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Attorneys for Plaintiff Marie Barraza Vae

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF KERN

Marie Barraza Vae an individual, on behalf of
herself and on behalf of all persons similarly
situated,

Plaintiff,

v.

MOGA TRANSPORT, INC., a California
Corporation; and DOES 1 through 50, inclusive,

Defendants.

Case No. BCV-20-103017 DRL

CLASS ACTION

FIRST AMENDED COMPLAINT

1. Failure to Pay Minimum Wages
2. Failure to Pay Separately and Hourly for Time Spent on Rest Periods
3. Failure to Reimburse Required Expenses
4. Failure to Provide Accurate Wage Statements
5. Failure to Pay All Wages Owed Upon Separation
6. Violation of the Unfair Competition Law (Cal. Bus. & Prof. Code §§ 17200, *et seq.*)
7. Violation of the Private Attorneys General Act

DEMAND FOR JURY TRIAL

1 Plaintiff Marie Barraza Vae (hereinafter “Plaintiff” or “Vae”), an individual, on behalf of
2 herself and all other similarly situated current and former employees, alleges on information and
3 belief, except for her own acts and knowledge which are based on personal knowledge, the
4 following:

5 **INTRODUCTION**

6 1. This is a putative class action brought against Defendant Moga Transport, Inc.,
7 (hereinafter “Defendant” or “MOGA”) on behalf of truck drivers for (i) failing to pay minimum
8 wages for all work performed, including reporting time pay; (ii) failing to pay for rest and recovery
9 periods and other non-productive time separate from any piece-rate compensation; (iii) failing to
10 reimburse required business expenses; (iv) failing to pay all owed wages each and every pay period;
11 (v) failing to provide accurate, compliant, itemized wage statements; (vi) failing to pay all wages
12 owed upon separation of employment; (vii) violation of California’s Unfair Competition Law
13 (“UCL”); and, (viii) violating the California Private Attorneys General Act (hereinafter “PAGA”).

14 2. Plaintiff is a Member of and the named representative for the Class, the Terminated
15 Employee Subclass, and the Wage Statement Subclass, as defined in Paragraphs 14-16 below. The
16 term “Class” includes Plaintiff and all other persons who are members of the “Class,” and/or the
17 “Terminated Employee Subclass,” and/or the “Wage Statement Subclass,” as herein defined.

18 3. On behalf of herself and other Members of the Class, Plaintiff seeks: 1) all minimum
19 wages owed, including reporting time pay wages, under Labor Code § 1194 and § 1197; 2) all
20 wages owed under Labor Code § 226.2; 3) expense reimbursement, under Labor Code § 2802 for
21 cellular telephone usage; 4) unpaid wages, due every pay period, under Labor Code § 204; 5)
22 unpaid wages due at the time of resignation or termination under Labor Code § 201 and/or § 202
23 and penalties based on waiting to receive those wages under Labor Code § 203; 6) penalties for
24 inaccurate and non-compliant itemized wage statements, under Labor Code § 226(e); 7) restitution
25 under California Business & Professions Code (hereinafter “Cal. Bus. & Prof. Code”) § 17203; and
26 8) injunctive relief under Labor Code § 226(h) and Business and Professions Code § 17200, *et seq*,
27 requiring that Defendants provide compliant, itemized wage statements, consistent with Labor
28 Code § 226(a), and cease and desist from their other unlawful and/or unfair employment practices.

4. The State of California Private Attorneys General Act of 2004 allows for a tolling of the limitations period during the period during which the California Labor and Workforce Development Agency (hereinafter “LWDA”) is assessing, or the employer may be curing, the alleged violations. Cal. Labor Code § 2699.3(d). On December 29, 2020, pursuant to Cal. Labor Code § 2699.3(a)(1), counsel for Plaintiff, on behalf of Marie Barraza Vae, provided written notice via online filing with the LWDA and via certified mail, with return-receipt, to the employer / Defendant, alleging violations of the California Labor Code and the facts and theories that support the alleged violations. (*see Exhibit 1*, attached hereto and incorporated by this reference herein). Additionally, on December 29, 2020, pursuant to Cal. Labor Code §2699.3(a)(1)(B), counsel for Plaintiff, on behalf of Marie Barraza Vae, electronically submitted the required filing fee of \$75.00 to the LWDA. (*see Exhibit 1*).

JURISDICTION AND VENUE

5. This Court has jurisdiction over this Action pursuant to California Code of Civil Procedure (hereinafter “Cal. Code of Civ. Proc.”) § 410.10 and Cal. Bus. & Prof. Code § 17203. This action is brought as a Class Action on behalf of Plaintiff and similarly situated employees of Defendant, pursuant to Cal. Code of Civ. Proc. § 382.

6. Venue is proper in this Court, pursuant to Cal. Code of Civ. Proc. § 395 and § 395.5, because Defendant does business in the County of Kern.

THE PARTIES

A. Plaintiff and the Class

7. Plaintiff Vae worked as a truck driver transporting milk for Defendant from approximately May 7, 2019 through approximately May 29, 2019, and then again from approximately June 2019 through approximately May 25, 2020. Plaintiff was classified as a full-time employee and paid on a piece-rate basis, as evidenced by her paystubs and her employment file. Plaintiff primarily performed her work in the State of California, but would sometimes drive to Oregon, Nevada, or Arizona.

