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Attorneys for Plaintiffs
ERIC D. MCDOWELL, AARON L. STUBBS,
LEON C. WILLIS, AND ON BEHALF OF ALL PERSONS SIMILARLY SITUATED

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO**

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

Plaintiffs,

vs.

PENSKE TRUCK LEASING CO., L.P.;
PENSKE LOGISTICS LLC, a Delaware
Limited Liability Company; and DOES 1
through 10, inclusive,

Defendants.

Case No. CIVDS2012273

[Assigned for all purposes to the Honorable
David S. Cohn, Dept. S-26]

CLASS ACTION

**JOINT STIPULATION OF CLASS
ACTION AND PAGA SETTLEMENT**

Action Filed: May 29, 2020
Trial Date: None

1 IT IS HEREBY STIPULATED, by and between Plaintiffs Eric D. McDowell, Aaron L.
2 Stubbs and Leon C. Willis (collectively, "Plaintiffs"), individually and on behalf of the Settlement
3 Class, and Defendants Penske Truck Leasing Co., L.P. and Penske Logistics LLC (collectively,
4 "Defendants"), and subject to the approval of the Court, that the Action is hereby settled pursuant
5 to the terms and conditions set forth in this Joint Stipulation of Class Action and PAGA
6 Settlement and Release of Claims ("Agreement") and that the Court shall make and enter
7 judgment subject to the definitions, recitals and terms set forth herein which by this reference
8 become an integral part of this Agreement.
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11 **I. DEFINITIONS**

- 12 A. "Action" or "Lawsuit" shall mean, the civil action entitled *Eric D. McDowell, an*
13 *individual; Aaron L. Stubbs, an individual; Leon C. Willis, an individual, and on*
14 *behalf of all persons similarly situated v. Penske Truck Leasing Co., L.P., Penske*
15 *Logistics LLC, a Delaware limited liability company, and Does 1 through 10,*
16 *inclusive, originally filed on May 29, 2020, in the San Bernardino County Superior*
17 *Court, and assigned Case No. CIVDS2012273.*
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19
20 B. "Agreement" or "Settlement Agreement" means this Joint Stipulation of Class
21 Action and PAGA Settlement and Release of Claims.
22
23 C. "Class Counsel" means the attorneys of record for the Class Representatives and
24 Class Members, *i.e.*, Mark J. Skapik, Geralyn L. Skapik, and Blair J. Berkley,
25 Skapik Law Group, 5861 Pine Avenue, Suite A-1, Chino Hills, California 91709.
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- 1 D. "Class Counsel Award" means an award of attorneys' fees, expenses and costs
2 granted to Class Counsel and paid from the Maximum Settlement Amount in
3 recognition of their efforts and risks in assisting with the prosecution of the Action.
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- 5 E. "Class Data" means for each Class Member, his or her full name; last-known
6 mailing address; Social Security number; his or her employee identification number; his or
7 her email address (if known and available to Defendants); his or her dates of employment,
8 and data allowing the Settlement Administrator to calculate the number of weeks in which
9 he or she actually performed any work during the Class Period and PAGA Period.
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- 11 F. "Class Members" means all current and former non-exempt employees of
12 Defendants in California employed at any time between January 31, 2016 and the
13 date of the order approving Plaintiffs' Motion for Preliminary Approval of Class
14 Action and PAGA Settlement (*i.e.* April 6, 2022).
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- 16 G. "Class Period" shall mean the time period from January 31, 2016, through the date
17 of the order approving Plaintiffs' Motion for Preliminary Approval of Class Action
18 and PAGA Settlement (*i.e.* April 6, 2022).
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- 20 H. "Class Representative Service Award" means the amount that the Court authorizes
21 to be paid to Plaintiffs from the Maximum Settlement Amount, in addition to their
22 Individual Settlement Payments, in recognition of their efforts and risks in assisting
23 with the prosecution of the Action and in exchange for executing a General Release
24 of Defendants.
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- 1 I. "Class Representatives" means the named Plaintiffs in this lawsuit, Eric D.
2 McDowell, Aaron L. Stubbs and Leon C. Willis.
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4 J. "Court" means the Superior Court for the State of California, County of San
5 Bernardino.
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7 K. "Defendants" means Penske Truck Leasing Co., L.P. and Penske Logistics LLC.
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9 L. "Defense Counsel" or "Counsel for Defendants" shall mean Evan Moses of
10 Ogletree, Deakins, Nash, Smoak & Stewart, P.C., 400 South Hope Street, Suite
11 1200, Los Angeles, California 90071.
- 12
13 M. "Effective Date" shall be the later of the following: (i) if no objections to the
14 settlement have been filed, or the timely objections have been filed and then
15 withdrawn, then the date the Court enters judgment granting Final Approval; (ii) if
16 an objection to the settlement has been filed, then the date on which time expires to
17 file an appeal of the Court's grant of Final Approval of settlement; or (iii) if an
18 objection was filed and a Notice of Appeal of the Court's grant of Final Approval
19 of settlement was timely filed, then the date the appeal is finally resolved, with the
20 final approval unaffected.
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23 N. "Final Approval Order" or "Final Approval" means the Court's order granting final
24 approval of the Settlement.
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26 O. "Individual Settlement Payment" means the amount payable from the Net
27 Settlement Amount to each Settlement Member.

- 1 P. "Maximum Settlement Amount" means \$1,000,000.00, which sum includes all
2 payments contemplated by this Agreement, including but not limited to: the
3 Individual Settlement Payments, the Class Representative Service Awards, the
4 Class Counsel Award, PAGA Payment, the Settlement Administration Costs, and
5 any award of costs or reimbursements to Class Counsel or Plaintiffs. It does not
6 include any required employer payroll taxes, and Defendants shall pay such
7 amounts separate and apart from the Maximum Settlement Amount. This is a non-
8 reversionary settlement. Except for any required employer payroll taxes, in no
9 event shall Defendants be liable for more than \$1,000,000.00 as a result of this
10 Settlement.
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13 Q. "Net Settlement Amount" or "NSA" means the Maximum Settlement Amount, less
14 the Class Representative Service Awards, the Class Counsel's Attorneys Fee
15 Award, PAGA Payment, the Settlement Administration Costs, and any award of
16 costs or reimbursements to Class Counsel or Plaintiffs.
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18 R. "Notice Packet" means the Notice of Class Action Settlement in a form
19 substantially similar to the form attached hereto as Exhibit 1, and a pre-printed
20 postage-paid return envelope.
21
22 S. "PAGA" means the California Labor Code Private Attorneys General Act of 2004.
23
24 T. "PAGA Period" shall mean the time period from January 31, 2019, through the
25 date of the order approving Plaintiffs' Motion for Preliminary Approval of Class
26 Action and PAGA Settlement (*i.e.* April 6, 2022).
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- 1 U. "PAGA Payment" means the payment made hereunder to the California Labor and
2 Workforce Development Agency pursuant to PAGA.
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4 V. "PAGA Members" means current and former non-exempt employees of
5 Defendants in California employed at any time between January 31, 2019 and the
6 date of the order approving Plaintiffs' Motion for Preliminary Approval of Class
7 Action and PAGA Settlement (*i.e.* April 6, 2022).
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9 W. "Parties" means Plaintiffs and Defendants, collectively, and "Party" shall mean
10 either Plaintiff or Defendants, individually.
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12 X. "Payment Ratio" means the respective Qualified Workweeks for each Settlement
13 Member divided by the total Qualified Workweeks for all Class Members.
- 14
15 Y. "Plaintiffs" shall mean the named Plaintiffs in this action, Eric D. McDowell,
16 Aaron L. Stubbs and Leon C. Willis.
- 17
18 Z. "Preliminary Approval Date" means the date the Court enters an order granting
19 preliminary approval of the Settlement.
- 20
21 AA. "Qualified Workweeks" means the total number of weeks in which the Class
22 Members actually worked within the Class Period (as reflected in the Class Data).
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24 BB. "Qualified Settlement Fund" or "QSF" means the qualified settlement fund set up
25 by the Settlement Administrator into which the Maximum Settlement Amount shall
26 be deposited and disbursements from it shall be made.
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1 CC. "Released Claims" means all causes of action and factual or legal theories
2 that were alleged in the operative Second Amended Complaint or reasonably could
3 have been alleged based on the facts and legal theories contained in the operative
4 Second Amended Complaint, including all of the following claims for relief: (i)
5 failure to pay wages due (including minimum wages, straight wages, and
6 overtime/premium/double-time wages); (ii) failure to provide proper meal periods
7 and/or proper premium payments in lieu of meals; (iii) failure to provide proper rest
8 breaks and/or proper premium payments in lieu of rest breaks; (iv) failure to
9 provide accurate wage statements; (v) failure to reimburse for business expenses;
10 (vi) failure to pay wages timely during employment; (vii) failure to pay wages
11 timely at or after termination; (viii) failure to maintain necessary or accurate payroll
12 records and work schedules; (ix) unfair business practices; (x) civil penalties under
13 the Private Attorneys General Act ("PAGA"); (xi) any other claims or penalties
14 under the wage and hour laws pleaded in the Action; and (xii) all damages,
15 penalties, interest and other amounts recoverable under said causes of action under
16 California and federal law, to the extent permissible, including but not limited to
17 the California Labor Code as to the facts alleged in the Action, the applicable Wage
18 Orders as to the facts alleged in the proposed complaint, and the California Unfair
19 Competition Law. The period of the Release shall extend to the limits of the Class
20 Period. The *res judicata* effect of the Judgment will be the same as that of the
21 Release.
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1 DD. "Released Parties" shall mean Defendants Penske Truck Leasing Co., L.P. and
2 Penske Logistics LLC, and all of their past, present and/or future, direct and/or
3 indirect, officers, directors, employees, agents, representatives, attorneys, insurers,
4 partners, investors, shareholders, administrators, parent companies, partners,
5 subsidiaries, affiliates, divisions, predecessors, successors, assigns, benefit plans,
6 and joint venturers.
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8 EE. "Request for Exclusion" refers to a formal request to be excluded from the
9 Settlement as described in detail in Paragraph III.L.7.
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11 FF. "Response Deadline" means the date forty-five (45) days after the Settlement
12 Administrator mails and emails Notice Packets to Class Members and the last date
13 on which Class Members may submit requests for exclusion, or objections to the
14 Settlement.
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16 GG. "Settlement" means the disposition of the Action pursuant to this Agreement.
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18 HH. "Settlement Administrator" means Simpluris.
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20 II. "Settlement Members" means all Class Members that do not submit a valid
21 Request for Exclusion and all PAGA Members. Settlement Members will release
22 all of the Released Claims and be bound by all terms of the Settlement and any
23 final judgment entered in this Action.
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II. RECITALS

