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PENSKE LOGISTICS LLC

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN JOAQUIN

JOSE ESTRADA, an individual, on behalf of
himself and all others similarly situated,

Plaintiff,

vs.

PENSKE LOGISTICS LLC, a Delaware
Corporation and DOES 1-50, inclusive,

Defendants.

Case No. STK-CV-UOE-2022-0004749

JOINT STIPULATION OF SETTLEMENT

[Assigned for all purposes to
The Honorable Erin Guy Castillo, Dept. 10B]

Action Filed: June 6, 2022
Trial Date: None

PRIVATE ATTORNEYS GENERAL ACT SETTLEMENT AGREEMENT
AND LIMITED RELEASE

This Private Attorneys General Act Settlement Agreement and Release (“Agreement”) is made by and between Jose Estrada (“Plaintiff”), on behalf of himself, on behalf of the PAGA Employees (as defined below), and as a proxy/agent for the California Labor Workforce Development Agency (“LWDA”), and Defendant Penske Logistics LLC (“Defendant”), to resolve the Action and Released Claims, subject to the terms and conditions hereof and the approval of the Court. Plaintiff and Defendant are collectively referred to herein as the “Parties” and each may be individually referred to as a “Party.”

I. REPRESENTATIONS AND DEFINITIONS

1. “Action” means and refers to the civil action filed in the Superior Court of the State of California for the County of San Joaquin, entitled *Jose Estrada v. Penske Logistics LLC, San Joaquin County Superior Court* Case No. STK-CV-UOE-2022-0004749, filed on June 9, 2022.

2. “Agreement” or “Settlement” means the arm’s-length settlement agreement reached between the Parties as set forth in this Private Attorneys General Act Settlement Agreement and Limited Release, and the terms, conditions and requirements set forth herein, including any attached exhibits.

3. “Counsel for Defendant” means and refers to Evan R. Moses, Madeleine K. Lee, and Justin M. Dean of Ogletree, Deakins, Nash, Smoak & Stewart, PC.

4. “Court” means and refers to the Superior Court of California for the County of San Joaquin. Court shall also mean any other Court that acquires proper jurisdiction of this Action.

5. “Defendant” means and refers to Penske Logistics LLC.

6. “Effective Date” means and refers to the date: (1) the Court has signed and entered the Approval Order and Judgment (as defined below) if no motions to intervene are filed prior to the Court’s hearing on the Approval Order and Judgment; or, (2) in the event a motion to intervene is filed prior to the Court’s hearing on the Approval Order and Judgment, the later of the following events: (a) the day after the last day by which a notice of appeal of the Approval Order and Judgment may be timely filed with the California Court of Appeal by the proposed intervenor, and

1 none is filed; (b) if an appeal is filed and is finally disposed of by ruling, dismissal, denial, or
2 otherwise, the day after the last date for filing a request for further review of the Court of Appeal's
3 decision passes and no further review is requested; (c) if an appeal is filed and there is a final
4 disposition by ruling, dismissal, denial, or otherwise by the Court of Appeal, and further review of
5 the Court of Appeal's decision is requested, the day after the request for review is denied with
6 prejudice and/or no further review of the order can be requested; or (d) if review is accepted, the
7 day the Supreme Court of the State of California affirms the Settlement.

8 7. "LWDA" means and refers to the California Labor and Workforce Development
9 Agency.

10 8. "Operative Complaint" means and refers to: the First Amended Complaint, filed on
11 August 30, 2022, in the Action.

12 9. "PAGA" means and refers to the Private Attorneys General Act of 2004, codified at
13 California Labor Code § 2698, *et seq.*

14 10. "PAGA Employees" or singularly "PAGA Employee" means and refers to Plaintiff
15 and all current and former non-exempt employees who worked for Defendant within the State of
16 California at any point during the PAGA Period who could have theoretically been entitled to sick
17 pay at a rate of pay greater than their base rate.

18 11. "PAGA Period" means the time period from May 9, 2021 through the date the Court
19 enters the order granting approval of the settlement or July 10, 2023, whichever occurs first.

20 12. "Parties" means and refers to, collectively, Plaintiff and Defendant, and "Party"
21 means and refers to Parties individually.

22 13. "Pay Periods" means and refers to the total number of pay periods that each PAGA
23 Employee worked as a non-exempt employee for Defendant during the PAGA Period.

24 14. "Plaintiff" means Jose Estrada.

25 15. "Plaintiff's Counsel" means and refers to Nazo Koulloukian of KOUL LAW FIRM
26 and Sahag Majarian, II, Esq. of Law Offices of Sahag Majarian II.

