

FILED
 Superior Court Of California,
 Sacramento
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 rsanmiguel
 By _____, Deputy
 Case Number:
 34-2021-00309849

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 8 **SUPERIOR COURT OF CALIFORNIA**
 9 **FOR THE COUNTY OF SACRAMENTO**

10 MERLE "DUKE" NEUFIELD, individually
 11 and on behalf of all other similarly situated
 12 employees,

13 Plaintiff,

14 vs.

15 PROFESSIONAL TRANSPORTATION,
 16 INC., an Indiana Corporation; and
 DOES 1 to 100, inclusive,

17 Defendants.

Case No. 34-2021-00309849

CLASS ACTION

**FIRST AMENDED COMPLAINT FOR
 DAMAGES:**

1. Failure to Pay Overtime Wages
2. Failure to Pay Minimum Wages
3. Meal Period Violations
4. Rest Period Violations
5. Wage Statement Violations
6. Waiting Time Penalties
7. Failure to Reimburse Expenses
8. Unfair Competition
9. Failure to Pay Reporting Time
10. Private Attorneys General Act

DEMAND FOR JURY TRIAL

1 Plaintiff MERLE "DUKE" NEUFIELD ("Plaintiff"), on behalf of himself and all other
2 similarly situated employees, hereby files this Complaint against Defendants PROFESSIONAL
3 TRANSPORTATION, INC., an Indiana Corporation; and DOES 1 to 100, inclusive (hereinafter all
4 collectively referred to as "Defendants"). On information and belief, Plaintiff allege the following:

5 INTRODUCTION

6 1. This is a class action and Private Attorneys General Act ("PAGA") lawsuit brought by
7 Plaintiff for failure to pay minimum and overtime wages, meal and rest period violations, failure to
8 reimburse necessary expenses, wage statement violations, failure to pay final wages, failure to reimburse
9 expenses, failure to maintain accurate records, failure to provide paid sick leave, failure to pay reporting
10 time and unfair competition.

11 JURISDICTION AND VENUE

12 2. The Sacramento County Superior Court has jurisdiction in this matter pursuant to
13 California Code of Civil Procedure section 410.10 to determine alleged violations of the California
14 Labor Code, California Business and Professions Code, and Wage Order No. 9.

15 3. Venue is proper pursuant to Civil Procedure Code §§ 395(a), 395.2 and 395.5, in that
16 Defendants reside in Sacramento County and/or are foreign entities and have not designated any county
17 in California as being where they maintain their principal offices.

18 4. Plaintiff sought permission pursuant to California Labor Code section 2699 *et seq.* to
19 pursue the claims set forth in this Complaint against Defendants as a Private Attorney General on behalf
20 of himself and other similarly situated employees. Pursuant to California Labor Code section 2699.3,
21 Plaintiff gave written notice via online submission to the Labor and Workforce Development Agency
22 ("LWDA") on approximately October 13, 2021. Plaintiff provided facts and legal bases for his claims
23 within the notice to the LWDA on all violations asserted under the Private Attorneys General Act cause
24 of action. Plaintiff also submitted the \$75.00 filing fee. The October 13, 2021 notice was also sent via
25 certified mail to Defendants on the same day. To date, the LWDA has not provided any response to
26 Plaintiff's notice correspondence. Accordingly, Plaintiff has exhausted all administrative remedies
27 pursuant to the Private Attorneys General Act ("PAGA") and may bring this action on behalf of himself
28 and all similarly situated employees, i.e., Aggrieved Employees. See Cal. Lab. Code § 2699.3(a)(2)(A),

1 (c)(3); *Caliber Bodyworks, Inc., v. Sup. Ct.*, 134 Cal. App. 4th 365, 383 n.18, 385 n.19 (2005).

2 Aggrieved Employees includes but is not limited to the following: all non-exempt employees who have
3 worked, or continue to work, for Defendants in California in the position of driver or who performed
4 similar job duties from October 13, 2020 to the present.

5 **PARTIES**

6 5. MERLE "DUKE" NEUFIELD is an individual over the age of eighteen (18) and is a
7 resident of the State of California.

