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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO

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

Plaintiffs,

v.

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

Defendants.

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

Plaintiff,

v.

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

Defendants.

ANGEL ZAMORA, GABRIEL LOAIZA and
JORGE GUILLÉN, individuals, on behalf of

Case No. CIVDS2012273

**[PROPOSED] FINAL APPROVAL
ORDER AND JUDGMENT**

Hearing Date: August 29, 2022
Hearing Time: 10:00 a.m.

Judge: Hon. David Cohn
Dept: S26

Action Filed: May 29, 2020
Trial Date: None

FINAL APPROVAL ORDER AND JUDGMENT

1 themselves and on behalf of all persons similarly
2 situated,

3 Plaintiffs,

4 vs.

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

7 Defendant.

8 MARK LUNA, an individual, on behalf of
9 himself and on behalf of all persons similarly
10 situated,

11 Plaintiff,

12 v.

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

15 Defendants.

16 PHIL POSTON, individually, and on behalf of
17 other members of the general public similarly
18 situated;

19 Plaintiff,

20 vs.

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

25 Defendants.

1 The motion of Plaintiffs Eric D. McDowell, Aaron L. Stubbs, Leon C. Willis, Angel
2 Zamora, Gabriel Loaiza, Jorge Guillen, Ladell Taylor, Mark Luna, and Phil Poston (collectively,
3 “Plaintiffs”) for an order finally approving the consolidated Settlement in the form of the Joint
4 Stipulation of Class Action and PAGA Settlement and Release of Claims (“McDowell
5 Agreement”) and the Class Action Settlement Agreement (“Zamora/Taylor/Luna Agreement”) with
6 Defendants Penske Truck Leasing Co., L.P. and Penske Logistics LLC (collectively
7 “Defendants”), and the two (2) motions for attorneys’ fees and costs, service payments, duly came
8 on for hearing on August 29, 2022 before the Honorable David Cohn.

9
10 **I.**

11 **FINDINGS**

12 Based on the oral and written argument and evidence presented in connection with the
13 motion, the Court makes the following findings:

14 1. All terms used herein shall have the same meaning as defined in the McDowell
15 Agreement and the Zamora/Taylor/Luna Agreement. Collectively, the McDowell Agreement and
16 the Zamora/Taylor/Luna Agreement are referred to herein as the “Settlement”.

17 2. This Court has jurisdiction over the subject matter of this litigation pending before
18 the California Superior Court for the County of San Bernardino, and over all Parties to this
19 litigation, including the Class.

20 3. Based on a review of the papers submitted by Plaintiffs and a review of the
21 applicable law, the Court finds that Maximum Settlement Amount in the McDowell Agreement is
22 One Million Dollars (\$1,000,000) and Gross Settlement Amount in the Zamora/Taylor/Luna
23 Agreement is One Million Four Hundred Fifty-Five Thousand Dollars (\$1,455,000), which is a
24 combined amount of Two Million Four Hundred Fifty-Five Thousand Dollars (\$2,455,000)
25 (“Settlement Fund”) and the terms set forth of the consolidated Settlement are fair, reasonable, and
26 adequate.

1 4. The Court further finds that the Settlement was the result of arm's length
2 negotiations conducted after Class Counsel had adequately investigated the claims and became
3 familiar with the strengths and weaknesses of those claims. In particular, the amount the
4 Settlement, the significant risks relating to certification, liability, and damages issues, and the
5 assistance of an experienced mediator in the settlement process, among other factors, support the
6 Court's conclusion that the Settlement is fair, reasonable, and adequate.

7 **Preliminary Approval of the Settlement**

8 5. On April 6, 2022, the Court granted preliminary approval of the Settlement. At this
9 same time, the Court approved conditional certification of the Class for settlement purposes only.

10 **Notice to the Class**

11 6. In compliance with the Preliminary Approval Order, the Class Notice was mailed
12 by first class mail to members of the Class at their last known addresses on or about May 11,
13 2022. Mailing of the Class Notice to their last known addresses was the best notice practicable
14 under the circumstances and was reasonably calculated to communicate actual notice of the
15 litigation and the proposed settlement to the Class. The Class Notice given to the Class Members
16 fully and accurately informed the Class Members of all material elements of the proposed
17 Settlement and of their opportunity to object to or comment thereon or to seek exclusion from the
18 Settlement; was valid, due, and sufficient notice to all Class Members; and complied fully with the
19 requirements of California Rule of Court 3.769, laws of the State of California, the United States
20 Constitution, due process and other applicable law. The Class Notice fairly and adequately
21 described the Settlement and provided Class Members adequate instructions and a variety of
22 means to obtain additional information.

