

FILED
Superior Court Of California,
Sacramento
11/14/2022
May
By _____, Deputy
Case Number:
34-2021-00309849

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

29 MERLE "DUKE" NEUFIELD and JEREMY
30 MAGEE, individually and on behalf of all
31 other similarly situated employees,

32 Plaintiffs,

33 vs.

34 PROFESSIONAL TRANSPORTATION,
35 INC., an Indiana Corporation; and
36 DOES 1 to 100, inclusive,

37 Defendants.

Case No. 34-2021-00309849

CLASS ACTION

**SECOND 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

BY FAX

DEMAND FOR JURY TRIAL

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

6 INTRODUCTION

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

12 JURISDICTION AND VENUE

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

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

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

1 bring this action on behalf of himself and all similarly situated employees, *i.e.*, Aggrieved Employees.
2 See Cal. Lab. Code § 2699.3(a)(2)(A), (c)(3); *Caliber Bodyworks, Inc., v. Sup. Ct.*, 134 Cal. App. 4th
3 365, 383 n.18, 385 n.19 (2005). Aggrieved Employees includes but is not limited to the following: all
4 non-exempt employees who have worked, or continue to work, for Defendants in California in the
5 position of driver or who performed similar job duties from October 13, 2020 to the present.

6 **PARTIES**

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

9 6. JEREMY MAGEE is an individual over the age of eighteen (18) and is a resident of
10 the State of California.

11 7. On information and belief, Plaintiffs allege PROFESSIONAL TRANSPORTATION,
12 INC. is now and/or at all times mentioned in this Complaint was an Indiana Corporation and the
13 owner and operator of an industry, business and/or facility doing business in the State of California.

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

21 9. At all times mentioned herein, each Defendant was the agent or employee of each of the
22 other Defendants and was acting within the course and scope of such agency or employment. The
23 Defendants are jointly and severally liable to Plaintiffs.

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

28 //

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

3 12. Defendants proximately caused Plaintiffs to be subjected to the unlawful practices,
4 wrongs, complaints, injuries and/or damages alleged in this Complaint.

5 **CLASS ALLEGATIONS**

6 13. Plaintiffs brings the First through Ninth and Eleventh Causes of Action on behalf of
7 themselves and all others similarly situated as a class action pursuant to California Code of Civil
8 Procedure section 382. The class which Plaintiffs seek to represent is composed of, and defined, as
9 follows:

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

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

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

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

26 (1) Whether Defendants violated Labor Code sections 226.7, 512, and applicable
27 IWC Wage Orders, by failing to authorize and permit daily rest periods to
28 Plaintiffs and putative class members for every four hours or major fraction

thereof worked and failing to compensate said employees one hours wages in lieu of rest periods;

- (2) Whether Defendants violated Labor Code sections 226.7, 512 and applicable IWC Wage Orders, by failing to provide a meal period to Plaintiffs and putative class members on days they worked work periods in excess of six and 10 hours and failing to compensate said employees one hour wages in lieu of meal periods;
- (3) Whether Defendants failed to maintain accurate time record including recording Plaintiffs' and putative class members' meal periods pursuant to Labor Code sections 1174.5 and the applicable IWC Wage Orders;
- (4) Whether Defendants failed to reimburse business expenses incurred by Plaintiffs and putative class members pursuant to Labor Code section 2802;
- (5) Whether Defendants violated Business and Professions Code and Labor Code sections 201-203, 510, 558, 226.7, 512, 1174, 1174.5, 1175, 1194, 1197, 1197.1, 2802 and applicable IWC Wage Orders which violation constitutes a violation of fundamental public policy;
- (6) Whether Plaintiffs and the putative class are entitled to equitable relief pursuant to Business and Professions Code section 17200, et. seq.;
- (7) Whether Plaintiffs and the putative class are entitled to relief in the form of back wages, penalties and interest for failure to pay minimum wages pursuant to Labor Code sections 558, 1194 and 1197;
- (8) Whether Defendants required Plaintiffs and putative class members to work split shifts without paying split shift premiums;
- (9) Whether Defendants failed to correctly calculate Plaintiffs' and putative class members' regular rates of pay;
- (10) Whether Defendants failed to pay Plaintiffs and putative class members for all hours worked;
- (11) Whether Defendants failed to pay Plaintiffs and putative class members all overtime wages they were owed;

