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10 on behalf of herself and all others similarly situated,

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **IN AND FOR THE COUNTY OF SAN DIEGO**

13 SHANNON NANGLE, on behalf herself and all
14 others similarly situated,

15 Plaintiffs,

16 v.

17 PENSKE LOGISTICS, LLC, a Delaware
18 corporation, and DOES 1 through 100, Inclusive,

19 Defendants.

20 CASE NO. 37-2011-00086681-CU-OE-CTL
21) CLASS ACTION COMPLAINT FOR
22) DAMAGES, INJUNCTIVE RELIEF, AND
23) RESTITUTION
24) 1) Illegal Deduction to Wages - Wage
25) Forfeiture (Cal. Labor Code §§221-222)
26) 2) Failure to Pay Overtime Wages
27) (Cal. Labor Code §1194)
28) 3) Knowing and Intentional Failure to
Provide Accurate Itemized Employee Wage
Statements (Lab. Code, §226(b))
4) Knowing and Intentional Failure to
Timely Pay Wages Due Upon Separation
from Employment (Cal. Labor Code §203)
5) Violations of the Unfair Competition
Law (Bus. & Prof. Code, §§ 17200-17208)

DEMAND FOR JURY TRIAL

1 Plaintiff SHANNON NANGLE, on behalf of herself and all others similarly situated,
2 complain and allege as follows:

3 I.

4 INTRODUCTION

5 1. This case arises out an employer's use of an automatic 30-minute meal period
6 deduction for its hourly employees, which results in illegal wage deductions and wage forfeiture
7 for an ascertainable group of hourly employed drivers employed in the State of California. The
8 use of the "auto deduction" not only results in underpayment of wages for all hours actually
9 caused and suffered to work, but also results in the failure to provide accurate itemized wage
10 statements and the failure to timely pay all wages due for employees who separate from their
11 employment with the company. The preceding applies to certain California employees currently
12 employed by, or formerly employed by PENSKE LOGISTICS, LLC, a Delaware Corporation
13 (hereinafter referred to as "PENSKE" or "Defendant") conducting business throughout the State
14 of California. The proposed Plaintiff Class consists of all California-based current and former
15 employees of Defendant who, within the last 4 years prior to the commencement of this action
16 were (1) hourly paid drivers holding a valid commercial vehicle license; (2) were assigned to
17 Defendant's non-Whirlpool delivery accounts and (3) were subject to Defendant's use of an
18 automatic 30 minute wage deduction policy.

19 2. During the class period, which is defined as four years prior to the commencement
20 of this action, Defendant implemented a uniform and systematic policy that automatically
21 deducted 30 minutes of work time from the employee's wages for shifts exceeding 6 hours in
22 length. For shifts exceeding 10 hours, Plaintiff is informed and believes, and based thereon
23 alleges, that Defendant automatically deducted an additional 30 minutes of time from the
24 employee's working hours that were otherwise eligible for hourly pay. Ostensibly, Defendant
25 implemented this policy to provide for "meal periods." But in fact, Defendant takes the position
26 that such meal periods are not required under California law, and uses the automatic deduction to
27 engage in wage theft against the Plaintiff and the proposed Plaintiff Class. The result is that
28 employees are docked up to an hour of pay from wages earned. Plaintiff was subjected to this

1 policy and lost wages as a result of it. PENSKE implemented no policy, practice or procedure
2 for Plaintiff or other affected employees to recover automatically deducted time on days during
3 the proposed Class Period, when they were not provided and did not take a continuous 30-
4 minute, duty free and uninterrupted break.

5 3. Plaintiff, on behalf of herself and all proposed members of the Plaintiff Class,
6 brings this action pursuant California Labor Code Section 221-222, 203, and 226 in order to
7 recover illegally deducted wages that resulted from Defendant's policy. Plaintiff, on behalf of
8 herself and all other proposed members of the Plaintiff Class also brings this action pursuant to
9 Business and Professions Code sections 17200-17208, seeking injunctive relief, restitution, and
10 disgorgement of all benefits Defendant enjoyed from their use of the automatic deduction policy
11 to skim employees of wages earned.

12 II.

13 JURISDICTION AND VENUE

14 4. The amount in controversy arising from the actions and statutory violations as
15 further described herein is sufficient to implicate the general jurisdiction of the Superior Court in
16 and for the County of San Diego.

17 5. Based on information and belief, and records maintained pursuant to the
18 California Secretary of State, venue as to each Defendant is proper in this judicial district,
19 pursuant to Code of Civil Procedure section 395, as Defendant is an out of state corporation,
20 conducts business, maintains an office address and operates facilities in the County of San Diego,
21 and has failed to identify any principal place of business with the California Secretary of State,
22 such that venue is proper in any county where the Defendants may be located. Further, based on
23 information and belief, some or all of the alleged harms herein occurred as putative class
24 members are employed in the County of San Diego..

25 6. On information and belief, the California Superior Court has jurisdiction in this
26 matter because there is no federal question at issue as the issues herein are based solely on
27 California statutes and law including the California Labor Code, Industrial Welfare Commission
28 Wage Orders, Code of Civil Procedure, Rules of Court, and Business and Professions Code.

1 Furthermore, the case is not appropriate for removal under the Class Action Fairness Act
2 (“CAFA”) as Plaintiff is informed and believes, and thereupon alleges that the required monetary
3 amount in controversy is not satisfied. Specifically, Plaintiff alleges that her individual claim
4 does not exceed \$74,999.00 and the individual claims of all putative class members are less than
5 the required amount in controversy necessary to invoke federal subject matter jurisdiction under
6 28 U.S.C. Section 1332. No federal controversy is alleged and, based upon information and
7 belief, the aggregate amount of all class members claim is less than \$5,000,000.00. Plaintiff
8 further alleges that, based on initial investigation, the aggregate \$5,000,000.00 damage threshold
9 cannot be established to exist as to the amount in controversy by the Defendant to a legal
10 certainty as required by federal law, and therefore does not implicate jurisdiction under 28 U.S.C.
11 Section 1332(d). Plaintiff further alleges in the affirmative that this action falls within the
12 mandatory and/or discretionary “local case or controversy” exemption from CAFA jurisdiction as
13 all class members are or were residents of the State of California.