23 7. The deadline for opting out of the Class or submitting objections to the Settlement
24 was June 25, 2022. There was an adequate interval between notice and the deadline to permit
25 Class Members to choose what to do and act on their decision. A full opportunity has been
26 afforded to the Class Members to participate in this hearing, and all Class Members and other
27 persons wishing to be heard have been heard. Class Members also have had a full and fair
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1 opportunity to exclude themselves from the proposed Settlement and Class. Accordingly, the
2 Court determines that all Class Members who did not timely and properly submit a request for
3 exclusion are bound by the Settlement and this Final Approval Order and Judgment.

4 **Fairness Of Settlement**

5 8. The Settlement is entitled to a presumption of fairness. *Dunk v. Ford Motor Co.* 48
6 Cal.App.4th 1794, 1801 (1996).

7 a. The Settlement was reached through arm's-length bargaining between the
8 Parties, first during an all-day mediation with Lou Marlin, a well-respected mediator with
9 considerable experience mediating wage and hour class actions, and then a second all-day
10 mediation with Lou Marlin. There has been no collusion between the parties in reaching the
11 proposed settlement.

12 b. Plaintiffs' investigation and discovery have been sufficient to allow the
13 Court and counsel to act intelligently.

14 c. Counsel for the Parties are experienced in similar employment class action
15 litigation. All counsel recommended approval of the Settlement.

16 d. The percentage of objectors and requests for exclusion is small. No
17 objections were received. Nine (9) valid requests for exclusion were received. There were two
18 requests for exclusion that were late and one that was deficient, and these requests for exclusion
19 As to these two late requests and one deficient request, [REDACTED].

20 e. The participation rate was high. 5,800 Class Members will be mailed a
21 settlement payment, representing more than 99% of the overall Class.

22 9. The consideration to be given to the Class Members under the terms of the
23 Settlement is fair, reasonable and adequate considering the strengths and weaknesses of the claims
24 asserted in this action and is fair, reasonable and adequate compensation for the release of Class
25 Members' claims, given the uncertainties and significant risks of the litigation and the delays
26 which would ensue from continued prosecution of the Action.

1 10. The Settlement is approved as fair, adequate and reasonable and in the best interests
2 of the Class Members.

3 **Attorneys' Fees and Costs**

4 11. An award of \$333,333.33 to Skapik Law Group of reasonable attorneys' fees and
5 the additional amount to reimburse actual litigation costs incurred not to exceed \$12,000.00, is
6 reasonable and adequate. An award of \$485,000.00 collectively to Blumenthal Nordrehaug
7 Bhowmik De Blouw LLP (BNBD), GrahamHollis, APC (GH), and Lawyer for Justice, PC. (LFJ),
8 to be split 45% to BNBD; 45% to GH; and, 10% to LFJ, and the additional amount to reimburse
9 actual litigation costs incurred not to exceed \$70,000.00, is reasonable and adequate.

10 **Class Representative Service Payments**

11 12. The Settlement provides for a Class Representative Service Payment of not more
12 than \$10,000 to each of the Plaintiffs, subject to the Court's approval. The Court finds that Class
13 Representative Service Payments in the amount of \$10,000.00 to each of the Plaintiffs is
14 reasonable in light of the risks and burdens undertaken by the Plaintiffs in the litigation, for the
15 time and effort in bringing and prosecuting this matter on behalf of the Class, and for the
16 execution of a general release.

17 **Settlement Administration Expenses**

18 13. The Settlement Administrator shall calculate and administer the payments to be
19 made to the Class Members, transmit payment for attorneys' fees and costs to Class Counsel,
20 transmit the Class Representative Service Payments to the Plaintiffs, distribute the PAGA
21 Payment, issue any required tax reporting forms, calculate withholdings and perform the other
22 remaining duties set forth in the Settlement. The Settlement Administrator has documented
23 \$34,250 in fees and expenses, and this amount is reasonable in light of the work performed by the
24 Settlement Administrator. These Settlement Administration Expenses shall be allocated 40% to
25 the McDowell Agreement and 60% to the Zamora/Taylor/Luna Agreement.