8. Upon the commencement of a work shift, Plaintiff would drive in her personal vehicle to Defendant's fenced-in yard, at which time she would transfer her personal items into the

1 cab of Defendant's truck (the "vehicle"). Then, Plaintiff would perform a pre-trip inspection of the
2 vehicle and link-up the cab (connecting hoses, etc.) with the tanker that holds the milk. Plaintiff
3 would need to visit a storage shed on the property, where she would take an ice chest and load
4 samples of milk into the ice chest from the ice machine as labeled for her taking in order to be
5 provided to the customer upon her arrival for a delivery. Plaintiff would also need to ensure that
6 the seals on the top of the tanker were not tampered with. Plaintiff was not paid for all time spent
7 on pre-trip activities or on similar (reverse) post-trip activities upon her return. Also, on certain
8 occasions, Plaintiff would be gone for multiple days at a time and was required to sleep in the truck
9 cab sleeping birth, without wages for all time spent on the road and without a sufficient per diem
10 being provided. On many occasions Plaintiff would wait for hours for her delivery to be completed
11 and failed to receive compensation for this time. On certain occasions, due to traffic accidents or
12 just irregular traffic, Plaintiff would spend an increased amount of time driving (beyond what
13 would normally be anticipated for the designated route based on the distance) but was not
14 compensated any additional wages for this work time. Defendant failed to pay sufficient wages for
15 all time actually worked, based on the time spent and the compensation paid, which fell below
16 minimum wage. On certain occasions, Plaintiff maintained her own log sheets to document her
17 time being worked because it was unclear to her how she was being paid (either hourly, or per load,
18 or per mile) and when she confronted a supervisor by the name of "Navi," she had her personal log-
19 sheets forcibly removed from her possession and torn-up.

20 9. The Members of the Class are identifiable, similarly situated persons currently
21 and/or formerly employed by Defendant who were (1) not paid wages for all time worked,
22 including reporting time pay, (2) were not provides wages for rest and recovery periods and other
23 non-productive time separate from any piece-rate compensation, (3) were not reimbursed for all
24 incurred business expenses, including cellular telephone usage and travel expenses; (4) were not
25 provided accurate itemized wage statements; (5) were not paid all wages due each and every pay
26 period; and/or (6) were not provided with all earned wages upon their separation of employment.

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1 **B. Defendants**

2 10. Defendant MOGA is an entity created under the laws of the State of California, with
3 terminals in Bakersfield, California (7117 Dole Ct., Bakersfield, CA 93308), Hesperia, California
4 (17105 Darwin Avenue, Hesperia, CA 92345), and Petaluma, California (1 Casa Grande Rd.,
5 Petaluma, CA 94954). According to the MOGA website, it has been in business since 2013 and its
6 primary business is the transportation of milk in large tanker trucks, typically transported from
7 ranch pick-ups or plant-to-plant movements.

8 11. The true names and capacities, whether individual, corporate, associate or otherwise
9 of the Defendants sued here as DOES 1 through 50, inclusive, are presently unknown to Plaintiff,
10 who therefore sues these Defendants by such fictitious names, pursuant to Cal. Civ. Proc. Code
11 § 474. Plaintiff is ignorant of the true names, capacities, relationships and extent of participation in
12 the conduct herein alleged, of the Defendants sued herein as DOES 1 through 50 but is informed
13 and believes and thereon alleges that said Defendants are legally responsible for the wrongful
14 conduct alleged herein and therefore sues these Defendants by such fictitious names. To the extent
15 required, Plaintiff will seek leave of Court to amend this Complaint to reflect the true names and
16 capacities of these Defendants, when they have been ascertained and become known.

17 12. Plaintiff is informed and believes, and based thereon, alleges that each of the
18 Defendants designated herein is legally responsible in some manner for the unlawful acts referred
19 to herein and that each Defendant acted in all respects pertinent to this action as the agent of the
20 other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto,
21 and the acts of each Defendant are legally attributable to the other Defendants.

22 13. The agents, servants and/or employees of Defendants and each of them, acting on
23 behalf of the Defendants, acted within the course and scope of his, her or its authority as the agent,
24 servant and/or employee of the Defendants, and personally participated in the conduct alleged
25 herein on behalf of the Defendants with respect to the conduct alleged herein. Consequently, the
26 acts of each Defendant are legally attributable to the other Defendants and all Defendants are jointly
27 and severally liable to Plaintiff and the other non-exempt hourly employees, for the loss sustained
28 as a proximate result of the conduct of the Defendants' agents, servants and/or employees.

CLASS ACTION ALLEGATIONS

14. Plaintiff brings this action on behalf of herself and all other similarly situated persons as a class action pursuant to Code of Civil Procedure § 382. Plaintiff seeks to represent a Class composed of and defined as follows:

All of Defendant's truck drivers in the State of California at any time since December 29, 2016 through the date as determined by the Court ("Class Period") ("Class Members").

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

All Class Members whose work with Defendant ended at any time since December 29, 2017 ("Terminated Subclass Members").

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

All Class Members employed at any time since December 29, 2019 ("Wage Statement Subclass Members").

17. This action has been brought and may be maintained as a class action pursuant to Code of Civil Procedure § 382, because there is a well-defined community of interest among many persons who comprise a readily ascertainable class.

- a. The Class Members are so numerous that individual joinder of all of them as plaintiffs is impractical. Although the exact number of Class members is unknown to Plaintiff at this time, Plaintiff is informed and believes and thereon alleges that there are not less than 100 Class Members.
- b. The identity of Class Members can readily be determined from Defendants' records. Defendants' records include the name and address of every person who performed work for them in California during the Class Period.
- c. Common questions of law and fact exist as to Class Members and predominate over any questions that may affect only individual Class Members. These common questions include, but are not limited to:

- (1) Did Defendants, in violation of Labor Code § 1194 and § 1197 and/or I.W.C. Wage Order No. 9-2001, fail to pay Plaintiff and Class Members for all minimum wages and/or reporting time pay?
- (2) Did Defendants, in violation of Labor Code § 226.2 and § 1194 and/or I.W.C. Wage Order No. 9-2001, fail to pay Plaintiff and Class Members separately for rest and recovery periods and other non-productive time separate from any piece-rate compensation at the legally required rates of pay?
- (3) Did Defendants, in violation of Labor Code § 2802, fail to indemnify Class Members for all necessary expenditures or losses incurred in the course of their duties, including cellular telephone usage and travel expenses?
- (4) Did Defendants fail to provide Wage Statement Subclass Members with accurate, compliant, and itemized wage statements, as required by Labor Code § 226(a)?
- (5) Are Defendants liable for civil penalties under Labor Code § 226?
- (6) Did Defendants, in violation of Labor Code § 201 and/or § 202, fail to pay timely all wages owed to Terminated Subclass Members upon separation?
- (7) Did Defendants act willfully when they failed to pay timely all wages owed to Terminated Subclass Members upon separation?
- (8) Are Defendants liable for penalty wages under Labor Code § 203?
- (9) Did Defendants violate Cal. Bus. & Prof. Code § 17200, *et seq.*, by their unlawful practices, as alleged herein?
- (10) Did Defendants violate Cal. Bus. & Prof. Code § 17200, *et seq.*, by failing to pay Plaintiff and Class Members all wages earned each pay period, in violation of Labor Code § 204, as alleged herein?
- (11) Are Defendants liable for restitution under Cal. Bus. & Prof. Code § 17203?
- (12) Should Defendants be subjected to declaratory and/or injunctive relief measures, prohibiting the continuation of the unlawful business practices

under Cal. Bus. & Prof. Code § 17200, *et seq.*?

(13) Are Defendants liable for pre-judgment interest?

(14) Are Defendants liable for attorney's fees and costs?

d. Plaintiff is a Member of the Class and the Subclasses, and her claims are typical of the claims of the other Class Members and Subclass Members. Plaintiff is informed and believes and thereon alleges that Defendants maintain policies or practices of: 1) failing to pay minimum wages for all hours actually worked, including reporting time pay; 2) failing to pay for rest and recovery periods and other non-productive time; 3) failing to reimburse all necessarily incurred business expenses, including cellular telephone usage and travel expenses; 4) failing to pay employees for all wages earned during each pay period; 5) failing to pay employees all earned wages due upon separation of employment; and/or, 6) failing to provide employees with accurate, compliant itemized wage statements reflecting all required information, including but not limited to, the number of hours worked and the number of piece-rate units worked.

e. Plaintiff will adequately and fairly protect the interests of the Class Members and Subclass Members. Plaintiff has no interest adverse to the interests of absent Class Members and/or Subclass Members. Plaintiff is represented by legal counsel who has substantial class action experience in civil litigation and employment law.

18. A class action is superior to other available means for fair and efficient adjudication of the claims of the Class and would be beneficial for the parties and the court. Class action treatment will allow a large number of similarly situated persons to prosecute their common claims in a single forum, simultaneously, efficiently, and without the unnecessary duplication of effort and expense that numerous individual actions would require. The monetary amounts due to many individual Class Members are likely to be relatively small, and the burden and expense of individual litigation would make it difficult or impossible for individual members of the Class to seek and obtain relief. A class action will serve an important public interest by permitting such individuals to effectively pursue recovery of the sums owed to them. Further, class litigation

1 prevents the potential for inconsistent or contradictory judgments raised by individual litigation.

2 **FIRST CAUSE OF ACTION**
3 **Failure to Pay Minimum Wages**

(By Plaintiff and the Class Members against all Defendants)

4 19. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

5 20. At all relevant times, Plaintiff and the Class Members were and/or are employees of
6 Defendants covered by Labor Code § 1194 and § 1197 and I.W.C. Wage Order No. 9-2001.

7 21. By their failure to pay minimum wages for all time worked, including reporting time
8 pay, Defendants willfully breached their agreement to pay wages, in violation of Labor Code §
9 1194 and § 1197 and I.W.C. Wage Order No. 9-2001.

10 22. Plaintiff is informed and believes and thereon alleges that at all relevant times within
11 the applicable limitations period, Defendants maintained and continue to maintain a policy of
12 failing to pay wages for all pre and post trip vehicle inspections and other preparatory work
13 required (*i.e.* collecting milk samples, gathering paper work, etc.), time spent waiting with the
14 truck, time spent fueling the vehicle, etc.

15 23. Further, Plaintiff is informed and believes and thereon alleges that on certain days
16 after reporting to work, Defendant failed to pay her for half of her usual or scheduled day's work,
17 and for at least two (2) hours (up to four (4) hours), at the regular rate of pay.

18 24. Additionally, Plaintiff was required on numerous occasions to drive the vehicle
19 empty, with no load, and did not receive compliant compensation for the time worked to perform
20 that duty of transporting an empty vehicle.

21 25. As a result of Defendants' unlawful and willful conduct, employees have suffered
22 damages in an amount, subject to proof, to the extent that they were not paid all minimum wages
23 for all hours actually worked, and reporting time pay at the regular rate of pay, owed to them under
24 Labor Code § 1194 and § 1197, and I.W.C. Wage Order No. 9-2001.

25 26. Pursuant to Labor Code §§ 1194, 1194.2 and 1194.3, Plaintiff and the Class
26 Members are entitled to recover the full amount of unpaid wages, liquidated damages, pre-
27 judgment interest, reasonable attorney's fees and costs of suit.

1 **SECOND CAUSE OF ACTION**

2 **Failure to Pay Separately and Hourly for Time Spent on Rest and Recovery Periods**
3 (By Plaintiff and the Class Members against all Defendants)

4 27. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

5 28. At all relevant times, Plaintiff and Members of the Class were employees of
6 Defendants covered by Labor Code § 226.2, § 1194, § 1194.2, and I.W.C. Wage Order No. 9-2001.