8 6. On information and belief, Plaintiff alleges PROFESSIONAL TRANSPORTATION,
9 INC. is now and/or at all times mentioned in this Complaint was an Indiana Corporation and the
10 owner and operator of an industry, business and/or facility doing business in the State of California.

11 7. Defendants DOES 1 through 100 are affiliates, subsidiaries and related entities and the
12 alter egos of each of the other Defendants named herein, corporate or otherwise, who participated in and
13 are liable for the actions herein alleged. Plaintiff will seek to amend this Complaint to allege the true
14 names and capacities of these DOE Defendants when they are ascertained. At all times mentioned
15 herein, each Defendant was the agent or employee of each of the other Defendants and was acting within
16 the course and scope of such agency or employment. The Defendants are jointly and severally liable to
17 Plaintiff.

18 8. At all times mentioned herein, each Defendant was the agent or employee of each of the
19 other Defendants and was acting within the course and scope of such agency or employment. The
20 Defendants are jointly and severally liable to Plaintiff.

21 9. Defendants, and each of them, are now and/or at all times mentioned in this Complaint
22 were members of and/or engaged in a joint employment, joint venture, partnership and common
23 enterprise, and were acting within the course and scope of, and in pursuance of said joint employment,
24 joint venture, partnership and common enterprise.

25 10. Defendants, and each of them, now and/or at all times mentioned in this Complaint
26 approved, ratified, acquiesced, aided or abetted the acts and omissions alleged in this Complaint.

27 11. Defendants proximately caused Plaintiff to be subjected to the unlawful practices,
28 wrongs, complaints, injuries and/or damages alleged in this Complaint.

CLASS ALLEGATIONS

12. Plaintiff brings the First through Ninth Causes of Action on behalf of himself and all others similarly situated as a class action pursuant to California Code of Civil Procedure section 382. The class which Plaintiff seeks to represent is composed of, and defined, as follows:

All non-exempt employees who have worked, or continue to work, for Defendants in California in the position of driver or who performed similar job duties from October 14, 2017 to the present.

13. This action has been brought and may be properly maintained as a class action, pursuant to the provision of California Code of Civil Procedure section 382, because there is a well-defined community of interests in the litigation and the proposed class is easily ascertainable.

(a) Numerosity: The putative class is so numerous that the individual joinder of all members is impracticable under the circumstances of this case. While the exact number of class members is unknown to Plaintiff at this time, Plaintiff is informed and believes that Defendants have employed as many as fifty (50) individuals falling within the above stated class definition throughout the State of California during the applicable statute of limitations, who were subjected to the policies and practices outlined in this Complaint. As such, joinder of all members of the putative class is not practicable.

(b) Common Questions Predominate: Common questions of law and fact exist as to all members of the putative class and predominate over questions that affect only individual members of the class. These common questions of law and fact include, without limitation, the following:

- (1) Whether Defendants required Plaintiff and putative class members to work split shifts without paying split shift premiums;
- (2) Whether Defendants failed to correctly calculate Plaintiff's and putative class members' regular rates of pay;
- (3) Whether Defendants failed to pay Plaintiff and putative class members for all hours worked;
- (4) Whether Defendants failed to pay Plaintiff and putative class members all overtime wages they were owed;

- (5) Whether Defendants failed to authorize and permit meal periods;
- (6) Whether Defendants failed to authorize and permit rest periods;
- (7) Whether Defendants required Plaintiff and putative class members to remain on duty and on call during meal and rest periods;
- (8) Whether Defendants required Plaintiff and putative class members to use their personal cellphones for work without reimbursing them for such use;
- (9) Whether Defendants unlawfully rounded Plaintiff's and putative class members' hours worked;
- (10) Whether Defendants unlawfully rounded Plaintiff's and putative class members' time entries for meal periods;
- (11) Whether Defendants had any policy or practice to pay reporting time pay when no work was available to Plaintiff or putative class members;
- (12) Whether as a result of Defendants' policies and practices Plaintiff's and putative class members received all wages, due and owing, at the time of their termination or separation; and
- (13) Whether Defendants provided Plaintiff's and putative class members with wage statements that complied with Labor Code section 226.