26 **PAGA Settlement**

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14. There are two proposed payments relating to the claim for penalties under the Private Attorney Generals Act (“PAGA”). The first PAGA Payment from the McDowell Agreement 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 from the Zamora/Taylor/Luna Agreement is for \$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 from the Zamora/Taylor/Luna Agreement shall be allocated to all Aggrieved Employees regardless of whether they request exclusion. These PAGA Payments are fair, reasonable and adequate.

II.

ORDERS

Based on the foregoing findings, and good cause appearing, IT IS HEREBY ORDERED:

1. The certification of the Class for the purposes of settlement is confirmed. The Class is defined as follows:

All current and former non-exempt employees of Defendant Penske Logistics LLC and/or Defendant Penske Truck Leasing Co., L.P. employed at any time during the Class Period.

The Class Period is from January 31, 2016 through and including April 6, 2022.

2. All persons who meet the foregoing definition are members of the Class, except for those individuals who filed a valid request for exclusion (“opt out”) from the Class. Simpluris

1 received 12 requests for exclusion from the Settlement. Of the 12 requests for exclusions
2 submitted, 9 are valid which were submitted by Jose Estrada, Jose Gonzalez, Catharine Keene,
3 Christopher Arthur, Amy Livezey, Pasquale Lamp, Allan Soutar, Reynaldo Caldera and Luis
4 Meza. Two (2) requests for exclusions that were submitted late by Juan Luevano and Gilberto
5 Gonzalez, are [REDACTED]. One (1) request for exclusion from Omar Gorski was
6 deficient and is [REDACTED].

7 3. The Settlement is hereby finally approved as fair, reasonable, adequate, and in the
8 best interest of the Class.

9 4. Class Counsel are awarded attorneys' fees in the amount of \$333,333.33 to Skapik
10 Law Group and \$485,000.00 collectively to Blumenthal Nordrehaug Bhowmik De Blouw LLP
11 (BNBD), GrahamHollis, APC (GH), and Lawyer for Justice, PC. (LFJ), to be split 45% to BNBD;
12 45% to GH; and, 10% to LFJ. The Skapik Law Group are awarded costs in the amount of
13 \$10,288.38 to be paid from the McDowell Agreement. Blumenthal Nordrehaug Bhowmik De
14 Blouw LLP (BNBD) [\$42,055.95], GrahamHollis, APC (GH) [\$16,203.70], and Lawyer for
15 Justice, PC. (LFJ) [\$3,184.60] are awarded costs in the collective amount of \$61,444.23 to be paid
16 from the Zamora/Taylor/Luna Agreement, which shall be distributed in accordance with the
17 Zamora/Taylor/Luna Agreement. Class Counsel shall not seek or obtain any other compensation
18 or reimbursement from Defendants, Plaintiffs or members of the Class.

19 5. The payment of the Class Representative Service Payments in the amount of
20 \$10,000.00 to each of the Plaintiffs is approved and is to be distributed in accordance with the
21 McDowell Agreement and the Zamora/Taylor/Luna Agreement.

22 6. The payment of \$34,250 to the Settlement Administrator for their fees and
23 expenses is approved, which shall be allocated 40% to the McDowell Agreement and 60% to the
24 Zamora/Taylor/Luna Agreement.

25 7. The PAGA Payments of \$75,000 and \$30,000 are approved and are to be
26 distributed in accordance with the McDowell Agreement and the Zamora/Taylor/Luna Agreement.

1 8. The McDowell Agreement and the Zamora/Taylor/Luna Agreement and this
2 Settlement are not an admission by Defendants, nor is this Final Approval Order and Judgment a
3 finding, of the validity of any claims in the Action or of any wrongdoing by Defendants or that
4 this Action is appropriate for class treatment (other than for settlement purposes). Neither this
5 Final Approval Order and Judgment, the McDowell Agreement, the Zamora/Taylor/Luna
6 Agreement, nor any document referred to herein, nor any action taken to carry out the Settlement
7 is, may be construed as, or may be used as an admission by or against Defendants of any fault,
8 wrongdoing or liability whatsoever. The entering into or carrying out of the Settlement, and any
9 negotiations or proceedings related thereto, shall not in any event be construed as, or deemed to be
10 evidence of, an admission or concession with regard to the denials or defenses by Defendants.
11 Notwithstanding these restrictions, Defendants may file in the Action or in any other proceeding
12 this Final Approval Order and Judgment, the Settlement, or any other papers and records on file in
13 the Action as evidence of the settlement to support a defense of res judicata, collateral estoppel,
14 release, or other theory of claim or issue preclusion or similar defense as to the Released Class.