14 III.

15 THE PARTIES

16 A. The Plaintiffs

17 7. Plaintiff SHANNON NANGLE is a resident of the State of California. At all
18 relevant times herein, Plaintiff NANGLE was employed by Defendants as a Driver with a valid
19 commercial drivers’ license and was assigned to Non-Whirlpool accounts in and around San
20 Diego County, Orange County and Los Angeles County. Plaintiff NANGLE was assigned to
21 non-Whirlpool delivery accounts by PENSKE, was paid on an hourly basis and was subject to
22 PENSKE’s automatic deduction policy. Plaintiff NANGLE lost wages for time actually spent
23 working as a result of PENSKE’s automatic deduction policy. Plaintiff NANGLE’s work time
24 statements were inaccurate in that the hours worked were deducted by at least 30 minutes per day
25 and were not reinstated by PENSKE.

26 B. The Defendants

27 8. Defendant, PENSKE LOGISTICS, LLC, a Delaware Corporation, and any
28 subsidiaries or affiliated companies, are engaged in the ownership and operation of facilities

1 throughout California. During the liability period, Defendant employed Plaintiffs and similarly
2 situated persons as PENSKE's Non-Exempt Employees within California. On information and
3 belief, PENSKE conducts business in and throughout the State of California, and has business
4 presence in the County of San Diego.

5 9. Defendant also operates many subsidiaries or affiliated companies, and is engaged
6 in the ownership and operation of facilities throughout California. During the liability period,
7 Defendant employed Plaintiffs and similarly situated persons as PENSKE's hourly paid non-
8 Whirlpool account drivers within California. On information and belief, Penske is conducting
9 business in and throughout the State of California, and has business presence in the County of
10 San Diego. Plaintiff was assigned to routes in San Diego, and worked without continuous 30
11 minute break periods, but was subject to the automatic wage deduction in any event.

12 10. The true names and capacities, whether individual, corporate, associate, or
13 otherwise, of Defendants sued here in as DOES 1 through 100, inclusive, are currently unknown
14 to Plaintiffs, who therefore sue Defendants by such fictitious names under Code of Civil
15 Procedure section 474. Plaintiff is informed and believes, and based thereon alleges, that each of
16 the Defendants designated herein as a DOE is legally responsible in some manner for the
17 unlawful acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to
18 reflect the true names and capacities of the Defendants designated hereinafter as DOES when
19 such identities become known.

20 11. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
21 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a
22 joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each
23 Defendant are legally attributable to the other Defendants.

24 IV.

25 GENERAL ALLEGATIONS

26 12. Defendant operates and, at all times during the liability period, has conducted
27 business throughout the State of California for purposes of business inventory management and
28 merchandise delivery system in California. Defendant employs non-exempt hourly employees

1 with commercial driver's license to drive PENSKE's trucks in order to deliver merchandise to
2 contracting third parties such as "BIG LOTS," "MISSION FOODS," "CVS," "LONG'S
3 DRUGS," and other entities. The proposed Plaintiff Class specifically excludes drivers who
4 were assigned to the Whirlpool appliance delivery and installation account. The employees are
5 subject to PENSKE's hourly pay rates for all hours actually caused or suffered to work.

6 13. Upon information and belief, Plaintiff alleges that she and the proposed Plaintiff
7 class were subject to Defendant's systematic use of an "automatic deduction" policy, wherein, all
8 drivers would have a minimum of 30-minutes deducted from reported work time each day so that
9 Defendant could ostensibly claim that it provided "meal periods." In truth and fact, however,
10 the policy was used to skim and illegally deduct eligible work time from employees and to
11 underpay for the amount of work performed in any given work day. This practice and policy
12 constituted an illegal scheme to engage in wage forfeiture and granted PENSKE a windfall of
13 productive work time without pay to the affected employees.

14 14. Plaintiff is informed and believes, and based thereon allege, that Defendants
15 currently employ, and during the relevant time period has employed, over 100 employees in the
16 State of California in commercial driver positions and assigned them to work as hourly
17 employees servicing non-Whirlpool accounts, such as delivery accounts for "BIG LOTS,"

18 15. During the class period, PENSKE used a computer system to record the Plaintiff
19 Class Members' time. This system automatically deducted 30 minutes from each Plaintiff Class
20 Members work time when calculating hours worked. This deduction occurred without regard to
21 whether or not a 30 minute meal period was taken and constitutes a violation of the California
22 Labor Code, appropriate regulations, and is unfair and deceptive to employees of the Defendant.
23 Additionally, Penske management instructed Plaintiff Class Members to log meal periods even if
24 the Plaintiff Class did not take a meal period. PENSKE had no policy, procedure or practice to
25 allow for the employees to recovery wages lost due to the automatic deduction policy.

26 V.

27 **CLASS ACTION ALLEGATIONS**

28 16. Plaintiff brings this action on behalf of herself and all others similarly situated as a

1 class action pursuant to section 382 of the Code of Civil Procedure. Plaintiff seeks to represent a
2 Class composed of and defined as follows:

3 Plaintiff Class:

4 All of Defendant's current and former California-based drivers,
5 specifically excluding drivers assigned to the Defendant's
6 Whirlpool Account, who were (1) employed by Defendants at any
7 time four years prior to the filing of this action through the date of
8 trial ("Relevant Time Period"); (2) were assigned to Defendants'
non-Whirlpool delivery accounts to work on an hourly basis; and
9 (4) were subject to Defendants' 30 minute automatic deduction
policy.

10 17. Plaintiff also seeks to bring this action on behalf of herself and all other similarly
11 situated persons in a sub-class of the Plaintiff Class, which is composed of and defined as
follows:

12 The Wage Deduction Sub-Class: All Plaintiff Class Members who worked
13 without taking a 30 minute duty free meal period but whose hourly wages were
automatically deducted by Defendant's "auto-deduction" policy.

14 18. Plaintiff also seeks to bring this action on behalf of herself and all other similarly
15 situated persons in a sub-class of the Plaintiff Class, which is composed of and defined as
16 follows:

17 The Overtime Subclass: All Plaintiff Class Members who worked hours eligible
18 for overtime compensation, but whose overtime pay was unpaid and/or reduced as
a result of Defendant's 30-minute "auto-deduction" policy.

