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MAGEE

16
17 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
18 **FOR THE COUNTY OF SACRAMENTO**

19
20 **MERLE "DUKE" NEUFIELD and JEREMY**
MAGEE, individually and on behalf of all other
21 **similarly situated employees,**

22 **Plaintiff,**

23 **v.**

24 **PROFESSIONAL TRANSPORTATION, INC.,**
25 **an Indiana Corporation; and DOES 1 to 100,**
26 **inclusive,**

27 **Defendant.**

Case No. 34-2021-00309849
Hon. Lauri A. Damrell
Dept.: 28

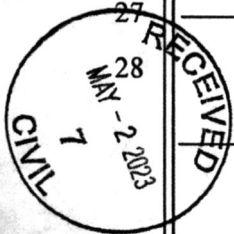
**[PPSD] ORDER GRANTING FINAL APPROVAL
OF CLASS ACTION AND PAGA SETTLEMENT**

Date: May 26, 2023
Time: 9:00 a.m.
Dept: 28

FILED/ENDORSED

MAY 26 2023

By: **V. Aleman**
Deputy Clerk



[PPSD] ORDER GRANTING FINAL APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT

BY FAX

1 TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:

2 The Motion for Final Approval of Class Action and PAGA Settlement ("Motion") in the above
3 referenced case came before this Court, on May 26, 2023, at 9:00 a.m., in Department 28 before the
4 Honorable Lauri A. Damrell presiding. Plaintiff Merle "Duke" Neufield filed this putative class action
5 on October 14, 2021. The operative Complaint filed by Plaintiffs Merle "Duke" Neufield and Jeremy
6 Magee ("Plaintiffs") alleges that Defendant Professional Transportation, Inc. ("Defendant") failed to
7 pay overtime wages, failed to pay minimum wages, failed to provide meal periods or pay premiums in
8 lieu thereof, failed to provide rest periods or pay premiums in lieu thereof, failed to provide accurate
9 wage statements, failed to pay final wages, failed to pay reimbursements for expenses, engaged in
10 unfair competition, violated of provisions regulating hours and days of work in any industrial welfare
11 commission order, failed to maintain accurate records, failed to provide paid sick leave, and failed to
12 pay reporting time. Plaintiffs have also alleged Defendant is liable for a civil penalties under the
13 Private Attorneys General Act ("PAGA") based on these violations. Plaintiffs sought attorneys' fees
14 and costs as part of this Action. Defendant denied all of Plaintiffs' claims and denied that this case
15 was appropriate for class treatment. The class settlement was preliminarily approved and the
16 settlement class preliminarily certified by this court on January 13, 2023.

17 The parties have agreed to settle the class and PAGA claims. Defendant will provide monetary
18 consideration in exchange for a release of claims consistent with the terms of the proposed settlement
19 as set forth in the Joint Stipulation Regarding Class Action and PAGA Settlement and Release
20 ("Agreement" or "Settlement"). Any capitalized terms herein shall have the same meaning as set forth
21 in the Agreement. The Court, having received and considered Plaintiffs' Motion for Final Approval of
22 Class Action and PAGA Settlement, the declarations in support, the Agreement, the proposed Notice
23 of Settlement, and other evidence, HEREBY ORDERS AND MAKES DETERMINATIONS AS
24 FOLLOWS:

25 **I. CERTIFYING A SETTLEMENT CLASS; APPOINTMENT OF CLASS**
26 **REPRESENTATIVES; APPOINTMENT OF CLASS COUNSEL**

27 The Court finds that certification of the following class for settlement purposes only is
28 appropriate under the California Code of Civil Procedure and related case law:

1 All non-exempt employees who have worked or continue to work for
2 Professional Transportation, Inc. in California in the position of driver or
3 who performed similar job duties from October 14, 2017 up to December
26, 2022.

4 The Court recognizes that the foregoing definition is for Class Member identification purposes only and
5 is not intended to capture the claims at issue or limit or alter the released claims under the Agreement.
6 This definition of Class Members shall not include Spencer James Ramirez, who opted out of the class
7 settlement. This individual shall not be bound by the Agreement except for the releases and covenants
8 regarding the PAGA claims as he is still an Aggrieved Employee under the Agreement and there is no
9 ability to opt out of a PAGA settlement.

