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13 **SUPERIOR COURT OF CALIFORNIA**
14 **FOR THE COUNTY OF SACRAMENTO**
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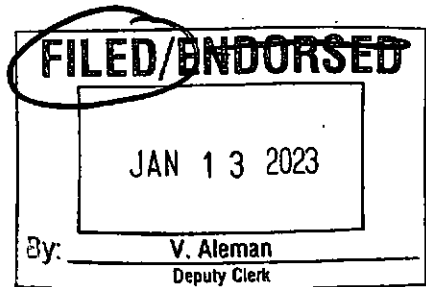
16 MERLE "DUKE" NEUFIELD and JEREMY
MAGEE, individually and on behalf of all
17 other similarly situated employees,

18 Plaintiffs,

19 vs.

20 PROFESSIONAL TRANSPORTATION,
21 INC., an Indiana Corporation; and
22 DOES 1 to 100, inclusive,

23 Defendants.
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Case No. 34-2021-00309849

CLASS ACTION

**[PROPOSED] ORDER GRANTING
PLAINTIFFS' MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT**

Reservation No. 2686129

Date: January 13, 2023
Time: 9:00 a.m.
Dept.: 28
Judge: Hon. Lauri A. Damrell

Filed: October 14, 2021
FAC Filed: March 16, 2022
SAC Filed: November 14, 2022
Trial Date: None Set

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



1 TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:

2 The Motion for Preliminary Approval of Class Action and PAGA Settlement ("Motion") in the
3 above referenced case came before this Court, on January 13, 2023 at 9:00 a.m., in Department 28
4 before the Honorable Lauri A. Damrell presiding. Plaintiff Merle "Duke" Neufield filed this putative
5 class action on October 14, 2021. The operative Complaint filed by Plaintiffs Merle "Duke" Neufield
6 and Jeremy Magee ("Plaintiffs") alleges that Defendant Professional Transportation, Inc.
7 ("Defendant") failed to pay overtime wages, failed to pay minimum wages, failed to provide meal
8 periods or pay premiums in lieu thereof, failed to provide rest periods or pay premiums in lieu thereof,
9 failed to provide accurate wage statements, failed to pay final wages, failed to pay reimbursements for
10 expenses, engaged in unfair competition, violated of provisions regulating hours and days of work in
11 any industrial welfare commission order, failed to maintain accurate records, failed to provide paid
12 sick leave, and failed to pay reporting time. Plaintiffs have also alleged Defendant is liable for a civil
13 penalties under the Private Attorneys General Act ("PAGA") based on these violations. Plaintiffs
14 sought attorneys' fees and costs as part of this Action. Defendant denied all of Plaintiffs' claims and
15 denied that this case was appropriate for class treatment. No class has been certified.

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

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

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

28 All non-exempt employees who have worked or continue to work for

Professional Transportation, Inc. in California in the position of driver or who performed similar job duties from October 14, 2017 up to December 26, 2022.

The Court recognizes that the foregoing definition is for Class Member identification purposes only and is not intended to capture the claims at issue or limit or alter the released claims under the Agreement.

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

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

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

6 **II. PRELIMINARILY APPROVING CLASS ACTION AND PAGA SETTLEMENT**

7 The Court has reviewed the Agreement, which was submitted with Plaintiffs' Motion as Exhibit
8 A. The Court finds, on a preliminary and conditional basis, that the Settlement is fair, reasonable, and
9 adequate and falls within the range of reasonableness of a settlement that could ultimately be given final
10 approval by this Court. The Court finds the Settlement was agreed upon only after extensive
11 investigation, litigation, and arms-length negotiations by counsel experienced in complex litigation, who
12 took reasonable steps and measures to weigh the potential value of the disputed claims against the risks
13 of continued litigation. The Court also acknowledges that Class Members may present any objections to
14 the Settlement at a fairness hearing approved by this Court or opt-out of being bound by the
15 preliminarily approved Agreement. The Court preliminarily approves the Agreement and all terms
16 therein as if stated here in full, including the \$900,000 Gross Settlement Amount.