19 19. Plaintiff also seeks to bring this action on behalf of herself and all other similarly
20 situated persons in a sub-class of the Plaintiff Class, which is composed of and defined as
21 follows:

22 The Wage Statement Sub-Class: All Plaintiff Class Members who, as a result of
23 Defendant's "auto-deduction" policy, received inaccurate wage statements that
understated the actual hours the employee worked.

24 20. Plaintiff also seeks to bring this action on behalf of herself and all other similarly
25 situated persons in a sub-class of the Plaintiff Class, which is composed of and defined as
26 follows:

27 The Separation Pay Subclass: All Plaintiff Class Members who did not receive all
28 wages due within 72-hours of their separation/termination from their employment
with Defendant.

1 21. Plaintiff also seeks to bring this action on behalf of herself and all other similarly
2 situated persons in a sub-class of the Plaintiff Class, which is composed of and defined as
3 follows:

4 The UCL Sub-Class: All Plaintiff Class Members who were
5 subject to the wage deduction policy and who are owed restitution
6 for hours worked without pay.

7 22. Plaintiff reserves the right under Rule 3.765(b), California Rules of Court, to
8 amend or modify the class description with greater specificity or further division into subclasses
9 or limitation to particular issues.

10 23. This action has been brought and may be properly maintained as a class action
11 under the provisions section 382 of the Code of Civil Procedure because there is a well-defined
12 community of interest in the litigation and the proposed Class is easily ascertainable.

13 **A. Numerosity**

14 24. The potential members of the Class as defined are so numerous that joinder of all
15 the members of the Class is impracticable. While the precise number of Class Members has not
16 been determined at this time, Plaintiffs are informed and believe that Defendant currently
17 employs, and during the relevant time periods employed, hundreds of employees in the State of
18 California who were subject to Defendant's auto-deduction policy and suffered wage forfeiture.

19 25. Accounting for employee turnover during the relevant periods necessarily
20 increases this number substantially. Upon information and belief, Plaintiffs allege Defendant's
21 employment records would provide information as to the number and location of all Class
22 Members. Joinder of all members of the proposed Class is not practicable, nor are the individual
23 damages sufficient to meaningfully allow for practical resolution through individualized
24 litigation.

25 **B. Commonality**

26 26. There are questions of law and fact common to the Class that predominate over
27 any questions affecting only individual Class Members. These common questions of law and
28 fact include, without limitation:

1. Whether Defendant violated California labor law by subjecting the

1 Plaintiff and the proposed Plaintiff class to an automatic deduction
2 policy without any mechanism to recover wages for time when no
3 30-minute break was provided;

4 2. Whether Defendant's auto-deduction policy resulted in the non-
5 payment or reduced payment of overtime wages for all overtime
6 hours worked;

7 3. Whether Defendant violated California labor law by failing to
8 provide accurate itemized wage statements;

9 4. Whether Defendant violated California labor law by failing to pay
10 Plaintiff Class members all timely wages due upon separation from
11 their employment with Defendant.

12 5. Whether Plaintiffs and the members of the Plaintiff Class are
13 entitled to equitable relief pursuant to Business and Professions
14 Code sections 17200, *et. seq.*

15 **C. Typicality**

16 27. The claims of the named Plaintiff is typical of the claims of the proposed Plaintiff
17 Class. Plaintiff and all members of the Class sustained injuries and damages arising out of and
18 caused by the Defendant's common course of conduct in violation of laws, regulations that have
19 the force and effect of law, and statutes as alleged herein. Plaintiff has standing to bring this
20 action and has suffered the harm, damages and lost wages alleged herein during her employment
21 with the Defendant as direct result of the auto-deduction policy. Plaintiff reasonably estimates
22 that approximately 4 days per week, her hours of work would be automatically deducted for a
23 continuous 30-minutes, when in fact, she was not provided with a 30-minute continuous break
24 period free from employer control. The result was the underpayment of wages for all hours
25 actually caused or suffered to work, including elimination or diminishment of overtime
26 compensation on qualifying shifts.

27 **D. Adequacy of Representation**

28 28. Plaintiff will fairly and adequately represent and protect the interests of the

1 members of the Class. Counsel who represent Plaintiffs are competent and experienced in
2 litigating large employment class actions.

3 **E. Superiority of Class Action**

4 29. A class action is superior to other available means for the fair and efficient
5 adjudication of this controversy. Individual joinder of all Class Members is not practicable, and
6 questions of law and fact common to the Class predominate over any questions affecting only
7 individual members of the Class. Each member of the Class has been damaged and is entitled to
8 recovery by reason of Defendant's illegal policy and/or practice of failing to pay all hourly wages
9 due and by engaging in a policy that resulted in wage forfeiture. Class action treatment will allow
10 those similarly situated persons to litigate their claims in the manner that is most efficient and
11 economical for the parties and the judicial system. Plaintiff is unaware of any difficulties that are
12 likely to be encountered in the management of this action that would preclude its maintenance as
13 a class action. Some of the damages for the violations alleged herein are small and amount to
14 just a few hundred dollars for some employees impacted by Defendant's policy and practice.
15 Without the ability to use class action procedure, the Defendant would essentially be immune
16 from engaging in collectively hundreds of thousands of dollars worth of wage skimming with no
17 employee individually having sufficient ability to retain counsel to recover said sums in a manner
18 that is economically viable.

19 **F. Manageability of Class Action**

20 30. The nature of this action and the nature of laws available to Plaintiff make use of
21 the class action format a particularly efficient and appropriate procedure to afford relief to
22 Plaintiff for the wrongs alleged herein. Specifically, the primary claims alleged turn upon
23 Defendant's own uniform, systematic practice of automatically deducting work time of at least
24 30-minutes for affected job positions without any individual scrutiny or review of whether the
25 employees actually took time off from work during their work day for a continuous,
26 uninterrupted and duty free meal period. Therefore, the propriety of the classification scheme
27 applicable to all employees holding the job titles and positions as described herein is a
28 predominant question of fact that is easily cable of being discovered through manageable devices

1 of common proof such as statistical random sampling, survey evidence based on scientific
2 principles, representative testimony, documentary evidence and common practices/procedures of
3 the Defendant in treating each of the class members as a homogeneous group in the payment of
4 their wages. Damages, if any, suffered by each member is capable of being shown by several
5 means of common proof and limited by individual showings of entitlement to recovery that can
6 be professionally administered and tailored to the facts and circumstances of the case.

