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Case Management Conference
12/05/2022 08:45 AM in 10B

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STK-CV-UOE-2022-0004749

Attorneys for Plaintiffs,
JOSE ESTRADA,
and all putative class members

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN JOAQUIN

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

Plaintiffs,

vs.

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

Defendants.

Case No.:

CLASS ACTION COMPLAINT FOR:

- 1. Failure to Properly Calculate and Pay Sick Leave Wages**
- 2. Failure to Timely Pay Sick Pay Wages Owed**
- 3. Failure to Provide Accurate Itemized Wage Statements**
- 4. Unlawful Business Practices
Bus & Prof. Code §17200**

JURY TRIAL DEMANDED

1 Plaintiffs JOSE ESTRADA, individually, and on behalf of all others similarly situated
2 (collectively “Plaintiffs”), alleges as follows:

3 NATURE OF THE ACTION

4 1. This is an employment class action on behalf of over 100 hourly, non-exempt employees
5 against their employer for violations of numerous wage and hour laws. Plaintiffs bring this
6 employment class action complaint on behalf of themselves, and all others similarly situated
7 against PENSKE LOGISTICS LLC, and the other Defendants DOES 1-50, inclusive, (hereafter
8 collectively “Defendant” or “Defendants”).

9 2. Defendants PENSKE LOGISTICS LLC provides transportation and distribution
10 solutions throughout California. Plaintiff JOSE ESTRADA worked for Defendants until August
11 3, 2022. Plaintiffs and the proposed class earn at or near minimum wage.

12 3. As described further below, Defendants have violated the California Labor Code by (1)
13 failing to properly calculate and pay sick leave wages (§246); (2) failing to timely pay sick pay
14 wages owed (§201, 202, 203); (3) failing to provide accurate itemized wage statements (§226,
15 1174); and (4) unlawful and unfair business practices (Bus. & Prof. Code §17200, et. seq.).

16 4. The class claims in this action are brought pursuant to Code of Civil Procedure (“CCP”)
17 §382, seeking recovery for unpaid sick leave wages, statutory and waiting time penalties,
18 injunctive and other equitable relief, interest, and reasonable attorneys’ fees and costs. Pursuant to
19 the class action procedures provided for under California law, Plaintiffs, on behalf of himself and
20 proposed Class Members (also referred to as “Class”), also seeks injunctive relief and restitution
21 of all benefits Defendants have received from their unlawful actions as alleged herein.

22 5. The “Class Period” is designated as the four-year period prior to the filing of this
23 Complaint through the date of final disposition of this action.

24 6. Defendants have treated all persons employed in California in such a way as to violate
25 California’s laws governing conditions of employment and payment of wages owed. Plaintiffs
26 assert that Defendants have knowingly and with conscious disregard of the law refused to pay the
27 Class Members all sick pay wages owed. Defendants have violated numerous Labor Code
28 provisions, as set forth herein. Class Members are owed their back sick pay, plus interest and/or

1 premiums and penalties under Business and Professions Code section 17203 to compensate Class
2 Members for the delay in receiving wages due.

3 7. Defendants, by and through their actions, have engaged in unfair competition, requiring
4 restitution to persons affected and disgorgement of profits so obtained.

5 **THE PARTIES**

6 8. Plaintiff JOSE ESTRADA is an individual who resides in California and worked for
7 Defendants until August 3, 2022.

8 9. Defendants PENSKE LOGISTICS LLC is a Delaware corporation, doing business in
9 California with the capacity to sue and to be sued and doing business, in San Joaquin County, State
10 of California. PENSKE LOGISTICS LLC exercised control over the wages, hours, and/or working
11 conditions of Plaintiffs and members of the proposed class throughout the liability period.

12 10. Defendants Does 1-50, inclusive, are sued herein under fictitious names. Their true
13 names and capacities are unknown to Plaintiffs. When their true names and capacities are
14 ascertained, Plaintiffs will amend this complaint by inserting their true names and capacities
15 herein. Plaintiffs are informed and believe, and thereon alleges, that each of the fictitiously named
16 Defendants is responsible in some manner for the occurrences herein alleged, and that the damages
17 sustained by Plaintiffs and the Class Members herein alleged were proximately caused by such
18 Doe Defendants.