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

20 (c) Typicality: Plaintiffs' claims are typical of the claims of the members of the putative
21 class. The putative class also sustained damages arising out of Defendants' common
22 course of conduct in violation of the law as complained of herein. Plaintiffs and all
23 members of the putative class were non-exempt employees who were not paid for all
24 regular and overtime hours worked, were not paid the correct regular rates of pay, were
25 not paid all split shift premiums owed, were not authorized and permitted to take all meal
26 and rest periods, and were not reimbursed for personal cellphone use and cleaning
27 supplies purchased, resulting in underpayment of wages, unpaid cellphone and cleaning
28 supply expenses, and statutory penalties. Additionally, Defendants issued Plaintiffs and

1 all members of the putative class wage statements that did not comply with
2 section 226. As a result, Plaintiffs and each member of the putative class wi
3 suffered the same type of harm and seek the same type of recovery based on
4 legal theories.

5 (d) Adequacy: Plaintiffs will fairly and adequately protect the interests of the m
6 putative class. For all relevant times, Plaintiffs resided in California and wo
7 Defendants in California. Moreover, Plaintiffs are adequate representatives
8 putative class as Plaintiffs have no interests that are adverse to those of puta
9 members. Additionally, Plaintiffs have retained counsel who has substantia
10 in complex civil litigation and wage and hour matters.

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

23 15. Plaintiffs are unaware of any difficulties that are likely to be encountered in
24 management of this action that would preclude its maintenance as a class action.

25 GENERAL ALLEGATIONS

26 16. Plaintiffs incorporate by reference and re-alleges paragraphs 1 through 15 as
27 set forth herein.
28

1 all members of the putative class wage statements that did not comply with Labor Code
2 section 226. As a result, Plaintiffs and each member of the putative class will have
3 suffered the same type of harm and seek the same type of recovery based on the same
4 legal theories.

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

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

23 15. Plaintiffs are unaware of any difficulties that are likely to be encountered in the
24 management of this action that would preclude its maintenance as a class action.

25 GENERAL ALLEGATIONS

26 16. Plaintiffs incorporate by reference and re-alleges paragraphs 1 through 15 as though fully
27 set forth herein.
28

1 17. Plaintiff Merle "Duke" Neufield worked for Defendants from approximately May 1, 2019
2 to April 20, 2021, as a non-exempt driver. Plaintiff Jeremy Magee worked for Defendants from
3 approximately February 2020 to June 2020, as a non-exempt driver. Plaintiffs and similarly situated
4 employees would pick up and transport individuals in Dodge Caravans provided by Defendants.
5 Plaintiffs and similarly situated employees regularly worked over eight (8) hours in a day and/or forty
6 (40) hours in a week. Plaintiffs and similarly situated employees regularly worked shifts of twelve (12)
7 hours.

8 18. Plaintiffs and similarly situated employees were required to contact Defendants' office at
9 the beginning of each shift to see if there was any work. There were several occasions where Plaintiffs
10 and similarly situated employees called in at the beginning of their shifts and were not provided any
11 work. Additionally, Plaintiffs and similarly situated employees completed several trips shorter than
12 their scheduled shift. However, Defendants failed to pay Plaintiffs and similarly situated employees any
13 reporting time pay.

14 19. Defendants failed to compensate Plaintiffs and similarly situated employees for all
15 compensable time. Plaintiffs and similarly situated employees were not compensated for time spent
16 warming up their vans, setting up the van's computer and programs, clocking in for their shifts once the
17 van's computers booted up, inspecting the vans to ensure they were in good working condition, driving
18 to pick up passengers, waiting to pick up passengers, and discussing work matters with Defendants'
19 management outside of work hours. In addition, Defendants unlawfully deducted 30-minute meal
20 periods that were later, cut short, interrupted, or never provided. As a result, Plaintiffs and similarly
21 situated employees were not paid for all regular and overtime hours they worked.

22 20. Defendants required Plaintiffs and similarly situated employees to work split shifts but
23 did not pay them any split shift premiums.

24 21. Defendants also required Plaintiffs and similarly situated employees to be on call for
25 twelve (12) hour shifts regardless of whether there were any trips for them to complete. For example,
26 Plaintiff Merle "Duke" Neufield was regularly on call four days a week from 12:00 p.m. to 12:00 a.m.
27 As another example, Plaintiff Jeremy Magee would be clocked in and ready to work at 6:00 a.m. but
28 would only be compensated when his shuttle trips began at 10:00 a.m., causing him to go unpaid for the

1 hours spent waiting for a trip. Moreover, because Defendants required employees to arrive at the yard
2 within thirty (30) minutes of a receiving a call during their shift and respond to any phone calls within
3 ten (10) minutes, they were not able to use their on-call time effectively for their own purposes.