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2 A. Class Certification. The Parties stipulate and agree to class certification for
3 purposes of this Settlement only. This Agreement is subject to the approval of the
4 Court and is made for the sole purpose of consummating settlement of the Action.
5 Should the Settlement not become final and effective as herein provided, class
6 certification shall immediately be set aside and the Settlement Class immediately
7 decertified (subject to further proceedings on motion of any party to certify or deny
8 certification thereafter). The Parties' willingness to stipulate to class certification
9 as part of the Settlement shall have no bearing on, and shall not be admissible in or
10 considered in connection with, the issue of whether a class should be certified in a
11 non-settlement context in this Action and shall have no bearing on, and shall not be
12 admissible or considered in connection with, the issue of whether a class should be
13 certified in any other lawsuit.
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17 B. Procedural History. On May 29, 2020, Plaintiffs filed a putative class action
18 Complaint, Case No. CIVDS2012273 in the Superior Court for the State of
19 California, County of San Bernardino, asserting claims against Defendant Penske
20 Truck Leasing Co., L.P., for alleged violations of the California Labor Code and
21 the Business and Professions Code, including failure to reimburse for necessary
22 business expenses, failure to pay minimum wage, and unfair business practices,
23 along with claims for interest, attorneys' fees and costs. On September 10, 2021,
24 Plaintiffs filed a First Amended Complaint against Defendants, for alleged
25 violations of the California Labor Code and the Business and Professions Code,
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1 including failure to reimburse for necessary business expenses, unfair business
2 practices, failure to pay minimum wage, failure to pay overtime, failure to provide
3 proper meal and rest periods, failure to maintain accurate required records and to
4 provide complete, accurate, or properly formatted wage statements, failure to
5 timely pay final wages and to pay all wages owed upon separation, and civil
6 penalties under PAGA, along with claims for restitution under California Business
7 & Professions Code sections 17200, *et seq.*, and claims for interest, attorneys' fees
8 and costs.
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11 C. Mediation. On June 22, 2021, the Parties participated in a full day private
12 mediation with Lou Marlin, a well-respected mediator with considerable experience
13 mediating wage and hour class actions. The mediation took place after several
14 months of settlement discussions and only after the Parties exchanged extensive
15 informal discovery, Class and PAGA data. The mediation and subsequent arms-
16 length negotiations resulted in the Settlement described herein to resolve this
17 Action in its entirety.
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20 D. Consolidation of Related Actions. On November 10, 2021, Defendants participated
21 in a separate all-day mediation presided over by Lou Marlin with the Plaintiffs in
22 the following related actions: (1) *Angel Zamora, et al. v. Penske Truck Leasing Co,*
23 *L.P.*, Case No. 2:20-cv-02503 ODW(MRWx), pending in United States District
24 Court, Central District of California; (2) *Angel Zamora, et al. v. Penske Truck*
25 *Leasing Co, L.P.*, Case No. 20STCV46359, pending in the Superior Court of the
26 State of California, County of Los Angeles; (3) *Ladell Taylor, et al. v. Penske*
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1 *Logistics LLC*, Case No. 5:20-cv-02623-ODW (MRWx), pending in the United
2 States District Court, Central District of California; (4) *Ladell Taylor, et al v.*
3 *Penske Logistics LLC*, Case No. CIVSB2029173, pending in the Superior Court of
4 the State of California, County of San Bernardino; (5) *Mark Luna v. Penske*
5 *Logistics LLC*, Case No. 2:21-cv-00081-TLN-JDP, pending in the United States
6 District Court, Eastern District of California; (6) *Mark Luna v. Penske Logistics*
7 *LLC*, Case No. 34-2021-00292756, pending in the Superior Court of the State of
8 California, County of Sacramento; (7) *Phil Poston v. Penske Logistics LLC*, Case
9 No. 2:21-cv-03939, United States District Court, Central District of California; and
10 (8) *Phil Poston v. Penske Logistics, LLC*, Case No. 21CMCV00142, pending in the
11 Superior Court of the State of California, County of Los Angeles (collectively, the
12 “Related Actions”). Plaintiffs and Defendants to this Agreement will stipulate to
13 consolidate the Related Actions with this Action, for settlement purposes only
14 (together, collectively the “Actions”). The Parties to the Actions will seek
15 consolidation through the filing of a Second Amended Consolidated Complaint in
16 this Action, for settlement purposes only.

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20 1. Following filing of the Second Amended Consolidated Complaint, this
21 Settlement will be submitted for approval jointly before the Court along with the
22 settlement of the Related Actions.

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24 2. The Parties further agree that, provided the approval of the Settlement
25 proceeds jointly with the Related Actions in the Court and is granted preliminary
26 and final approval, they will not oppose or object to the settlement negotiated in the
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1 Related Actions nor the application for attorneys' fees and costs to be made by the
2 attorneys in the Related Actions.

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4 3. The Parties in this Action agree that if settlement approval of a joint
5 settlement of the Actions is not granted, the Related Actions and this Action will
6 proceed in the same courts and venues, in the same positions, and based on the
7 same claims and statutes of limitations, as they existed immediately prior to
8 November 10, 2021.

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10 E. Benefits of Settlement to Settlement Class Members. Plaintiffs and Class Counsel
11 recognize the expense and length of continued proceedings necessary to litigate
12 their disputes through trial and through any possible appeals. Plaintiffs have also
13 taken into account the uncertainty and risk of the outcome of further litigation, and
14 the difficulties and delays inherent in such litigation. Plaintiffs and Class Counsel
15 are also aware of the burdens of proof necessary to establish liability for the claims
16 asserted in the Action, both generally and in response to Defendants' defenses
17 thereto, and the difficulties in establishing damages for the Class and PAGA
18 Members. Based on the foregoing, Plaintiffs and Class Counsel have determined
19 that the terms set forth in this Agreement is a fair, adequate and reasonable
20 settlement, and is in the best interests of the Settlement Members.

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24 F. Defendants' Reasons for Settlement. Defendants have concluded that any further
25 defense of this litigation would be protracted and expensive for all Parties.
26 Substantial amounts of Defendants' time and resources have been and, unless this
27 Settlement is made, will continue to be devoted to the defense of the claims
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1 asserted by Plaintiffs and Class and PAGA Members. Defendants have also taken
2 into account the risks of further litigation in reaching their decision to enter into
3 this Settlement. Despite continuing to contend that they are not liable for any of
4 the claims set forth by Plaintiffs, Defendants have, nonetheless, agreed to settle in
5 the manner and upon the terms set forth in this Agreement to put to rest the claims
6 as set forth in the Action.
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9 G. Class Members' Claims. The Class Representatives' claim that their allegations
10 have merit and give rise to liability on the part of Defendants. This Agreement is a
11 compromise of disputed claims. The monies being paid as part of the settlement
12 are genuinely disputed and the Parties agree that the provisions of Labor Code
13 section 206.5 are not applicable to this Settlement. Nothing contained in this
14 Agreement and no documents referred to herein and no action taken to carry out
15 this Agreement may be construed or used as an admission by or against the Class
16 Members or Class Counsel as to the merits or lack thereof of the claims asserted.
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19 H. Defendants' Defenses. Defendants claim that the Released Claims have no merit
20 and do not give rise to liability. This Agreement is a compromise of disputed
21 claims. The monies being paid as part of the settlement are genuinely disputed and
22 the Parties agree that the provisions of Labor Code section 206.5 are not applicable
23 to this Settlement. Nothing contained in this Agreement and no documents referred
24 to herein and no action taken to carry out this Agreement may be construed or used
25 as an admission by or against Defendants as to the merits or lack thereof of the
26 claims asserted.
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III. TERMS OF AGREEMENT

A. Settlement Consideration by Defendants. Defendants shall pay the monetary sums as specified in this Agreement, up to the Maximum Settlement Amount, plus any required employer payroll taxes on the portion of the Individual Settlement Payments allocated to wages. The Parties agree that this is a non-reversionary Settlement. In no event shall Defendants be required to pay more than the Maximum Settlement Amount, plus any required employer payroll taxes on the portion of the Individual Settlement Payments allocated to wages.

B. Limited Release By All Settlement Class Members. As of the Effective Date, in exchange for the consideration set forth in this Settlement Agreement, Settlement Members will be deemed to have, and by operation of the Final Approval Order and Judgment, will have, expressly waived and released the Released Parties of the Released Claims (as defined above) to the fullest extent permitted by the law. All Settlement Members who do not opt out of the Settlement will be bound by a release of all claims and causes of action falling within the definition of "Released Claims" (above), whether known or unknown. However, to be clear, the scope of the release is limited to the Released Claims. Plaintiffs and the Settlement Members may hereafter discover facts or legal arguments in addition to or different from those they now know or currently believe to be true with respect to the claims, causes of action and legal theories of recovery in this Action. Regardless, the discovery of new facts or legal arguments shall in no way limit the scope or definition of the Released Claims, and by virtue of this Agreement, Plaintiffs and the Settlement Members

1 shall be deemed to have, and by operation of the final judgment approved by the
2 Court, shall have, fully, finally, and forever settled and released all of the Released
3 Claims. The Parties understand and specifically agree that the scope of the release
4 described in this Paragraph is a material part of the consideration for this Agreement;
5 was critical in justifying the agreed upon economic value of this settlement and
6 without it Defendants would not have agreed to the consideration provided; and is
7 narrowly drafted and necessary to ensure that Defendants are obtaining peace of
8 mind regarding the resolution of claims that were or could have been alleged based
9 on the facts, causes of action, and legal theories contained in Plaintiffs' Second
10 Amended Complaint. The settlement checks will include an endorsement
11 confirming that by cashing the check, the Settlement Members are releasing the
12 Released Claims.
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16 C. General Release By Plaintiffs. As of the Effective Date, in consideration for the
17 consideration set forth in this Agreement, Plaintiffs, for themselves and their heirs,
18 successors and assigns, hereby waive, release, acquit and forever discharge the
19 Released Parties, from any and all claims, actions, charges, complaints, grievances
20 and causes of action, of whatever nature, whether known or unknown, which exist
21 or may exist on Plaintiffs' behalf as of the date of this Agreement, including but not
22 limited to any and all tort claims, contract claims, wage claims, wrongful
23 termination claims, disability claims, benefit claims, public policy claims, retaliation
24 claims, statutory claims, personal injury claims, emotional distress claims, invasion
25 of privacy claims, defamation claims, fraud claims, quantum meruit claims, and any
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1 and all claims arising under any federal, state or other governmental statute, law,
2 regulation or ordinance, including, but not limited to claims for violation of the Fair
3 Labor Standards Act, the California Labor Code, the Wage Orders of California's
4 Industrial Welfare Commission, other state wage and hour laws, the Americans with
5 Disabilities Act, the Age Discrimination in Employment Act (ADEA), the
6 Employee Retirement Income Security Act, Title VII of the Civil Rights Act of
7 1964, the California Fair Employment and Housing Act, the California Family
8 Rights Act, the Family Medical Leave Act, California's Whistleblower Protection
9 Act, California Business & Professions Code Section 17200 et seq., and any and all
10 claims arising under any federal, state or other governmental statute, law, regulation
11 or ordinance. Plaintiffs hereby expressly waive and relinquish any and all claims,
12 rights or benefits that they may have under California Civil Code § 1542, which
13 provides as follows: "*A general release does not extend to claims which the*
14 *creditor does not know or suspect to exist in his or her favor at the time of executing*
15 *the release and that, if known by him or her, would have materially affected his or*
16 *her settlement with the debtor or released party.*" Plaintiffs may hereafter discover
17 claims or facts in addition to, or different from, those which they now know or
18 believe to exist, but they expressly agree to fully, finally and forever settle and
19 release any and all claims against the Released Parties, known or unknown,
20 suspected or unsuspected, which exist or may exist on behalf of or against the other
21 at the time of execution of this Agreement, including, but not limited to, any and all
22 claims relating to or arising from Plaintiffs' employment with Defendants. The
23 Parties further acknowledge, understand and agree that this representation and
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1 commitment is essential to the Agreement and that this Agreement would not have
2 been entered into were it not for this representation and commitment.