19 11. Plaintiffs are informed and believes and thereon alleges that each Defendant, directly
20 or indirectly, or through agents or other persons, employed Plaintiffs and other members of the
21 Class, and exercised control over their wages, hours, and working conditions. Plaintiffs are
22 informed and believes and thereon alleges that each Defendants acted in all respects pertinent to
23 this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy
24 in all respects pertinent hereto, and the acts of each Defendants are legally attributable to the other
25 Defendants.

1 19. Defendants further failed to provide timely, accurate, itemized wage statements to
2 Plaintiffs and the aggrieved employees, as well as maintain accurate records, in accordance with
3 Labor Code §§ 226 and 1174.

4 20. Based upon the above allegations, Defendants engaged in unfair competition.

5 **CALIFORNIA CLASS ACTION ALLEGATIONS**

6 21. Plaintiffs bring this action on behalf of himself, and all other persons similarly situated,
7 to recover from Defendants for failure to comply with California wage and hour laws, and for
8 claims under Business and Professions Code § 17200.

9 22. This action has been brought and may properly be maintained as a class action
10 pursuant to the provisions of Code of Civil Procedure § 382 because the proposed class is
11 ascertainable and there is a well-defined community of interest. Plaintiffs are among in excess of
12 100 employees who have been similarly injured by Defendants' unlawful employment policies
13 and practices.

14 23. The "Relevant Time Period" or proposed "Class Period" as defined herein commences
15 four years prior to the date of filing this Complaint.

16 24. Plaintiffs bring this action on their behalf and as a class action under Cal. Code of
17 Civil Procedure §382 on behalf of the following defined groups:

18 25. Proposed Class: "All persons who are employed or have been employed by
19 Defendants in the State of California as hourly, non-exempt workers during the period of the
20 relevant statute of limitations."

21 26. Proposed Sub-classes:

22 A. All persons who are employed or have been employed by Defendants in the
23 State of California as hourly, non-exempt workers during the period of the
24 relevant statute of limitations, who were paid sick leave wages at their base
25 hourly rates of pay.

26 B. All persons who are employed or have been employed by Defendants in the
27 State of California as hourly, non-exempt workers during the period of the
28

relevant statute of limitations, who separated their employment from Defendants.

C. All persons who are employed or have been employed by Defendants in the State of California as hourly, non-exempt workers during the period of the relevant statute of limitations, who received pay for one or more pay periods.

D. All persons who are employed or have been employed by Defendants in the State of California as hourly, non-exempt workers during the period of the relevant statute of limitations, who received wages without accompanying California Sick Pay disclosures.

27. This action is brought, and may properly be maintained, as a class action under CCP §382 because there is a well-defined community of interest in the litigation, and the proposed Class and Subclasses (collectively “Class”) are easily ascertainable.

28. Numerosity: The Proposed Class is so numerous that joinder of all members is impractical. Plaintiffs are informed and believes, and on that basis alleges, that during the relevant time period, Defendants employed over 100 putative Class Members who are geographically dispersed and who satisfy the definition of the proposed Class. As such, a class action is the only available method for the fair and efficient adjudication of this controversy. Membership in the Proposed Class can be easily ascertained by an examination and analysis of employee and payroll records, among other records within Defendants’ possession and control.

29. Typicality: Plaintiffs’ claims are typical of the claims of the Class Members. Plaintiffs, like others similarly situated, were subjected to Defendants’ common, unlawful policies, practices, and procedures described above. The Plaintiffs’ positions at the company was typical of those of other Class Members. Plaintiffs’ claims are typical of the claims of each Class Member because each have sustained damages arising out of and caused by Defendants’ common course of conduct, as alleged herein. As such, Plaintiffs have the same interests in this matter as all members of the Class.

1 30. Adequacy: Plaintiffs will fairly and adequately protect the interests of the members of
2 the Class. Plaintiffs have retained counsel competent and experienced in complex class actions
3 and California labor and employment litigation.