27 16. "Released Claims" means and refers to any and all claims, rights, or causes of action
28 and factual or legal theories/allegations that were alleged in the operative complaints in the Action

under PAGA, or reasonably could have been alleged under PAGA based on the facts, legal theories, California Labor Code sections (including, but not limited to Labor Code §§ 201, 202, 203, 204, 226, 246, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 2698, 2699), and primary rights at issue in the Complaints filed in the Action including, but not limited to, all of the following claims for civil penalties premised on: (a) failure to properly calculate and pay all sick pay wages; (b) failure to furnish accurate itemized wage statements; (c) failure to timely pay sick pay wages owed at termination and/or during employment; (d) failure to pay all wages owed twice per month; (e) failure to maintain, preserve and keep required and accurate employee payroll records; (f) claims for civil penalties under the PAGA related to the claims set forth herein; and (g) any other claims for civil penalties under PAGA pertaining to the wage and hour laws and IWC Wage Orders that were or could have been premised on the facts and legal theories pleaded in the Action or primary rights pursued in the Action. The period of the Release shall encompass the entire PAGA Period. The *res judicata* effect of the Judgment will be the same as that of the Release.

17. “Released Parties” means and refers to Defendant and its past, present and/or future, direct and/or indirect, officers, directors, members, managers, employees, agents, representatives, attorneys, insurers, partners, investors, shareholders, administrators, parent companies, subsidiaries, affiliates, divisions, predecessors, successors, assigns, and joint venturers .

18. “Settlement Administrator” means and refers to CPT Group, Inc.

II. NATURE OF ACTION

1. On May 9, 2022, Plaintiff Jose Estrada sent a letter to the LWDA and Defendant giving notice of his intent to pursue a representative action pursuant to the PAGA, on behalf of himself and the State of California, as well as on behalf of a proposed group of aggrieved employees. The letter is referred to as “Notice to the LWDA.”

2. On June 9, 2022, Plaintiff filed his Complaint as a class action lawsuit, alleging that, Defendant failed to: properly calculate and pay sick leave wages, failure to timely pay sick pay wages owed, failure to provide accurate itemized wage statements, unlawful business practices Bus. & Prof. Code section 17200. On August 30, 2022, Plaintiff filed the First Amended Complaint containing a single cause of action for Violation of the Private Attorneys General Act of

2004, Cal. Labor Code Section 2698 *et seq.* and the court subsequently dismissed the original Complaint's class claims. The First Amended Complaint alleged numerous violations of the California Labor Code and the applicable Wage Order(s), including, but not limited to, failure to properly calculate and pay sick leave wages, failure to timely pay sick pay wages owed, failure to pay all wages owed twice per month, failure to maintain accurate records, and failure to provide accurate itemized wage statements.

3. The Parties engaged in significant investigation and exchange of data and documents, as well as a private mediation that took place on April 10, 2023, with mediator Lou Marlin, Esq., and with the benefit of the mediator's evaluation, the Parties reached the Settlement described herein.

4. This Settlement relates solely to the PAGA claims on behalf of Plaintiff and the State of California with respect to Plaintiff and all PAGA Employees. Defendant denies any liability or wrongdoing of any kind associated with the claims alleged in the Action, denies liability for the Released Claims, and further denies that the Action is appropriate for representative treatment for any purpose other than settling this Action. Defendant contends, among other things, that it has complied at all times with the California Labor Code and the related Industrial Welfare Commission Wage Orders, all other state and federal wage laws, and further contends that all of its employees were and are paid properly and that the Action is without merit. Defendant has denied and continues to deny each and every material factual allegation and all alleged claims asserted against it in the Action.

5. The Parties recognize that the issues presented in the Action are likely only to be resolved with extensive and costly pretrial and trial proceedings, and that further litigation may cause inconvenience, distraction, disruption, delay and expense disproportionate to the potential benefits of litigation. The Parties have taken into account the risk and uncertainty of the outcome inherent in any litigation.

6. Based on their own independent investigations and evaluations, the Parties and their respective counsel are of the opinion that the settlement for the consideration and on the terms set forth in this Agreement is fair, reasonable, adequate, and is in the best interests of Plaintiff, the

PAGA Employees, the State of California, and Defendant in light of all known facts and circumstances and the risks inherent in litigation, including the potential appellate issues. Further, Plaintiff's Counsel believes that the settlement amount entered into is in the best interests of the PAGA Employees and the State of California, and is fair, reasonable, and adequate given the inherent risk of litigation.

III. TERMS OF SETTLEMENT

1. In consideration of the mutual covenants, promises and representations set forth in this Agreement, Plaintiff, on behalf of himself, the State of California, and all PAGA Employees, and Defendant agree to settle and compromise the Action and the Released Claims.