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4 D. ADEA Waiver by Plaintiff(s). Without limiting the scope of this Agreement,
5 Plaintiff McDowell agrees that this Agreement constitutes a knowing and voluntary
6 waiver of any and all rights or claims that exist or that Plaintiff McDowell may
7 claim to have under the Age Discrimination in Employment Act ("ADEA"), as
8 amended by the Older Workers' Benefit Protection Act of 1990 (29 U.S.C. §§ 621,
9 et seq.). Plaintiff McDowell acknowledges all of the following:
10

- 11 1. The consideration provided pursuant to this Agreement is in addition to any
12 consideration that they would otherwise be entitled to receive;
13
- 14 2. Plaintiff McDowell has been and is advised in writing to consult with an
15 attorney prior to signing this Agreement;
16
- 17 3. Plaintiff McDowell has been provided a full and ample opportunity to study
18 this Agreement, including a period of at least twenty-one (21) calendar days
19 within which to consider it;
20
- 21 4. To the extent that Plaintiff McDowell takes fewer than twenty-one (21)
22 calendar days to consider this Agreement prior to signing it, he
23 acknowledges that he had sufficient time to consider this Agreement with
24 legal counsel and that he expressly, voluntarily and knowingly waives any
25 additional time;
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1 5. Plaintiff McDowell agrees that any changes made to the Agreement during
2 the twenty-one (21) day period (whether material or immaterial) do not
3 restart the running of the twenty-one (21) day period; and

4
5 6. Plaintiff McDowell is aware of his right to revoke this waiver of claims
6 under the ADEA any time within the seven (7) calendar-day period
7 following the date Plaintiff McDowell signs the Agreement and that the
8 waiver of claims under the ADEA shall not become effective or enforceable
9 until the seven (7) calendar-day revocation period expires. Notwithstanding
10 Plaintiff's right to revoke the waiver of claims under the ADEA, the
11 remainder of the terms of this Agreement shall become effective and
12 enforceable as of the date that the Parties sign this Agreement.

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15 7. To be effective, timely notice of revocation of the waiver of ADEA claims
16 must be made in writing and delivered to Defendants through its counsel,
17 Evan Moses, Esq., at Ogletree Deakins Nash Smoak & Stewart, P.C., 400
18 South Hope Street, Suite 1200, Los Angeles, California 90017, no later than
19 the seventh (7th) day after Plaintiff McDowell executes this Agreement.
20 Plaintiff McDowell agrees to keep written documentation proving that he
21 revoked this Agreement as provided in this section, either by keeping the
22 documents attesting to the delivery of the revocation, or verification that the
23 fax was, in fact, received.
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26 E. Conditions Precedent: This Settlement will become final and effective only upon
27 the occurrence of all of the following events:
28

1. The Court enters an order granting preliminary approval of the Settlement;
2. The Court enters an order granting final approval of the Settlement and a Final Judgment;
3. The Final Effective Date occurs;
4. Defendants do not invoke their right to revoke the Settlement as described in Paragraph III.Q. ("Defendants' Option to Revoke Settlement") herein; and
5. Plaintiff McDowell does not revoke the waiver of claims under the ADEA after the conclusion of his timeframe to do so.

F. Nullification of Settlement Agreement. In the event that this Settlement Agreement is not preliminarily or finally approved by the Court, fails to become effective, or is reversed, withdrawn or modified by the Court, or in any way prevents or prohibits Defendants from obtaining a complete resolution of the claims as described herein:

1. This Settlement Agreement shall be void ab initio and of no force or effect, and shall not be admissible in any judicial, administrative or arbitral proceeding for any purpose or with respect to any issue, substantive or procedural;
2. The conditional class certification (obtained for any purpose) shall be void ab initio and of no force or effect, and shall not be admissible in any

judicial, administrative or arbitral proceeding for any purpose or with respect to any issue, substantive or procedural; and

3. None of the Parties to this Settlement will be deemed to have waived any claims, objections, defenses or arguments in the Action, including with respect to the issue of class certification.

G. Certification of the Settlement Class. The Parties stipulate to conditional class certification of the Settlement Class for the Class Period for purposes of settlement only and only as follows:

1. Plaintiffs shall be appointed as Class Representatives.

2. The Parties stipulate that Mark J. Skapik, Geralyn L. Skapik, and Blair J. Berkley shall be appointed Class Counsel.

3. In the event that this Settlement is not approved by the Court, fails to become effective, or is reversed, withdrawn or modified by the Court, or in any way prevents or prohibits Defendants from obtaining a complete resolution of the claims as described herein, the conditional class certification (obtained for any purpose) shall be void ab initio and of no force or effect, and shall not be admissible in any judicial, administrative or arbitral proceeding for any purpose or with respect to any issue, substantive or procedural.

H. Tax Liability. The Parties make no representations as to the tax treatment or legal effect of the payments called for hereunder, and Settlement Members are not relying

1 on any statement or representation by the Parties in this regard. Settlement
2 Members understand and agree that they will be responsible for the payment of any
3 taxes and penalties assessed on the Individual Settlement Payments described herein
4 and will be solely responsible for any penalties or other obligations resulting from
5 their personal tax reporting of Individual Settlement Payments.
6

- 7 I. Circular 230 Disclaimer. Each Party to this Agreement (for purposes of this section,
8 the “acknowledging party” and each Party to this Agreement other than the
9 acknowledging party, an “other party”) acknowledges and agrees that: (1) no
10 provision of this Agreement, and no written communication or disclosure between
11 or among the Parties or their attorneys and other advisers, is or was intended to be,
12 nor shall any such communication or disclosure constitute or be construed or be
13 relied upon as, tax advice within the meaning of United States Treasury Department
14 circular 230 (31 CFR part 10, as amended); (2) the acknowledging party (a) has
15 relied exclusively upon his, her or its own, independent legal and tax counsel for
16 advice (including tax advice) in connection with this Agreement, (b) has not entered
17 into this Agreement based upon the recommendation of any other Party or any
18 attorney or advisor to any other Party, and (c) is not entitled to rely upon any
19 communication or disclosure by any attorney or adviser to any other party to avoid
20 any tax penalty that may be imposed on the acknowledging party, and (3) no
21 attorney or adviser to any other Party has imposed any limitation that protects the
22 confidentiality of any such attorney’s or adviser’s tax strategies (regardless of
23 whether such limitation is legally binding) upon disclosure by the acknowledging
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1 party of the tax treatment or tax structure of any transaction, including any
2 transaction contemplated by this Agreement.

- 3
- 4 J. Preliminary Approval Motion. At the earliest practicable time, Plaintiffs shall file
5 with the Court a Motion for Order Granting Preliminary Approval and supporting
6 papers, which shall include this Settlement Agreement. Plaintiffs shall provide a
7 courtesy draft of these papers to Defense Counsel at least 7 business days before
8 filing the documents.
- 9
- 10 K. Settlement Administrator. By accepting the role as Settlement Administrator, the
11 Settlement Administrator is bound to all of the terms, conditions and obligations
12 described in this Settlement Agreement. Among these obligations, the Settlement
13 Administrator shall have sole and exclusive responsibility for: calculating Qualified
14 Workweeks and Individual Settlement Payments; processing and mailing payments
15 to the Class Representative, Class Counsel, LWDA and Settlement Members;
16 printing, mailing, and emailing the Notice Packets to the Class Members as directed
17 by the Court; receiving and reporting objections, opt outs, Requests for Exclusion
18 and Notices of Objection; deducting all legally required taxes from Individual
19 Settlement Payments and distributing tax forms; processing and mailing any tax
20 payments to the appropriate state and federal taxing authorities; providing
21 declaration(s) as necessary in support of preliminary and/or final approval of this
22 Settlement; and other tasks as the Parties mutually agree or the Court orders the
23 Settlement Administrator to perform. The Settlement Administrator shall keep the
24 Parties timely apprised of the performance of all Settlement Administrator's
25 responsibilities. Defendants and Defense Counsel shall have no responsibility for
26 validating or ensuring the accuracy of the Settlement Administrator's work.
27

1 Plaintiffs, Class Counsel, Defendants and Defense Counsel shall not bear any
2 responsibility for errors or omissions in the calculation or distribution of the
3 Individual Settlement Payments or any other distribution of monies contemplated by
4 this Agreement. The administration of this Settlement shall take place jointly with
5 the administration of the settlement of the Related Actions, and there shall only be
6 one notice mailing sent out to Class Members with respect to the Action and the
7 settlement of the Related Actions. The Settlement Administration Expenses are
8 being allocated between the Action and the Related Actions pro-rata based upon
9 relative amount of the Maximum Settlement Amount in the Action and the Gross
10 Settlement Amount in the Related Actions.
11

12 L. Notice Procedure.
13

14 1. Class Data. The Class Data shall be confidential. The Settlement
15 Administrator shall not provide the Class Data to Class Counsel or Plaintiffs
16 or any third party, or use the Class Data or any information contained
17 therein for any purpose other than to administer this Settlement. Defendants
18 shall provide the Settlement Administrator with the Class Data for purposes
19 of preparing and mailing/emailing Notice Packets to Settlement Members.
20 This shall take place within fourteen (14) calendar days after the
21 Preliminary Approval Date.
22

23 2. Notice Packets.
24

25 a) The Notice of Class Action and PAGA Settlement mailed and, to the
26 extent feasible, emailed, out to Class Members (the "Notice Packet")
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1 shall be in a form substantially similar to the form attached hereto as
2 Exhibit 1. The Notice of Class Action and PAGA Settlement shall
3 also inform Class Members to keep the Settlement Administrator
4 apprised of their current mailing addresses, to which the Settlement
5 Payments will be mailed following the Effective Date. The Notice
6 of Class Action and PAGA Settlement shall set forth the release to
7 be given by all members of the Settlement Class who do not request
8 to be excluded from the Settlement Class in exchange for an
9 Individual Settlement Payment.
10

11
12 b) The Notice Packet shall be individualized by inclusion of the
13 Settlement Member's starting and ending dates of employment
14 during the Settlement Class Period, the Settlement Member's
15 number of Qualified Workweeks, and the Settlement
16 Administrator's calculation of their estimated Individual Settlement
17 Payment if they do not request to be excluded from the Settlement.
18

19
20 c) The Notice Packet's mailing envelope shall include the following
21 language: "IMPORTANT LEGAL DOCUMENT- YOU MAY GET
22 MONEY FROM A CLASS ACTION SETTLEMENT; A PROMPT
23 REPLY IS REQUIRED TO PRESERVE YOUR RIGHTS."
24