(c) Typicality: Plaintiff's claims are typical of the claims of the members of the putative class. The putative class also sustained damages arising out of Defendants' common course of conduct in violation of the law as complained of herein. Plaintiff and all members of the putative class were non-exempt employees who were not paid for all regular and overtime hours worked, were not paid the correct regular rates of pay, were not paid all split shift premiums owed, were not authorized and permitted to take all meal and rest periods, and were not reimbursed for personal cellphone use resulting in underpayment of wages, unpaid cellphone expenses, and statutory penalties. Additionally, Defendants issued Plaintiff and all members of the putative class wage statements that did not comply with Labor Code section 226. As a result, Plaintiff and

1 each member of the putative class will have suffered the same type of harm and seek the
2 same type of recovery based on the same legal theories.

3 (d) Adequacy: Plaintiff will fairly and adequately protect the interests of the members of the
4 putative class. For all relevant times, Plaintiff resided in California and worked for
5 Defendants in California. Moreover, Plaintiff is an adequate representative of the
6 putative class as Plaintiff has no interests that are adverse to those of putative class
7 members. Additionally, Plaintiff has retained counsel who has substantial experience in
8 complex civil litigation and wage and hour matters.

9 (e) Superiority: A class action is superior to other available means for the fair and efficient
10 adjudication of the controversy since individual joinder of all members of the putative
11 class is impracticable. Class action treatment will permit a larger number of similarly
12 situated persons to prosecute their common claims in a single forum simultaneously,
13 efficiently, and without the unnecessary duplication of effort and expense that numerous
14 individual actions would engender. Further, as damages suffered by each individual
15 member of the class may be relatively small, the expenses and burden of the individual
16 litigation would make it difficult or impossible for individual members of the class to
17 redress the wrongs done to them, and an important public interest will be served by
18 addressing the matter as a class action. The cost to the court system of adjudication of
19 such individualized litigation would be substantial. Individualized litigation would also
20 present the potential for inconsistent or contradictory judgments.

21 14. Plaintiff is unaware of any difficulties that are likely to be encountered in the
22 management of this action that would preclude its maintenance as a class action.

23 GENERAL ALLEGATIONS

24 15. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 14 as though fully
25 set forth herein.

26 16. Plaintiff worked for Defendants from approximately May 1, 2019 to April 20, 2021, as a
27 non-exempt driver. Plaintiff and similarly situated employees would pick up and transport individuals
28 in Dodge Caravans provided by Defendants. Plaintiff and similarly situated employees regularly

1 worked over eight (8) hours in a day and/or forty (40) hours in a week. Plaintiff and similarly situated
2 employees regularly worked shifts of twelve (12) hours.

3 17. Plaintiff and similarly situated employees were required to contact Defendants' office at
4 the beginning of each shift. At that time, they would learn if they had any "runs" for the day. Each trip
5 transporting individuals was referred to as a "run." There were several occasions where Plaintiff and
6 similarly situated employees called in at the beginning of their shifts and were not provided any work.
7 However, Defendants failed to pay Plaintiff and similarly situated employees any reporting time pay.

8 18. When Plaintiff and similarly situated employees were assigned a run, Defendants
9 required Plaintiff and similarly situated employees to arrive at Defendants' yard within thirty (30)
10 minutes to pick up Dodge Caravans. Plaintiff and similarly situated employees were also required to
11 inspect the Dodge Caravans before driving them to ensure they were in good working condition. Then,
12 Plaintiff and Similarly situated employees would drive to the pick up location. However, Defendants
13 did not consider this work time compensable. Defendants considered Plaintiff's and similarly situated
14 employees' start time to be when they arrived at the pick up location. As a result, Plaintiff and similarly
15 situated employees were not paid for all regular and overtime hours they worked. Defendants also
16 required Plaintiff and similarly situated employees to work split shifts but did not pay them any split
17 shift premiums.

18 19. Defendants also required Plaintiff and similarly situated employees to be on call for
19 twelve (12) hour shifts regardless of whether there were any runs for them to complete. For example,
20 Plaintiff was regularly on call four days a week from 12:00 p.m. to 12:00 a.m. Because Defendants
21 required employees to arrive at the yard within thirty (30) minutes of a receiving a call during their shift
22 and respond to any phone calls within ten (10) minutes, they were not able to use their on-call time
23 effectively for their own purposes.