2. **The Gross Settlement Amount.** As consideration for the settlement described herein and the release provided herein, Defendant agrees to pay the all inclusive total amount of Ninety-Five Thousand Dollars and zero cents (\$95,000.00) ("Gross Settlement Amount"). In no event shall Defendant be liable for more than \$95,000 as a result of this Settlement. The balance after deduction of attorneys' fees, costs, administration and settlement administration costs, payment to the LWDA, and general release payments to Plaintiff/Settlement Group Member Representatives will be the "Net Settlement Amount." Defendant shall fund the Gross Settlement Amount as set forth herein. The Gross Settlement Amount will include payments as follows, which Plaintiff will seek approval of from the Court, in conformity with this Agreement:

a. Payment to the Settlement Administrator in the amount of up to Eleven Thousand Five Hundred Dollars and zero cents (\$11,500.00) ("Settlement Administration Costs");

b. Payment of Attorneys' Fees and Costs to Plaintiff's Counsel, as set forth herein; and

c. The PAGA Penalties to be paid to the LWDA and PAGA Employees, as set forth herein.

3. **Plaintiff's General Release Payment.** Defendant will not oppose a request by the named Plaintiff for a general release payment of up to \$3,750, to be deducted from the Gross

Settlement Amount, in exchange for his service as the lead aggrieved employee plaintiff against Defendant and release of individual claims (“General Release Payment”). This General Release Payment is in addition to the payment to which Plaintiff is entitled to receive as an aggrieved employee. Even in the event that the Court reduces or does not approve the requested General Release Payment, Plaintiff shall not have the right to revoke this Agreement, and it shall remain binding.

4. **Allocation and Calculation of the PAGA Penalties.** The amount available for distribution to the LWDA and PAGA Employees (“PAGA Penalties”) is the Gross Settlement Amount less the Court-approved Attorneys’ Fees and Costs to Plaintiff’s Counsel, Settlement Administration Costs to the Settlement Administrator, and the Plaintiff’s General Release Payment. Seventy Five Percent (75%) of the PAGA Penalties will be paid to the LWDA (“LWDA Payment”), and Twenty Five Percent (25%) of the PAGA Penalties will be paid to the PAGA Employees (“Employee Amount”), as required by California Labor Code § 2699(i).

5. **Allocation and Calculation of the Individual Settlement Payments.** Each PAGA Employee will receive a *pro rata* portion of the Employee Amount, determined based on the pay periods that he or she worked for Defendant in the State of California during the PAGA Period, to be calculated as follows: the Employee Amount will be divided by the total number of Pay Periods of all PAGA Employees to yield the “Per Pay Period Amount,” and then each PAGA Employee’s individual number of Pay Periods will be multiplied by the Per Pay Period Amount to yield his or her “Individual Settlement Payment.” Individual Settlement Payments shall be paid to PAGA Employees by way of a single check to each PAGA Employee (“Individual Settlement Check”).

6. **Tax Treatment of Individual Settlement Payments to PAGA Employees.** The Parties agree that Individual Settlement Payments sent to PAGA Employees will be characterized One Hundred Percent (100%) as penalties and Form 1099s will be issued. Nothing in this Agreement is intended to constitute legal advice regarding federal, state, and/or local tax obligations. Plaintiff and PAGA Employees shall be deemed to acknowledge that they have not obtained any tax advice from Defendant, Counsel for Defendant, or Plaintiff’s Counsel, and that neither Defendant, Counsel for Defendant, nor Plaintiff’s Counsel have made any representation

concerning the tax consequences, if any, of any payments made pursuant to this Agreement. To the extent that this Agreement or its attachment(s) are interpreted to contain or constitute advice regarding any U.S. or Federal tax issue, such advice is not intended or written to be used, and cannot be used, by any person for the purpose of avoiding penalties under the Internal Revenue Code.

7. **Plaintiff's Counsel's Attorneys' Fees and Costs.** As part of the request for approval of this Settlement, Plaintiff will request, and Defendant will not oppose, that the Court award the following to Plaintiff's Counsel: up to 35% of the Gross Settlement Amount, or Thirty-Three Thousand Two-Hundred and Fifty Dollars and zero cents (\$33,250.00), for attorneys' fees, and up to Twelve Thousand Five Hundred Dollars and zero cents (\$12,500.00) for reimbursement of actual costs and expenses of litigating the Action (together, "Attorneys' Fees and Costs"). The Attorneys' Fees and Costs shall be paid from the Gross Settlement Amount, subject to approval by the Court. Should Plaintiff's Counsel request a lesser amount for attorneys' fees and costs and/or the Court approve a lesser amount, the difference shall be a part of the PAGA Penalties to be distributed to the LWDA and PAGA Employees as described above. Payment of Attorneys' Fees and Costs will be reflected in a Form 1099 to Plaintiff's Counsel who shall assume full responsibility and liability for the payment of taxes due on such payments. Even in the event that the Court reduces or does not approve the requested Plaintiff's Counsel Award and Costs, Plaintiff's counsel shall not have the right to revoke this Agreement, and it will remain binding.