15 9. Notice of entry of this Final Approval Order and Judgment shall be given to all
16 Parties by Class Counsel on behalf of Plaintiffs and all Class Members. The Final Approval Order
17 and Judgment shall be posted as set forth in the Class Notice to the Class. It shall not be necessary
18 to send notice of entry of this Final Approval Order and Judgment to individual Class Members.

19 10. If the Settlement does not become final and effective in accordance with the terms
20 of the Settlement, then this Final Approval Order and Judgment, and all orders entered in
21 connection herewith, shall be rendered null and void and shall be vacated, and the Parties shall
22 revert to their respective positions as of immediately prior to November 10, 2021, and expressly
23 reserve their respective rights regarding the prosecution and defense of their respective actions,
24 including all available defenses and affirmative defenses, and arguments that any claim in the
25 action(s) could not be certified as a class action and/or managed as a representative action.

26 11. Within twenty-one (21) calendar days of the Effective Date, Defendants shall transmit
27 the Settlement Fund to the Settlement Administrator, and shall further transmit and the amount
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1 necessary to pay Defendants' share of payroll taxes to the Settlement Administrator as provided
2 for in the Settlement. Neither Defendants nor any of the Released Parties shall have any further
3 liability for costs, expenses, interest, attorney's fees, or for any other charge, expense or liability,
4 except as provided by the McDowell Agreement and/or the Zamora/Taylor/Luna Agreement.

5
6 **IT IS HEREBY ORDERED, ADJUDICATED AND DECREED THAT:**

7 1. Final judgment is hereby entered in conformity with the McDowell Agreement and
8 the Zamora/Taylor/Luna Agreement and this Court's Preliminary Approval Order. This document
9 shall constitute a final judgment pursuant to California Rule of Court 3.769(h).

10 2. Except as set forth in the McDowell Agreement and/or the Zamora/Taylor/Luna
11 Agreement and this Final Approval Order and Judgment, Plaintiffs, and all members of the Class,
12 shall take nothing in the Action.

13 3. Pursuant to California Code of Civil Procedure section 664.6, the Court shall retain
14 exclusive and continuing jurisdiction to construe, interpret, implement and enforce the Settlement,
15 to hear and resolve any contested challenge to a claim for settlement benefits, and to supervise and
16 adjudicate any dispute arising from or in connection with the distribution of settlement benefits.

17 4. Each party shall bear its own attorneys' fees and costs, except as otherwise
18 provided in the Settlement and in this Final Approval Order and Judgment.

19 5. Upon the Effective Date, each Settlement Member shall release Defendants and the
20 Released Parties, and each of them, from the Released Claims as set forth in the McDowell
21 Agreement. The "Released Claims" are all causes of action and factual or legal theories that were
22 alleged in the operative Second Amended Complaint or reasonably could have been alleged based
23 on the facts and legal theories contained in the operative Second Amended Complaint, including
24 all of the following claims for relief: (i) failure to pay wages due (including minimum wage,
25 straight wages, and overtime/premium wages); (ii) failure to provide proper meal periods and/or
26 proper premium payments in lieu of meals; (iii) failure to provide proper rest breaks and/or proper
27 premium payments in lieu of rest breaks; (iv) failure to provide accurate wage statements; (v)
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1 failure to reimburse for business expenses; (vi) failure to pay wages timely during employment;
2 (vii) failure to pay wages timely at or after termination; (viii) failure to maintain necessary or
3 accurate payroll records and work schedules; (ix) unfair business practices; (x) civil penalties
4 under the Private Attorneys General Act (“PAGA”); (xi) any other claims or penalties under the
5 wage and hour laws pleaded in the Action; and (xii) all damages, penalties, interest and other
6 amounts recoverable under said causes of action under California and federal law, to the extent
7 permissible, including but not limited to the California Labor Code as to the facts alleged in the
8 Action, the applicable Wage Orders as to the facts alleged in the proposed complaint, and the
9 California Unfair Competition Law. The period of the Release shall extend to the limits of the
10 Class Period.