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

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

26 The Court finds that the proposed Notice of Settlement, which was submitted with Plaintiffs'
27 Motion as Exhibit F, fairly and adequately advises Class Members of the terms of the Agreement, the
28 rights being waived, their right to opt out, the ability to dispute the number of Qualifying Workweeks

1 worked during the Class Period, their pro rata share of the Net Settlement Amount, how to participate in
2 the settlement, how to file documentation in opposition to the proposed settlement, and when to appear
3 at the fairness hearing to be conducted on the date set forth below. The Court further finds that the
4 Notice of Settlement and proposed distribution of such notice by first class mail to each identified Class
5 Member at his or her most recent address based on a National Change of Address database search from
6 the Class Members' last known address and a skip trace on any Class Members who have the Notice of
7 Settlement returned as "undeliverable" or "not at this address" comports with all constitutional
8 requirements, including those of due process.

9 The Court also finds that because there is a strong interest in providing Class Members the
10 opportunity to participate in the settlement, along with the Parties' efforts to minimize any intrusion to
11 privacy rights, the sharing of employment information, including social security numbers, is not a
12 serious intrusion on their privacy rights. Hence, the Court orders Defendant to provide the following
13 information for Class Members: first and last name, last known mailing address, social security number,
14 start and end date of employment, and number of paychecks issued to the Settlement Administrator
15 only, and not to Plaintiffs or Class Counsel, in order to process this settlement as contemplated within
16 the Agreement and approved by this Order. The Settlement Administrator shall only use this
17 information for the purposes identified in the Agreement and shall keep this information confidential
18 consistent with the terms of the Agreement.

19 IV. IMPLEMENTATION SCHEDULE

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

22 Last day for Defendant to provide Settlement 23 Administrator with Class Member and Aggrieved 24 Employee information	Within 14 calendar days after the Preliminary Approval Date
25 Last day for Settlement Administrator to 26 complete NCOA search, update Class Member 27 and Aggrieved Employee mailing information, 28 and mail Notice of Settlement	Within 14 calendar days after the Settlement Administrators' receipt of Class Members' information from Defendant

1 2 3	Last day for Class Members to opt-out, submit disputes, submit objections, and submit data requests	60 calendar days after mailing of Notice of Settlement or within 10 days after Notice of Settlement is re-mailed, whichever is later
4 5	Last day for Settlement Administrator to provide Parties with signed declaration reporting on settlement administration statistics	Within 14 calendar days after end of the Notice Period
6 7 8 9 10	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
11 12	Last day for Defendant to fund settlement	Within 21 calendar days after the Effective Date
13 14 15 16	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
17 18 19	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
20 21 22	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
23 24	Last day for Settlement Administrator to provide Parties with compliance declaration	Within 21 calendar days after settlement check cashing deadline

FINAL APPROVAL AND HEARING

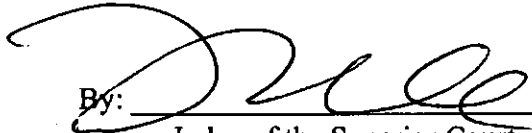
The Court directs the parties to contact the Clerk for Department 28 to schedule a final approval hearing to take place in this Department on a Friday at 9:00 a.m. consistent with the administration timelines set forth in the Agreement. Briefs and supporting documentation relating to the final approval

1 hearing are to be submitted according to the California Code of Civil Procedure. Class Members who
2 object in a timely manner, and in the manner set forth in the Agreement, may appear and present such
3 objections at the fairness hearing in person or by counsel.

4 If for any reason the Court does not grant final approval of the Agreement, all evidence and
5 proceedings held in connection therewith shall be without prejudice to the status quo and rights of the
6 parties to the litigation, including all challenges to personal jurisdiction and to class certification for any
7 purpose other than approving a settlement class. The parties will revert to their respective positions as if
8 no settlement had been reached at all.

9 **IT IS SO ORDERED.**

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11 Date: 1/13/23

12 By: 
13 Judge of the Superior Court

14 LAURI A. DAMRELL
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