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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **FOR THE COUNTY OF ALAMEDA**

11 James Milam, as a Private Attorney General
12 on Behalf of the State of California,

13 Plaintiff,

14 v.

15 Penske Logistics LLC; Penske Truck Leasing
16 Co., L.P.; and Does 1 through 20, inclusive,

17 Defendants.

Case No.: **24CV096654**

REPRESENTATIVE ACTION
COMPLAINT FOR:

VIOLATION OF THE CALIFORNIA
LABOR CODE PRIVATE ATTORNEYS
GENERAL ACT OF 2004 (CAL. LABOR
CODE §§ 2698, *ET SEQ.*)

Jury Trial Demanded

ELECTRONICALLY FILED
Superior Court of California,
County of Alameda
10/22/2024 at 03:12:38 PM
By: Milagros Cortez,
Deputy Clerk

1 Plaintiff James Milam, as a Private Attorney General on Behalf of the State of
2 California, alleges as follows:

3 **NATURE OF ACTION AND INTRODUCTORY STATEMENT**

4 1. Plaintiff James Milam (“Plaintiff”) brings this representative action against
5 Defendant Penske Logistics LLC, Defendant Penske Truck Leasing Co., L.P., and Does 1
6 through 20, inclusive (collectively, “Defendants”), on behalf of himself individually and as a
7 Private Attorney General on behalf of the State of California. Plaintiff seeks to recover civil
8 penalties for all California-based aggrieved employees during the “Relevant Time Period”
9 (defined as one year before the date Plaintiff gave notice of these claims to the California
10 Labor and Workforce Development Agency (“LWDA”) until the date of commencement of
11 trial) who incurred wage and hour violations and losses as hereinafter described.

12 2. Defendant Penske Logistics LLC is a Delaware corporation and provides
13 supply chain management and logistics solutions to leading brands around the World, which
14 provides employment to employees in California.

15 3. Defendant Penske Truck Leasing Co., L.P. wholly owns Defendant Penske
16 Logistics LLC and is a leading transportation services provider that operates and maintains a
17 fleet of approximately 438,000 vehicles and offers full-service truck leasing, contract fleet
18 maintenance, commercial and consumer truck rentals, and used truck sales, which provides
19 employment to employees in California.

20 4. On January 18, 2024, Plaintiff gave notice of these claims to the California
21 Labor and Workforce Development Agency (“LWDA”) and to the agent for service of
22 process for each Defendant. Plaintiff has not received a response from the LWDA
23 indicating that it intends to investigate these claims. Accordingly, Plaintiff has exhausted
24 all notice requirements under the PAGA. Plaintiff asserts claims for civil penalties as a
25 representative of the State of California, as authorized by the Private Attorneys General Act
26 of 2004 (“PAGA”), and to the extent permitted by law, on behalf of aggrieved employees
27 who held the positions identified herein and suffered one or more of the violations alleged.
28 Labor Code §§ 2698, *et seq.*

1 5. Through this action, Plaintiff alleges that Defendants have engaged in a
2 systematic pattern of wage and hour violations under the California Labor Code and Industrial
3 Welfare Commission (“IWC”) Wage Orders, all of which contribute to Defendants’ deliberate
4 unfair competition.

5 6. Plaintiff is informed and believes, and thereon alleges, that during the Relevant
6 Time Period, Defendants have increased their profits by violating state wage and hour laws
7 by, among other things:

- 8 (a) Failing to provide legally compliant meal periods or compensation in lieu
9 thereof;
- 10 (b) Failing to provide legally compliant rest breaks or provide compensation
11 in lieu thereof;
- 12 (c) Failing to timely pay minimum, regular, and/or overtime wages for all
13 hours worked;
- 14 (d) Failing to provide accurate, itemized wage statements;
- 15 (e) Failing to timely pay all final wages; and
- 16 (f) Failure to maintain accurate records.

17 7. Plaintiff brings this representative action seeking monetary relief against
18 Defendants on behalf of himself and all aggrieved employees to recover, among other things,
19 penalties, attorneys’ fees, costs, and expenses pursuant to the PAGA. 7, 510, 512, 558, 1174,
20 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, and 1199.

21 **JURISDICTION AND VENUE**

22 8. The monetary relief sought by Plaintiff exceeds the minimal jurisdictional
23 limits of the Superior Court and will be established according to proof at trial.

24 9. This Court has jurisdiction over this action pursuant to the California
25 Constitution, Article VI, § 10, which grants the Superior Court original jurisdiction in all
26 causes except those given by statutes to other courts. The statutes under which this action is
27 brought do not specify any other basis for jurisdiction.

28 10. This Court has jurisdiction over all Defendants because, upon information and

1 belief, they are citizens of California, have sufficient minimum contacts in California or
2 otherwise intentionally avail themselves of the California market so as to render the exercise
3 of jurisdiction over them by the California courts consistent with traditional notions of fair
4 play and substantial justice.

5 11. Venue is proper in this Court because, upon information and belief, Defendants
6 reside, transact business or have offices in this county and the acts and omissions alleged
7 herein took place in this county.