25 3. Notice By First Class U.S. Mail. Upon receipt of the Class Data, the
26 Settlement Administrator will perform a search based on the National
27 Change of Address Database to update and correct any known or
28

1 identifiable address changes. No later than fourteen (14) calendar days after
2 receiving the Class Data from Defendants as provided herein, the
3 Settlement Administrator shall mail copies of the Notice Packet to all Class
4 Members via regular First Class U.S. Mail, and shall email copies of the
5 Notice Packet to each Class Member for whom Defendants have an email
6 address. The Settlement Administrator shall exercise its best judgment to
7 determine the current mailing address for each Class Member. The address
8 identified by the Settlement Administrator as the current mailing address
9 shall be presumed to be the best mailing address for each Class Member. A
10 reminder postcard will also be mailed and emailed to the Class Members
11 thirty (30) days after the Notice Packet is first sent to the Class Members.
12
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- 14 4. Undeliverable Notices. Any Notices of Class Action and PAGA Settlement
15 returned to the Settlement Administrator as non-delivered on or before the
16 Response Deadline shall be re-mailed to the forwarding address affixed
17 thereto. If no forwarding address is provided, the Settlement Administrator
18 shall promptly attempt to determine a correct address by lawful use of skip-
19 tracing, or other search using the name, address and/or Social Security
20 number of the Class Member involved, and shall then perform a re-mailing,
21 if another mailing address is identified by the Settlement Administrator. In
22 addition, if any Notices of Class Action Settlement, which are addressed to
23 Class Members who are currently employed by Defendants, are returned to
24 the Settlement Administrator as non-delivered and no forwarding address is
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1 provided, the Settlement Administrator shall notify Defendants. Defendants
2 will request that the currently employed Class Member provide a corrected
3 address, and transmit to the Administrator any corrected address provided
4 by the Class Member. Class Members who received a re-mailed Notice
5 Packet shall have their Response Deadline extended fifteen calendar (15)
6 days from the original Response Deadline.
7

8
9 5. Disputes Regarding Individual Settlement Payments. Class Members will
10 have the opportunity, should they disagree with the dates of employment
11 and/or the estimated number of Qualified Workweeks stated on their Notice
12 of Class Action and PAGA Settlement, to provide documentation and/or an
13 explanation to show contrary employment dates. If there is a dispute, the
14 Settlement Administrator will consult with the Parties to determine whether
15 an adjustment is warranted. The Settlement Administrator shall determine
16 the eligibility for, and the amounts of, any Individual Settlement Payments
17 under the terms of this Agreement. The Settlement Administrator's
18 determination of the eligibility for and amount of any Individual Settlement
19 Payment shall be binding upon the Settlement Member and the Parties.
20
21

22 6. Disputes Regarding Administration of Settlement. Any disputes not
23 resolved by the Settlement Administrator concerning the administration of
24 the Settlement will be resolved by the Court under the laws of the State of
25 California. Prior to any such involvement of the Court, counsel for the
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1 Parties will confer in good faith to resolve the disputes without the necessity
2 of involving the Court.

3
4 7. Requests for Exclusion.

5 a) The Notice of Class Action and PAGA Settlement contained in the
6 Notice Packet shall state that Class Members who wish to exclude
7 themselves from the Settlement must submit a written Request for
8 Exclusion by the Response Deadline. The written Request for Exclusion
9 must state that the Class Member wishes to exclude himself or herself from
10 the Settlement and (1) must contain the name, address, and the last four
11 digits of the Social Security number and/or Employee ID number of the
12 person requesting exclusion; (2) must be signed by the Class Member; (3)
13 must be postmarked by the Response Deadline and returned to the
14 Settlement Administrator at the specified address; and (4) contain a
15 typewritten or handwritten notice stating in substance: "I wish to opt out of
16 the settlement of the class action lawsuit entitled *Eric D. McDowell, an*
17 *individual; Aaron L. Stubbs, an individual; Leon C. Willis, an individual,*
18 *and on behalf of all persons similarly situated v. Penske Truck Leasing Co.,*
19 *L.P., Penske Logistics LLC, a Delaware limited liability company, and*
20 *Does 1 through 10, inclusive,* filed in the San Bernardino County Superior
21 Court. I understand that by requesting to be excluded from the settlement, I
22 will receive no money from the Settlement described in this Notice."
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1 b) The Request for Exclusion will not be valid if it is not timely
2 submitted, if it is not signed by the Class Member, or if it does not contain
3 the name and address of the Class Member. The date of the postmark on
4 the return mailing envelope for the Request for Exclusion shall be the
5 exclusive means used to determine whether the Request for Exclusion was
6 timely submitted. Class Members who fail to submit a valid and timely
7 written Request for Exclusion on or before the Response Deadline shall be
8 Settlement Members who are bound by all terms of the Settlement and any
9 final judgment entered in this Action if the Settlement is approved by the
10 Court.
11

12
13 c) Any Class Member who requests to be excluded from the Settlement
14 Class will not be entitled to any recovery under the Settlement and will not
15 be bound by the terms of the Settlement or have any right to object, appeal
16 or comment thereon. Nothing in this Settlement or Settlement Agreement
17 will constitute or be construed as a waiver of any defense that Defendants or
18 the Released Parties have or could assert against anyone who timely serves
19 a Request for Exclusion.
20

21
22 d) No later than ten (10) calendar days after the Response Deadline, the
23 Settlement Administrator shall provide counsel for the Parties with a final
24 list of the Class Members who have timely submitted written Requests for
25 Exclusion.
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1 e) At no time shall any of the Parties or their counsel seek to solicit or
2 otherwise encourage members of the Settlement Class to submit Requests
3 for Exclusion from the Settlement.
4

5 8. Objections.

6 a) The Notice of Class Action and PAGA Settlement contained in the
7 Notice Packet shall state that Settlement Class Members who wish to object
8 to the Settlement must mail to the Settlement Administrator a written
9 statement of objection ("Notice of Objection") by the Response Deadline.
10 This deadline is extended by fifteen (15) calendar days if the Notice Packet
11 is returned as undeliverable and skip trace procedures are performed as
12 provided in Paragraph III.L.4. above. The postmark date of mailing shall be
13 deemed the exclusive means for determining that a Notice of Objection was
14 served timely.
15
16

17 b) Class Members who submit a timely Notice of Objection will have a
18 right to appear at the Final Approval/Settlement Fairness Hearing in order
19 to have their objections heard by the Court. The Notice of Objection must
20 be signed by the Class Member and state: (1) the case name and number;
21 (2) the name of the Class Member; (3) the address of the Class Member; (4)
22 the last four digits of the Class Member's Social Security number and/or
23 Employee ID number; (4) the basis for the objection; and (5) if the Class
24 Member intends to appear at the Final Approval/Settlement Fairness
25 Hearing. Class Members who fail to make objections in the manner
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1 specified above shall be deemed to have waived any objections and shall be
2 foreclosed from making any objections (whether by appeal or otherwise) to
3 the Settlement.

4
5 c) At no time shall any of the Parties or their counsel seek to solicit or
6 otherwise encourage Class Members to file or serve written objections to
7 the Settlement or appeal from the Order and Final Judgment.

8
9 d) Class Members who submit a written Request for Exclusion are not
10 entitled to object to the Settlement. In the event that a Class Member
11 submits both a Request for Exclusion and a Notice of Objection, the
12 Request for Exclusion will be invalid, while the Notice of Objection will
13 remain valid.
14

15 e) The Settlement Administrator shall send all objections to Class
16 Counsel and Defense Counsel. Class Counsel will be responsible for filing
17 the Notices of Objection with the Court in advance of the Final Approval
18 Hearing. Plaintiffs and/or Defendants may file oppositions to any properly
19 submitted Notices of Objection no later than nine (9) court days prior to the
20 date of the Final Approval/Settlement Fairness Hearing.
21

22
23 f) Defendants shall not be responsible for the fees, costs, or expenses
24 incurred by Plaintiffs, Class Counsel or Class Members arising from or
25 related to any objection to the Settlement Agreement or related to any
26 appeals thereof.
27

1 M. Funding and Allocation of the Maximum Settlement Amount. This is a non-
2 reversionary settlement in which Defendants are required to pay the entirety of the
3 Maximum Settlement Amount. No amount of the Maximum Settlement Fund will revert
4 to Defendants. Upon satisfaction of the preconditions described in this Settlement and
5 pursuant to the timeline and instructions below, Defendants will deposit the Maximum
6 Settlement Amount into a Qualified Settlement Fund (“QSF”) to be established by the
7 Settlement Administrator. In no event shall Defendants be responsible for any payments in
8 excess of the Maximum Settlement Amount, plus any required employer payroll taxes on
9 the portion of the Individual Settlement Payments allocated to wages.
10

11
12 1. Funding Due Date. No later than twenty-one (21) calendar days after the
13 Effective Date, Defendants shall provide the Maximum Settlement Amount
14 to the Settlement Administrator to fund the Settlement as set forth in this
15 Agreement.
16

17 2. Individual Settlement Payments. Individual Settlement Payments shall be
18 paid from the Net Settlement Amount and shall be paid pursuant to the
19 formula set forth herein.
20

21 a) Calculation of Individual Settlement Payments. Using the Class
22 Information, the Settlement Administrator will calculate the total
23 Qualified Workweeks for all Settlement Members. The respective
24 Qualified Workweeks for each Settlement Member will be divided
25 by the total Qualified Workweeks for all Class Members, resulting
26 in the Payment Ratio for each Settlement Member. Each Settlement
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1 Member's Payment Ratio will then be multiplied by the Net
2 Settlement Amount to calculate each Settlement Member's
3 estimated Individual Settlement Payments. Individual Settlement
4 Payments will be provided only to those individuals who satisfy the
5 definition of Settlement Members (*i.e.*, all Class Members who do
6 not submit a Request for Exclusion). Each Individual Settlement
7 Payment will be reduced by any legally mandated employee tax
8 withholdings (e.g., employee payroll taxes, etc.). The settlement
9 checks will include an endorsement confirming that by cashing the
10 check, the Settlement Members are releasing state and federal claims
11 covered by the Released Claims.
12

13
14 b) Tax Allocation. For tax purposes, Individual Settlement Payments
15 shall be allocated and treated as follows: 20% as wages subject to
16 IRS Form W-2 reporting and applicable taxes/withholdings, and
17 80% as penalties and interest for which an IRS Form 1099 will be
18 issued.
19

20
21 c) Mailing. Individual Settlement Payments shall be mailed by regular
22 First Class U.S. Mail to Settlement Class Members' last known
23 mailing address no later than fifteen (15) calendar days after
24 Defendants fund the Maximum Settlement Amount into the QSF
25 established by the Settlement Administrator.
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1 d) Uncashed Checks. Any checks issued to Settlement Members shall
2 remain valid and negotiable for one hundred and eighty (180) days
3 from the date of their issuance. In the event an Individual
4 Settlement Payment check has not been cashed within one hundred
5 and eighty (180) days, pursuant to California Code of Civil
6 Procedure section 384, the unpaid residue shall be tendered to the
7 Controller's Unclaimed Property Fund. The Settlement
8 Administrator shall prepare a report regarding the distribution plan
9 pursuant to California Code Civil Procedure Section 384, including
10 and not limited to the unused funds as set forth in this Paragraph,
11 and the report shall be presented to the Court by Class Counsel.
12
13

14 3. Class Representative Service Award.