4 22. Defendants paid Plaintiffs and similarly situated employees non-discretionary
5 remuneration in addition to their basic hourly rates of pay, including but not limited to an amount
6 called "Minimum Trip" on Plaintiffs' and similarly situated employees' paystubs. However, Defendants
7 did not correctly incorporate the value of non-discretionary remuneration into Plaintiffs' and similarly
8 situated employees' regular rates of pay for the purpose of paying overtime and paid sick time.

9 23. Defendants had a policy to round Plaintiffs' and similarly situated employees' hours
10 worked that was not neutrally applied to Plaintiffs and similarly situated employees. Defendants also
11 rounded Plaintiffs' and similarly situated employees' clock out and in times for meal periods, which
12 concealed short and late meal periods.

13 24. Defendants did not authorize and permit Plaintiffs and similarly situated employees to
14 take all meal and rest periods owed to them. Because of Defendants' staffing and scheduling practices,
15 lack of coverage, work demand, and Defendants' policies and practices, Defendants frequently failed to
16 provide Plaintiffs and similarly situated employees legally compliant uninterrupted 30-minute meal
17 periods on shifts over five hours or ten hours as required by law. Defendants instructed Plaintiffs and
18 similarly situated employees to stay available to complete as many trips as possible. To the extent any
19 meal or rest breaks were taken, Defendants required Plaintiffs and similarly situated employees to be on
20 call and on duty during the breaks because Defendants would often contact Plaintiffs and similarly
21 situated employees regarding the next pick up/drop off and required employees to respond to any phone
22 call within ten (10) minutes. Defendants did not have any policy to provide a second meal period or
23 third rest period although Plaintiffs and similarly situated employees worked shifts longer than (10)
24 hours. Plaintiffs and similarly situated employees did not waive their rights to meal periods under the
25 law. Defendants did not pay Plaintiffs and similarly situated employees missed meal or rest period
26 premiums.

27 25. Defendants required Plaintiffs and similarly situated employees to use their personal
28 cellphones for work and to buy cleaning products to clean their van without paying any amount to

1 reimburse them for these expenses. Defendants regularly contacted Plaintiffs and similarly situated
2 employees on their personal cellphones during their shifts regarding pick ups and drop offs.
3 Additionally, Plaintiffs and similarly situated employees were required to call Defendants' office after
4 each run, identify themselves, identify where they were calling from, what time they started, what time
5 they arrived at the pick up, what time they left the pick up, what time they arrived the destination, what
6 time they left the destination, and what time they arrived at the yard.

7 26. Defendants did not pay Plaintiffs and similarly situated employees all wages owed to
8 them at the time of their separation or termination, including minimum wages, overtime wages, split
9 shift premiums, reporting time pay, meal and rest premiums and paid sick time.

10 27. Defendants issued inaccurate wage statements to Plaintiffs and similarly situated
11 employees. The wage statements did not state Plaintiffs' and similarly situated employees accurate total
12 hours worked, all applicable hourly rates in effect and hours worked at those rates, and the correct
13 amount of gross and net wages earned.

14 CAUSES OF ACTION

15 FIRST CAUSE OF ACTION 16 FAILURE TO PAY OVERTIME WAGES 17 (As to all Defendants)

18 28. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 27 as though fully
19 set forth herein.

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

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

31. Plaintiffs and similarly situated employees were not exempt from overtime protections employees under the California Wage Orders and Labor Code.

32. As a proximate result of Defendants' conduct, Plaintiffs 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.

SECOND CAUSE OF ACTION
FAILURE TO PAY MINIMUM WAGES
(As to all Defendants)

33. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 32 as though fully set forth herein.

34. For the period preceding the filing of this Complaint, Defendants were required to compensate Plaintiffs 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 §§ 1194, 1197, 1197.1. Defendants were also required to pay split shift premiums for any split shifts worked by Plaintiffs and similarly situated employees. *See* IWC Wage Order, No. 9, section 4.

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

36. As a proximate result of Defendants' conduct, Plaintiffs 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.

THIRD CAUSE OF ACTION
MEAL PERIOD VIOLATIONS
(As to all Defendants)

37. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 36 as though fully set forth herein.