8. **No Effect on Employee Benefits.** The payments made to Plaintiff and other PAGA Employees pursuant to this Agreement are not intended to count as earnings by Plaintiff or the PAGA Employees, and will not entitle Plaintiff or the PAGA Employees to any additional compensation and/or benefits under any retirement, benefit, bonus, incentive, pension, welfare, and/or any other plan of or sponsored by Defendant. Defendant shall not make as part of this Agreement, nor be required to make, any deductions, nor pay any monthly contributions for any insurance, retirement, bonuses, 403(b), or profit sharing plans related to monies paid as a result of this Agreement. The Individual Settlement Payments paid to the PAGA Employees shall not have any effect on the eligibility for, or calculation of, any of the employee benefits (e.g. bonuses,

vacation, holiday pay, retirement plans, etc.) of the PAGA Employees. The Parties agree that any Individual Settlement Payments paid to the PAGA Employees under the terms of this Agreement do not represent any modification of the PAGA Employees' previously credited hours of service or other eligibility criteria under an employee benefit plan sponsored by Defendant. Further, any Individual Settlement Payments are penalties and thus shall not be considered "compensation" in any year for purposes of determining eligibility for, or benefit accrual within, and employee benefit plan or bonus plan sponsored by Defendant.

IV. RELEASE OF CLAIMS

1. General Release by Plaintiff.

Plaintiff does, for Plaintiff and for Plaintiff's respective spouses, heirs, successors, beneficiaries, devisees, legatees, executors, administrators, trustees, conservators, guardians, personal representatives, and assigns, forever and completely release and discharge Released Parties from any and all charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, injuries, actions, causes of action, suits, rights, demands, costs, losses, debts, wages, expenses, statutory penalties, civil penalties, liquidated damages, exemplary damages, interest, attorneys' fees and costs, and other legal responsibilities, of any form whatsoever, whether known or unknown, unforeseen, unanticipated, unsuspected or latent (referred to collectively hereafter as "Claim" or "Claims"), which Plaintiff has at any time owned or held up to and including the Effective Date of this Agreement, including, and without limiting the generality of the foregoing, any and all Claims arising out of, connected with, or relating to: (1) the Action; (2) Plaintiff's employment with Defendant or the termination of his employment; (3) any act or omission by or on the part of any of the Released Parties; (4) any Claim for violation of any federal, state or local law, rule or regulation prohibiting discrimination, harassment or retaliation of any kind; (5) breach of any express or implied employment contract or agreement, wrongful discharge, breach of the implied covenant of good faith and fair dealing, intentional or negligent infliction of emotional distress, fraud, misrepresentation, defamation, trespass, conversion, interference with prospective economic advantage, invasion of privacy; (5) any violation of the California Labor Code, applicable California Wage Order, Fair Labor Standards Act or the

1 Consolidated Omnibus Budget Reconciliation Act (COBRA), as amended; (6) any federal, state or
2 local law, rule or regulation regulating compensation, salaries, wages, meal periods, rest periods,
3 itemized wage statements, employment records including but not limited to wages statements or
4 payroll records, hours, bonuses, commissions, overtime, benefits, monies, pay, allowances,
5 benefits, sick pay, severance pay, retention pay or benefits, paid leave benefits, vacation pay,
6 reimbursement of expenses; (7) any other federal, state, local law, rule or regulation not previously
7 mentioned; and (8) any Claim for attorneys' fees, costs or expenses.

8 Plaintiff agrees that there is a risk that any injury that Plaintiff may have suffered by reason
9 of Released Parties might not now be known, and there is a further risk that said injuries, whether
10 known or unknown at the date of this Settlement Agreement, might possibly become progressively
11 worse, and that as a result thereof further damages may be sustained. Nevertheless, Plaintiff agrees
12 to forever and fully release and discharge the Released Parties, and understands that by the
13 execution of this Settlement Agreement no further claims for any such injuries may ever be
14 asserted by Plaintiff against the Released Parties with respect to claims arising in the time period
15 from the beginning of time to the Effective Date.

16 Plaintiff expressly waives and relinquishes all rights and benefits afforded by Section 1542
17 of the Civil Code of the State of California and do so understanding and acknowledging the
18 significance of the waiver of Section 1542. Section 1542 of the Civil Code of the State of
19 California states:

20 "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
21 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
22 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE
23 RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE
24 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR
25 OR RELEASED PARTY."

26 Notwithstanding the provisions of Section 1542, and for the purpose of implementing a full
27 and complete release and discharge of all parties, Plaintiff expressly acknowledges that this
28 Settlement Agreement is intended to include in its effect, without limitation, all claims that Plaintiff

1 knows of, as well as all claims that Plaintiff does not know or suspect to exist in Plaintiff's favor
2 against any of the Released Parties, for the time period from the beginning of time to the Effective
3 Date, and that this Settlement Agreement contemplates the extinguishment of any such claims.

4 **2. Release by Plaintiff, PAGA Employees and LWDA.**

5 Upon the Effective Date, Plaintiff and each PAGA Employee, shall fully release and
6 forever discharge Released Parties from the Released Claims during the period from May 9, 2021
7 through the date the Court enters the order granting approval of the settlement or July 10, 2023,
8 whichever occurs first, and the State of California shall fully release and forever discharge
9 Released Parties from the Released Claims as they pertain to Plaintiff and the PAGA Employees
10 from May 9, 2021 through the date the Court enters the order granting approval of the settlement or
11 July 10, 2023, whichever occurs first.