15
16 a) Defendants agree not to oppose or object to any application or
17 motion by Plaintiffs for Class Representative Service Awards of up to Ten
18 Thousand dollars (\$10,000.00) to each Plaintiff in exchange for the
19 Released Claims and a General Release and for their time, effort and risk in
20 bringing and prosecuting this matter. The Class Representative Service
21 Awards shall be in addition to the Plaintiffs' Individual Settlement
22 Payments as Settlement Class Members.
23
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25 b) The Settlement Administrator shall pay the Class Representative
26 Service Awards to Plaintiffs from the Maximum Settlement Amount no
27 later than thirty (30) calendar days after the Effective Date. Any portion of
28

1 the requested Class Representative Service Awards that is not awarded to
2 the Class Representatives shall become part of the Net Settlement Amount.

3
4 c) The Settlement Administrator shall issue an IRS Form 1099 —
5 MISC to Plaintiffs for their Class Representative Service Awards. Plaintiffs
6 shall be solely and legally responsible to pay any and all applicable taxes on
7 their Class Representative Service Awards and shall hold harmless
8 Defendants and the Released Parties from any claim or liability for taxes,
9 penalties, or interest arising as a result of the Class Representative Service
10 Awards.
11

12
13 d) In the event that the Court reduces or does not approve the requested
14 Class Representative Service Awards, Plaintiffs shall not have the right to
15 revoke the Settlement, and it will remain binding, nor will Plaintiffs seek,
16 request, or demand an increase in the Maximum Settlement Amount.
17

18 4. Class Counsel Award.

19
20 a) In consideration for settling the Action and in exchange for the
21 release of the Released Parties for all Released Claims and the General
22 Release by Plaintiff, Class Counsel intends to apply for an award of
23 attorneys' fees not to exceed thirty-three and one-third percent (33.33%) of
24 the Maximum Settlement Amount (\$333,333.33 of \$1,000,000.00), plus
25 costs and expenses supported by declaration, from the Maximum Settlement
26 Amount.
27

1 b) Class Counsel, Plaintiff and the Settlement Members will not apply
2 to the Court for any payment of attorneys' fees and costs that are in addition
3 to the foregoing or that exceed the Maximum Settlement Amount. The
4 Parties agree that, over and above the Court-approved Class Counsel
5 Award, each of the Parties, including all Settlement Members, shall bear
6 their own fees and costs, including, but not limited to, those related to the
7 investigation, filing, prosecution, or settlement of the Action; the
8 negotiation, execution, or implementation of this Agreement; and/or the
9 process of obtaining, administering, or challenging an Order Granting
10 Preliminary Approval and/or Final Approval.
11

12
13 c) Any portion of the requested Class Counsel Award that is not
14 awarded to Class Counsel shall be part of the Net Settlement Amount and
15 shall be distributed to Settlement Members as provided in this Agreement.
16

17 d) The Settlement Administrator shall pay the Class Counsel Award to
18 Class Counsel from the Maximum Settlement Amount no later than thirty
19 (30) calendar days after the Effective Date.
20

21 e) Class Counsel shall be solely and legally responsible to pay all
22 applicable taxes on the payment made pursuant to this Paragraph. The
23 Settlement Administrator shall issue an IRS Form 1099 — MISC to Class
24 Counsel for the payments made pursuant to this Paragraph.
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1 f) In the event that the Court reduces or does not approve the requested
2 Class Counsel Award, Plaintiff and Class Counsel shall not have the right to
3 modify or revoke the Settlement, or to appeal such order, and the Settlement
4 will remain binding, nor will Plaintiff or Class Counsel seek, request, or
5 demand an increase in the Maximum Settlement Amount.
6

7 5. PAGA Payment. Seventy-five thousand dollars (\$75,000.00) shall be
8 allocated from the Maximum Settlement Amount for settlement and release
9 of claims for civil penalties under the Private Attorneys General Act of
10 2004. The Settlement Administrator shall pay seventy-five percent (75%)
11 of amount, or \$56,250 to the California Labor and Workforce Development
12 Agency (the "PAGA Payment") no later than thirty (30) calendar days after
13 the Effective Date. Twenty-five (25%) of the remaining amount of the
14 \$75,000 payment, or \$18,750, will be part of the Net Settlement Amount
15 and distributed as described in this Agreement. Class Counsel will take all
16 action required by California Labor Code section 2699(1).
17
18

19
20 6. Settlement Administration Costs. The Settlement Administrator shall be
21 paid for the costs of administration of the Settlement from the Maximum
22 Settlement Amount. The estimate of the Settlement Administration Costs is
23 Twenty-Five Thousand dollars (\$25,000.00). The Settlement Administrator
24 shall be paid the Settlement Administration Costs no later than fifteen (15)
25 calendar days after Defendants provide funds to the Settlement
26 Administrator for disbursement under this Agreement.
27
28

1 N. Mutual Full Cooperation. The Parties agree to fully cooperate with each other to
2 accomplish the terms of this Settlement Agreement, including but not limited to, execution
3 of necessary documents and to take such other action as may reasonably be necessary to
4 implement the terms of this Settlement Agreement. As soon as practicable after execution
5 of this Settlement Agreement, Class Counsel shall, with the assistance and cooperation of
6 Defendants and Defense Counsel, take all necessary steps to secure the Court's
7 Preliminary and Final Approval of this Settlement Agreement. The Parties also agree to
8 cooperate in the Settlement administration process. The Parties each represent they do not
9 have any financial interest in the Settlement Administrator or otherwise have a relationship
10 with the Settlement Administrator that could create a conflict of interest. Class Counsel
11 will also notify Defense Counsel if subpoenaed or upon receipt of any other request for
12 documents or information regarding any other action filed or potential action against the
13 Released Parties that covers or includes any Settlement Members and the Released Claims.
14
15

16
17 O. Preliminary Approval Hearing. Plaintiffs shall obtain a hearing before the Court to
18 request the preliminary approval of the Settlement, and the entry of a Preliminary Approval
19 Order for: (i) conditional certification of the Class under California Code of Civil
20 Procedure Section 382 for settlement purposes only, (ii) preliminary approval of the
21 proposed Agreement, and (iii) setting a date for a Final Approval/Settlement Fairness
22 Hearing. The Preliminary Approval Order shall provide for the Notice Packet to be sent to
23 all Class Members as specified herein. In conjunction with the Preliminary Approval
24 Hearing, Plaintiff shall submit this Agreement, which sets forth the terms of this
25 settlement, and will include the proposed Notice Packet, which shall include the proposed
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1 Notice of Class Action Settlement. Plaintiffs shall provide a courtesy draft of all papers
2 filed in support of preliminary approval to Defense Counsel at least seven (7) business
3 days before filing the documents.

4
5 P. Final Approval Motion. Not later than sixteen (16) court days before the Final
6 Approval Hearing, the Plaintiffs will file with the Court a motion for final approval of the
7 Settlement, the PAGA Payment, and payment of the Settlement Administration Costs.
8 Plaintiffs shall provide a courtesy draft of these papers to Defense Counsel at least seven
9 (7) business days before filing the documents.
10

11 1. Declaration by Settlement Administrator. The Settlement Administrator
12 shall submit a declaration in support of Plaintiffs' motion for final approval
13 of this Settlement detailing the number of Notice Packets mailed and re-
14 mailed to Class Members, the number of undeliverable Notice Packets, the
15 number of timely requests for exclusion, the number of Notices of
16 Objections received, the amount of the average Individual Settlement
17 Payment, the Settlement Administration Costs, and any other information as
18 the Parties mutually agree or the Court orders the Settlement Administrator
19 to provide.
20

21
22 2. Final Approval Order and Judgment. The Parties shall present an Order
23 Granting Final Approval of Class Action Settlement to the Court for its
24 approval, and Judgment thereon consistent with the terms and conditions of
25 this Agreement.
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1 Q. Option to Revoke Settlement. Defendants have the unilateral right to revoke the
2 Settlement as follows:

- 3
- 4 1. If, after the Response Deadline, the number of Class Members who
5 submitted timely and valid written requests for exclusion from the
6 Settlement equals at least 5% of all Class Members, Defendants shall have,
7 in their sole discretion, the option to terminate this Settlement. If
8 Defendants exercise the option to terminate this Settlement, Defendants
9 shall: (a) provide written notice to Class Counsel within fourteen (14)
10 calendar days after the Response Deadline and (b) pay all Settlement
11 Administration Costs incurred up to the date or as a result of the
12 termination; and the Parties shall proceed in all respects as if this
13 Agreement had not been executed.
14
- 15
- 16 2. In the event that Plaintiff McDowell invokes his right to revoke a waiver of
17 claims under the ADEA, Defendants shall have, in their sole discretion, the
18 option to terminate this Settlement. If Defendants exercise their option to
19 terminate this Settlement, Defendants shall: (a) provide written notice to
20 Class Counsel within fourteen (14) calendar days after the Response
21 Deadline and (b) pay all Settlement Administration Costs incurred up to the
22 date or as a result of the termination; and the Parties shall proceed in all
23 respects as if this Agreement had not been executed.
24
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26 R. Review of Motions for Preliminary and Final Approval. Class Counsel will provide
27 an opportunity for Counsel for Defendants to review the Motions for Preliminary
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1 and Final Approval prior to filing with the Court. The Parties and their counsel will
2 cooperate with each other and use their best efforts to effect the Court's approval of
3 the Motions for Preliminary and Final Approval of the Settlement, and entry of
4 Judgment.

5
6 S. Interim Stay of Proceedings. The Parties agree to stay all proceedings in the Action,
7 except such proceedings necessary to implement and complete the Settlement,
8 pending the Final Approval/Settlement Fairness Hearing to be conducted by the
9 Court.

10
11 T. Nullification of Settlement Agreement. In the event: (i) the Court does not grant
12 preliminary approval; (ii) the Court does not grant final approval; (iii) the Court
13 does not enter a final judgment as provided herein; or (iv) the Settlement does not
14 become final for any other reason, this Agreement shall be null and void and any
15 order or judgment entered by the Court in furtherance of this Settlement shall be
16 treated as void from the beginning. In such a case, the Parties and any funds to be
17 awarded under this Settlement shall be returned to their respective statuses as of the
18 date and time immediately prior to the execution of this Agreement, and the Parties
19 shall proceed in all respects as if this Agreement had not been executed, except that
20 any costs already incurred by the Settlement Administrator shall be paid by equal
21 apportionment among the Parties. In the event an appeal is filed from the Court's
22 final judgment, or any other appellate review is sought, administration of the
23 Settlement shall be stayed pending final resolution of the appeal or other appellate
24 review, but any fees incurred by the Settlement Administrator prior to it being
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1 notified of the filing of an appeal from the Court's Final Judgment, or any other
2 appellate review, shall be paid to the Settlement Administrator within thirty (30)
3 days of said notification.