7 VI.

8 CAUSES OF ACTION

9 **FIRST CAUSE OF ACTION**
10 **Illegal Wage Deduction Resulting in Wage Forfeiture**
(Labor Code §221-222)

11 31. Plaintiff incorporates all preceding paragraphs as if fully alleged herein.

12 32. Plaintiff alleges that during her employment with Defendant, she worked as an
13 hourly commercial driver for the Defendant's non-Whirlpool delivery accounts in the State of
14 California. She separated from employment in March 2010. At all relevant times, Plaintiff
15 maintained a current commercial vehicle license and was assigned delivery routes that were to be
16 paid by Defendant on an hourly wage basis. During the course of Plaintiff's employment,
17 Defendant had in place a policy, practice and procedure to automatically deduct 30-minutes from
18 total work time recorded from start to finish of Plaintiff's work day. This deduction was taken to
19 ostensibly provide drivers with a 30-minute meal period, but in fact, very few uninterrupted and
20 duty free meal periods were provided, which resulted in a loss of pay – illegally deducted by
21 Defendant from Plaintiff's total hourly work time. Over the course of her employment, Plaintiff
22 estimates that \$100's of dollars were skimmed from her wages as a result of Defendant's auto-
23 deduction policies. Defendants maintained no policy, procedure or recourse for Plaintiff and the
24 proposed Class to recover wages lost by Defendant's policy.

25 33. As a result of the unlawful acts of Defendant, Plaintiff and the proposed Plaintiff
26 Class have been deprived actually earned but unpaid wages in amounts to be determined at trial,
27 and are entitled to recovery of such amounts, plus interest thereon, attorneys' fees, and costs of
28 suit.

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**SECOND CAUSE OF ACTION
FAILURE TO PAY OVERTIME WAGES
(Labor Code § 1194)**

34. Plaintiff incorporates all preceding paragraphs as if fully alleged herein.

35. Plaintiff and members of the Plaintiff Overtime Subclass were eligible for overtime pay on qualifying shifts. As a result of the Defendant's "auto-deduction" policy, on some shifts where Plaintiff and the proposed subclass were entitled to overtime pay at a rate of 1.5x the regular hourly rate of pay, overtime was eliminated and/or reduced by 30-minutes on days when Plaintiff and the proposed subclass worked without a continuous 30-minute uninterrupted break period. For example, on a day when Plaintiff would work a shift of 8.5 hours, and not have a 30-minute continuous break period, the extra half hour of overtime eligible pay would not be paid due to Defendant's auto-deduction policy. Similarly, on days when Plaintiff might work 9 hours without a continuous 30 minute uninterrupted break period, the auto-deduction would be applied to diminish overtime compensation from one hour to only one-half hour pay at 1.5x Plaintiff's hourly rate. The amount of unpaid and skimmed overtime taken from Plaintiff and the proposed class for work performed for Defendant will be shown in an amount according to proof. Pursuant to Labor Code section 1194, the Plaintiff Class members seek the payment of all lost or diminished overtime compensation which they earned and accrued after four (4) years prior to filing of this complaint, according to proof.

36. Additionally, Plaintiff and Plaintiff Class members are entitled to attorneys' fees, and costs, pursuant to California Labor Code section 1194 and prejudgment interest.

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**THIRD CAUSE OF ACTION
Knowing and Intentional Failure to Comply With Itemized Wage Statement Provisions
(Labor Code §§226(b), 1174, 1175)**

37. Plaintiff incorporates all preceding paragraphs as if fully alleged herein.

38. Section 226(a) of the California Labor Code requires Defendant to itemize in wage statements all deductions from payment of wages and to accurately report total hours worked by Plaintiff and members of the Plaintiff Class. Defendant has knowingly and intentionally failed to comply with Labor Code section 226(a) on each and every wage statement that should have been provided to Plaintiff and members of the Plaintiff Class. Specifically,

1 Defendant knew that on any day that a driver in the proposed Plaintiff class had 30-minutes of
2 work time automatically deducted but did not in fact cease all work functions for 30-minutes in
3 length, that the employee was being illegally subject to a wage deduction for hours caused or
4 suffered to work. Defendant maintained the policy despite this knowledge and despite having no
5 policy or procedure for the employees to recover time automatically deducted.

6 39. Section 1174 of the California Labor Code requires Defendants to maintain and
7 preserve, in a centralized location, among other items, records showing the names and addresses
8 of all employees employed, payroll records showing the hours worked daily by and the wages
9 paid to its employees. Defendant has knowingly and intentionally failed to comply with Labor
10 Code section 1174. Defendant's failure to comply with Labor Code §1174 is unlawful pursuant
11 to Labor Code §1175.

12 40. IWC Wage Order 7-2001(7) requires Defendant to maintain time records
13 showing, including but not limited to, when the employee begins and ends each work period,
14 meal periods, and total daily hours worked in an itemized wage statements, and must show all
15 deductions from payment of wages, and accurately report total hours worked by Plaintiffs and the
16 members of the proposed class.

17 41. Defendant, and each of them, unlawfully placed the burden of recording work
18 time and hours on employees in the Plaintiff class, and still subjected the employees to automatic
19 deductions from working hours without justification.

20 42. As a consequence of Defendant's knowing and intentional failure to comply with
21 Labor Code section 226(a), Plaintiff and Wage Statement Subclass are entitled to actual damages
22 or penalties not to exceed \$4000 for each employee pursuant to Labor Code section 226(b),
23 together with interest thereon and attorneys' fees and costs.

24 **FOURTH CAUSE OF ACTION**
25 **Failure to Timely Pay Wages Due at Termination in Violation of**
26 **California Labor Code § 203**

26 43. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

27 44. Defendant had a consistent and uniform policy, practice and procedure of
28 willfully failing to lawfully pay the earned and unpaid overtime wages of Defendant's former

1 employees. Labor Code sections 201 and 202 requires Defendant to pay its employees all
2 wages due within 72 hours of termination of employment. Section 203 of the Labor Code
3 provides that if an employer willfully fails to timely pay such wages the employer must, as a
4 penalty, continue to pay the subject employee's wages until the back wages are paid in full or an
5 action is commenced. The penalty cannot exceed 30 days of wages.

6 45. Plaintiff and Members of the Waiting Time Subclass are no longer employed by
7 Defendant. They were either discharged from or quit Defendant's employment, but were not
8 paid all lawful wages due as a result of Defendant's use of the automatic deduction program.