12 It is understood and agreed that this Agreement neither releases the Released Parties from
13 liability, if any, to the PAGA Employees for violations of any predicate statutes other than PAGA,
14 nor effects a waiver of claims by the PAGA Employees against the Released Parties for the same.

15 **V. DUTIES OF THE PARTIES PRIOR TO COURT APPROVAL**

16 **1. Settlement Approval by Court.** The Parties recognize that Court approval is
17 required in the event of any settlement of a PAGA action, in accordance with California Labor
18 Code § 2699(l)(2), and that a judgment with respect to the PAGA action is binding with respect to
19 non-party aggrieved employees upon Court approval, pursuant to California Labor Code § 2699(l)
20 and *Arias v. Superior Ct.* (2009) 46 Cal.4th 969. The Parties further recognize that a settlement of a
21 PAGA action is not subject to class action procedural rules, and that PAGA Employees do not have
22 the right to opt-out of or otherwise exclude themselves from the Settlement, or object to the
23 Settlement, and upon approval of the Settlement by the Court and funding of the Settlement, all
24 PAGA Employees will have released the Released Parties of and for the Released Claims and the
25 PAGA Employees will be entitled to receive payment, in conformity with the Settlement. In order
26 to comply with the requirements of California Labor Code § 2699, promptly upon execution of this
27 Agreement, Plaintiff's Counsel shall prepare, file and serve a motion requesting that the Court
28 approve the Settlement, including and not limited to the PAGA Penalties, Plaintiff's General

1 Release Payment, Attorneys' Fees and Costs, and Settlement Administration Costs, and apply to
2 the Court for the entry of an order approving the Settlement and all of the requested payments and
3 entering judgment ("Approval Order and Judgment"). The motion shall advocate that the penalties
4 are fair, adequate, and reasonable, which will draw no opposition from Defendant or Defendant's
5 Counsel. Before Plaintiff applies to the Court for approval of the Settlement, Plaintiff's Counsel
6 shall submit the Agreement to the LWDA in conformity with California Labor Code § 2699(1)(2).

7 **2.** With Plaintiff's motion for approval of Settlement, Plaintiff shall submit a proposed
8 Approval Order and Judgment which shall seek approval of this Settlement and the terms herein.
9 Upon entry of the Approval Order and Judgment by the Court, Plaintiff's Counsel shall submit the
10 Approval Order and Judgment to the LWDA in conformity with California Labor Code §
11 2699(1)(2).

12 **VI. ADMINISTRATION OF THE SETTLEMENT**

13 **1. PAGA Employee List.** Defendant shall compile a list containing the following
14 information regarding each of the PAGA Employees: (1) full name; (2) last known mailing
15 address; (3) Social Security number or, as applicable, other taxpayer identification numbers; and
16 (4) the total number of pay periods worked during the PAGA Period ("PAGA Employee List"). If
17 it can be readily determined, pay periods where someone was employed but did not work any hours
18 due to a leave of absence, vacation, or other reason can be excluded from this calculation. The
19 PAGA Employee List will be provided to the Settlement Administrator within fifteen (15) calendar
20 days after the Court has signed and entered the Approval Order and Judgment. This information
21 shall be treated as and remain confidential and shall be used solely to manage the notice and
22 payment process described herein, shall not be disclosed to anyone other than the Settlement
23 Administrator, except to applicable taxing authorities, or pursuant to express written authorization
24 of Defendant, the individual in question, or by order of the Court. Defendant and Defendant's
25 Counsel shall not enter into any contractual relationship with the Settlement Administrator.
26 Plaintiff, Plaintiff's counsel, Defendant, and Defendant's counsel shall not bear any responsibility
27 for errors or omissions in the calculation or distribution of the settlement payments or development
28 of the list of recipients of settlement payments.

1 **2. Funding of Settlement.** Defendant shall fund the Gross Settlement Amount by way
2 of electronic transfer to the account to be established by the Settlement Administrator for purposes
3 of administration of the Settlement (“Settlement Administration Account”) within fourteen (14)
4 calendar days after the Effective Date.

5 **3. Payments to LWDA, Plaintiff’s Counsel, Plaintiff, and Settlement**

6 **Administrator.** Within ten (10) calendar days after Defendant funds the Gross Settlement
7 Amount, the Settlement Administrator shall pay the Court-approved LWDA Payment to the
8 LWDA, the Court-approved Attorneys’ Fees and Costs to Plaintiff’s Counsel, the Court-approved
9 Plaintiff’s General Release Payment to Plaintiff, and the Settlement Administration Costs to itself.