7 29. As set forth above, during the Class Period, Plaintiff and the Class Members were
8 compensated in whole or in part on a piece-rate basis, but Defendants did not separately
9 compensate the truck drivers at the regular rate of pay for their time spent on rest or recovery
10 periods or other non-productive time, in violation of Labor Code § 226.2 and § 1194.

11 30. Accordingly, during the Class Period, Plaintiff and Class Members did not receive
12 the requisite compensation under Labor Code § 226.2 for their time spent taking statutory rest
13 breaks, recovery periods, and or for time spent on other non-productive time.

14 31. In failing to pay Class Members at their regular rate of pay for their time spent on
15 rest/recovery periods separately, particularly after *Bluford v. Safeway Stores, Inc.*, (2013) 216 Cal.
16 App. 4th 864, *Gonzalez v. Downtown LA Motors, LP*, (2013) 215 Cal. App. 4th 36, and the
17 enactment of Labor Code § 226.2, consistent with those holdings, Defendants have operated in bad
18 faith, given the state of the law. Accordingly, pursuant to Labor Code § 1194 and § 1194.2,
19 Plaintiff and the Class Members are entitled to recover their unpaid hourly wages due, plus
20 liquidated damages.

21 32. Pursuant to § 1194.2 of the Labor Code, Plaintiff and the Class Members are also
22 entitled to recover interest, costs, and attorneys' fees associated with this cause of action.

23 **THIRD CAUSE OF ACTION**

24 **Failure to Reimburse Employees for Required Expenses**
25 (By Plaintiff and the Class Members against all Defendants)

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

27 34. At all relevant times, Plaintiff and the other Members of the Class were employees
28 of Defendants covered by Labor Code § 2802 which provides, in relevant part, 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

1 unlawful, unless the employee, at the time of obeying the directions, believed them
2 to be unlawful.

3 35. At all relevant times herein, Defendants violated Labor Code § 2802 by failing to
4 reimburse and indemnify the Plaintiff and the other Members of the Class for cellular telephone
5 usage (*i.e.* communicating with dispatch and company employees) and for sufficient per
6 diems/travel expenses when travelling for more than one day.

7 36. Class Members were required to communicate with their dispatch center and with
8 other employees, yet were not provided with a company cellular telephone, nor were they provided
9 with expense reimbursement for this necessarily incurred business expenditure on behalf of
10 Defendants. Additionally, on certain occasions Class Members were required to sleep in their
11 vehicle and purchase meals other incidentals while away from their homes and failed to receive
12 sufficient reimbursement from Defendants to cover these out-of-pocket expenses.

13 37. Defendants were aware that Class Members have incurred these out-of-pocket
14 expenses, but failed and still fail to reimburse them as an employer is required to do under the laws
15 and regulations of the State of California. Defendants are estopped by this conduct to assert any
16 waiver of this expectation.

17 38. Labor Code § 2802(b) and (c) provides for interest at the statutory post judgment
18 rate of ten percent (10%) simple interest per annum from the date of the expenditure, plus
19 attorneys' fees to collect reimbursement.

20 39. Plaintiff therefore demands reimbursement for expenditures or losses incurred by
21 her and the other Class Members in the discharge of their duties for Defendants, or their obedience
22 to the directions of Defendants, with interest at the statutory rate and costs under Labor Code §
23 2802.

24 **FOURTH CAUSE OF ACTION**
25 **Failure to Provide Accurate Wage Statements**

(By Plaintiff and the Wage Statement Subclass Members against all Defendants)

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

27 41. At all relevant times, Plaintiff and the Wage Statement Subclass Members were
28 employees of Defendants covered by Labor Code § 226.

1 42. Pursuant to Labor Code § 226(a), Plaintiff and the Wage Statement Subclass
2 Members were entitled to receive, semi-monthly or at the time of each payment of wages, an
3 accurate, compliant itemized statement showing gross wages earned; net wages earned; all
4 applicable hourly rates in effect during the pay period; the corresponding number of hours worked
5 at each hourly rate; and the number of piece-rate units earned and any applicable piece rate.

6 43. Defendants failed to provide Plaintiff and the Wage Statement Subclass Members
7 accurate, compliant itemized wage statements in accordance with Labor Code § 226(a) and § 226.2.
8 Plaintiff is informed and believes and thereon alleges that at all relevant times since one (1) year
9 preceding the filing of the Complaint in this action (the “Penalty Period”), Defendants maintained a
10 policy or practice of failing to pay wages for all time actually worked, failing to accurately record
11 all hours actually worked, failing to pay legally required sufficient wages for rest and recovery
12 periods and other non-productive time separate from any piece-rate compensation pursuant to
13 Labor Code § 226.2, failing to reimburse required expenditures, failing to list the hours worked and
14 applicable rates of pay, and failing to list the number of piece-rate units worked. Defendants’
15 practice resulted and continues to result in the issuance of non-compliant ‘wage statements’ to
16 Class Members that do not show the correct amount of gross wages earned, the correct amount of
17 net wages earned, the correct number of hours worked, the correct number of piece-rate units
18 worked and applicable rates of pay thereto, the correct hourly rates of pay in effect for each hour
19 worked, and the correct deductions made thereto for taxing authority purposes.

20 44. Defendants failed to provide Plaintiff and the Wage Statement Subclass Members
21 with wage statements that list the total hours worked pursuant to Labor Code § 226(a)(2) and failed
22 to provide wage statements that list the number of piece-rate units earned and the applicable rates
23 of pay pursuant to Labor Code § 226(a)(3).

24 45. Defendants’ failure to provide Plaintiff and the Wage Statement Subclass Members
25 with accurate itemized wage statements was knowing and intentional. Defendants had the ability to
26 provide Plaintiff and Wage Statement Subclass Members with accurate wage statements, but
27 intentionally provided ‘wage statements’ that Defendants knew were not accurate or compliant.