9 46. Defendant willfully failed to pay LC203 Subclass Members a sum certain at the
10 time of their termination or within seventy-two (72) hours of their resignation, and failed to pay
11 those sums for thirty (30) days thereafter. Defendant knew that by using the auto-deduction
12 policy against its hourly employees that it was understating the amount of time worked and
13 wages owed to said employees on any day that 30-minute deduction was levied but for which the
14 employee continued to work. Defendant knew and has been placed on notice that such events
15 occurred and resulted in an illegal wage forfeiture, yet its policy and practices continue.

16 47. Defendant's willful failure to pay wages to the LC203 Subclass Members
17 violates Labor Code section 203 because Defendant knew wages were due to the LC203 Subclass
18 Members, but Defendant failed to pay them.

19 48. Plaintiff and Members of the "Waiting Time" Subclass are entitled to penalties
20 pursuant to Labor Code section 203, in the amount of each class member's daily wage multiplied
21 by thirty (30) days.

22 **FIFTH CAUSE OF ACTION**
23 **Violations of the Unfair Competition Law**
(Bus. & Prof. Code, §§ 17200-17208)

24 49. Plaintiff incorporates all preceding paragraphs as if fully alleged herein.

25 50. Defendant's failure to pay for all working hours, as alleged herein, constitute
26 unlawful and deceptive activity prohibited by Business and Professions Code section 17200 *et*
27 *seq.*

28 51. The actions of Defendant in failing to pay Plaintiffs and members of the Plaintiff

1 Class in a lawful manner, as alleged herein, constitute false, unfair, fraudulent and deceptive
2 business practices, within the meaning of Business and Professions Code section 17200, *et. seq.*

3 52. Plaintiff brings this cause individually and as a representative of all others subject
4 to Defendant's unlawful acts and practices.

5 53. As a result of their unlawful acts, Defendant has reaped and continue to reap
6 unfair benefits at the expense of Plaintiff, and the Class she seeks to represent. Defendant should
7 be enjoined from this activity, caused to specifically perform its obligations, and made to
8 disgorge these ill-gotten gains and restore to Plaintiff and the members of the Plaintiff Class the
9 wrongfully withheld wages and/or other monies pursuant to Business and Professions Code
10 section 17200 *et seq.* Plaintiff is informed and believes, and thereon alleges, that Defendant is
11 unjustly enriched through its use of the automatic 30 minute deduction system by not having to
12 pay wages for all time employees spend working.

13 54. Plaintiff is informed and believe, and thereon allege, that Plaintiff and members
14 of the proposed Plaintiff Class are prejudiced by Defendant's unfair trade practices by having
15 their wages skimmed by at least 30 minutes of work time on days when no 30-minute cessation
16 of work is provided.

17 55. As a direct and proximate result of the unfair business practices of Defendants,
18 and each of them, Plaintiffs, individually and on behalf of all employees similarly situated, are
19 entitled to equitable and injunctive relief, including full restitution, specific performance, and/or
20 disgorgement of all wages which have been unlawfully withheld from Plaintiffs and members of
21 the Plaintiff Class as a result of the business acts and practices herein and enjoining of Defendant
22 to cease and desist from engaging in the practices described herein.

23 56. The illegal conduct alleged herein is continuing, and there is no indication that
24 Defendant will not continue such activity into the future. Plaintiffs allege that if Defendant is not
25 enjoined from the conduct set forth in this Complaint, they will continue to fail to provide hourly
26 wages, fail to provide overtime wages for off-the-clock working while clocked out for meal
27 periods, fail to provide meal periods or appropriate compensation in lieu thereof, fail to provide
28 rest periods or appropriate compensation in lieu thereof, and will fail to pay and avoid paying

1 appropriate taxes, insurance, and unemployment withholdings.

2 57. Plaintiff further requests that the court issue a preliminary and permanent
3 injunction prohibiting Defendant from continuing to fail to pay hourly wages, require employees
4 to work off-the-clock while having time automatically deducted for meal periods that are not
5 provided.

6 VII.

7 PRAAYER FOR RELIEF

8 WHEREFORE, Plaintiff prays for judgment as follows:

- 9 1. That the Court issue an Order that this action may be maintained as a class action
10 and certify the Class and subclasses herein, appointing the named Plaintiff as
11 representative of all others similarly situated, and appointing the law firm
12 representing the named Plaintiff as counsel for the members of the Class and
13 subclasses;
- 14 2. For compensatory damages in an amount according to proof;
- 15 3. For economic damages in an amount according to proof;
- 16 4. For interest accrued to date under the California Labor Code, including under
17 Labor Code § 221;
- 18 5. For costs of suit incurred herein under the California Labor Code, including under
19 Labor Code § 221;
- 20 6. For reasonable attorneys' fees under the California Labor Code, including under
21 Labor Code § 221 and/or other applicable statute;
- 22 7. For unpaid overtime wages that were earned, but not paid in full as a result of an
23 improper deduction of work time, pursuant to Labor Code § 1194.
- 24 8. For attorneys fees pursuant to Labor Code § 1194.
- 25 9. For "waiting time penalties" under California Labor Code § 203;
- 26 10. For damages according to proof, as set forth in California Labor Code § 221;
- 27 11. For an order preliminarily and permanently enjoining Defendants from engaging
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in the practice challenged herein;

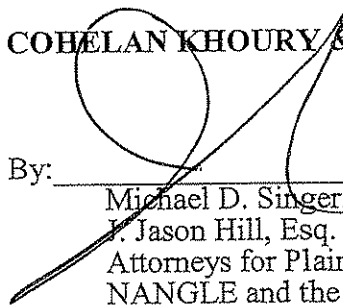
12. For an order that Defendant makes restitution to Plaintiff and the class identified herein due to its unlawful business practice as described herein, including disgorgement of their unlawfully-obtained revenues, earnings, profits, compensation and benefits, pursuant to California Business and Professions Code §§ 17203 and 17204;

13. Based on investigation, information and belief, the damages, back-wages, restitution, penalties, interest and attorneys's fees do not exceed an aggregate of \$4,999,999.99 and NANGLE's individual claim does not exceed \$74,999.99.