24 20. Defendants paid Plaintiff and similarly situated employees non-discretionary
25 remuneration in addition to their basic hourly rates of pay, including but not limited to an amount
26 called "Minimum Trip" on Plaintiff's and Similarly situated employees' paystubs. However,
27 Defendants did not correctly incorporate the value of non-discretionary remuneration into Plaintiff's and
28 similarly situated employees' regular rates of pay for the purpose of paying overtime and paid sick time.

1 21. Defendants had a policy to round Plaintiff's and similarly situated employees' hours
2 worked that was not neutrally applied to Plaintiff and similarly situated employees. Defendants also
3 rounded Plaintiff's and similarly situated employees' clock out and in times for meal periods, which
4 concealed short and late meal periods.

5 22. Defendants did not authorize and permit Plaintiff and similarly situated employees to take
6 all meal and rest periods owed to them. Defendants instructed Plaintiff and similarly situated employees
7 to stay available to complete as many runs as possible. To the extent any meal or rest breaks were taken,
8 Defendants required Plaintiff and similarly situated employees to be on call and on duty during the
9 breaks because Defendants would often contact Plaintiff and similarly situated employees regarding the
10 next pick up/drop off and required employees to respond to any phone call within ten (10) minutes.
11 Defendants did not have any policy to provide a second meal period or third rest period although
12 Plaintiff and similarly situated employees worked shifts longer than (10) hours. Defendants did not pay
13 Plaintiff and similarly situated employees missed meal or rest period premiums.

14 23. Defendants required Plaintiff and similarly situated employees to use their personal
15 cellphones for work without paying any amount to reimburse them for this expense. Defendants
16 regularly contacted Plaintiff and similarly situated employees on their personal cellphones during their
17 shifts regarding pick ups and drop offs. Additionally, Plaintiff and similarly situated employees were
18 required to call Defendants' office after each run, identify themselves, identify where they were calling
19 from, what time they started, what time they arrived at the pick up, what time they left the pick up, what
20 time they arrived the destination, what time they left the destination, and what time they arrived at the
21 yard.

22 24. Defendants did not pay Plaintiff and similarly situated employees all wages owed to them
23 at the time of their separation or termination, including minimum wages, overtime wages, split shift
24 premiums, reporting time pay, meal and rest premiums and paid sick time.

25 25. Defendants issued inaccurate wage statements to Plaintiff and similarly situated
26 employees. The wage statements did not state Plaintiff's and similarly situated employees accurate total
27 hours worked, all applicable hourly rates in effect and hours worked at those rates, and the correct
28 amount of gross and net wages earned.

1 **CAUSES OF ACTION**

2 **FIRST CAUSE OF ACTION**
3 **FAILURE TO PAY OVERTIME WAGES**
4 **(As to all Defendants)**

5 26. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 26 as though fully
6 set forth herein.

7 27. During the period Plaintiff was employed by Defendants, Defendants were required to
8 compensate Plaintiff at one and one-half (1½) times the regular rate of pay for hours worked in excess of
9 eight (8) hours per day and/or forty (40) hours per week, and two (2) times the regular rate of pay for
10 hours worked in excess of twelve (12) hours per day. *See, e.g., IWC Wage Order No. 9, § (3)(A); Cal.*
11 *Lab. Code §§ 510, 1194.*

12 28. Plaintiff and similarly situated employees worked in excess of eight (8) hours per day
13 and/or forty (40) hours per week on several occasions while employed by Defendants. However,
14 Defendants failed to compensate Plaintiff and similarly situated employees for all overtime hours
15 worked at their regular rate of pay. For instance, Defendants did not pay Plaintiff and similarly situated
16 employees for all on-call time or time spent at the yard or driving to the first pick up location.

17 29. Plaintiff and similarly situated employees were not exempt from overtime protections
18 employees under the California Wage Orders and Labor Code.

19 30. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees
20 have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to
21 the extent pertinent as if set forth here in full.

22 **SECOND CAUSE OF ACTION**
23 **FAILURE TO PAY MINIMUM WAGES**
24 **(As to all Defendants)**

25 31. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 30 as though fully
26 set forth herein.