4 31. Commonality: Common questions of law and fact exist, including but not limited to
5 the following:

- 6 i. Whether Defendants violated wage and hour laws by calculating sick leave
7 wages at employees' base hourly rates of pay;
- 8 ii. Whether Defendants violated wage and hour laws by underpaying sick leave
9 wages;
- 10 iii. Whether Defendants violated wage and hour laws by failing to pay sick pay
11 wages owed upon termination;
- 12 iv. Whether Defendants violated wage and hour laws by failing to pay all wages
13 owed twice a month;
- 14 v. Whether Defendants unlawfully failed to keep and furnish Class Members
15 with accurate, itemized records of hours worked, in violation of Labor Code
16 §§ 226 and 1174;
- 17 vi. Whether Defendants' policy and practice of failing to pay employees all
18 wages owed twice per month violates Labor Code §204(a);
- 19 vii. Whether Defendants' policy and practice of failing to pay its employees all
20 wages due within the time required by law after their employment ended
21 violates the law and warrants waiting time penalties under Cal. Labor Code
22 §§ 200, 201, 202, 203, and 204;
- 23 viii. The proper measure of damages sustained and the proper measure of
24 restitution recoverable by Plaintiffs, the Class Members, and Subclass
25 Members;
- 26 ix. Whether the Class Members are entitled to injunctive relief to enjoin any
27 further violations of wage and labor laws;
- 28

- x. Whether Defendants, and each of them, are/were participants in the alleged unlawful and/or tortious conduct;
- xi. Whether Defendants' conduct was willful and reckless;
- xii. The effect upon and the extent of injuries suffered by Plaintiffs and the Plaintiffs Class and the appropriate amount of reimbursement, restitution, damages, or other compensation; and
- xiii. What is the extent of liability of each Defendant, including DOE defendants, to each Class and Subclass member?

32. Superiority: A class action is superior to other available methods of the fair and efficient adjudication of the controversy, particularly in the context of wage and hour litigation where the damage suffered by individual plaintiffs, while not inconsequential, makes individual actions impracticable given the expenses and burdens associated with seeking individual relief. Prosecuting over 100 identical, individual lawsuits does not promote judicial efficiency or equity and consistency in judicial results. Moreover, the Class is a group of hourly, low-wage earning employees who rely on their wages and requiring that each individual take time away from work to prosecute individual actions would be inequitable and result in undue hardship for the individual Class members and their families. Public policy favors efficient resolution of their claims and uniform enforcement of California Labor laws against entities skirting their legal obligations at the expense of a vulnerable working population.

33. Manageability: Plaintiffs are informed and believe that all allegations in this Complaint are capable of being determined on the same evidence and based primarily on review of corporate records and key testimony of Defendants' corporate representatives. To the extent statistical analysis and representative evidence is necessary, Plaintiffs and proposed class counsel will employ competent experts and consultants in the field to determine and review evidence for both issues of liability and damages in a scientifically reliable manner.

34. Plaintiffs request, pursuant to Rule 1857(a)(1) and Rule 3.766 of the California Rules of Court, that the absent Class and Subclass Members be notified by the best notice practicable under the circumstances, including individual notice to all members who can be identified through

1 reasonable effort. The names and address of the Class and Subclass Members are available from
2 Defendants.

3 **FIRST CAUSE OF ACTION**
4 **FAILURE TO PROPERLY CALCULATE AND PAY SICK LEAVE WAGES**
5 **Cal. Labor Code §§246.**

6 **(All Plaintiffs Against All Defendants)**

7 35. Plaintiffs incorporate by reference in this cause of action each allegation of the
8 preceding paragraphs as though fully set forth herein.

9 36. Defendants' conduct described in this complaint violates the provisions of Labor Code
10 §§ 246.

11 37. Employers must calculate paid sick leave for non-exempt employees in one of two
12 ways:

13 A. Paid sick time for nonexempt employees shall be calculated in the same
14 manner as the regular rate of pay for the workweek in which the employee
15 uses paid sick time, whether or not the employee actually works overtime in
16 that workweek; [or]

17 B. Paid sick time for nonexempt employees shall be calculated by dividing the
18 employee's total wages, not including overtime premium pay, by the
19 employee's total hours worked in the full pay periods of the prior 90 days of
20 employment.

21 Labor Code § 246 (l)

22 38. Plaintiffs and aggrieved employees were paid sick leave wages at their base hourly
23 rates of pay, which is less than required under either of the two alternative methods of
24 calculation provided by Labor Code section 246(l). Accordingly, Defendants have underpaid
25 sick pay wages.