8 **THE PARTIES**

9 12. Plaintiff is a citizen of California. Plaintiff was employed by Defendants as a
10 Material Handler during the Relevant Time Period in California.

11 13. Plaintiff is informed and believes, and thereon alleges, that Defendants at all
12 times hereinafter mentioned, were and are employers as defined in and subject to the Labor
13 Code and IWC Wage Orders, whose employees were and are engaged throughout this county
14 and the State of California.

15 14. Plaintiff is unaware of the true names or capacities of the Defendants sued
16 herein under the fictitious names DOES 1 through 20 but will seek leave of this Court to
17 amend this Complaint and serve such fictitiously named Defendants once their names and
18 capacities become known.

19 15. Plaintiff is informed and believes and thereon alleges, that DOES 1 through 20
20 are or were the partners, agents, owners, shareholders, managers, or employees of Defendants
21 at all relevant times.

22 16. Plaintiff is informed and believes, and thereon alleges, that each Defendants
23 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a
24 joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each
25 Defendants are legally attributable to the other Defendants. Furthermore, defendants in all
26 respects acted as the employer and/or joint employer of Plaintiff and the aggrieved employees.

27 17. Plaintiff is informed and believes, and thereon alleges, that each and all of the
28 acts and omissions alleged herein were performed by, or are attributable to, Defendants and/or

DOES 1 through 20, acting as the agent or alter ego for the other, with legal authority to act on the other's behalf. The acts of any and all Defendants were in accordance with, and represent, the official policy of Defendants.

18. At all relevant times, Defendants, and each of them, acted within the scope of such agency or employment, or ratified each and every act or omission complained of herein. At all relevant times, Defendants, and each of them, aided and abetted the acts and omissions of each and all the other Defendants in proximately causing the damages herein alleged.

19. Plaintiff is informed and believes, and thereon alleges, that each of said Defendants are in some manner intentionally, negligently or otherwise responsible for the acts, omissions, occurrences and transactions alleged herein.

GENERAL ALLEGATIONS

20. At all relevant times mentioned herein, Defendants employed Plaintiff and other aggrieved employees as non-exempt employees.

21. Plaintiff was employed in a non-exempt position by Defendants during the Relevant Time Period.

22. Defendants continue to employ non-exempt employees throughout California.

23. Plaintiff is informed and believes, and thereon alleges, that at all times herein mentioned, Defendants were advised by skilled lawyers, employees and other professionals who were knowledgeable about California's wage and hour laws, employment and personnel practices and the requirements of California law.

24. Through this action, Plaintiff alleges that Defendants have engaged in a systematic pattern of wage and hour violations under the California Labor Code and IWC Wage Orders.

25. Plaintiff is informed and believes, and thereon alleges, that Defendants failed to provide Plaintiff and other aggrieved employees timely, uninterrupted, off-duty meal periods of no less than thirty minutes for each period of five hours worked. Plaintiff and other aggrieved employees would also often be required to work through meal periods or would be otherwise interrupted during their meal periods.

1 26. Plaintiff is informed and believes, and thereon alleges, that Defendants knew
2 or should have known that Plaintiff and other aggrieved employees were entitled to receive
3 all required meal periods or payment of one (1) additional hour of pay at Plaintiff and other
4 aggrieved employees' regular rate of pay when they did not receive a timely meal period. In
5 violation of the Labor Code and IWC Wage Orders, Plaintiff and other aggrieved employees
6 did not receive all timely meal periods or payment of one (1) additional hour of pay at Plaintiff
7 and other aggrieved employees' regular rate of pay when they did not receive a timely,
8 uninterrupted meal period.

9 27. Upon information and belief, Defendants failed to provide Plaintiff and other
10 aggrieved employees timely, uninterrupted, on-the-clock rest period of no less than ten
11 minutes for every four hours worked, or every major fraction thereof. Defendants also
12 routinely failed to provide Plaintiff and other aggrieved employees with a second rest period
13 for shifts lasting longer than six hours, or a third rest period for shifts lasting longer than ten
14 hours. These policies, among others, have resulted in a denial of these employees' rights to a
15 ten-minute rest period in violation of California law.

16 28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew
17 or should have known that Plaintiff and other aggrieved employees were entitled to receive
18 all rest breaks or payment of one (1) additional hour of pay at Plaintiff and other aggrieved
19 employees' regular rate of pay when a rest break was missed. In violation of the Labor Code
20 and IWC Wage Orders, Plaintiff and other aggrieved employees did not receive all rest breaks
21 or payment of one (1) additional hour of pay at Plaintiff and other aggrieved employees'
22 regular rate of pay when a rest break was missed.

23 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew
24 or should have known that Plaintiff and other aggrieved employees were entitled to receive
25 wages for all hours worked and that they were not receiving all wages earned for work that
26 was required to be performed. In violation of the Labor Code and IWC Wage Orders, Plaintiff
27 and other aggrieved employees were not paid wages (including minimum wages and overtime
28 wages) when Defendants required Plaintiff and other aggrieved employees to work off-the-

1 clock. For example, Plaintiff and other aggrieved employees' workloads could not be
2 reasonably completed within their scheduled hours, and Defendants directed, pressured,
3 compelled, and/or otherwise coerced Plaintiff and other aggrieved employees to regularly
4 perform their job duties while clocked out for their meal periods, and Defendant improperly
5 considered time spent by Plaintiff and other aggrieved employees working through meal
6 periods as non-compensable and failed to provide any renumeration.