27 32. For the period preceding the filing of this Complaint, Defendants were required to
28 compensate Plaintiff and similarly situated employees with at least California's applicable minimum for
every hour worked. *See MW-Order 2019; IWC Wage Order, No. 9, section 4(A); Cal. Lab. Code §*

1 1194. Defendants were also required to pay split shift premiums for any split shifts worked by Plaintiff
2 and similarly situated employees. See IWC Wage Order, No. 9, section 4.

3 33. Plaintiff and similarly situated employees were not exempt to the State's Minimum Wage
4 Order. Defendants aware of their obligation to pay the minimum wage for each hour worked but failed
5 to do so. For instance, Defendants did not pay Plaintiff and similarly situated employees for all on-call
6 time or time spent at the yard or driving to the first pick up location. Defendants also required Plaintiff
7 and similarly situated employees to work split shifts without paying them split shift premiums.

8 34. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees
9 have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to
10 the extent pertinent as if set forth here in full.

11 **THIRD CAUSE OF ACTION**
12 **MEAL PERIOD VIOLATIONS**
13 **(As to all Defendants)**

14 35. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 34 as though fully
15 set forth herein.

16 36. An employer must provide an employee a meal period in accordance with the
17 applicable Wage Order, and California Labor Code sections 226.7 and 512.

18 37. California Labor Code sections 226.7 and 512 and IWC Wage Order No. 9, section
19 11(A) require an employer to provide an uninterrupted meal period of not less than thirty (30)
20 minutes for each work period of more than five (5) hours.

21 38. California Labor Code section 512 and Wage Order No. 9 section 11(B) further
22 provide that employers may not employ employees for a work period for more than ten (10) hours
23 per day without providing the employee with a second meal period of at least thirty (30) minutes.
24 However, if the total hours worked is no more than twelve (12) hours, the second meal period may
25 be waived so long as there was no waiver as to the first meal period. Employees are entitled to one
26 (1) hour of pay at their regular rate of compensation for each meal period not provided.

27 39. Defendants employed Plaintiff and similarly situated employees for periods of more
28 than five (5) hours without providing meal breaks of at least thirty (30) minutes or a second meal
period of at least thirty (30) minutes when Plaintiff and similarly situated employees worked more

1 than ten (10) hours in a day. Defendants also failed to allow Plaintiff and similarly situated
2 employees to take their first meal period before the completion of their fifth hour of work and failed
3 to allow Plaintiff and similarly situated employees to take their second meal period before the
4 completion of their tenth hour of work. Plaintiff and similarly situated employees did not waive their
5 rights to all meal periods throughout their employment.

6 40. Defendants further failed to pay Plaintiff and similarly situated employees the
7 applicable meal period premiums for any such missed meal breaks.

8 41. As a proximate result of Defendants' conduct, Plaintiff and similarly situated
9 employees have been damaged as stated in the section below entitled "DAMAGES," which is
10 incorporated here to the extent pertinent as if set forth here in full.

11 **FOURTH CAUSE OF ACTION**
12 **REST PERIOD VIOLATIONS**
(As to all Defendants)

13 42. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 41 as though fully
14 set forth herein.

15 43. An employer must provide an employee a rest period in accordance with the
16 applicable Wage Order and California Labor Code section 226.7.

17 44. California Labor Code section 226.7 and Wage Order No. 9, section 12(A) require an
18 employer to provide a rest period of not less than ten (10) minutes for each work period of more than
19 four (4) hours or a major fraction thereof.

20 45. Plaintiff alleges that Defendants failed to authorize and permit Plaintiff and similarly
21 situated employees to take paid rest periods of at least ten (10) minutes for each work period that
22 they worked more than four (4) hours or a major fraction thereof.

23 46. Defendants further failed to pay Plaintiff and similarly situated employees the
24 applicable rest period premiums for any such missed rest periods.

25 47. As a proximate result of Defendants' conduct, Plaintiff and similarly situated
26 employees have been damaged as stated in the section below entitled "DAMAGES," which is
27 incorporated here to the extent pertinent as if set forth here in full.
28

FIFTH CAUSE OF ACTION
WAGE STATEMENT VIOLATIONS
(As to all Defendants)

48. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 47 as though fully set forth herein.