10 The Court finds that Class Members meet the ascertainability and numerosity requirements since
11 the parties can identify with a matter of certainty, based on payroll records, individuals who fall within
12 the definition and the number of Class Members would make joinder impractical. The commonality and
13 predominance requirements are met for settlement purposes since there are questions of law and fact
14 common to Class Members. The common questions of law or fact in this case all stem from Plaintiffs'
15 contentions that Defendant caused the violations outlined above by 1) failing to compensate class
16 members for all hours worked; 2) adopting a policy that required class members to be on call and limited
17 their ability to use the time for their own benefit; 3) rounding class members' hours worked; 4) requiring
18 class members to work split shifts and having no policy to pay split shift premiums; 5) failing to provide
19 legally compliant meal and rest periods; 6) failing to correctly calculate class members' regular rates of
20 pay for the purpose of paying overtime and paid sick time when they received non-discretionary
21 remuneration in addition to their base hourly rates; 7) failing to have any policy to reimburse class
22 members for expenses they incurred for work; and 8) failing to pay all reporting time owed. Defendant
23 has denied each of Plaintiffs' claims and Defendant has denied that this Action is appropriate for class
24 certification for anything other than settlement purposes. The PAGA, waiting time penalty, wage
25 statement violation, and unfair competition claims also derive from these violations. Additionally,
26 Class Members seek the same remedies under state law. The typicality requirement for settlement
27 purposes is also satisfied since the claims of the Class Representatives are based on the same facts and
28 legal theories as those applicable to the class members.

1 The Court also finds that certifying the settlement class is required to avoid each Class Member
2 from litigating similar claims individually. This Settlement will achieve economies of scale for Class
3 Members with relatively small individual claims and conserve the resources of the judicial system.

4 The Court finds that Plaintiffs Merle "Duke" Neufeld and Jeremy Magee, and Plaintiffs'
5 counsel, Galen T. Shimoda, Justin P. Rodroquez, and Brittany V. Berzin of Shimoda & Rodriguez Law,
6 PC and James R. Hawkins, Gregory Mauro, Michael Calvo and Jeanne Sarmiento of James Hawkins
7 APLC, to be adequate representatives of the settlement class. The Court appoints them as Class
8 Representatives and Class Counsel, respectively.

9 II. APPROVING CLASS ACTION AND PAGA SETTLEMENT

10 The Court has again reviewed the preliminarily approved Agreement, which was submitted with
11 Plaintiffs' Motion as Exhibit A. The Court finds that final approval is warranted as the Agreement falls
12 within the range of reasonableness and is fair, reasonable, and adequate for the class. The Court also
13 finds the Settlement was agreed upon only after extensive investigation, litigation, and arms-length
14 negotiations by counsel experienced in complex litigation, who took reasonable steps and measures to
15 weigh the potential value of the disputed claims against the risks of continued litigation. The Court also
16 acknowledges that Class Members were able to present any objections to the Settlement through the
17 administration process and at a fairness hearing or opt-out of being bound by the preliminarily approved
18 Agreement. No objections were made by Class Members and only one individual opted out of the
19 settlement. The Court gives final approval to the Agreement and all terms therein as if stated here in
20 full, including the \$900,000 Gross Settlement Amount.

21 The Court approves of the \$50,000 PAGA Payment, which shall be paid from the Gross
22 Settlement Amount, not in addition to the Gross Settlement Amount, to resolve the alleged PAGA
23 claims. Seventy-Five percent (75%) of the PAGA Payment will be paid to the Labor and Workforce
24 Development Agency ("LWDA") and Twenty-Five percent (25%) will be paid to Aggrieved Employees
25 on a pro rata basis as described in the Agreement. The Court also finds based on the facts of this case
26 and the disputed issues, the Agreement provides a recovery that creates an effective substantial deterrent
27 to any potential future non-compliance, furthering the purpose of the Labor Code and LWDA.
28

1 The Court approves of the identified *cy pres* distribution plan wherein any checks issued to
2 Participating Class Members and/or Aggrieved Employees that are not cashed by the deadline to do so
3 shall be donated equally, *i.e.*, 50/50, to Capital Pro Bono, Inc., and the Center for Workers' Rights. No
4 portion of the Gross Settlement Amount will revert to Defendant for any reason.