4
5 U. No Effect on Employee Benefits. Amounts paid to Plaintiffs or other Settlement
6 Members pursuant to this Agreement shall be deemed not to be pensionable
7 earnings and shall not have any effect on the eligibility for, or calculation of, any of
8 the employee benefits (e.g., vacations, holiday pay, retirement plans, etc.) of the
9 Plaintiffs or Settlement Members.

10
11 V. Exhibits and Headings. The terms of this Agreement include the terms set forth in
12 the attached Exhibit 1, which is incorporated by this reference as though fully set
13 forth herein. The exhibit to this Agreement is an integral part of the Settlement.
14 The descriptive headings of any paragraphs or sections of this Agreement are
15 inserted for convenience of reference only and do not constitute a part of this
16 Agreement.

17
18
19 W. Amendment or Modification. This Agreement may be amended or modified only by
20 a written instrument: (1) signed by counsel for all Parties or their successors-in-
21 interest; (2) signed by the Parties or their successors-in-interest; and (3) as may be
22 approved by the Court.

23
24 X. Entire Agreement. This Agreement and any attached Exhibits constitute the entire
25 Agreement among these Parties, and no oral or written representations, warranties or
26 inducements have been made to any Party concerning this Agreement or its Exhibits
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1 other than the representations, warranties and covenants contained and
2 memorialized in the Agreement and its Exhibits.

3
4 Y. Authorization to Enter into Settlement Agreement. Counsel for all Parties warrant
5 and represent they are expressly authorized by the Parties whom they represent to
6 negotiate this Agreement and to take all appropriate actions required or permitted to
7 be taken by such Parties pursuant to this Agreement to effectuate its terms, and to
8 execute any other documents required to effectuate the terms of this Agreement.
9 The person signing this Agreement on behalf of Defendants represents and warrants
10 that they are authorized to sign this Agreement on behalf of Defendant. Plaintiffs
11 represent that they are authorized to sign this Agreement and that they have not
12 assigned, transferred, or encumbered any claim, or part of a claim, demand, cause of
13 action or any rights herein released and discharged or covered by this Settlement to
14 any third-party.
15

16
17 Z. Binding on Successors and Assigns. The provisions of this Settlement Agreement
18 shall run in perpetuity. This Agreement shall be binding upon, and inure to the
19 benefit of, the successors or assigns of the Parties hereto, as previously defined.
20

21 AA. California Law Governs. All terms of this Agreement and the Exhibits hereto and
22 any disputes arising hereunder shall be governed by and interpreted according to the
23 laws of the State of California.
24

25 BB. Counterparts. This Agreement may be executed in one or more counterparts. All
26 executed counterparts and each of them shall be deemed to be one and the same
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instrument provided that counsel for the Parties to this Agreement shall exchange among themselves copies or originals of the signed counterparts.

CC. This Settlement Is Fair, Adequate and Reasonable. The Parties believe this Settlement is a fair, adequate and reasonable settlement of this Action and have arrived at this Settlement after informal discovery was conducted and after extensive arm's-length negotiations, taking into account all relevant factors, present and potential. The Parties further agree that this Settlement Agreement shall not be construed in favor of or against any party by reason of the extent to which any party or his or its counsel participated in the drafting of this Settlement Agreement.

DD. Jurisdiction of the Court. The Parties agree that the Court shall retain jurisdiction with respect to the interpretation, implementation and enforcement of the terms of this Agreement and all orders and judgments entered in connection therewith, and the Parties and their counsel hereto submit to the jurisdiction of the Court for purposes of interpreting, implementing and enforcing the settlement embodied in this Agreement and all orders and judgments entered in connection therewith.

EE. Invalidity of Any Provision. Before declaring any provision of this Agreement invalid, the Court shall first attempt to construe the provisions valid to the fullest extent possible consistent with applicable precedents so as to define all provisions of this Agreement valid and enforceable.

FF. Publicity. Plaintiffs and Class Counsel agree not to disclose or publicize the Settlement amount, its terms or contents, and the negotiations underlying the

1 Settlement, in any manner or form, directly or indirectly, to any person or entity,
2 except potential class members and as shall be contractually required to effectuate
3 the terms of the Settlement as set forth herein. Plaintiffs agree not to issue press
4 releases, communicate with or respond to any media or publication entities, publish
5 information in manner or form, whether printed or electronic, on any medium, or
6 otherwise communicate, whether by print, video, website, recording or any other
7 medium, with any person or entity concerning the Settlement, including the fact of
8 the Settlement, its terms or contents and the negotiations underlying the Settlement,
9 except as shall be contractually required to effectuate the terms of the Settlement as
10 set forth herein. However, for the limited purpose of allowing Class Counsel to
11 prove adequacy as class counsel in other actions, Class Counsel may disclose the
12 name of the Parties in this action, the venue/case number of this action, the fact that
13 the matter involved wage and hour and PAGA issues, the number of class members,
14 and the fact this action settled on a class-wide basis (but not any other settlement
15 details) for such purposes.
16
17
18

19 GG. No Unalleged Claims. Plaintiffs and Class Counsel represent that they, as of the
20 date of execution of this Settlement, have no current intention of pursuing any
21 claims against Defendants in any judicial, administrative, or arbitral forum,
22 including, but not limited to, any and all claims relating to or arising from Plaintiffs'
23 employment with Defendants, and that Plaintiffs' Counsel is not currently aware of
24 any facts or legal theories upon which any claims or causes of action could be
25 brought against Defendants, excepting those facts or legal theories alleged in the
26
27
28

operative complaint in this Action. Plaintiffs and Plaintiffs' Counsel further represent and agree that they do not currently know of or represent any persons who have expressed any interest in pursuing litigation or seeking any recovery against Defendants. The Parties further acknowledge, understand and agree that this representation is essential to the Agreement and that this Agreement would not have been entered into were it not for this representation. Nothing in this Paragraph will be construed as a restraint on the right of any counsel to practice.

HH. Waiver of Certain Appeals. The Parties agree to stipulate to class certification for purposes of implementing this Settlement only and agree to waive all appeals from the Court's final approval of the Settlement, unless the Court modifies the Settlement.

II. No Admissions by the Parties. Plaintiffs have claimed and continue to claim that the Released Claims have merit and give rise to liability on the part of Defendants. Defendants claim that the Released Claims have no merit and do not give rise to liability. This Agreement is a compromise of disputed claims. Nothing contained in this Agreement and no documents referred to herein and no action taken to carry out this Agreement may be construed or used as an admission by or against the Defendants or Plaintiff or Class Counsel as to the merits or lack thereof of the claims asserted.

///

1 JJ. Notice of Settlement to LWDA. Plaintiffs hereby represent that by April 6, 2022,
2 Plaintiffs will provide notice of this Agreement and proposed settlement to the
3 Labor Workforce Development Agency ("LWDA") as required by Labor Code
4 Section 2699(1)(2).
5

6 The Parties indicate by signing below their approval of the form of this Settlement
7 Agreement (and exhibits thereto).
8

9
10 IN WITNESS WHEREOF, this Joint Stipulation of Class Action and PAGA Settlement is
11 executed by the Parties and their duly authorized attorneys as of the day and year herein set forth.

12 ///

13 ///

14 ///

15 **IT IS SO AGREED:**

16
17 Dated: April 1, 2022

PENSKE TRUCK LEASING CO., L.P.

18 Christina Fletcher

19 Name: Christina Fletcher
20 Title VP + Assistant General Counsel
21 On Behalf of Defendant

22 Dated: April 1, 2022

PENSKE LOGISTICS LLC

23 Christina Fletcher

24 Name: Christina Fletcher
25 Title VP + Assistant General Counsel
26 On Behalf of Defendant
27
28

1 Dated: 3/31/22, 2022

ERIC D. MCDOWELL


Eric D. McDowell, Plaintiff

6 Dated: _____, 2022

AARON L. STUBBS

Aaron L. Stubbs, Plaintiff

11 Dated: _____, 2022

LEON C. WILLIS

Leon C. Willis, Plaintiff

15 **APPROVED AS TO FORM:**

17 Dated: _____, 2022

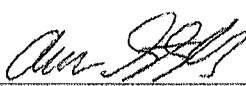
SKAPIK LAW GROUP

Mark J. Skapik
Geraldyn L. Skapik
Counsel for Plaintiffs and Proposed Class Counsel

23 Dated: _____, 2022

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

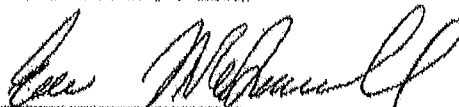
Evan Moses
Counsel for Defendants

1 Dated: _____, 2022 ERIC D. MCDOWELL
2
3
4 Eric D. McDowell, Plaintiff
5
6 Dated: 3-31-22, 2022 AARON L. STUBBS
7
8 
9 Aaron L. Stubbs, Plaintiff
10
11 Dated: _____, 2022 LEON C. WILLIS
12
13
14 Leon C. Willis, Plaintiff
15 **APPROVED AS TO FORM:**
16
17 Dated: _____, 2022 SKAPIK LAW GROUP
18
19
20 Mark J. Skapik
21 Geralyn L. Skapik
22 Counsel for Plaintiffs and Proposed Class Counsel
23
24 Dated: _____, 2022 OGLETREE, DEAKINS, NASH, SMOAK
25 & STEWART, P.C.
26
27 Evan Moses
28 Counsel for Defendants

1 Dated: _____, 2022 ERIC D. MCDOWELL
2
3
4 Eric D. McDowell, Plaintiff
5
6 Dated: _____, 2022 AARON L. STUBBS
7
8 Aaron L. Stubbs, Plaintiff
9
10
11 Dated: March 31, 2022 LEON C. WILLIS
12
13 Leon C. Willis
14 Leon C. Willis, Plaintiff
15 **APPROVED AS TO FORM:**
16
17 Dated: March 31, 2022 SKAPIK LAW GROUP
18
19 Geralyn L. Skapik
20 Mark J. Skapik
21 Geralyn L. Skapik
22 Counsel for Plaintiffs and Proposed Class Counsel
23
24 Dated: _____, 2022 OGLETREE, DEAKINS, NASH, SMOAK
25 & STEWART, P.C.
26
27 Evan Moses
28 Counsel for Defendants

1 Dated: 3/31/22, 2022

ERIC D. MCDOWELL

2 
3
4 Eric D. McDowell, Plaintiff

5
6 Dated: _____, 2022

AARON L. STUBBS

7
8
9 Aaron L. Stubbs, Plaintiff

10
11 Dated: _____, 2022

LEON C. WILLIS

12
13
14 Leon C. Willis, Plaintiff

15 **APPROVED AS TO FORM:**

16
17 Dated: _____, 2022

SKAPIK LAW GROUP

18
19
20 Mark J. Skapik
21 GERALYN L. SKAPIK
22 Counsel for Plaintiffs and Proposed Class Counsel

23 Dated: April 1, 2022

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

26 
27 Evan Moses
28 Counsel for Defendants

EXHIBIT 1

**NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION
AND HEARING DATE FOR FINAL COURT APPROVAL**

***McDowell, et al. v. Penske Truck Leasing Co., L.P., Penske Logistics LLC*, Superior Court of
the State of California, County of San Bernardino, Case No. CIVDS2012273**

**YOUR LEGAL RIGHTS MAY BE AFFECTED WHETHER YOU ACT OR DO NOT
ACT. PLEASE READ THIS NOTICE CAREFULLY.**

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
Do Nothing and Receive a Payment	To receive a cash payment from the Settlement, you do not have to do anything. Your estimated Individual Settlement Payment is: \$<< ___ >>. See the explanation in Section 5 below. After final approval by the Court, the payment will be mailed to you at the same address as this notice. In exchange for the settlement payment, you will release claims against the Defendants as detailed in Section 4 below. If your address has changed, you must notify the Settlement Administrator as explained in Section 6 below.
Exclude Yourself	To exclude yourself, you must send a written request for exclusion to the Settlement Administrator as provided below. If you request exclusion, you will receive no money from the Settlement, however if you are an Aggrieved Employee who requests exclusion, you will still receive a small amount as your share of the PAGA Payment described below. Instructions are set forth in Section 7 below.
Object	Write to the Court about why you do not agree with the settlement. Directions are provided in Section 8 below.