49. Pursuant to California Labor Code section 226(a), an employer must provide an itemized statement to an employee, semimonthly or at the time of each payment of wages, showing:

(1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. The deductions made from payment of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.

50. Plaintiff alleges that Defendants intentionally and knowingly failed to provide an itemized statement or failed to provide an accurate and complete itemized statement showing the requirements set forth in California Labor Code section 226(a). Specifically, Defendants did not accurately itemize all applicable hourly rates in effect during the pay period, all regular and overtime hours worked and corresponding rates of pay, and gross and net wages earned. The paystubs also did not accurately itemize Plaintiff's and similarly situated employees' total hours worked. Plaintiff and similarly situated employees were not able to promptly and easily determine their total hours worked from their paystubs alone. Additionally, Plaintiff and similarly situated employees suffered confusion over whether they received all wages owed and were prevented from effectively challenging information on their wage statements.

51. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

SIXTH CAUSE OF ACTION
WAITING TIME PENALTIES
(As to all Defendants)

52. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 51 as though fully set forth herein.

53. An employer must pay an employee who is terminated all unpaid wages immediately upon termination. See Cal. Lab. Code § 201.

54. An employer must pay an employee who resigns all unpaid wages within seventy-two (72) hours of their resignation. See Cal. Lab. Code § 202.

55. Plaintiff and similarly situated employees did not receive all wages, including minimum and overtime wages, meal and rest period premiums, or all sick leave pay owed at their termination or within the required time after their separation from employment.

56. An employer who willfully fails to pay an employee wages in accordance with California Labor Code sections 201 and/or 202 must pay the employee a waiting time penalty of up to thirty (30) days. See Cal. Lab. Code § 203.

57. Defendants knew of their obligation to pay Plaintiff's and similarly situated employees' their final wages when their employment terminated. Indeed, Defendants had knowledge that Plaintiff and similarly situated employee were working prior to clocking in and were earning nondiscretionary remuneration in addition to their hourly rates that needed to be incorporated into the regular rate of pay. Such conduct shows Defendants had knowledge of earned, but unpaid wages at the time of separation, yet Defendants still refused to pay the remaining wages owed.

58. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees have been damaged and deprived of their wages and thereby seek their daily rate of pay multiplied by thirty (30) days for Defendants' failure to pay all wages due.

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**SEVENTH CAUSE OF ACTION
FAILURE TO REIMBURSE EXPENSES
(As to all Defendants)**

59. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 58 as though fully set forth herein.

60. California Labor Code section 2802(a) states that "An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful."

61. Defendants required Plaintiff and similarly situated employees to use their personal cellphones to communicate about drop offs and pick ups but failed to reimburse them for such use.

62. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

**EIGHTH CAUSE OF ACTION
UNFAIR COMPETITION
(As to PROFESSIONAL TRANSPORTATION, INC. and DOES 1 to 100)**

63. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 62 as though fully set forth herein.

64. Unfair competition shall mean and include any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by Chapter 1 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions Code. See California Business and Professions ("B&P") Code § 17200.

65. Plaintiff and similarly situated employees were not paid all wages owed, including minimum and overtime wages, and meal and rest period premiums, and paid sick leave during their employment or any time thereafter.

66. Plaintiff further alleges that such actions and/or conduct constitute a violation of the California Unfair Competition Law ("UCL") (Business and Professions Code 17200 *et seq.*) pursuant to *Cortez v. Purolator Air Filtration Products Co.*, 23 Cal. 4th 163 (2000).

1 67. As a direct and legal result of the Defendants' conduct, as alleged herein, pursuant to the
2 UCL (including B&P Code §17203), Plaintiff and similarly situated employees are entitled to
3 restitution, including, but not limited to, interest and penalties pursuant to Business & Professions Code
4 sections 17203, 17208, violations of California Labor Code sections 226.7, 510, 512, and 1194 all in an
5 amount as yet unascertained but subject to proof at trial, for four (4) years from the filing of this Action.

6 **NINTH CAUSE OF ACTION**
7 **FAILURE TO PAY REPORTING TIME**
8 **(As to all Defendants)**

9 68. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 67 as though
10 fully set forth herein.

