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VIA ELECTRONIC SUBMISSION VIA CERTIFIED MAIL TO OPPOSING PARTY

California Labor and Workforce Development Agency
Attn: PAGA Administrator
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102

Re: Shalynn Donahue et al. adv. Penske Truck Leasing Co., LP

PAGA Notice Pursuant to California Labor Code section 2699.3, et seq.

Dear Sir/Madam:

This firm represents Shalynn "Shay" Donahue, Cosme Muñoz, Joel Hernández, Jr. (hereinafter "Plaintiffs") and all other aggrieved employees who intend to file a lawsuit against Penske Truck Leasing Co., LP (hereinafter "Defendant") with regard to violations of the California Labor Code committed by Defendant. This letter shall serve as notice, and a request, pursuant to California Labor Code section 2699.3, et seq. (Private Attorneys General Act of 2004 (hereinafter "PAGA")), that your agency investigate the alleged violations by Defendant described herein against Plaintiffs and other current and/or former employees. If the agency does not intend to investigate the alleged violations described herein, we respectfully request that the agency specifically notify our office of the same at your earliest possible opportunity.

I. Statement of Specific Provisions of the Labor Code Alleged to Have Been Violated

The above-mentioned civil action will be brought by Plaintiffs against Defendant for violations of California Labor Code sections 201-203, 204, 226(a), 510, 1194, 1197, 1197.1, 1198, 2802, 98.6, 1102.5, and 232.5.

II. Facts and Theories in Support of Alleged Violations

Defendant is a Delaware limited partnership engaged in the business of truck rental and leasing and related services. Throughout the relevant time period, Defendant employed Plaintiffs and other aggrieved workers in the State of California at its Woodland, CA location in Yolo County. Plaintiff were employed by Defendant as repair technicians that repair box trucks, Plaintiff Muñoz as a painter from at least 2019. Plaintiffs were non-exempt employee pursuant to the IWC Wage Order 9 and the California Labor Code. However, throughout Plaintiff's employment with Defendant, Plaintiff was subjected to unlawful, uniform, and systematic practices that resulted in the violation of Plaintiff's rights as follows:

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1. Failure to Compensate for Preparation Time: Throughout Plaintiffs' employment, from 2019 through October 2023. Defendant has required Plaintiffs and their co-workers to show up early to get ready, get dressed, and put on uniforms, taking approximately 15 minutes. This mandatory preparation time before regular hours of work has not been compensated.

Pursuant to IWC Wage Order 9 Section 2(H), "Hours worked" means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so. The California Court of Appeal has recognized in *Sheppard v. North Orange County Regional Occupational Program* [191 Cal. App. 4th 289 (Cal. Ct. App. 2010)] that preparation time required as part of the job should be compensated.

By failing to compensate Plaintiffs and other aggrieved employees for this mandatory preparation time, Defendant has violated California Labor Code sections 510, 1194, 1197, 1197.1, and 1198, which require the payment of minimum wages for all hours worked and overtime wages for hours worked in excess of 8 hours in a workday or 40 hours in a workweek.

2. Failure to Provide and Maintain Necessary Tools and Equipment: From the start of Plaintiffs' employment, Defendant failed to provide complete tools necessary for Plaintiffs and other aggrieved employees to perform their job duties. As a result, Plaintiffs and other aggrieved employees were compelled to purchase and provide their own tools to complete their assigned tasks.

IWC Wage Order 9 Section 9(B) states that when tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two times the minimum wage may be required to provide and maintain hand tools and equipment customarily required by the trade or craft.

Plaintiffs' wages were never two times the minimum wage provided in IWC Wage Order 9 ($\$16 \times 2 = \$32.00 > \$27.29$, Plaintiffs' wages). Therefore, Defendant was required to provide and maintain all necessary tools and equipment for Plaintiffs and other similarly situated employees.

By failing to provide necessary tools and equipment, and by failing to compensate or reimburse employees for the purchase and maintenance costs of these tools, Defendant has violated California Labor Code Section 2802, which requires employers to indemnify employees for necessary expenditures incurred in the discharge of their duties.

3. Failure to Compensate for Lost/Missing/Stolen Tools: On or about January 17, 2023, upon returning from medical leave, Plaintiff Donahue discovered that more than half of his tools were missing from the company premises where he was required to leave his toolbox. Plaintiff Donahue reported this matter to manager Juan Torres, who instructed him to "use the ones you have or can bring to work for now" until new tools could be provided.

To date, Defendant has failed to compensate, reimburse, or replace Plaintiff Donahue's missing tools. Defendant has also failed to take appropriate action, such as reporting the incident to the police or conducting an investigation.