14. For such other and further relief that the Court may deem proper and just.

COHELAN KHOURY & SINGER

Dated: February 28, 2011

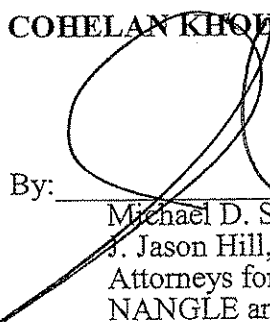
By: 
Michael D. Singer, Esq.
J. Jason Hill, Esq.
Attorneys for Plaintiff, SHANNON
NANGLE and the putative class.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial of her claims by jury to the extent authorized by law.

COHELAN KHOURY & SINGER

Dated: February 28, 2011

By: 
Michael D. Singer, Esq.
J. Jason Hill, Esq.
Attorneys for Plaintiff, SHANNON
NANGLE and the putative class.

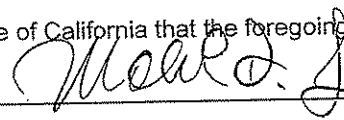
ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Michael D. Singer, Esq. (SBN 115301) COHELAN KHOURY & SINGER 605 C Street, Suite 200, San Diego California 92101 TELEPHONE NO.: 619.595.3001 FAX NO.(Optional): 619.595.3000 E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): Plaintiff Shannon Nangle		FOR COURT USE ONLY F I L E D Clerk of the Superior Court MAR 04 2011 By: C. REIN, Deputy
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO <input type="checkbox"/> CENTRAL DIVISION, COUNTY COURTHOUSE, 220 W. BROADWAY, SAN DIEGO, CA 92101 <input checked="" type="checkbox"/> CENTRAL DIVISION, HALL OF JUSTICE, 330 W. BROADWAY, SAN DIEGO, CA 92101 <input type="checkbox"/> CENTRAL DIVISION, FAMILY COURT, 1501 6TH AVE., SAN DIEGO, CA 92101 <input type="checkbox"/> CENTRAL DIVISION, MADGE BRADLEY, 1409 4TH AVE., SAN DIEGO, CA 92101 <input type="checkbox"/> CENTRAL DIVISION, KEARNY MESA, 8950 CLAIREMONT MESA BLVD., SAN DIEGO, CA 92123 <input type="checkbox"/> CENTRAL DIVISION, JUVENILE COURT, 2851 MEADOW LARK DR., SAN DIEGO, CA 92123 <input type="checkbox"/> NORTH COUNTY DIVISION, 325 S. MELROSE DR., VISTA, CA 92081 <input type="checkbox"/> EAST COUNTY DIVISION, 250 E. MAIN ST., EL CAJON, CA 92020 <input type="checkbox"/> RAMONA BRANCH, 1428 MONTECITO RD., RAMONA, CA 92065 <input type="checkbox"/> SOUTH COUNTY DIVISION, 500 3RD AVE., CHULA VISTA, CA 91910		
PLAINTIFF(S) Shannon Nangle		JUDGE Hon. Jeffrey B. Barton
DEFENDANT(S) Penske Logistics, LLC, et al.		DEPT C-69
IN THE MATTER OF A MINOR		CASE NUMBER 37-2011-00086681-CU-OE-CTL
PEREMPTORY CHALLENGE		

Michael D. Singer _____, is a party an attorney for a party in the above-entitled case and declares that Hon. Jeffrey B. Barton, the judge to whom this case is assigned, is prejudiced against the party or the party's attorney or the interests of the party or the party's attorney such that the said party or parties believe(s) that a fair and impartial trial or hearing cannot be had before such judge.

WHEREFORE, pursuant to the provisions of Code Civ. Proc. §170.6, I respectfully request that this court issue its order reassigning said case to another, and different, judge for further proceedings.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: March 3, 2011



Signature

ORDER OF THE COURT

GRANTED - This case is referred to Presiding/Supervising Department for reassignment and a notice will be mailed to counsel.

DENIED

Date: MAR 07 2011

JEFFREY B. BARTON

Judge/Commissioner/Referee of the Superior Court

FOR OFFICE USE ONLY

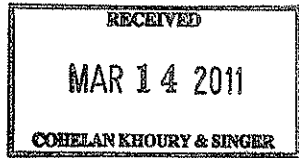
This case has been reassigned to Judge _____ per Presiding/Supervising Judge _____ on _____.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO STREET ADDRESS: 330 West Broadway MAILING ADDRESS: 330 West Broadway CITY AND ZIP CODE: San Diego, CA 92101 BRANCH NAME: Central TELEPHONE NUMBER: (619) 450-7061	FOR COURT USE ONLY
PLAINTIFF: Shannon Nangle	CASE NUMBER: 37-2011-00086681-CU-OE-CTL
DEFENDANT: Penske Logistics LLC	
Short Title: Nangle vs. Penske Logistics LLC	
NOTICE OF CASE REASSIGNMENT	

Filed : 02/28/2011

EFFECTIVE IMMEDIATELY, THE ABOVE-ENTITLED CASE HAS BEEN REASSIGNED

to Judge John S. Meyer, in Department C-61
 due to the following reason: 170.6



All subsequent documents filed in this case must include the name of the new judge and the department number on the first page immediately below the number of the case. All counsel and self-represented litigants are advised that Division II of the Superior Court Rules is strictly enforced. It is the duty of each plaintiff (and cross-complainant) to serve a copy of this notice with the complaint (and cross-complaint).

ANY NEW HEARINGS ON THIS CASE WILL BE SCHEDULED BEFORE THE NEW JUDICIAL OFFICER

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO


Central
330 West Broadway
San Diego, CA 92101

SHORT TITLE: Nangle vs. Penske Logistics LLC

CLERK'S CERTIFICATE OF SERVICE BY MAIL

CASE NUMBER:
37-2011-00086681-CU-OE-CTL

I certify that I am not a party to this cause. I certify that a true copy of NOTICE OF CASE REASSIGNMENT was mailed following standard court practices in a sealed envelope with postage fully prepaid, addressed as indicated below. The certification occurred at San Diego, California on 03/09/2011. The mailing occurred at Sacramento on 03/10/2011.