7 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew
8 or should have known that Plaintiff and other aggrieved employees were entitled to receive
9 wages for all overtime hours worked and that they were not receiving all wages earned for
10 work that was required to be performed. In violation of the Labor Code and IWC Wage
11 Orders, Plaintiff and other aggrieved employees were not paid overtime wages at the correct
12 regular rate when Defendants failed to include all bonuses in their regular rate calculation and
13 failed to pay all bonuses earned.

14 31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew
15 or should have known that Plaintiff and other aggrieved employees were entitled to receive
16 itemized wage statements that accurately showed their gross and net wages earned, inclusive
17 dates of pay periods, total hours worked, and all applicable hourly rates in effect and the
18 number of hours worked at each hourly rate in accordance with California law. In violation
19 of the Labor Code, Plaintiff and other aggrieved employees were not provided with accurate
20 itemized wage statements.

21 32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew
22 or should have known that Defendants were required to maintain accurate and complete
23 records. In violation of the Labor Code, Defendants failed to accurately record employee
24 hours worked and/or paid including wages owed for off-the-clock time and meal and rest
25 premiums.

26 33. Plaintiff is informed and believes, and thereon alleges, that Defendants knew
27 or should have known that Defendants were required to pay all wages to Plaintiff and other
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1 aggrieved employees at the separation of their employment but, in violation of the Labor
2 Code, failed to do so.

3 34. Plaintiff is informed and believes, and thereon alleges, that Defendants knew
4 or should have known they had a duty to compensate Plaintiff and other aggrieved employees,
5 and Defendants had the financial ability to pay such compensation but willfully, knowingly
6 and intentionally failed to do so all in order to increase Defendants' profits.

7 **FIRST CAUSE OF ACTION**

8 **ENFORCEMENT OF LABOR CODE § 2698 *ET SEQ.* ("PAGA")**

9 35. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above
10 as though fully set forth herein.

11 36. Pursuant to Labor Code § 2699(a), any provision of the Labor Code that
12 provides for a civil penalty to be assessed and collected by the Labor and Workforce
13 Development Agency ("LWDA") or any of its departments, divisions, commissions,
14 boards, agencies or employees for violation of the code may, as an alternative, be recovered
15 through a civil action brought by an aggrieved employee on behalf of themselves or herself
16 and other current or former employees pursuant to the procedures specified in Labor Code
17 § 2699.3.

18 37. For all provisions of the Labor Code except those for which a civil penalty
19 is specifically provided, Labor Code § 2699(f) imposes upon Defendants a penalty of one
20 hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial
21 violations and two hundred dollars (\$200.000) for each aggrieved employee per pay period
22 for each subsequent pay period in which Defendants violated these provisions of the Labor
23 Code.

24 38. Defendants' conduct with respect to Plaintiff and other aggrieved employees
25 violates numerous Labor Code sections including, but not limited to, the following:

- 26 a. Violation of Labor Code §§ 218, 510, 1194, 1194.2, 1197, 1197.1, 1198,
27 and 1199(c) for failure to pay all wages for all hours worked, including
28 minimum, regular, and overtime wages;

- b. Violation of Labor Code §§ 226.7 and 512 for failure to provide meal periods or compensation in lieu thereof;
- c. Violation of Labor Code § 226.7 for failure to authorize or permit rest breaks or provide compensation in lieu thereof;
- d. Violation of Labor Code § 226 for failure to provide accurate, itemized wage statements;
- e. Violation of Labor Code §§ 201-204, 256, 1198, and 2699 for failure to timely pay all wages due during and upon termination of employment; and
- f. Violation of Labor Code §§ 226, 1174, and 1174.5 for failure to maintain accurate and complete records.

39. Plaintiff is an “aggrieved employee” because he was employed by the alleged violator and had one or more of the alleged violations committed against him, and therefore are properly suited to represent the interests of all other aggrieved employees.

40. Plaintiff has exhausted the procedural requirements under Labor Code § 2699.3 as to Defendants and is therefore able to pursue a claim for penalties on behalf of themselves and all other aggrieved employees under PAGA.

41. Pursuant to Labor Code §§ 2699(a), 2699.3 and 2699.5, Plaintiff is entitled to recover civil penalties for violations of the Labor Code sections cited above.

42. For bringing this action, Plaintiff is entitled to attorney’s fees and costs incurred herein.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on his own behalf and on behalf of all other aggrieved employees, prays for relief and judgment against Defendants, jointly and severally, as follows:

1. For civil penalties against Defendants on behalf of all aggrieved employees;
2. For reasonable attorney’s fees and costs of suit to the extent permitted by law, including pursuant to California Labor Code §§ 2699(g) and California Code of Civil Procedure § 1021.5; and

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3. For such other relief as the Court deems just and proper.

DATED: October 22, 2024

Lebe Law, APLC

By: 
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