intent to appear shall not be permitted to present his,
18 her, or its Objections at the Final Approval and Fairness Hearing.

19 12. A Final Approval Hearing shall be held before this Court on 8/29/22
20 _____ at 10:00 in Department 26 of the San Bernardino County Superior Court to
21 determine all necessary matters concerning the Settlement, including: whether the proposed
22 settlement of the Action on the terms and conditions provided for in the Agreement is fair,
23 adequate and reasonable and should be finally approved by the Court; whether the Final Approval
24 Order and Judgment should be entered herein; whether the plan of allocation contained in the
25 Agreement should be approved as fair, adequate and reasonable to the Class Members; and to
26 finally approve attorneys' fees and costs, the service award, and the expenses of the Settlement
27 Administrator. Plaintiffs' consolidated motion for final approval and two (2) separate motions for
28

PRELIMINARY APPROVAL ORDER

1 attorneys' fees, costs and service awards as to the McDowell Agreement and the
2 Zamora/Taylor/Luna/Poston Agreement shall all be heard at the Final Approval Hearing. All
3 papers in support of the motion for final approval and the motions for attorneys' fees, costs and
4 service awards shall be filed with the Court and served on all counsel no later than sixteen (16)
5 court days before the hearing.

6 13. Neither the Settlement nor any exhibit, document, or instrument delivered
7 thereunder shall be construed as a concession or admission by Defendants in any way that the
8 claims asserted have any merit or that this Action was properly brought as a class or representative
9 action, and shall not be used as evidence of, or used against Defendants as, an admission or
10 indication in any way, including with respect to any claim of any liability, wrongdoing, fault or
11 omission by Defendants or with respect to the truth of any allegation asserted by any person.
12 Whether or not the Settlement is finally approved, neither the Settlement, nor any exhibit,
13 document, statement, proceeding or conduct related to the Settlement, nor any reports or accounts
14 thereof, shall in any event be construed as, offered or admitted in evidence as, received as or
15 deemed to be evidence for any purpose adverse to the Defendants, including, but not limited to,
16 evidence of a presumption, concession, indication or admission by Defendants of any liability,
17 fault, wrongdoing, omission, concession or damage.

18 14. In the event the Settlement does not become effective in accordance with the terms
19 of the McDowell Agreement and the Zamora/Taylor/Luna/Poston Agreement, or the Settlement is
20 not finally approved, or is terminated, canceled or fails to become effective for any reason, this
21 Order shall be rendered null and void and shall be vacated, and the Parties shall revert to their
22 respective positions as of immediately before November 10, 2021, and expressly reserve their
23 respective rights regarding the prosecution and defense of this Action, including all available
24 defenses and affirmative defenses, and arguments that any claim in the Action could not be
25 certified as a class action and/or managed as a representative action. In such an event, the Court's
26 orders regarding the Settlement, including this Order, shall not be used or referred to in litigation

27
28 PRELIMINARY APPROVAL ORDER

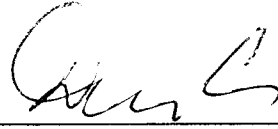
1 for any purpose. Nothing in this paragraph is intended to alter the terms of the Settlement with
2 respect to the effect of the Settlement if it is not approved.

3 15. The Court reserves the right to adjourn or continue the date of the final approval
4 hearing without further notice to Class Members, and retains jurisdiction to consider all further
5 applications arising out of or connected with the proposed Settlement.

6 16. Pending the Final Approval Hearing, all proceedings in this action other than
7 proceedings necessary to carry out or enforce the terms and conditions of the Settlement and the
8 Order, are stayed and all trial and related pre-trial dates are vacated, subject to further orders of the
9 Court at the Final Approval Hearing.

10 **IT IS SO ORDERED.**

11 Dated: 4/4/22


12 HON. DAVID COHN
13 JUDGE, SUPERIOR COURT OF CALIFORNIA
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PRELIMINARY APPROVAL ORDER