Clerk of the Court, by: , Deputy
D. Lim

JAMES J HILL
605 C STREET # 200
SAN DIEGO, CA 92101

CLERK'S CERTIFICATE OF SERVICE BY MAIL

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO	
STREET ADDRESS: 330 West Broadway	
MAILING ADDRESS: 330 West Broadway	
CITY AND ZIP CODE: San Diego, CA 92101	
BRANCH NAME: Central	
TELEPHONE NUMBER: (619) 450-7069	
PLAINTIFF(S) / PETITIONER(S):	Shannon Nangle
DEFENDANT(S) / RESPONDENT(S):	Penske Logistics LLC
NANGLE VS. PENSKE LOGISTICS LLC	
NOTICE OF CASE ASSIGNMENT	CASE NUMBER: 37-2011-00086681-CU-OE-CTL

Judge: Jeffrey B. Barton

Department: C-69

COMPLAINT/PETITION FILED: 02/28/2011

CASES ASSIGNED TO THE PROBATE DIVISION ARE NOT REQUIRED TO COMPLY WITH THE CIVIL REQUIREMENTS LISTED BELOW

IT IS THE DUTY OF EACH PLAINTIFF (AND CROSS-COMPLAINANT) TO SERVE A COPY OF THIS NOTICE WITH THE COMPLAINT (AND CROSS-COMPLAINT), THE ALTERNATIVE DISPUTE RESOLUTION (ADR) INFORMATION FORM (SDSC FORM #CIV-730), A STIPULATION TO USE ALTERNATIVE DISPUTE RESOLUTION (ADR) (SDSC FORM #CIV-359), AND OTHER DOCUMENTS AS SET OUT IN SDSC LOCAL RULE 2.1.5.

ALL COUNSEL WILL BE EXPECTED TO BE FAMILIAR WITH SUPERIOR COURT RULES WHICH HAVE BEEN PUBLISHED AS DIVISION II, AND WILL BE STRICTLY ENFORCED.

TIME STANDARDS: The following timeframes apply to general civil cases and must be adhered to unless you have requested and been granted an extension of time. General civil cases consist of all civil cases except: small claims proceedings, civil petitions, unlawful detainer proceedings, probate, guardianship, conservatorship, juvenile, and family law proceedings.

COMPLAINTS: Complaints and all other documents listed in SDSC Local Rule 2.1.5 must be served on all named defendants, and a Certificate of Service (SDSC form #CIV-345) filed within 60 days of filing.

DEFENDANT'S APPEARANCE: Defendant must generally appear within 30 days of service of the complaint. (Plaintiff may stipulate to no more than 15 day extension which must be in writing and filed with the Court.) (SDSC Local Rule 2.1.6)

DEFAULT: If the defendant has not generally appeared and no extension has been granted, the plaintiff must request default within 45 days of the filing of the Certificate of Service. (SDSC Local Rule 2.1.7)

CASE MANAGEMENT CONFERENCE: A Case Management Conference will be set within 150 days of filing the complaint.

ALTERNATIVE DISPUTE RESOLUTION (ADR): THE COURT ENCOURAGES YOU TO CONSIDER UTILIZING VARIOUS ALTERNATIVES TO TRIAL, INCLUDING MEDIATION AND ARBITRATION, PRIOR TO THE CASE MANAGEMENT CONFERENCE. PARTIES MAY FILE THE ATTACHED STIPULATION TO USE ALTERNATIVE DISPUTE RESOLUTION (SDSC FORM #CIV-359).

YOU MAY ALSO BE ORDERED TO PARTICIPATE IN ARBITRATION. IF THE CASE IS ORDERED TO ARBITRATION PURSUANT TO CODE CIV. PROC. 1411.11, THE COSTS OF ARBITRATION WILL BE PAID BY THE COURT PURSUANT TO CODE CIV. PROC. 1141.28.

FOR MORE INFORMATION, SEE THE ATTACHED ALTERNATIVE DISPUTE RESOLUTION (ADR) INFORMATION FORM (SDSC FORM #CIV-730)



SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

ALTERNATIVE DISPUTE RESOLUTION (ADR) INFORMATION

CASE NUMBER: 37-2011-00086681-CU-OE-CTL

CASE TITLE: Nangle vs. Penske Logistics LLC

NOTICE: All plaintiffs/cross-complainants in a general civil case are required to serve a copy of the following three forms on each defendant/cross-defendant, together with the complaint/cross-complaint:

- (1) this Alternative Dispute Resolution (ADR) Information form (SDSC form #CIV-730),
- (2) the Stipulation to Use Alternative Dispute Resolution (ADR) form (SDSC form #CIV-359), and
- (3) the Notice of Case Assignment form (SDSC form #CIV-721).

Most civil disputes are resolved without filing a lawsuit, and most civil lawsuits are resolved without a trial. The courts, community organizations, and private providers offer a variety of Alternative Dispute Resolution (ADR) processes to help people resolve disputes without a trial. The San Diego Superior Court expects that litigants will utilize some form of ADR as a mechanism for case settlement before trial, and it may be beneficial to do this early in the case.

Below is some information about the potential advantages and disadvantages of ADR, the most common types of ADR, and how to find a local ADR program or neutral. A form for agreeing to use ADR is attached (SDSC form #CIV-359).

Potential Advantages and Disadvantages of ADR

ADR may have a variety of advantages or disadvantages over a trial, depending on the type of ADR process used and the particular case:

Potential Advantages

- Saves time
- Saves money
- Gives parties more control over the dispute resolution process and outcome
- Preserves or improves relationships

Potential Disadvantages

- May take more time and money if ADR does not resolve the dispute
- Procedures to learn about the other side's case (discovery), jury trial, appeal, and other court protections may be limited or unavailable

Most Common Types of ADR

You can read more information about these ADR processes and watch videos that demonstrate them on the court's ADR webpage at <http://www.sdcourt.ca.gov/adr>.

Mediation: A neutral person called a "mediator" helps the parties communicate in an effective and constructive manner so they can try to settle their dispute. The mediator does not decide the outcome, but helps the parties to do so. Mediation is usually confidential, and may be particularly useful when parties want or need to have an ongoing relationship, such as in disputes between family members, neighbors, co-workers, or business partners, or when parties want to discuss non-legal concerns or creative resolutions that could not be ordered at a trial.

Settlement Conference: A judge or another neutral person called a "settlement officer" helps the parties to understand the strengths and weaknesses of their case and to discuss settlement. The judge or settlement officer does not make a decision in the case but helps the parties to negotiate a settlement. Settlement conferences may be particularly helpful when the parties have very different ideas about the likely outcome of a trial and would like an experienced neutral to help guide them toward a resolution.