1. Why did I get this Notice?

A proposed class action settlement (the "Settlement") of the above-captioned lawsuit pending in the Superior Court of the State of California, in and for the County of San Bernardino (the "Court") has been reached between 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") and Defendants Penske Truck Leasing Co., L.P. and Penske Logistics LLC (collectively "Defendant") and has been granted preliminary approval by the Court. You may be entitled to receive money from this Settlement.

You have received this Class Notice because you have been identified as a member of the Class, which is defined as:

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 April 6, 2022.

This Class Notice explains the lawsuit, the Settlement, and your legal rights. It is important that you read this Class Notice carefully as your rights may be affected by the Settlement.

2. What is this class action lawsuit about?

On May 29, 2020, plaintiffs Eric D. McDowell, Aaron L. Stubbs and Leon C. Willis filed a Complaint in the Superior Court of the State of California, County of San Bernardino, Case Number CIVDS2012273, asserting claims against Defendant Penske Truck Leasing Co., L.P., for alleged violations of the California Labor Code and the Business and Professions Code, including failure to reimburse for necessary business expenses, failure to pay minimum wage, and unfair business practices, along with claims for interest, attorneys' fees and costs. On September 10, 2021, plaintiffs Eric D. McDowell, Aaron L. Stubbs and Leon C. Willis filed a First Amended Complaint against Defendants, for alleged violations of the California Labor Code and the Business and Professions Code, including failure to reimburse for necessary business expenses, unfair business practices, failure to pay minimum wage, failure to pay overtime, failure to provide proper meal and rest periods, failure to maintain accurate required records and to provide complete, accurate, or properly formatted wage statements, failure to timely pay final wages and to pay all wages owed upon separation, and civil penalties under PAGA, along with claims for restitution under California Business & Professions Code sections 17200, *et seq.*, and claims for interest, attorneys' fees and costs. This lawsuit is referred to as the "Action".

Additional related lawsuits were filed against Defendants which alleged similar wage and hour claims. These Related Actions are: (1) *Angel Zamora, et al. v. Penske Truck Leasing Co, L.P.*, Case No. 2:20-cv-02503 ODW(MRWx), pending in United States District Court, Central District of California; (2) *Angel Zamora, et al. v. Penske Truck Leasing Co, L.P.*, Case No. 20STCV46359, pending in the Superior Court of the State of California, County of Los Angeles; (3) *Ladell Taylor, et al. v. Penske Logistics LLC*, Case No. 5:20-cv-02623-ODW (MRWx), pending in the United States District Court, Central District of California; (4) *Ladell Taylor, et al v. Penske Logistics LLC*, Case No. CIVSB2029173, pending in the Superior Court of the State of California, County of San Bernardino; (5) *Mark Luna v. Penske Logistics LLC*, Case No. 2:21-cv-00081-TLN-JDP, pending in the United States District Court, Eastern District of California; (6) *Mark Luna v. Penske Logistics LLC*, Case No. 34-2021-00292756, pending in the Superior Court of the State of California, County of Sacramento; (7) *Phil Poston v. Penske Logistics LLC*, Case No. 2:21-cv-03939, United States District Court, Central District of California; and (8) *Phil Poston v. Penske Logistics, LLC*, Case No. 21CMCV00142, pending in the Superior Court of the State of California, County of Los Angeles (collectively, the "Related Actions").

As part of this Settlement, the Plaintiffs and the Defendants have filed a Second Amended Complaint in the Action which consolidated the Related Actions and all of the Plaintiffs in the Related Actions into the Action for settlement purposes.

Defendants deny and dispute all claims asserted by the Plaintiffs. Specifically, Defendants contend that Plaintiffs and the Class Members were properly compensated for wages under California law; that Defendants did not fail to pay to Plaintiffs or any Class Members any required expense reimbursement; that Defendants complied with California wage statement requirements; that Defendants are not liable for any of the penalties claimed or that could be claimed in the Action; and that this Action cannot be maintained as a class action at trial.

The Court granted preliminary approval of the Settlement on <<INSERT PRELIMINARY APPROVAL DATE>>. At that time, the Court also preliminarily approved the Plaintiffs to serve as the Class Representatives, and the law firms of the Skapik Law Group, Blumenthal Nordrehaug Bhowmik De Blouw LLP, GrahamHollis, APC, and Lawyer for Justice, PC to serve as Class Counsel.

3. What are the terms of the Settlement?

Settlement Fund. Defendants have agreed to pay two settlements in the combined “all in” amount of Two Million Four Hundred Fifty-Five Thousand Dollars (\$2,455,000) (the “Settlement Fund”) to fund the settlement of this Action. The Settlement Fund includes all payments of Individual Settlement Payments to Class Members contemplated by the Settlement, the Settlement Administration Expenses, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class Representative Service Payments, and the PAGA Settlement for civil penalties. Any employer-side payroll taxes on the portion of the Individual Settlement Payments allocated to wages shall be separately paid by Defendants.

Within forty-six (46) days of the Judgment becoming Final, the Settlement Administrator will mail checks for the Individual Settlement Payments to Participating Class Members. “Final” means the date the Judgment is entered, or if there are objections or any appeal, the date the Judgment is affirmed and is no longer subject to appeal.

Amounts to be Paid From the Settlement Fund. The Settlement provides for certain payments to be made from the Settlement Fund as follows, which will be subject to final Court approval, and which will be deducted from the Settlement Fund before Individual Settlement Payments are made to Class Members who do not request exclusion (“Participating Class Members”):

- Settlement Administration Expenses. Payment to the Settlement Administrator, estimated not to exceed \$30,000, for expenses, including, without limitation, expenses of notifying the Class Members of the Settlement, processing opt outs, and distributing Individual Settlement Payments and tax forms, and handling inquiries and uncashed checks.
- Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment. Payment to Skapik Law Group of reasonable attorneys’ fees not to exceed \$333,333.00 and the additional amount to reimburse actual litigation costs incurred not to exceed \$12,000.00. In addition, Blumenthal Nordrehaug Bhowmik De Blouw LLP (BNBD), GrahamHollis, APC (GH), and Lawyer for Justice, PC. (LFJ) will seek the payment of attorneys’ fees not to exceed \$485,000.00 collectively to be split 45% to BNBD; 45% to GH; and, 10% to LFJ, and the additional amount to reimburse actual litigation costs incurred not to exceed \$70,000.00. Class Counsel has been prosecuting the Action on behalf of Plaintiffs and the Class on a contingency fee basis (that is, without being paid any money) and has been paying all litigation costs and expenses.
- Class Representative Service Payments. Class Representative Service Payments in an amount not to exceed Ten Thousand Dollars (\$10,000.00) to each of the Plaintiffs, or such lesser amount as may be approved by the Court, to compensate them for services on behalf of the Class in initiating and prosecuting the Action, and for the risks they undertook. Altogether, the Plaintiffs are applying for a combined total of \$90,000.00 in Class Representative Service Payments.

- PAGA Settlement. There are two proposed payments relating to the claim for penalties under the Private Attorney Generals Act (“PAGA”). The first PAGA Payment is for \$75,000 to be allocated \$56,250 to the California Labor and Workforce Development Agency (“LWDA”) and \$18,750 will be part of the Net Settlement Amount and distributed to the Class. The second PAGA Payment is \$30,000 to be allocated \$22,500 to the LWDA and \$7,500 will be distributed to the Aggrieved Employees based on their respective pay periods worked during the applicable period. “Aggrieved Employees” means (i) all individuals who were employed by Penske Logistics LLC in California as non-exempt employees at any time during the period October 28, 2019 to April 6, 2022 (the “PL Aggrieved Employees”), and (ii) all individuals who were employed by Penske Truck Leasing Co., L.P. in California as non-exempt employees at any time during the period September 25, 2018 to April 6, 2022 (the “PTL Aggrieved Employees”). The PAGA Payment shall be allocated to all Aggrieved Employees regardless of whether they request exclusion. One hundred percent (100%) of each Aggrieved Employee’s share of the PAGA Payment is in settlement of claims for civil penalties allegedly due which shall not be subject to wage withholdings, and shall be reported on IRS Form 1099.

Calculation of Payments to Class Members. After all of the payments of the court-approved attorneys’ fees and costs, the Class Representative Service Payments, the PAGA Settlement, and the Settlement Administration Expenses are deducted from the Settlement Amount, the remaining portion, called the “Net Settlement Amount”, shall be distributed to Settlement Members as Individual Settlement Payments. The combined Net Settlement Amount is estimated to be at least \$1,329,700.00, based upon the above proposed deductions. Settlement Administrator will pay an Individual Settlement Payment from the Net Settlement Amount to each Settlement Member. The Individual Settlement Payment for each Settlement Member will be calculated as follows: the Settlement Administrator will calculate the total Qualified Workweeks for all Settlement Members. “Qualified Workweeks” are the total number of weeks in which the Class Members actually worked within the Class Period. The respective Qualified Workweeks for each Settlement Member will be divided by the total Qualified Workweeks for all Class Members, resulting in the Payment Ratio for each Settlement Member. Each Participating Class Member’s Payment Ratio will then be multiplied by the Net Settlement Amount to calculate each Participating Class Member’s estimated Individual Settlement Payment. Workweeks shall be based upon Defendants’ payroll records, but Class Members will have the right to challenge the number of workweeks as explained below.

If the Settlement is approved by the Court and you do not exclude yourself, you will automatically be mailed a check for your Individual Settlement Payment to the same address as this Class Notice. You do not have to do anything to receive a payment. If your address has changed, you must contact the Settlement Administrator to inform them of your correct address to ensure you receive your payment.