11 69. Pursuant to its authority under California Labor Code section 1173, the Industrial
12 Welfare Commission promulgated Wage Order 9-2001. Wage Order 9-2001 mandates that "[e]ach
13 workday that an employee is required to report to a work site and does report, but is not put to work or is
14 furnished less than half of his/her usual or scheduled day's work, the employer shall pay him/her for half
15 the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4)
16 hours at the employee's regular rate of pay, which shall not be less than the minimum wage." See IWC
17 Wage Order No. 9-2001, § 5(B). Defendants failed to pay Plaintiff and similarly situated employees for
18 those instances when Plaintiff and similarly situated employees were asked to report to work by calling
19 in at the beginning of their shifts but then were not provided any work. Defendants did not pay any
20 reporting time pay in those instances.

21 70. Plaintiff and similarly situated employees were not exempt to the State's Wage Orders.
22 Defendants were aware of their obligation to pay reporting time wages but failed to do so.

23 71. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees
24 have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to
25 the extent pertinent as if set forth here in full.

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TENTH CAUSE OF ACTION
PRIVATE ATTORNEYS GENERAL ACT
(As to all Defendants)

72. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 71 as though fully set forth herein.

73. Plaintiff has alleged to the Labor Commissioner that Defendants have violated the following provisions of the Labor Code in their dealings with Plaintiff and other Aggrieved Employees:

- Violation of Labor Code §§ 510, 1194; IWC Wage Order 9, § 3 (Failure to Pay Overtime Wages)
- Violation of Labor Code §§ 1194, 1197.1; IWC Wage Order 9, § 4 (Failure to Pay Minimum Wages)
- Violation of Labor Code §§ 226.7, 512 and Wage Order No. 9, §§ 11(A) and 11(B) (Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof)
- Violation of Labor Code § 226.7 and Wage Order No. 9, § 12(A) (Failure to Provide Rest Periods or Pay Premiums in Lieu Thereof)
- Violation of Labor Code §§ 226, 226.3 (Failure to Provide Accurate Wage Statements)
- Violation of Labor Code §§ 201-203, 256 (Failure to Pay Final Wages)
- Violation of Labor Code § 2802 (Failure to Pay Reimbursements for Expenses)
- Violation of Labor Code §§ 558, 558.1 (Provisions Regulating Hours and Days of Work in Any Industrial Welfare Commission Order)
- Violation of Labor Code §§ 226.3, 1174 (Failure to Maintain Accurate Records)
- Violation of Labor Code §§ 246, 246.5, 248.5 (Failure to Provide Paid Sick Leave)
- Violation of Wage Order No. 9, § 5 (Failure to Pay Reporting Time)

74. Plaintiff seeks civil penalties against Defendants as provided in the California Labor Code, or, if no civil penalty is provided, default penalties pursuant to California Labor Code section 2699(f)(2).

75. Plaintiff seeks these civil penalties from Defendants pursuant to California Labor Code sections 2699(a) and 2699.3.

1 76. As a proximate result of Defendants' conduct, Plaintiff and Aggrieved Employees have
2 been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the
3 extent pertinent as if set forth here in full

4 **DAMAGES**

5 WHEREFORE Plaintiff requests relief as follows:

- 6 1. A jury trial;
- 7 2. As to the First Cause of Action:
 - 8 a. Wages in an amount to be proven at trial;
 - 9 b. Interest for the wages due pursuant to California Labor Code section 1194;
 - 10 c. For reasonable attorney's fees and costs incurred pursuant to California Labor
 - 11 Code section 1194;
- 12 3. As to the Second and Ninth Causes of Action:
 - 13 a. Wages in an amount to be proven at trial;
 - 14 b. Interest for the wages due pursuant to California Labor Code section 1194;
 - 15 c. For reasonable attorney's fees and costs incurred pursuant to California Labor
 - 16 Code section 1194;
 - 17 d. Liquidated damages pursuant to California Labor Code section 1194.2;
- 18 4. As to the Third Cause of Action:
 - 19 a. Wages in an amount to be proven at trial;
 - 20 b. Attorney's fees, costs and interest pursuant to California Code of Civil Procedure
 - 21 section 1021.5;
- 22 5. As to the Fourth Cause of Action:
 - 23 a. Wages in an amount to be proven at trial;
 - 24 b. Attorney's fees, costs and interest pursuant to California Code of Civil Procedure
 - 25 section 1021.5;
- 26 6. As to the Fifth Cause of Action:
 - 27 a. Penalties as provided for in Labor Code section 226, including the greater of all
 - 28 actual damages or fifty dollars (\$50.00) for the initial pay period in which the