11 6. Upon the Effective Date, each Participating Class Member shall release Defendants
12 and the Released Parties, and each of them, from the Released Class Claims as set forth in the
13 Zamora/Taylor/Luna Agreement. The “Released Class Claims” are all facts and legal theories that
14 were or reasonably could have been alleged based upon the Second Amended Consolidated
15 Complaint in the *McDowell* Action for the Class Period, or if not consolidated the operative
16 complaints in any/all of the Actions for their respective periods, including: (i) failure to pay wages
17 due (including minimum wages, straight wages, overtime/premium/double-time wages, rounding,
18 off-the-clock, pre- and post-liminary work, or miscalculation of the regular rate); (ii) failure to
19 provide proper meal periods and/or proper premium payments in lieu of meals; (iii) failure to
20 provide proper rest breaks and/or proper premium payments in lieu of rest breaks; (iv) failure to
21 provide accurate wage statements; (v) failure to reimburse for business expenses; (vi) failure to
22 pay wages timely during employment; (vii) failure to pay wages timely at or after termination;
23 (viii) failure to maintain necessary or accurate payroll records and work schedules; (ix) failure to
24 provide one day’s rest in seven/causing employees to work more than six days in seven; (ix) (x)
25 unfair business practices; (xi) civil penalties under the PAGA based on the facts and legal theories
26 alleged in the Second Amended Complaint; (xii) any other claims or statutory penalties under the
27 wage and hour laws pleaded in the Actions; and (xiii) all damages, statutory penalties, interest and
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1 other amounts recoverable under said causes of action under California and federal law, to the
2 extent permissible, including but not limited to the California Labor Code as to the facts alleged in
3 the operative complaints in the Actions for their respective periods, the applicable Wage Orders as
4 to the facts alleged in the operative complaints in the Actions for their respective periods, and the
5 California Unfair Competition Law as to the facts alleged in the operative complaints in the
6 Actions for their respective periods. Claims for wrongful termination are excluded from the
7 Released Claims, except with respect to the Plaintiffs. (“Released Class Claims”). Claims for
8 vested benefits, unemployment insurance, disability, social security, and workers' compensation,
9 are expressly excluded from the Released Class Claims. The Released Class Claims are released
10 against all Released Parties. The res judicata effect of the Judgment will be the same as that of the
11 Release.

12 7. Upon the Effective Date, Defendants shall receive a release from the State of
13 California of all PAGA claims for civil penalties under California Labor Code Sections 2698 et.
14 seq., based on the facts and legal theories alleged in the Second Amended Complaint, or if not
15 consolidated, the operative complaints in any/all of the Actions which occurred during the
16 respective PAGA Period (“Released PAGA Claims”), which include the following alleged
17 violations: (i) failure to pay wages due (including minimum wages, straight wages,
18 overtime/premium/double-time wages, rounding, off-the-clock, pre- and post-liminary work, or
19 miscalculation of the regular rate); (ii) failure to provide proper meal periods and/or proper
20 premium payments in lieu of meals; (iii) failure to provide proper rest breaks and/or proper
21 premium payments in lieu of rest breaks; (iv) failure to provide accurate wage statements; (v)
22 failure to reimburse for business expenses; (vi) failure to pay wages timely during employment;
23 (vii) failure to pay wages timely at or after termination; (viii) failure to maintain necessary or
24 accurate payroll records and work schedules; (ix) failure to provide one day’s rest in seven/causing
25 employees to work more than six days in seven; (x) retaliation against employees who make good
26 faith complaints about unpaid wages; (xi) any other claims for civil penalties premised on the
27 wage and hour laws pleaded in the operative complaints in the Actions. Claims for vested
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1 benefits, unemployment insurance, disability, social security, and workers' compensation, are
2 expressly excluded from the Released Claims. The Released PAGA Claims are released against all
3 Released Parties. The res judicata effect of the Judgment will be the same. The Released PAGA
4 Claims are released against all Released Parties. The release of the Released PAGA Claims shall
5 be effective as to all Aggrieved Employees, regardless of whether an Aggrieved Employee
6 submitted a request for an exclusion from the Class.

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8 8. Upon the Effective Date, Plaintiffs generally, fully and finally release and
9 discharge the Released Parties from any and all the Plaintiffs' Released Claims, as more fully set
10 forth in the McDowell Agreement and the Zamora/Taylor/Luna Agreement.

11
12 **LET JUDGMENT BE FORTHWITH ENTERED ACCORDINGLY. IT IS SO ORDERED.**

13
14 Dated: _____

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16 _____
HON. DAVID COHN
JUDGE, SUPERIOR COURT OF CALIFORNIA