Tax Matters. Twenty percent (20%) of each Participating Class Member’s Individual Settlement Payment is in settlement of wage claims (the “Wage Portion”). Accordingly, the Wage Portion is subject to wage withholdings, and shall be reported on IRS Form W-2. Eighty percent (80%) of each Settlement Member’s Individual Settlement Payment is in settlement of claims for interest and penalties allegedly due to employees (collectively the “Non-Wage Portion”). The Non-Wage Portion shall not be subject to wage withholdings, and shall be reported on IRS Form 1099. The employee portion of all applicable income and payroll taxes will be the responsibility of the Settlement Members. Neither Class Counsel nor Defendants’ Counsel intend anything contained

in this Notice to constitute advice regarding taxes or taxability. The tax issues for each Participating Class Member are unique to him/her, and each Participating Class Member may wish to consult a tax advisor concerning the tax consequences of the payments received under the Settlement.

Conditions of Settlement. This Settlement is conditioned upon the Court entering an order granting final approval of the Settlement and entering the Judgment.

4. What Do I Release Under the Settlement?

Released Claims. Upon the Effective Date, Defendants will receive a release of all facts and legal theories that were or reasonably could have been alleged based upon the Second Amended Complaint, or if not consolidated, the operative complaints in any/all of the Actions for their respective periods, including: (i) failure to pay wages due (including minimum wages, straight wages, overtime/premium/double-time wages, rounding, off-the-clock, pre- and post-liminary work, or miscalculation of the regular rate); (ii) failure to provide proper meal periods and/or proper premium payments in lieu of meals; (iii) failure to provide proper rest breaks and/or proper premium payments in lieu of rest breaks; (iv) failure to provide accurate wage statements; (v) failure to reimburse for business expenses; (vi) failure to pay wages timely during employment; (vii) failure to pay wages timely at or after termination; (viii) failure to maintain necessary or accurate payroll records and work schedules; (ix) failure to provide one day's rest in seven/causing employees to work more than six days in seven; (x) unfair business practices; (xi) civil penalties under the PAGA based on the facts and legal theories alleged in the Second Amended Complaint; (xii) any other claims or statutory penalties under the wage and hour laws pleaded in the Actions; and (xiii) all damages, statutory penalties, interest and other amounts recoverable under said causes of action under California and federal law, to the extent permissible, including but not limited to the California Labor Code as to the facts alleged in the operative complaints in the Actions for their respective periods, the applicable Wage Orders as to the facts alleged in the operative complaints in the Actions for their respective periods, and the California Unfair Competition Law as to the facts alleged in the operative complaints in the Actions for their respective periods ("Released Class Claims"). Claims for wrongful termination are excluded from the Released Claims, except with respect to the Plaintiffs. Claims for vested benefits, unemployment insurance, disability, social security, and workers' compensation, are expressly excluded from the Released Class Claims. The Released Class Claims are released against all Released Parties. The period of the Release shall extend to the limits of the Class Period.

This means that, if you do not timely exclude yourself from the settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Defendants and any other Released Party about the Released Claims resolved by this Settlement. It also means that all of the Court's orders in this Action will apply to you and legally bind you.

Released PAGA Claims. Upon the Effective Date, Defendants shall receive a release from the State of California of all PAGA claims for civil penalties under California Labor Code Sections 2698 et. seq., based on the facts and legal theories alleged in the Second Amended Complaint, or if not consolidated, the operative complaints in any/all of the Actions which occurred during the respective PAGA Period ("Released PAGA Claims"), which include the following alleged violations: (i) failure to pay wages due (including minimum wages, straight wages, overtime/premium/double-time wages, rounding, off-the-clock, pre- and post-liminary work, or miscalculation of the regular rate); (ii) failure to provide proper meal periods and/or proper

premium payments in lieu of meals; (iii) failure to provide proper rest breaks and/or proper premium payments in lieu of rest breaks; (iv) failure to provide accurate wage statements; (v) failure to reimburse for business expenses; (vi) failure to pay wages timely during employment; (vii) failure to pay wages timely at or after termination; (viii) failure to maintain necessary or accurate payroll records and work schedules; (ix) failure to provide one day's rest in seven/causing employees to work more than six days in seven; (x) retaliation against employees who make good faith complaints about unpaid wages; (xi) any other claims for civil penalties premised on the wage and hour laws pleaded in the operative complaints in the Actions. Claims for vested benefits, unemployment insurance, disability, social security, and workers' compensation, are expressly excluded from the Released Claims. The Released PAGA Claims are released against all Released Parties. The res judicata effect of the Judgment will be the same.

The Released PAGA Claims are released against all Released Parties. The release of the Released PAGA Claims shall be effective as to all Aggrieved Employees, regardless of whether an Aggrieved Employee submitted a request for an exclusion from the Class.

5. How much will my payment be?

Defendants' records reflect that you have << _____ >> Qualified Workweeks worked for Defendants as Class Member during the Class Period. The Class Period is January 31, 2016 through April 6, 2022.

Based on this information, your estimated Individual Settlement Payment is << _____ >>.

If you wish to challenge the information set forth above, then you must submit a written, signed dispute challenging the information along with supporting documents, to the Settlement Administrator at the address provided in this Class Notice no later than _____ [Response Deadline].

6. How can I get a payment?

To get money from the settlement, you do not have to do anything. A check for your Individual Settlement Payment will be mailed automatically to the same address as this Class Notice. If your address is incorrect or has changed, you must notify the Settlement Administrator. The Settlement Administrator is: Simpluris, Inc., (888) 369-3780, option 2.

The Court will hold a Final Approval Hearing on _____, at _____ in Department S26 of the San Bernardino County Superior Court to decide whether to approve the Settlement. If the Court approves the Settlement and there are no objections or appeals, payments will be mailed approximately two months after this hearing. If there are objections or appeals, resolving them can take time, usually more than a year. Please be patient.

7. What if I don't want to be a part of the Settlement?

If you do not wish to participate in the Settlement, you may exclude yourself from the Settlement or "opt out." **If you opt out, you will not receive an Individual Settlement Payment from the Settlement, and you will not be bound by the Settlement which means you will retain the right to sue Defendants for the Released Claims.** However, Aggrieved Employees who opt out will still be paid their allocation of the PAGA Settlement and will remain subject to the release of the Released PAGA Claims regardless whether they submit a request for exclusion.

To opt out, you must mail to the Settlement Administrator, by First Class Mail, a written, signed and dated request to opt-out postmarked no later than _____ [Response Deadline]. The request to opt-out must be received by the Settlement Administrator and should state in substance: "I wish to be excluded from the Class in the *McDowell v. Penske* lawsuit. I understand that if I ask to be excluded from the Class, I will not receive a settlement payment from the settlement of this Action." The request to opt-out must also include the Class Member's full name, address, telephone number, the approximate dates of employment in California by Defendants, and the name and number of the case, which is *McDowell v. Penske*, Case No. CIVDS2012273. The request to opt-out must be signed by you. No other person may opt-out for a living member of the Class.

The address for the Settlement Administrator is P.O. Box 26170, Santa Ana, CA 92799. Written requests for exclusion that are postmarked after _____, or are incomplete or unsigned will be rejected, and those Class Members will remain bound by the Settlement and the release described above.

8. How do I tell the Court that I don't agree with the Settlement?

Any Class Member who has not opted out and believes that the Settlement should not be finally approved by the Court for any reason may object to the proposed Settlement, the attorneys' fees, costs and/or the service awards, either in writing or in person. Objections that are in writing must state the Class Member's name, current address, telephone number, and the dates of employment in California by Defendants, and describe why you believe the Settlement is unfair and whether you intend to appear at the final approval hearing. All written objections or other correspondence must also state the name and number of the case, which is *McDowell v. Penske*, in the Superior Court of the State of California, County of San Bernardino, Case No. CIVDS2012273.

All written objections must be mailed to the Settlement Administrator at P.O. Box 26170 Santa Ana, CA 92799 no later than _____ [Response Deadline]. Any Class Member who does not request exclusion may, if the member so desires, enter an appearance through their own counsel.

Class Members who file a written objection may appear remotely at the Final Approval Hearing on _____ at _____ in Department S26 of the San Bernardino County Superior Court to make an oral objection. Currently, only remote appearances at the hearing are allowed. To appear at the hearing, contact Court Call (888-882-6878 or www.courtcall.com) to schedule a remote appearance. You may contact Class Counsel if you need assistance to appear at the hearing or have questions.

To object to the Settlement, you must not opt out, and if the Court approves the Settlement despite your objection, you will be bound by the terms of the Settlement in the same way as Class Members who do not object and you will still be mailed a check for your Individual Settlement Payment. Any Class Member who does not object in the manner provided in this Notice shall have waived any objection to the Settlement, whether by appeal or otherwise.

9. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Final Approval Hearing at _____ on _____, at the San Bernardino County Superior Court located at 247 W. 3rd St. San Bernardino, CA 92415, in Department S26 before Judge David Cohn. At this hearing the Court will consider whether the

Settlement is fair, reasonable, and adequate. The purpose of this hearing is for the Court to determine whether to grant final approval to the Settlement. If there are objections, the Court will consider them. This hearing may be rescheduled by the Court without further notice to you. **You are not required to attend** the Final Approval Hearing, although any Class Member is welcome to attend the hearing remotely. Please see the most current information about the hearing at the Court's website at <https://www.sb-court.org/>.

10. How do I get more information about the Settlement?

You may call the Settlement Administrator at (888) 369-3780, option 2, or write to *McDowell v. Penske* Settlement Administrator, c/o Simpluris, P.O. Box 26170, Santa Ana, CA 9279. You may also contact Class Counsel. The contact information for Class Counsel is as follows:

Class Counsel:

Mark J. Skapik, Esq.
Geraldyn L. Skapik, Esq.
Blair J. Berkley, Esq.
SKAPIK LAW GROUP
5861 Pine Avenue, Suite A-1
Chino Hills, CA 91709
Telephone: (909) 398-4404
Facsimile: (909) 398-1883
Email: gskapik@skapiklaw.com
Edwin Aiwarzian
Lawyers for Justice, PC
410 West Arden Avenue, Suite 203
Glendale, CA 91203
Tel: (818) 265-1020
Fax: (818) 265 1021
E-Mail: edwin@calljustice.com

Norman Blumenthal
Kyle Nordrehaug
Blumenthal Nordrehaug Bhowmik De Blouw LLP
2255 Calle Clara
La Jolla, CA 92037
Tel: 858-551-1223 / Fax: 858-551-1232
Email: kyle@bamlawca.com

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Monique R. Rodriguez
GrahamHollis APC
3555 Fifth Avenue, Suite 200
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This Class Notice summarizes the proposed settlement. More details are in the Settlement Agreement. You may receive a copy of the Settlement Agreement, the Final Judgment or other Settlement documents by contacting Class Counsel or the Settlement Administrator, or by examining the Court's file on the Open Access website for the California Superior Court for the County of San Bernardino (<http://openaccess.sb-court.org/OpenAccess/>) and entering the Case No. CIVDS2012273.

PLEASE DO NOT CALL THE COURT ABOUT THIS NOTICE.

IMPORTANT:

- You must inform the Settlement Administrator of any change of address to ensure receipt of your settlement payment.
- Settlement checks will be null and void 180 days after issuance if not deposited or cashed. In such event, the Settlement Administrator shall pay all unclaimed funds to the California State Controller's Unclaimed Property Fund in the name of and for the benefit of the individual who did not cash their check. If your check is lost or misplaced, you should contact the Settlement Administrator immediately to request a replacement.