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Cal. Labor Code §§ 201, 202, 203
(All Plaintiffs Against All Defendants)

43. As a result of these practices, Employees were underpaid for all sick wages owed, and this underpayment resulted in a failure to pay all wages owed twice per month.

Cal. Labor Code §§ 226, 1174
(All Plaintiffs Against All Defendants)

44. Plaintiffs incorporate by reference in this cause of action each allegation of the preceding paragraphs as though fully set forth herein.

1 45. Defendants knowingly and intentionally failed to provide timely, accurate, itemized
2 wage statements to Plaintiffs and the aggrieved employees, as well as maintain accurate records, in
3 accordance with Labor Code §§ 226 and 1174. The statements provided to Plaintiffs and aggrieved
4 employees have not accurately reflected the accurate rate of pay for sick wages. Such failures
5 caused injury to Plaintiffs and others, by, among other things, impeding them from knowing the
6 sick wages to which they are and were entitled.

7 46. California Labor Code § 226(a) provides that, at the time of each payment of wages,
8 an employer shall provide each employee with a wage statement itemizing, among other things,
9 the total hours worked by the employee in the pay period, and all applicable hourly rates in effect
10 during the pay period, the corresponding number of hours worked at each hourly rate by the
11 employee, and the true legal name of the entity that is the employer.

12 47. California Labor Code § 226(e) provides that an employee suffering injury as a result
13 of a knowing and intentional failure by an employer to comply with Labor Code § 226(a) is entitled
14 to recover the greater of his or her actual damages or a penalty of \$50 for the initial pay period in
15 which a violation occurs and \$100 per employee for each violation in a subsequent pay period (up
16 to a maximum of \$4,000), in addition to attorneys' fees and costs.

17 48. Plaintiffs and the Class Members are therefore entitled to the damages and penalties,
18 plus attorneys' fees and costs, provided for under Labor Code §§ 226(e) and (g). Pursuant to Labor
19 Code § 226(g), Plaintiffs and the Class Members are also entitled to and seek injunctive relief
20 requiring Defendants to comply with Labor Code 226(a).

21 49. Labor Code § 1174.5 provides that "[a]ny person employing labor who willfully fails
22 to maintain the records required by subdivision (c) of Section 1174 or accurate and complete records
23 maintained by subdivision (d) of Section 1174, or to allow any member of the commission or
24 employees of the division to inspect records pursuant to subdivision (b) of Section 1174, shall be
25 subject to a civil penalty of five hundred dollars (\$500)."

26 50. Plaintiffs allege on information and belief that Defendants knowingly and intentionally
27 failed to furnish the Class Members with accurate itemized statements for each pay period that they
28 worked and failed to maintain accurate payroll records of the Class Members as mandated by Labor

1 Code §§ 226 and 1174. As such, the Class Members are entitled to civil penalties and an award of
2 costs and attorney's fees under § 226(e). In addition, the Class Members are entitled to recover civil
3 penalties under § 1174.5.

4 **FOURTH CAUSE OF ACTION**
5 **UNFAIR BUSINESS PRACTICES IN VIOLATION OF**
6 **California Business and Professions Code section 17200, et seq.**
7 **(All Plaintiffs Against All Defendants)**

8 51. Plaintiffs incorporate by reference in this cause of action each allegation of the
9 preceding paragraphs as though fully set forth herein.

10 52. Defendants knowingly committed, and upon information and belief continue to
11 commit, ongoing unlawful business practices within the meaning of the UCL, including, but not
12 limited to unlawful practices as described in the causes of action articulated above, and hereby
13 incorporated herein.

14 53. Plaintiffs lost money and property as a result of Defendants' unlawful business
15 practices described above.

16 54. Pursuant to the UCL, Plaintiffs and all Class Members are entitled to restitution of
17 money or property acquired by Defendants by means of such unlawful business practices, in
18 amounts not yet known, but to be ascertained at trial.

19 55. Pursuant to the UCL, Plaintiffs and Class Members are entitled to injunctive relief
20 against Defendants' ongoing unlawful business practices. If an injunction does not issue enjoining
21 Defendants from engaging in the unlawful business practices described above, Plaintiffs and the
22 general public will be irreparably injured.