Arbitration: A neutral person called an "arbitrator" considers arguments and evidence presented by each side and then decides the outcome of the dispute. Arbitration is less formal than a trial, and the rules of evidence are usually relaxed. If the parties agree to binding arbitration, they waive their right to a trial and agree to accept the arbitrator's decision as final. With nonbinding arbitration, any party may reject the arbitrator's decision and request a trial. Arbitration may be appropriate when the parties want another person to decide the outcome of their dispute but would like to avoid the formality, time, and expense of a trial.

Other ADR Processes: There are several other types of ADR which are not offered through the court but which may be obtained privately, including neutral evaluation, conciliation, fact finding, mini-trials, and summary jury trials. Sometimes parties will try a combination of ADR processes. The important thing is to try to find the type or types of ADR that are most likely to resolve your dispute. Be sure to learn about the rules of any ADR program and the qualifications of any neutral you are considering, and about their fees.

Local ADR Programs for Civil Cases

Mediation: The San Diego Superior Court maintains a Civil Mediation Panel of approved mediators who have met certain minimum qualifications and have agreed to charge \$150 per hour for each of the first two (2) hours of mediation and their regular hourly rate thereafter in court-referred mediations.

On-line mediator search and selection: Go to the court's ADR webpage at www.sdcourt.ca.gov/adr and click on the "Mediator Search" to review individual mediator profiles containing detailed information about each mediator including their dispute resolution training, relevant experience, ADR specialty, education and employment history, mediation style, and fees and to submit an on-line Mediator Selection Form (SDSC form #CIV-005). The Civil Mediation Panel List, the Available Mediator List, individual Mediator Profiles, and Mediator Selection Form (CIV-005) can also be printed from the court's ADR webpage and are available at the Mediation Program Office or Civil Business Office at each court location.

Settlement Conference: The judge may order your case to a mandatory settlement conference, or voluntary settlement conferences may be requested from the court if the parties certify that: (1) settlement negotiations between the parties have been pursued, demands and offers have been tendered in good faith, and resolution has failed; (2) a judicially supervised settlement conference presents a substantial opportunity for settlement; and (3) the case has developed to a point where all parties are legally and factually prepared to present the issues for settlement consideration and further discovery for settlement purposes is not required. Refer to SDSC Local Rule 2.2.1 for more information. To schedule a settlement conference, contact the department to which your case is assigned.

Arbitration: The San Diego Superior Court maintains a panel of approved judicial arbitrators who have practiced law for a minimum of five years and who have a certain amount of trial and/or arbitration experience. Refer to SDSC Local Rules Division II, Chapter III and Code Civ. Proc. § 1141.10 et seq or contact the Arbitration Program Office at (619) 450-7300 for more information.

More information about court-connected ADR: Visit the court's ADR webpage at www.sdcourt.ca.gov/adr or contact the court's Mediation/Arbitration Office at (619) 450-7300.

Dispute Resolution Programs Act (DRPA) funded ADR Programs: The following community dispute resolution programs are funded under DRPA (Bus. and Prof. Code §§ 465 et seq.):

- In Central, East, and South San Diego County, contact the National Conflict Resolution Center (NCRC) at www.ncrconline.com or (619) 238-2400.
- In North San Diego County, contact North County Lifeline, Inc. at www.nclifeline.org or (760) 726-4900.

Private ADR: To find a private ADR program or neutral, search the Internet, your local telephone or business directory, or legal newspaper for dispute resolution, mediation, settlement, or arbitration services.

Legal Representation and Advice

To participate effectively in ADR, it is generally important to understand your legal rights and responsibilities and the likely outcomes if you went to trial. ADR neutrals are not allowed to represent or to give legal advice to the participants in the ADR process. If you do not already have an attorney, the California State Bar or your local County Bar Association can assist you in finding an attorney. Information about obtaining free and low cost legal assistance is also available on the California courts website at www.courtinfo.ca.gov/selfhelp/lowcost.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO STREET ADDRESS: 330 West Broadway MAILING ADDRESS: 330 West Broadway CITY, STATE, & ZIP CODE: San Diego, CA 92101-3827 BRANCH NAME: Central	<i>FOR COURT USE ONLY</i> CASE NUMBER: 37-2011-00086681-CU-OE-CTL
PLAINTIFF(S): Shannon Nangle	
DEFENDANT(S): Penske Logistics LLC	
SHORT TITLE: NANGLE VS. PENSKE LOGISTICS LLC	
STIPULATION TO USE ALTERNATIVE DISPUTE RESOLUTION (ADR)	

Judge: Jeffrey B. Barton

Department: C-69

The parties and their attorneys stipulate that the matter is at issue and the claims in this action shall be submitted to the following alternative dispute resolution (ADR) process. Selection of any of these options will not delay any case management timelines.

- | | |
|---|--|
| <input type="checkbox"/> Mediation (court-connected) | <input type="checkbox"/> Non-binding private arbitration |
| <input type="checkbox"/> Mediation (private) | <input type="checkbox"/> Binding private arbitration |
| <input type="checkbox"/> Voluntary settlement conference (private) | <input type="checkbox"/> Non-binding judicial arbitration (discovery until 15 days before trial) |
| <input type="checkbox"/> Neutral evaluation (private) | <input type="checkbox"/> Non-binding judicial arbitration (discovery until 30 days before trial) |
| <input type="checkbox"/> Other (specify e.g., private mini-trial, private judge, etc.): _____ | |

It is also stipulated that the following shall serve as arbitrator, mediator or other neutral: (Name) _____

Alternate neutral (for court Civil Mediation Program and arbitration only): _____

Date: _____

Date: _____

Name of Plaintiff

Name of Defendant

Signature

Signature

Name of Plaintiff's Attorney

Name of Defendant's Attorney

Signature

Signature

If there are more parties and/or attorneys, please attach additional completed and fully executed sheets.

It is the duty of the parties to notify the court of any settlement pursuant to Cal. Rules of Court, rule 3.1385. Upon notification of the settlement, the court will place this matter on a 45-day dismissal calendar.

No new parties may be added without leave of court.

IT IS SO ORDERED.

Dated: 02/28/2011

JUDGE OF THE SUPERIOR COURT