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1 46. As a result of Defendants' conduct, Plaintiff and the Wage Statement Subclass
2 Members have suffered injury. The absence of accurate and complete information on their wage
3 statements has prevented timely challenges to Defendants' unlawful pay practices, has and will
4 require discovery and mathematical computations to determine the amount of wages owed and
5 number of hours actually worked and the number of piece-rate units earned and the applicable rates
6 of pay, and has caused difficulty and expense in attempting to reconstruct time and pay records,
7 and has led to the submission of inaccurate information about wages and deductions to state and
8 federal government agencies. Moreover, Defendants' failure to include required information on its
9 wage statements prevents employees from determining if they are actually being paid at least
10 minimum wage for each hour worked, as the time worked is not reflected, nor are the rates of pay.

11 47. Pursuant to Labor Code § 226(e), Plaintiff and the Wage Statement Subclass
12 Members are each entitled to recover fifty dollars (\$50) for the initial pay period during the Penalty
13 Period in which a violation of Labor Code § 226 occurred and one hundred dollars (\$100) for each
14 violation of Labor Code § 226 in a subsequent pay period, not to exceed an aggregate penalty of
15 four thousand dollars (\$4,000) per employee.

16 48. Pursuant to Labor Code § 226(h), Plaintiff and the Wage Statement Subclass
17 Members are entitled to bring an action for injunctive relief to ensure Defendants' compliance with
18 Labor Code § 226(a). Injunctive relief is warranted because Defendants continue to provide
19 currently employed Wage Statement Subclass Members with inaccurate, deficient, non-compliant
20 'wage statements' in violation of Labor Code § 226(a) and currently employed Wage Statement
21 Subclass Members have no adequate legal remedy for the continuing injuries that will be suffered
22 as a result of Defendants' ongoing unlawful conduct. Injunctive relief is the only remedy available
23 for ensuring Defendants' compliance with Labor Code § 226(a).

24 49. Pursuant to Labor Code § 226(e) and § 226(h), Plaintiff and the Wage Statement
25 Subclass Members are entitled to recover the full amount of penalties due under Labor Code
26 §226(e), reasonable attorney's fees and costs of suit.

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1 **FIFTH CAUSE OF ACTION**

2 **Failure to Pay All Wages Owed Upon Separation**

(By Plaintiff and the Terminated Subclass Members against all Defendants)

3 50. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

4 51. At all relevant times, Plaintiff and the Terminated Subclass Members, were
5 employees of Defendants covered by Labor Code § 201 and/or § 202.

6 52. Pursuant to Labor Code § 201 and/or § 202, Plaintiff and the Terminated Subclass
7 Members were entitled upon termination to timely payment of all wages earned and unpaid prior to
8 termination. Discharged employees were entitled to payment of all wages earned and unpaid prior
9 to discharge immediately upon termination. Employees who resigned were entitled to payment of
10 all wages earned and unpaid prior to resignation within 72 hours after giving notice of resignation
11 or, if they gave 72 hours previous notice, they were entitled to payment of all wages earned and
12 unpaid prior to resignation at the time of resignation.

13 53. Defendants failed to pay Plaintiff and the Terminated Subclass Members all wages
14 earned and unpaid prior to termination in accordance with Labor Code § 201 or § 202. Plaintiff is
15 informed and believes and thereon alleges that during the three (3) year limitations period
16 applicable to this cause of action, Defendants maintained and continue to maintain a policy or
17 practice of failing to pay minimum wages for all work performed, including reporting time pay, and
18 failing to pay required wages for all rest and recovery periods and other non-productive time.

19 54. Defendants' failure to pay Plaintiff and the Terminated Subclass Members all wages
20 earned prior to termination in accordance with Labor Code § 201 and/or § 202 was willful.
21 Defendants had the ability to pay all wages earned by employees but intentionally adopted policies
22 or practices incompatible with the requirements of Labor Code § 226.2, § 1194 and § 1197, and
23 I.W.C. Wage Order No. 9-2001. Defendants had the ability to pay all wages, but intentionally
24 adopted policies or practices incompatible with the requirements of Labor Code § 226.2, § 1194
25 and § 1197, and I.W.C. Wage Order No. 9-2001. When Defendants failed to pay upon termination
26 all wages earned prior to termination, Defendants knew what they were doing and intended to do
27 what they did.

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55. Pursuant to Labor Code § 201 and/or § 202, Plaintiff and the Terminated Subclass Members are entitled to all wages earned prior to termination that Defendants did not pay them.

56. Pursuant to Labor Code § 203, Plaintiff and the Terminated Subclass Members are entitled to penalty wages, from the day their earned and unpaid wages were due upon termination until paid, up to a maximum of 30 days.

57. As a result of Defendants' conduct, Plaintiff and the Terminated Subclass Members have suffered damages in an amount, subject to proof, to the extent they were not paid for all wages earned prior to termination in violation of Labor Code § 201 and/or § 202.

58. As a result of Defendants' conduct, Plaintiff and the Terminated Subclass Members have suffered damages in an amount, subject to proof, to the extent they were not paid all penalty wages owed to them, in violation of Labor Code § 203.

59. Pursuant to Labor Code §§ 218 and 218.5, Plaintiff and the Terminated Subclass Members are entitled to recover the full amount of their unpaid wages, unpaid penalty wages, and reasonable attorney's fees and costs of suit. Plaintiff and the Terminated Subclass Members are entitled to recover pre-judgment interest on all due and unpaid wages and penalty wages under Labor Code § 218.6 and/or Civil Code § 3287(a).

SIXTH CAUSE OF ACTION
Violation of the Unfair Competition Law (“UCL”)
[Cal. Bus. & Prof. Code § 17200, *et seq.*]
(By Plaintiff and the Class Members against all Defendants)

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

61. Plaintiff brings this claim on behalf of herself and all others similarly situated in her representative capacity against Defendants for their unlawful business acts and/or practices, pursuant to Cal. Bus. & Prof. Code § 17200, *et seq.* (the “UCL”), which prohibits all unlawful business acts and/or practices.