23 56. Plaintiffs have no plain, speedy, and adequate remedy at law. Defendants, if not
24 enjoined by this Court, will continue to engage in the unlawful business practices described above
25 in violation of the UCL, in derogation of the rights of Plaintiffs and Class Members and of the
26 general public.

27 57. Plaintiffs' success in this action will result in the enforcement of important rights
28 affecting the public interest by conferring a significant benefit upon the general public.

58. Defendants' numerous violations of local and California law, as well as the other statutory and regulatory violations alleged herein, constitute unlawful business actions and practices in violation of Business and Professions Code § 17200, et seq.

59. Pursuant to Business and Professions Code § 17200, et seq., Plaintiffs and the Class Members are entitled to restitution of unpaid wages, among other relief alleged herein, that were withheld and retained by Defendants during a period that commences four years prior to the filing of this action. Plaintiffs are further entitled to a permanent injunction requiring Defendants to comply with all provisions of California labor law, including properly paying the lawful rate of pay for sick pay, complying with California sick pay requirements, maintaining accurate wages statements and payroll records, in addition to an award of attorneys' fees and costs pursuant to Code of Civil Procedure § 1021.5 and other applicable law, and costs.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of himself and the Proposed Class, request judgment and the following specific relief against Defendants as follows:

- A. That the Court determine that this action may be maintained as a class action under Code of Civil Procedure § 382;
- B. Provision of class notice to all members of the Class;
- C. That Defendants are found to have violated the above-referenced provisions of the Labor Code, CCR and IWC Wage Order as to Plaintiffs, Class Members and relevant subclass Members;
- D. For compensatory damages, in an amount according to proof at trial, with interest thereon;
- E. For compensation for not being paid all sick leave wages owed;
- F. For compensation for not being paid all wages owed twice per month;
- G. For compensation for not being paid all wages owed upon termination;
- H. That Defendants' actions are found to be willful and/or in bad faith to the extent necessary under §§ 201, 202, 203, and 558 of the California Labor Code for

1 willful failure to pay all compensation owed at the time of separation to
2 Plaintiffs and Class Members no longer employed by Defendants;

3 I. That Plaintiffs and Class Members receive penalties for Defendants' violation
4 of §226 and 1174 of the California Labor Code for willful failure to provide
5 and maintain the required accurate and itemized wage statements;

6 J. That Plaintiffs and Class Members receive an award in the amount of unpaid
7 wages owed, including interest thereon, and penalties as provided in the Labor
8 Code, CCR and Wage Order, including under Labor Code §§ 203, 510, and
9 558, subject to proof at trial;

10 K. That Plaintiffs and Class Members receive damages pursuant to §§248.5 in
11 addition to reasonable attorneys' fees, and costs of suit pursuant to Labor Code
12 § 218.5 and CCP 1021.5;

13 L. That Defendants be ordered to pay restitution to Plaintiffs and Class Members
14 for amounts acquired through Defendants' unlawful activities pursuant to
15 Business and Professions Code §§ 17200-05 and enjoined to cease and desist
16 from unlawful and unfair activities in violation of California Business and
17 Professions Code § 17200 et. seq.;

18 M. That Plaintiffs and Class Members receive an award of reasonable attorneys'
19 fees and costs pursuant to Code of Civil Procedure §1021.5, Labor Code §226,
20 218.5, and 1194 and/or applicable laws;

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1 N. That the Court issue declaratory relief that Defendants' challenged policies are
2 unlawful; and

3 O. That the Court order further relief, in law and equity, as it deems appropriate
4 and just.
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6 DATED: June 9, 2022

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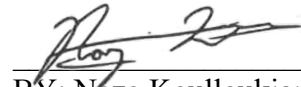
8 BY: Nazo Koulloukian, Esq.
9 Attorneys for Plaintiffs JOSE ESTRADA
10 and putative class members
11

12 ***DEMAND FOR JURY TRIAL***
13

14 Plaintiffs, on behalf of himself and the putative class, hereby demands trial by jury to the
15 full extent permitted by law.
16

17 DATED: June 9, 2022

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18 

19 BY: Nazo Koulloukian, Esq.
20 Attorneys for Plaintiffs JOSE ESTRADA
21 and putative class members
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