violation occurred and one hundred dollars (\$100.00) per employee for each violation in the subsequent pay periods, but not to exceed four thousand dollars (\$4,000.00);

b. For reasonable attorney's fees and costs incurred pursuant to Labor Code section 226(e);

7. As to the Seventh Cause of Action:

a. An amount to be proven at trial;

b. For attorney's fees, interest, and costs pursuant to Labor Code section 2802(c);

8. As to the Tenth Cause of Action:

a. For civil penalties as provided for in the Labor Code for each enumerated violation;

b. For those Labor Code sections, the violation of which there is no civil penalty provided, the default penalty provided in Labor Code section 2699(f): for any initial violation, one hundred dollars (\$100) for each aggrieved employee per pay period; For any subsequent violation, two hundred dollars (\$200) for each aggrieved employee per pay period;

c. Reasonable attorney's fees and costs pursuant to Labor Code section 2699;

d. For any other remedies as allowed by law and/or deemed appropriate by the Court;

9. For such other and further relief as this Court may deem just and proper, including, but not limited to:

a. Wages as proved at trial;

b. Injunctive and Declaratory relief;

c. Attorney's fees and costs as provided for by law; and

d. Interest.

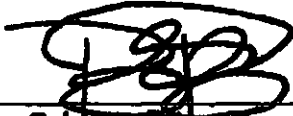
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1 Dated: February 22, 2022

Shimoda & Rodriguez Law, PC

2
3 By: 

Galen I. Shimoda

Justin P. Rodriguez

Brittany V. Berzin

Attorneys for Plaintiff

3 **PROOF OF SERVICE — CCP §§ 1013a, 1010.6 and 2015.5**
4 **and California Rules of Court, Rule 1.21 and Rule 2.150**

5 I, Caitlyn A. Lopez, declare that:

6 I am a citizen of the United States and am over the age of eighteen years and not a party to the
7 within above-entitled action.

8 On March 16, 2022, I served the following documents on the party below:

- 9 • First Amended Complaint for Damages

10 James T. Conley (SBN 224174) 11 Briana N. LaBriola (SBN 293548) 12 Ogletree, Deakins, Nash, Smoak & Stewart, P.C. 13 Park Tower 14 695 Town Center Drive, 15th Floor 15 Costa Mesa, CA 92626 16 Phone: (714) 800-7989 17 (415) 350-7492 18 Fax: (714) 754-1298 19 Email: james.conley@ogletree.com 20 briana.labriola@ogletree.com	
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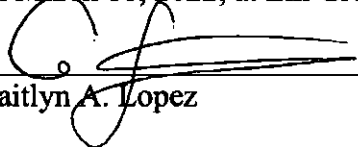
21 [XXX] [By Mail] I am familiar with my employer's practice for the collection and
22 processing of correspondence for mailing with the United States Postal
23 Service and that each day's mail is deposited with the United States Postal
24 Service that same day in the ordinary course of business. On the date set forth
25 above, I served the aforementioned document(s) on the parties in said action
26 by placing a true copy thereof enclosed in a sealed envelope with postage
27 thereon fully prepaid, for collection and mailing on this date, following
28 ordinary business practices, at Elk Grove, California, addressed as set forth
above.

21 [] [By Personal Service] By personally delivering a true copy thereof to the
22 office of the addressee above.

22 [] [By Electronic Mail] I e-mailed the documents(s) to the person(s) shown
23 above. No error was reported by the e-mail service that I used.

24 [] [By Overnight Courier] By causing a true copy and/or original thereof to be
25 personally delivered via the following overnight courier service: UPS.

26 I declare under penalty of perjury under the laws of the State of California that the foregoing is
27 true and correct, and that this declaration was executed on March 16, 2022, at Elk Grove, California.

28 
Caitlyn A. Lopez