62. Defendants are each a “person,” as that term is defined under Cal. Bus. and Prof. Code § 17021.

63. The UCL defines unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section 17203 authorizes injunctive, declaratory, and/or other equitable relief with

1 respect to unfair competition as follows:

2 Any person who engages, has engaged, or proposes to engage in
3 unfair competition may be enjoined in any court of competent
4 jurisdiction. The court may make such orders or judgments,
5 including the appointment of a receiver, as may be necessary to
6 prevent the use or employment by any person of any practice which
7 constitutes unfair competition, as defined in this chapter, or as may
8 be necessary to restore to any person in interest any money or
9 property, real or personal, which may have been acquired by means
10 of such unfair competition.

11 Cal. Bus. & Prof. Code § 17203.

12 64. By the conduct alleged herein, Defendants have engaged and continue to engage in
13 business practices that violate California law, including but not limited to, I.W.C. Wage Order No.
14 9-2001, the California Code of Regulations and the California Labor Code including §§ 201-204, §
15 226, § 226.2, § 1194, § 1197, and § 2802, for which this Court should issue declaratory and other
16 equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, as may be necessary to prevent and
17 remedy the conduct held to constitute unfair competition, including restitution of wages and
18 premium pay wrongfully withheld.

19 65. By the conduct alleged herein, Defendants' practices were unlawful and unfair in
20 that these practices violated public policy, were immoral, unethical, oppressive, unscrupulous, or
21 substantially injurious to employees, and were without valid justification or utility for which this
22 Court should issue equitable and injunctive relief, pursuant to Cal. Bus. & Prof. Code § 17203, as
23 may be necessary to prevent and remedy the conduct held to constitute unfair competition,
24 including restitution of wages and premium pay wrongfully withheld.

25 66. By the conduct alleged herein, Defendants' practices were deceptive and fraudulent
26 in that Defendants' uniform policies and practices willfully failed to pay Plaintiff and the Class
27 Members for all minimum wages, including reporting time pay, failed to pay wages for all rest and
28 recovery periods and other non-productive time separate from any piece-rate compensation, failed
to reimburse all incurred business expenses (*e.g.* cellular telephone and travel expenses), failed to
pay all wages earned each and every pay period, failed accurately to record all time worked and the
applicable rate(s) of pay for all time actually worked, failed to record accurately the number of
piece-rate units earned and the applicable rates of pay, failed to maintain accurate time records, and

1 failed to pay all wages owed upon separation from employment, pursuant to the applicable Labor
2 Code, and I.W.C. Wage Order No. 9-2001 in violation of Cal. Bus. Code § 17200, *et seq.*, and for
3 which this Court should issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code §
4 17203, including restitution of wages and premium pay wrongfully withheld.

5 67. By the conduct alleged herein, Defendants' practices were also unlawful, unfair and
6 deceptive in that Defendants' employment practices caused Plaintiff and the Class Members to be
7 underpaid during their employment with Defendants.

8 68. By the conduct alleged herein, Defendants' practices were also unfair and deceptive
9 in that Defendants' uniform policies, practices and procedures failed to provide Plaintiff and the
10 Class Members with reimbursement for cellular telephone usage and travel expenses incurred on
11 multi-day trips.

12 69. By and through the unlawful and unfair business practices described herein,
13 Defendants have obtained valuable property, money and services from Plaintiff and the Class
14 Members, including earned wages for all time actually worked, amounts for expenditures on
15 cellular phones and travel (i.e. meals, incidentals, etc.), and has deprived them of valuable rights
16 and benefits guaranteed by law and contract, all to the detriment of these employees and to the
17 benefit of Defendants, so as to allow Defendants to unfairly compete against competitors who
18 comply with the law.

19 70. All of the acts described herein as violations of, among other things, the I.W.C.
20 Wage Orders, the California Code of Regulations, and the California Labor Code, were unlawful
21 and in violation of public policy, were immoral, unethical, oppressive and unscrupulous, were
22 deceptive, and thereby constitute unlawful, unfair, and/or deceptive business practices, in violation
23 of Cal. Bus. & Prof. Code § 17200, *et seq.*

24 71. Plaintiff and the Class Members are entitled to, and do, seek such relief as may be
25 necessary to restore to them the money and property that Defendants have acquired, or of which
26 Plaintiff and the Class Members have been deprived, by means of the above described unlawful
27 and unfair business practices, including earned but unpaid wages for all time worked and
28 reimbursement of expenditures incurred.

1 72. Plaintiff and the Class Members are further entitled to, and do, seek a declaration
2 that the described business practices are unlawful, unfair and deceptive, and that injunctive relief
3 should be issued restraining Defendants from engaging in any unlawful and unfair business
4 practices in the future.

5 73. Plaintiff and the Class Members have no plain, speedy and/or adequate remedy at
6 law that will end the unlawful and unfair business practices of Defendants. Further, the practices
7 herein alleged presently continue to occur unabated. As a result of the unlawful and unfair business
8 practices described herein, Plaintiff and the Class Members have suffered and will continue to
9 suffer irreparable legal and economic harm unless Defendants are restrained from continuing to
10 engage in these unlawful and unfair business practices.

11 74. Wherefore, Plaintiff and the other Class Members are entitled to equitable relief,
12 including restitution, attorney's fees and costs, declaratory relief, and a permanent injunction
13 enjoining Defendants from their unlawful and/or unfair activity.

SEVENTH CAUSE OF ACTION
Violation of the Private Attorneys General Act
[Cal. Bus. & Prof. Code §§ 2698, *et seq.*]

(By Plaintiff on behalf of all aggrieved employees against all Defendants)

16 75. Plaintiff and all aggrieved employees of all Defendants incorporate all the preceding
17 paragraphs as though fully set forth herein.