This failure to address the loss of employee tools and to provide compensation or replacement violates California Labor Code section 2802, which requires employers to indemnify employees for losses incurred in the direct consequence of the discharge of their duties.

4. **Retaliation and Harassment:** Beginning around February or March 2023, Plaintiff Donahue witnessed his co-worker, Cosme Muñoz, being confronted by management after Cosme protested about California's law on tools and equipment. Subsequently, on October 18, 2023, Defendant held a meeting informing Plaintiffs and their co-workers that they no longer needed to bring their own tools. Following this meeting, Plaintiff Donahue and his co-workers began experiencing what they perceived as retaliation, including being split up from their shared shift under the guise of *"efficiency times and the amount of techs we have on our shift."*

Plaintiffs reported this retaliation/harassment to Allison Brown, the Area HR Representative, for speaking as a group about their concerns.

These actions by Defendant potentially violate California Labor Code sections:

- a. 98.6, which prohibits retaliation against employees for filing complaints with the Labor Commissioner or exercising rights under the Labor Code;
- b. 1102.5, which protects employees who report violations of state or federal laws or regulations to government agencies, law enforcement, or supervisors; and
- c. 232.5, which prohibits retaliation against employees for disclosing or discussing information about the employer's working conditions.

5. **Inaccurate Wage Statements:** As a result of Defendant's failure to properly compensate Plaintiffs and other aggrieved employees for all hours worked, including preparation time and time spent using personal tools, Defendant has failed to provide accurate itemized wage statements as required by California Labor Code section 226(a).
6. **Waiting Time Penalties:** Defendant's failure to pay all wages due, including compensation for preparation time and reimbursement for personal tools, extends to employees who have separated from employment with Defendant. This failure to pay all wages due upon separation violates California Labor Code sections 201-203, which require timely payment of all wages due upon termination or resignation.

Based on the facts alleged above and such other facts that Plaintiffs might determine through the discovery process, Plaintiffs allege that Defendant's uniform and consistent policies and practices have resulted in the systematic violation of the California Labor Code sections as alleged:

1. California Labor Code sections 510, 1194, 1197, 1197.1, and 1198: Plaintiffs allege that Defendant failed to pay legally mandated regular, minimum, and/or overtime wages for hours worked, including mandatory preparation time and time spent using personal tools.

2. California Labor Code section 2802: Plaintiffs allege that Defendant failed to indemnify employees for necessary expenditures incurred in the discharge of their duties, specifically the purchase and maintenance of personal tools required for their work
3. California Labor Code sections 201-203 and 204: Plaintiffs allege that Defendant violated these sections of the California Labor Code by willfully failing to pay employees for all time worked, including preparation time and time spent using personal tools. Violations of these statutes occurred both at the time the wages in question were earned and payable and at the termination of employment.
4. California Labor Code section 226(a): Plaintiffs allege that, to the detriment and injury of its employees, Defendant knowingly and intentionally failed to provide employees with accurate itemized wage statements in accordance with California law, as the wage statements did not accurately reflect all hours worked and wages earned.
5. California Labor Code sections 98.6, 1102.5, and 232.5: Plaintiffs allege that Defendant engaged in retaliatory and harassing behavior against employees who raised concerns about labor law violations and working conditions.

As a result of the above, Defendant is liable to Plaintiffs and other current and/or former employees for their full, unpaid balance of their wages, plus waiting time penalties, plus interest thereon, attorneys' fees, and costs. Furthermore, Defendant is liable for civil penalties pursuant to California Labor Code sections 2699(f) and (g).

III. Conclusion

We provide notice pursuant to California Labor Code section 2699.3 of the Private Attorneys General Act of 2004, and specifically ask that your agency conduct an investigation as to the alleged violations described herein; or, in the alternative, if the agency does not intend to investigate the alleged violations, we ask that you issue an immediate notification letter to our office confirming the same so that we may proceed with our civil action with regard to the PAGA claims described herein against Defendant.

If you require anything further and/or have any questions, please do not hesitate to contact me. Nothing in this letter is intended to be, nor should be construed as, an admission against the interests of Shalynn Donahue, and/or other current and/or former employees, and shall not be construed as a waiver of their rights, remedies, claims, or defenses, all of which are expressly reserved.

Sincerely,

Dated: October 16, 2024

LABOR LAW ADVOCATES, APC

/s/ Justin Farahi

Justin Farahi, Esq. for SHALYNN DONAHUE, COSME MUÑOZ, JOEL HERNÁNDEZ, JR.

Carbon Copy: Penske Truck Leasing Co., LP c/o CSC- Lawyers, Agent of Service, 2710 Gateway Oaks Drive, Sacramento CA 95825