10 **4. Employee Notices and Payments to PAGA Employees.**

11 Within ten (10) calendar days after Defendant funds the Gross Settlement Amount, the
12 Settlement Administrator shall mail via U.S. First Class mail to each PAGA Employee his or her
13 Individual Settlement Check at the last known address in the PAGA Employee List or a more
14 updated address from the National Change of Address Database. A notice letter explaining why the
15 check is being sent (“Employee Notice”), in a mutually-agreed upon form that has been approved
16 by the Court, in substantially the form that is attached hereto as “**Exhibit A,**” will be included in
17 the mailing of each PAGA Employee’s Individual Settlement Check. Together, an Individual
18 Settlement Check that is mailed to a PAGA Employee with the Employee Notice is referred to as a
19 “Payment Packet.” Prior to mailing the Payment Packets, the Settlement Administrator shall check
20 the addresses provided using the National Change of Address database. Should any of the
21 Employee Notices be returned as undeliverable, the Settlement Administrator will have ten (10)
22 calendar days after it receives the returned undeliverable mail to search for a more current address
23 for the PAGA Employee (via a skip trace or other reasonable method) and to re-mail Employee
24 Notices to the traced address.

25 Within twenty-five (25) calendar days of distributing the Gross Settlement Fund, the
26 Settlement Administrator shall provide to Plaintiff’s and Defendant’s Counsel written confirmation
27 verifying that it effected disbursement of the Gross Settlement Fund pursuant to the terms of this
28 Agreement.

1 **5. Expiration of Settlement Checks.** All Individual Settlement Checks will expire
2 one hundred and eighty (180) calendar days after the initial mailing of the original Payment
3 Packets to the PAGA Employees, and thereafter, shall be cancelled. If any funds remain in the
4 Settlement Administration Account as a result of cancelled Individual Settlement Checks, such
5 funds shall be transmitted to the State Controller's Office Unclaimed Property Fund in the name of
6 each PAGA Employee whose check is voided. All duties set forth herein shall be included in the
7 Settlement Administration Costs and paid from the Gross Settlement Amount.

8 **6. Disputes Relating to Settlement Administration.** Any disputes concerning
9 administration of the Settlement which cannot be resolved by the Parties shall be submitted to and
10 resolved by the Court.

11 **7. Settlement Administrator's Tax Reporting.** The Settlement Administrator shall
12 be responsible for providing the requisite Form 1099's as required by this Agreement, and the
13 completion of any other steps necessary for compliance with any tax obligations of the Settlement
14 under federal, state, and/or local law, as applicable.

15 **8.** As soon as practicable after execution of this Agreement, Plaintiff's Counsel shall,
16 with the assistance and cooperation of Defendant and their counsel, take all necessary steps to
17 secure the approval of this Settlement from the Court. Irrespective of whether a PAGA Employee's
18 Individual Settlement Check has been cashed, he or she will be deemed to be bound to this
19 Settlement, the release provided herein, and the Court's Approval Order and Judgment.

20 **VII. ADDITIONAL TERMS.**

21 **1. No Prior Assignments.** The Parties hereto represent, covenant, and warrant that
22 they have not directly or indirectly, assigned, transferred, encumbered, or purported to assign,
23 transfer, or encumber to any person or entity any portion of any liability, claim, demand, action,
24 cause of action or rights herein released and discharged except as set forth herein.

25 **2. No Admission.** Nothing contained herein, nor is the consummation of this
26 Settlement, to be construed or deemed an admission with respect to liability, culpability,
27 negligence, or wrongdoing on the part of Defendant, Released Parties, Plaintiff, Plaintiff's
28 Counsel, PAGA Employees, or the LWDA. Each of the Parties hereto has entered into this

1 Agreement with the intention to avoid further disputes and litigation with the attendant
2 inconvenience and expenses. Defendant denies that it has engaged in any unlawful activity, that it
3 has failed to comply with the law in any respect, that it has any liability to anyone under the claims
4 asserted in the Action. The Parties agree that this Agreement does not constitute an admission by
5 Defendant or any of the Released Parties of any of the matters alleged in the Action or of any
6 violation by any of them of any federal, state or local law, ordinance or regulation, or of any
7 violation of any policy or procedure, or of any liability or wrongdoing whatsoever. This Agreement
8 is entered into solely for the purpose of compromising highly disputed claims. Neither this
9 Agreement nor anything in this Agreement shall be construed to be or shall be admissible in any
10 proceeding as evidence of liability or wrongdoing by Plaintiff, Defendant or any of the Released
11 Parties.