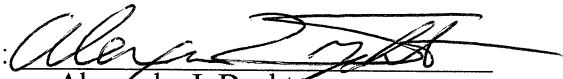
18 76. PAGA is a mechanism by which the State of California itself can enforce state labor
19 laws through the employee suing under the PAGA who do so as the proxy or agent of the state's
20 labor law enforcement agencies. An action to recover civil penalties under PAGA is fundamentally
21 a law enforcement action designed to protect the public and not to benefit private parties. The
22 purpose of the PAGA is not to recover damages or restitution, but to create a means of "deputizing"
23 citizens as private attorneys general to enforce the Labor Code. In enacting PAGA, the California
24 Legislature specified that "it was ... in the public interest to allow aggrieved employees, acting as
25 private attorneys general to recover civil penalties for Labor Code violations ..." Stats. 2003, ch.
26 906, § 1. Accordingly, PAGA claims cannot be subject to arbitration.

27 77. Plaintiff brings this Representative Action on behalf of the State of California with
28 respect to herself and all other truck drivers in the State of California since December 29, 2019, and

- 1 F. Liquidated damages under Labor Code § 1194 and § 1194.2;
2 G. Reimbursement for expenditures and/or losses under Labor Code § 2802;
3 H. Civil Penalties under Labor Code § 226(e);
4 I. Damages for unpaid final wages under Labor Code § 201 or § 202;
5 J. Damages for penalty wages under Labor Code § 203;
6 K. Restitution for unpaid wages under Cal. Bus. & Prof. Code § 17203;
7 L. Injunctive relief under Labor Code § 226(h) and Cal. Bus. & Prof. Code § 17200, *et*
8 *seq.*, requiring that Defendants provide compliant, itemized wage statements
9 consistent with Labor Code § 226(a) and cease and desist from their other unlawful
10 and/or unfair employment practices;
11 M. Recovery of civil penalties as prescribed by PAGA;
12 N. An award of penalties, attorneys' fees, and costs of suit pursuant to Labor Code §
13 2699(g);
14 O. Prejudgment interest at the maximum legal rate;
15 P. Reasonable attorneys' fees;
16 Q. Costs of suit; and
17 R. Such other relief as the Court may deem just and proper.

18 Dated: March 5, 2021

DYCHTER LAW OFFICES, APC
Law Offices of Raphael A. Katri

20 By: 
21 Alexander I. Dychter
Attorneys for Plaintiff Vae

22 **DEMAND FOR JURY TRIAL**

23 Plaintiff demands a trial by jury for herself and the Class on all claims so triable.
24

25 Dated: March 5, 2021

DYCHTER LAW OFFICES, APC
Law Offices of Raphael A. Katri

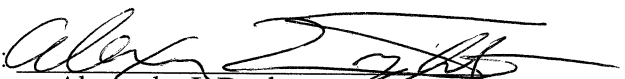
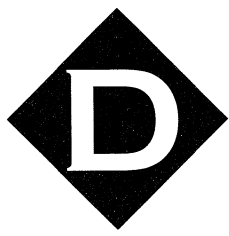
27 By: 
28 Alexander I. Dychter
Attorneys for Plaintiff Vae

EXHIBIT 1



**DYCHTER
LAW OFFICES**
A PROFESSIONAL CORPORATION

180 BROADWAY, SUITE 1835, SAN DIEGO, CALIFORNIA 92101
TEL 619.487.0777 | FAX 619.330.1827

December 29, 2020

**VIA U.S. CERTIFIED MAIL
RETURN RECEIPT REQUESTED**
[7018 3090 0001 2150 0245]

MOGA TRANSPORT, INC.
Attn: Prabhjeet Gill
5763 Dexter Circle
Rohnert Park, CA 94928

VIA ONLINE FILING ONLY
California Labor & Workforce Development Agency ("LWDA")

Re: Notice of Violation of California Labor Code Sections 201-204, 226, 226.2, 1194, 1197, 2802; Industrial Welfare Commission Wage Order(s), And Pursuant to California Labor Code Section 2699.5

Dear Sir/Madam,

Our office represents Plaintiff Marie Barraza Vae (the "Plaintiff" or "Vae"), and other aggrieved employees in a class action lawsuit against MOGA TRANSPORT, INC. ("Defendant" or "MOGA"), a California Corporation. Plaintiff and other employees were employed as truck drivers in the State of California, primarily transporting milk within the State of California and occasionally travelling outside California for deliveries/pick-ups. Defendant has failed to pay minimum wages for all work performed, including reporting time pay, failed to pay for rest and recovery periods and other non-productive time, failed to pay all wages owed each and every pay periods, failed to reimburse all incurred business expenses, failed to maintain accurate time records, failed to provide accurate itemized wage statements, and failed to pay all wages owed upon separation of employment in violation of the California Labor Code, and are therefore actionable under California Labor Code Section 2699.3.

A true and correct copy of the Complaint filed by Plaintiff on December 29, 2020 in the Superior Court of California – County of Kern is attached hereto as **Exhibit 1**, which (i) identifies the alleged violations, (ii) details the facts and theories which support the alleged violations, (iii) details the specific work performed by Plaintiff, (iv) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiff, and (v) sets forth the illegal practices used by Defendant. This information provides notice to the Labor and Workforce Development Agency ("LWDA") of the facts and theories supporting the alleged violations for the agency's reference. Plaintiff therefore incorporates the allegations of the attached Complaint (**Exhibit 1**) into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask. Attachment of **Exhibit 1** herein is **NOT** meant to act as "service" of the Complaint on Defendant MOGA. Service of the attached **Exhibit 1** will be conducted by Plaintiff on Defendant in the near future.