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

1 39. California Labor Code sections 226.7 and 512 and IWC Wage Order No. 9, section
2 11(A) require an employer to provide an uninterrupted meal period of not less than thirty (30)
3 minutes for each work period of more than five (5) hours.

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

10 41. Defendants employed Plaintiffs and similarly situated employees for periods of more
11 than five (5) hours without providing meal breaks of at least thirty (30) minutes or a second meal
12 period of at least thirty (30) minutes when Plaintiffs and similarly situated employees worked more
13 than ten (10) hours in a day. Defendants also failed to allow Plaintiffs and similarly situated
14 employees to take their first meal period before the completion of their fifth hour of work and failed
15 to allow Plaintiffs and similarly situated employees to take their second meal period before the
16 completion of their tenth hour of work. Plaintiffs and similarly situated employees did not waive
17 their rights to all meal periods throughout their employment.

18 42. Defendants further failed to pay Plaintiffs and similarly situated employees the
19 applicable meal period premiums for any such missed meal breaks.

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

23 **FOURTH CAUSE OF ACTION**
24 **REST PERIOD VIOLATIONS**
 (As to all Defendants)

25 44. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 43 as though fully
26 set forth herein.

27 45. An employer must provide an employee a rest period in accordance with the
28 applicable Wage Order and California Labor Code section 226.7.

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

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

48. Defendants further failed to pay Plaintiffs and similarly situated employees the applicable rest period premiums for any such missed rest periods.

49. As a proximate result of Defendants' conduct, Plaintiffs 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.

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

50. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 49 as though fully set forth herein.

51. 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

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59. Defendants knew of their obligation to pay Plaintiffs' and similarly situated employees' their final wages when their employment terminated. Indeed, Defendants had knowledge that Plaintiffs 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.

60. As a proximate result of Defendants' conduct, Plaintiffs 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.

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

61. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 60 as though fully set forth herein.

62. 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." Labor Code section 2804 states: "Any contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof is null and void, and this article shall not deprive any employee or his or her personal representative of any right or remedy to which he is entitled under the laws of this State."

63. Defendants required Plaintiffs 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. In addition, Defendants required Plaintiffs and similarly situated employees to purchase cleaning supplies for Defendants' vans but failed to reimburse them.

64. As a proximate result of Defendants' conduct, Plaintiffs 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)

65. Plaintiffs incorporate by reference and re-alleges paragraphs 1 through 64 as though fully set forth herein.

66. Defendants' conduct, as alleged in this complaint, has been, and continues to be, unfair, unlawful, and harmful to Plaintiffs and the putative class, Defendants' competitors, and the general public. Plaintiffs seek to enforce important rights affecting the public interest within the meaning of the California Code of Civil Procedure §1021.5.

67. 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.

68. Plaintiffs 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.

69. Plaintiffs 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).

70. As a direct and legal result of the Defendants' conduct, as alleged herein, pursuant to the UCL (including B&P Code §17203), Plaintiffs and similarly situated employees are entitled to restitution, including, but not limited to, interest and penalties pursuant to Business & Professions Code sections 17203, 17208, violations of California Labor Code sections 226.7, 510, 512, 2802 and 1194 all in an amount as yet unascertained but subject to proof at trial, for four (4) years from the filing of this Action.

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NINTH CAUSE OF ACTION
FAILURE TO PAY REPORTING TIME
(As to all Defendants)

71. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 70 as though fully set forth herein.

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

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

74. As a proximate result of Defendants' conduct, Plaintiffs 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.

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

75. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 74 as though fully set forth herein.

76. Plaintiff Merle "Duke" Neufield 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)

77. 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).

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

79. As a proximate result of Defendants' conduct, Plaintiff and Aggrieved 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.

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DAMAGES

WHEREFORE Plaintiffs request relief as follows:

1. A jury trial;
2. As to the First Cause of Action:
 - a. Wages in an amount to be proven at trial;
 - b. Interest for the wages due pursuant to California Labor Code section 1194;
 - c. For reasonable attorney's fees and costs incurred pursuant to California Labor Code section 1194;
3. As to the Second and Ninth Causes of Action:
 - a. Wages in an amount to be proven at trial;
 - b. Interest for the wages due pursuant to California Labor Code section 1194;
 - c. For reasonable attorney's fees and costs incurred pursuant to California Labor Code section 1194;
 - d. Liquidated damages pursuant to California Labor Code section 1194.2;
4. As to the Third Cause of Action:
 - a. Wages in an amount to be proven at trial;
 - b. Attorney's fees, costs and interest pursuant to California Code of Civil Procedure section 1021.5;
5. As to the Fourth Cause of Action:
 - a. Wages in an amount to be proven at trial;
 - b. Attorney's fees, costs and interest pursuant to California Code of Civil Procedure section 1021.5;
6. As to the Fifth Cause of Action:
 - a. Penalties as provided for in Labor Code section 226, including the greater of all 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);