12 **3. Nullification.** If the Court should fail to approve the Settlement as agreed upon by
13 the Parties, the Parties shall coordinate efforts to address the Court's questions or concerns and
14 work jointly to make reasonable efforts to remedy the Settlement in order to obtain the Court's
15 approval. If the Parties cannot resolve the issues identified by the Court in denying approval, the
16 Parties shall be restored to their litigation positions and all funds returned to Defendant. If, after the
17 Parties make a second attempt to obtain approval of the material terms of the Settlement, unless the
18 Parties specifically agree to continue with their coordinated efforts to obtain Court approval, the
19 Court fails to approve the material terms of the Settlement in the form agreed to by the Parties
20 (except for the amount of the Plaintiff's General Release Payment and the Attorneys' Fees and
21 Costs requested by Plaintiff's Counsel), or if the Court's approval of this Agreement is reversed,
22 modified, or declared or rendered void, then: (a) this Agreement shall be considered null and void;
23 (b) neither this Agreement nor any of the related negotiations or proceedings shall be of any force
24 or effect; and (c) all Parties to this Agreement shall stand in the same position, without prejudice,
25 as if the Agreement had been neither entered into nor filed with the Court. Invalidation of any
26 material portion of this Agreement, except for the amount of the Plaintiff's General Release
27 Payment or the Attorneys' Fees and Costs, shall invalidate this Agreement in its entirety unless the
28

1 Parties shall subsequently agree in writing that the remaining provisions shall remain in full force
2 and effect.

3 **4. Attorneys' Fees, Costs And Expenses.** Except as specifically set forth herein, each
4 Party shall bear its/his/her own attorneys' fees, costs and expenses, taxable or otherwise, incurred
5 by him/her/it/them arising out of the Action, and shall not seek reimbursement thereof from any
6 other party to this Agreement, unless otherwise specifically stated.

7 **5. Enforcement And Continuing Jurisdiction Of The Court.** The Parties agree that
8 upon approval by the Court, this Agreement shall be enforceable by the Court, and the Court shall
9 retain exclusive and continuing equity jurisdiction pursuant to California Code of Civil Procedure §
10 664.6 of this action over all Parties and PAGA Employees to interpret and enforce the terms,
11 conditions, and obligations set forth in this Agreement.

12 **6. Severability.** The Parties agree that if any immaterial provision of this Agreement is
13 held to be invalid by a court of competent jurisdiction, that provision shall be deemed severed and
14 deleted from this Agreement, and neither that provision nor its severance and deletion shall affect
15 the validity of the remaining provisions, and the remaining provisions shall be deemed enforceable.

16 **7. Construction.**

17 The Parties hereto agree that the terms and conditions of this Agreement are the result of
18 lengthy, intensive arm's-length negotiations between the Parties and that this Agreement
19 constitutes the entire agreement between Plaintiff and Defendant regarding the Settlement of the
20 Released Claims and that this Agreement supersedes all prior agreements, written or oral, between
21 or among the Parties regarding the resolution of the Released Claims.

22 Given that all Parties hereto had the opportunity to draft, review, and edit the language of
23 this Agreement, no presumption for or against any Party arising out of drafting all or any part of
24 this Agreement may be applied in any action relating to, connected to, or involving this Agreement.
25 Accordingly, the Parties hereby waive the benefit of any legal principle or rule providing that, in
26 cases of uncertainty, the language of a contract should be interpreted against the Party who caused
27 the uncertainty to exist
28

1 **8. Non-Evidentiary Use.** Neither the existence of this Agreement, the terms of this
2 Agreement, the negotiation and execution of this Agreement, all acts performed or documents
3 executed pursuant to or in furtherance of this Agreement, nor the settlement of the Action shall be:
4 (a) construed as, offered, or admitted in evidence as, received as, or deemed to be evidence for any
5 purpose adverse to Plaintiff, the LWDA, Defendant or any other of the Released Parties, including
6 but not limited to, evidence of a presumption, concession, indication, or admission by any of the
7 Released Parties of any liability, culpability, fault, wrongdoing, omission, concession, or damage,
8 or of the truth of any of the factual allegations in the Operative Complaint in the Action;
9 (b) disclosed, referred to, or offered in evidence against Plaintiff, the LWDA, or any of the
10 Released Parties in any further proceeding in the Action, or any other civil, criminal, or
11 administrative action or proceeding in any court, administrative agency or other tribunal except for
12 the purposes of effectuating the Settlement pursuant to this Agreement or for Defendant to attempt
13 to establish that a PAGA Employee has resolved or been compensated for any claims made by that
14 employee; and (c) deemed to be, nor used as, an admission or evidence of the appropriateness of
15 these or similar claims for representative treatment, class certification or administration other than
16 for purposes of administering this Settlement. Nothing herein shall constitute an admission by
17 Defendant that the Action was properly brought as a representative action other than for settlement
18 purposes.

19 **9. Choice Of Law.** The rights and obligations of the Parties under this Agreement
20 shall be construed and enforced in accordance with, and governed by, the laws of the State of
21 California. California law shall govern the interpretation of this Agreement even if a choice of law
22 analysis under state or federal law would dictate that another forum's law be applied.

23 **10. Cooperation.** Each Party, on behalf of themselves, and their respective business
24 entities, heirs, executors, and assigns, agrees that they will abide by this Agreement and will do all
25 such acts, and prepare, execute, and deliver all such documents, as may be reasonably required to
26 carry out the stated objectives of this Agreement.