5 The releases and waivers for Class Members who did not opt out of being bound by the
6 Agreement (*i.e.*, Participating Class Members), Aggrieved Employees, and the Class Representative are
7 also approved by the Court as set forth in the Agreement.

8 Class Counsel sought an award of attorneys' fees of \$315,000.00, attorney's costs of \$13,731.16
9 an Enhancement Payment to each of the Class Representatives in the amount of \$10,000.00, and for
10 Settlement Administrator Costs in the amount of \$9,750. Defendant does not oppose these requests.
11 The Notice of Settlement sent to Class Members included information regarding these amounts and that
12 they would be requested in connection with final approval of the Agreement. Class Members have been
13 given the opportunity to object to these amounts and no objections have been submitted. The Court has
14 reviewed the evidence submitted by Class Counsel regarding their hourly rates and the amount of time
15 expended in the litigation for the benefit of Class Members. The Court finds that the rates requested,
16 and hours expended are reasonable. The Court has also reviewed the updated itemized costs submitted
17 by Class Counsel, the information provided by the Class Representatives regarding the efforts and
18 burdens undertaken for the benefit of the class, and the cost information provided by the Settlement
19 Administrator in its declaration. The Court finds that these amounts requested for attorneys' fees and
20 costs, the Enhancement Payments, and the Settlement Administrator Costs are fair and reasonable, and
21 awarded as requested and deducted from the gross settlement amount. This finding is further supported
22 by the lack of objection by Class Members to these amounts. The difference between the actual
23 attorneys' costs and Settlement Administrator Costs awarded and the originally allocated amounts under
24 the Agreement will be added to the Net Settlement Amount pursuant to the terms of the Agreement.

25 **III. APPROVAL OF THE DISTRIBUTION METHOD OF NOTICE TO THE CLASS,**
26 **INCLUDING THE NOTICE OF SETTLEMENT**

27 The Court finds that the proposed Notice of Settlement, which was submitted with Plaintiffs'
28 Motion as Exhibit A to the Declaration of Nathalie Hernandez, fairly and adequately advised Class

Members of the terms of the Agreement, the rights being waived, their right to opt out, the ability to dispute the number of Qualifying Workweeks worked during the Class Period, their pro rata share of the Net Settlement Amount, how to participate in the settlement, how to file documentation in opposition to the proposed settlement, and when to appear at the fairness hearing. The Court further finds that the Notice of Settlement and distribution of such notice by first class mail to each identified Class Member at his or her most recent address based on a National Change of Address database search from the Class Members' last known address and a skip trace on any Class Members who have the Notice of Settlement returned as "undeliverable" or "not at this address" comported with all constitutional requirements, including those of due process.

IMPLEMENTATION SCHEDULE

Accordingly, with good cause shown, the Court hereby approves and orders that the following implementation schedule be adhered to:

Last day for Settlement Administrator to calculate the final Net Settlement Amount, the final Individual Settlement Amounts for Participating Class Members and/or Aggrieved Employees, any applicable taxes thereon, and report the results of these calculations to Class Counsel and Defendant's Counsel	Within 7 calendar days after the Effective Date
Last day for Defendant to fund settlement	Within 21 calendar days after the Effective Date
Last day for Settlement Administrator to deliver payment of Class Counsel's attorney's fees and costs, Enhancement Payments, PAGA Payment, Settlement Administrator Costs, payment to Participating Class Members, and payment to Aggrieved Employees	Within 7 calendar days after Defendant has funded the settlement
Last day for Participating Class Members and Aggrieved Employees to cash settlement checks	180 calendar days after issuance of checks to Participating Class Members and Aggrieved Employees

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	Last day for Settlement Administrator to deliver value of uncashed settlement checks to <i>cy pres</i> beneficiaries	Within 14 calendar days after settlement check cashing deadline
	Last day for Settlement Administrator to provide Parties with compliance declaration	Within 21 calendar days after settlement check cashing deadline

IT IS FURTHER ORDERED that this final approval order is effective as a judgment with each party to bear its own fees and costs outside of what has been ordered herein. This matter is subject to the Court's continuing jurisdiction to monitor and enforce the terms of this order and the approved Agreement.

IT IS SO ORDERED.

Date:

5/26/23



Judge of the Superior Court

LAURI A. DAMRELL