- 1 b. For reasonable attorney's fees and costs incurred pursuant to Labor Code section
2 226(e);

3 7. As to the Seventh Cause of Action:

- 4 a. An amount to be proven at trial;
5 b. For attorney's fees, interest, and costs pursuant to Labor Code section 2802(c);

6 8. As to the Tenth Cause of Action:

- 7 a. For civil penalties as provided for in the Labor Code for each enumerated
8 violation;
9 b. For those Labor Code sections, the violation of which there is no civil penalty
10 provided, the default penalty provided in Labor Code section 2699(f): for any
11 initial violation, one hundred dollars (\$100) for each aggrieved employee per pay
12 period; For any subsequent violation, two hundred dollars (\$200) for each
13 aggrieved employee per pay period;
14 c. Reasonable attorney's fees and costs pursuant to Labor Code section 2699;
15 d. For any other remedies as allowed by law and/or deemed appropriate by the
16 Court;

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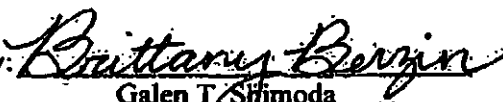
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- 1 9. For such other and further relief as this Court may deem just and proper,
2 including, but not limited to:
3 a. Wages as proved at trial;
4 b. Injunctive and Declaratory relief;
5 c. Attorney's fees and costs as provided for by law; and
6 d. Interest.

7
8 Dated: October 31, 2022

Shimoda & Rodriguez Law, PC

9
10 By: 
11 Galen T. Shimoda
12 Justin P. Rodriguez
13 Brittany V. Berzin
14 Attorneys for Plaintiff Merle "Duke"
15 Neufeld

16
17 JAMES HAWKINS APLC

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19 By: 
20 James R. Hawkins
21 Gregory Mauro
22 Michael Calvo
23 Jeanne Sarmiento
24 Attorneys for Plaintiff Jeremy Magee
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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, Estefania Rodriguez, 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 November 10, 2022, I served the following documents on the party below:

9 • **Second Amended Complaint for Damages**

10 James T. Conley (SBN 224174) 11 Kyle A. Wende (SBN 287728) 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@ogletreedeakins.com 20 Kyle.wende@ogletreedeakins.com 21 lisa.hamusek@ogletreedeakins.com 22 Joani.wise@ogletreedeakins.com	23 JAMES HAWKINS APLC 24 James R. Hawkins, Esq. (#192925) 25 Gregory Mauro, Esq. (#222239) 26 Michael Calvo, Esq. (#314986) 27 Jearme Sarmiento, Esq. (#309660) 28 9880 Research Drive, Suite 200 Irvine, CA 92618 Tel.: (949) 398-7200 Fax: (949) 387-6676 Email: james@jameshawkinsaplc.com greg@jameshawkinsaplc.com michael@jameshawkinsaplc.com jeanne@jameshawkinsaplc.com
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16 ☐ [By Mail] I am familiar with my employer's practice for the collection and
17 processing of correspondence for mailing with the United States Postal
18 Service and that each day's mail is deposited with the United States Postal
19 Service that same day in the ordinary course of business. On the date set forth
20 above, I served the aforementioned document(s) on the parties in said action
21 by placing a true copy thereof enclosed in a sealed envelope with postage
22 thereon fully prepaid, for collection and mailing on this date, following
23 ordinary business practices, at Elk Grove, California, addressed as set forth
24 above.

25 ☐ [By Personal Service] By personally delivering a true copy thereof to the
26 office of the addressee above.

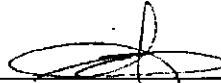
27 ☒ [XXX] [By Electronic Mail] I e-mailed the documents(s) to the person(s) shown
28 above. No error was reported by the e-mail service that I used.

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

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1 I declare under penalty of perjury under the laws of the State of California that the foregoing is
2 true and correct, and that this declaration was executed on November 10, 2022, at Elk Grove,
3 California.

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