NOTE: The attached Complaint as **Exhibit 1** is **NOT** meant to act as "service" on Defendant.

This notice is provided to enable the Plaintiff to proceed with the Complaint filed in the Superior Court of California – County of Kern on December 29, 2020, against MOGA as authorized by California Labor Code Section 2699, *et seq.* The pending class action lawsuit consists of a class of other aggrieved truck drivers who worked for MOGA in the State of California. As class counsel, our intention is to vigorously prosecute the class-wide claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorneys General Statute of 2004 on behalf of Plaintiff and all aggrieved Class Members.

Your earliest response to this notice is appreciated. If you have any questions of concerns, please do not hesitate to contact me at the above number and address.

Respectfully Submitted,

DYCHTER LAW OFFICES, APC
Law Offices of Raphael A. Katri

A handwritten signature in black ink, appearing to read 'A. Dychter', is written over a horizontal line.

Alexander I. Dychter, Esq.
Attorneys for Plaintiff Vae

encl: **Exhibit 1** = copy of Complaint filed on 12/29/20

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

OFFICIAL USE

Certified Mail Fee

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Extra Services & Fees (check box, add fee as appropriate)

- ☐ Return Receipt (hardcopy) \$
☐ Return Receipt (electronic) \$
☐ Certified Mail Restricted Delivery \$
☐ Adult Signature Required \$
☐ Adult Signature Restricted Delivery \$

Postage

\$

Total Postage and Fees

\$

Postmark
Here

Sent To

MOGA TRANSPORT, INC.

ATTN: PRABHJEET

Gill

Street and Apt. No., or PO Box No.

5763 Dexter Circle

City, State, ZIP+4®

ROHNERT PARK, CA 94928

PS Form 3800, April 2015 PSN 7530-02-000-9047

See Reverse for Instructions

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

MOGA TRANSPORT, INC.

Attn: Prabhjeet Gill

5763 Dexter Circle

Rohnert Park, CA 94928



9590 9402 5497 9249 8732 65

2. Article Number (Transfer from service label)

7018 3090 0001 2150 0245

COMPLETE THIS SECTION ON DELIVERY

A. Signature

x DH 10

☐ Agent

☐ Addressee

B. Received by (Printed Name)

CH

C. Date of Delivery

1-4-21

D. Is delivery address different from item 1? ☐ Yes

If YES, enter delivery address below: ☐ No

3. Service Type

- ☐ Adult Signature
☐ Adult Signature Restricted Delivery
☒ Certified Mail®
☐ Certified Mail Restricted Delivery
☐ Collect on Delivery
☐ Collect on Delivery Restricted Delivery
☐ Insured Mail
☐ Insured Mail Restricted Delivery (over \$500)

- ☐ Priority Mail Express®
☐ Registered Mail™
☐ Registered Mail Restricted Delivery
☐ Return Receipt for Merchandise
☐ Signature Confirmation™
☐ Signature Confirmation Restricted Delivery

PS Form 3811, July 2015 PSN 7530-02-000-9053

Domestic Return Receipt

From: noreply@salesforce.com on behalf of [LWDA DO NOT REPLY](#)
To: [Alexander Dychter](#)
Subject: Thank you for submission of your PAGA Case.
Date: Tuesday, December 29, 2020 4:53:42 PM

12/29/2020

LWDA Case No. LWDA-CM-816757-20
Law Firm : Dychter Law Offices, APC
Plaintiff Name : Maria Barraza Vae
Employer: MOGA TRANSPORT, INC.
Filing Fee : \$75.00
IFP Claimed : No

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm

From: noreply@salesforce.com on behalf of [LWDA DO NOT REPLY](#)
To: [Alexander Dychter](#)
Subject: State of California - Department of Industrial Relations Customer Receipt / Purchase Confirmation
Date: Tuesday, December 29, 2020 4:53:52 PM

Thank you for your payment.

Order Information

Merchant: State of California - Department of Industrial Relations

Case Number: LWDA-CM-816757-20

Order Number: ORD-000092311

Total:\$75.00

Card Type: Visa

Date: 12/29/2020

Billing Information

Name: Alexander Dychter

Email: alex@dychterlaw.com

Billing Address:

180 Broadway, Ste. 1835

San Diego, California

92101

1 Marie Barraza Vae v. MOGA Transport, Inc.
2 Superior Court of California, County of Kern
(Case No. BCV-20-103017-DRL)

3
4 **PROOF OF SERVICE**

5 **STATE OF CALIFORNIA, COUNTY OF KERN**

6 I, the undersigned, am over the age of 18 years and not a party to this action. My
7 business address is 180 Broadway, Suite 1835, San Diego, California 92101.

8 On the date of execution hereof, I caused to be served the following attached document:

9 **FIRST AMENDED COMPLAINT**

10 on the interested parties in this action, addressed as follows:

11 **ASOP for Defendant MOGA Transport, Inc.:**
12 **MOGA Transport, Inc.**
13 **Attn:** Prabhjeet Gill
14 5763 Dexter Circle
15 Rohnert Park, CA 94928

Co-Counsel for Plaintiff Vae:
Mr. Raphael A. Katri, Esq.
Law Offices of Raphael A. Katri
8549 Wilshire Blvd., Ste. 200
Beverly Hills, CA 90211
Telephone: (310) 940-2034
Facsimile: (310) 733-5644
E-Mail: RKatri@SoCalLaborLawyers.com

16 (via regular USPS Mail only)

(via e-mail only)

17
18 Using the following service method(s):

19 **[XX] BY REGULAR U.S. MAIL:** I placed for deposit at the United States Postal Service
20 this same day, following ordinary business practices.

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

23 Executed on March 5, 2021, at San Diego, California.

24 
25 Alexander I. Dychter
26
27
28