1 **11. Captions And Headings.** Paragraph titles, captions, or headings contained herein
2 are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or
3 describe the scope of this Agreement or any provision hereof.

4 **12. Modification.** This Agreement may not be changed, altered, waived, or modified,
5 except in writing and signed by counsel for the Parties hereto, and approved by the Court. This
6 Agreement may not be discharged except by performance in accordance with its terms or by a
7 writing signed by the Parties hereto.

8 **13. Binding.** This Agreement is binding upon, and shall inure to the benefit of, the
9 Parties hereto and their respective agents, employees, representatives, officers, directors, parents,
10 subsidiaries, assigns, heirs, executors, administrators, insurers, and successors in interest.

11 **14. No Publication.** Plaintiff and Plaintiff's Counsel will not issue press releases,
12 communicate with, or respond to any media or publication entities, publish information in any
13 manner or form, whether printed or electronic, on any medium or otherwise communicate, whether
14 by print, video, recording or any other medium, with any person or entity concerning the
15 Settlement, including the fact of the Settlement, its terms or contents and the negotiations
16 underlying the Settlement, except as shall be contractually required to effectuate the terms of the
17 Settlement as set forth herein (which includes submitting a copy of the PAGA Settlement to the
18 Court and the LWDA as part of the approval process and communicating with Settlement Group
19 Members about the Settlement upon inquiry). However, for the limited purpose of allowing
20 Plaintiff's Counsel to prove adequacy as class counsel or PAGA counsel in other actions,
21 Plaintiff's Counsel may disclose the name of the Parties in this Action and the venue/case numbers
22 of this Action (but not any other settlement details) for such purposes.

23 **15. No Unalleged Claims.** Plaintiff and Plaintiff's Counsel are not currently aware of
24 any: (a) unalleged claims in addition to, or different from, those which are finally and forever
25 settled and released against the Released Parties by this Settlement; and (b) unalleged facts or legal
26 theories upon which any claims or causes of action could be brought against Defendant, except
27 such facts and theories specifically alleged in the Operative Complaint in this Action. Plaintiff and
28 Plaintiff's Counsel further represent that, other than the instant Action, they have no current

1 intention of asserting any other claims against Defendant in any judicial or administrative forum.
2 Plaintiff and Plaintiff's Counsel further represent that they do not currently know of or represent
3 any persons who have expressed any interest in pursuing litigation or seeking any recovery against
4 Defendant. The Parties acknowledge, understand and agree that the representations described in
5 this paragraph are essential to the Agreement and that this Agreement would not have been entered
6 into were it not for this representation.

7 **16. Electronic Signatures and Counterparts.** This Agreement may be executed in
8 counterparts, and when each Party has signed and delivered at least one such counterpart, each
9 counterpart shall be deemed an original, and, when taken together with other signed counterparts,
10 shall constitute one Agreement, which shall be binding upon and effective as to all Parties. The
11 counterparts may be executed and/or transmitted electronically or by facsimile.

12 IN WITNESS WHEREOF, the parties knowingly and voluntarily executed this Private
13 Attorneys General Act Settlement Agreement and Release as of the date set forth below.

14 DATED:

PLAINTIFF JOSE ESTRADA

15
16 /s/ _____
17

18 DATED:

DEFENDANT PENSKE LOGISTICS LLC

19
20
21 By:  _____
22 Lucy Anthony
23 Vice President & Asst. General Counsel -
24 Employment Law & Compliance
25 On behalf of PENSKE LOGISTICS LLC
26
27
28

intention of asserting any other claims against Defendant in any judicial or administrative forum. Plaintiff and Plaintiff's Counsel further represent that they do not currently know of or represent any persons who have expressed any interest in pursuing litigation or seeking any recovery against Defendant. The Parties acknowledge, understand and agree that the representations described in this paragraph are essential to the Agreement and that this Agreement would not have been entered into were it not for this representation.

16. Electronic Signatures and Counterparts. This Agreement may be executed in counterparts, and when each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one Agreement, which shall be binding upon and effective as to all Parties. The counterparts may be executed and/or transmitted electronically or by facsimile.

IN WITNESS WHEREOF, the parties knowingly and voluntarily executed this Private Attorneys General Act Settlement Agreement and Release as of the date set forth below.

DATED: 6/12/2023

PLAINTIFF JOSE ESTRADA

DocuSigned by:

Jose Estrada

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DATED:

DEFENDANT PENSKE LOGISTICS LLC

By: _____

Kevonna Ahmad

Associate General Counsel

On behalf of PENSKE LOGISTICS LLC

1 **APPROVED AS TO FORM AND CONTENT:**

2 DATED: 6/12/2023

KOUL LAW FIRM

3
4
5 By: 

Nazo Koulloukian
Attorney for Plaintiff

6
7
8
9 DATED: 6/12/2023

LAW OFFICES OF SAHAG MAJARIAN II

10
11
12 By: 

Sahag Majarian, II
Attorney for Plaintiff