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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.

Lead Case No. BCV-20-103017 BCB
Consolidated Case No. BCV-21-100056 BCB

CLASS ACTION

Assigned for all Purposes to the Honorable
Bernard C. Barmann, Jr. (Dept. 10)

**JOINT STIPULATION AND
SETTLEMENT AGREEMENT**

Vae Complaint Filed: December 29, 2020
Vae FAC Filed: March 5, 2021

Avila Complaint Filed: January 11, 2021

Ojeda Complaint Filed: April 28, 2021
Ojeda FAC Filed: July 6, 2021

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JOINT STIPULATION AND SETTLEMENT AGREEMENT

Subject to its terms and conditions and the approval of the Court, this Joint Stipulation and Settlement Agreement (hereinafter the “Settlement Agreement” or “Agreement”) is made and entered into by and among Plaintiffs Marie Barraza Vae, Arturo Avila, and Daniel Ojeda (hereinafter the “Plaintiffs”), individually and on behalf of the Settlement Class, as defined herein, and Defendant MOGA TRANSPORT, INC. (hereinafter the “Defendant” or “MOGA”). Plaintiffs and Defendant are jointly referred to in this Settlement Agreement as the “Parties,” and each of them as a “Party.”

1. DEFINITIONS

1.1 The term “*Agreement*” means this Settlement Agreement.

1.2 The term “*Attorneys’ Fees and Costs*” means the amount of attorneys’ fees and costs and expenses to be requested by Class Counsel, subject to Court approval, in accordance with Subsection 4.4 of this Agreement.

1.3 The term “*Claimant*” and “*Settlement Class Member*” means any Class Member who does not opt-out of the Settlement.

1.4 The term “*Claims Administrator*” means Atticus Administration (hereinafter “Atticus”), the entity agreed to by the Parties, subject to Court approval, which will perform the duties of, among other things: (i) translating the Notice into Spanish; (ii) mailing the Notice in English and Spanish to Class Members; (iii) performing an NCOA search and skip-tracing; (iv) tracking and addressing Opt-Out Letters, Objections, and gross wages received disputes/LC 203 subclass eligibility; (v) notifying the Parties regarding submitted Opt-Out Letters, Objections, and gross wages received disputes/LC 203 subclass eligibility disputes consistent with this Agreement; (vi) issuing payments consistent with this Agreement; and, (vii) determining any appropriate tax withholdings from the wage portion of payments to Settlement Class Members, making the appropriate payments based on withholdings and the employer’s share of payroll taxes, and issuing any required tax paperwork.

1.5 The term “*Claims Period*” means the forty-five (45) day time-period for Settlement Class members to submit an Opt-Out Letter, an Objection to the Settlement, or to dispute the

gross wages received/LC 203 subclass eligibility listed on the Class Notice.

1.6 The term “**Claims Deadline**” is the last day of the Claims Period, but as discussed in paragraph 5.3 below, there is an extension available in the event of a re-mailed Notice.

1.7 The term “**Complaints**” or “**Operative Complaints**” means the First Amended Complaint (“FAC”) filed on March 5, 2021, styled as *Marie Barraza Vae v. MOGA Transport, Inc.* (Case No. BCV-20-103017 BCB) in the Superior Court of the State of California, County of Kern; the contemplated Second Amended Complaint to be filed before the Preliminary Approval hearing in Case No. BCV-20-103017 BCB to add Daniel Ojeda as a class representative Plaintiff; the Complaint filed on January 11, 2021, styled as *Arturo Avila v. MOGA Transport, Inc.* (Case No. BCV-21-100056 DRL) in the Superior Court of the State of California, County of Kern; and the FAC filed on July 6, 2021, styled as *Daniel Ojeda v. MOGA Transport, Inc.* (Case No. CIVSB2111590) in the Superior Court of the State of California, County of San Bernardino.

1.8 The term “**Class Counsel**” means the following counsel who, subject to Court approval, shall act as counsel for the Settlement Class: Dychter Law Offices, APC, Law Offices of Raphael A. Katri, Labor Law PC, Haines Law Group, APC, and Sani Law, APC.

1.9 The term “**Class**” or “**Class Member**” means all current and former MOGA Transport, Inc. truck drivers in California at any time since December 29, 2016 *through* September 3, 2021.

a. “**LC 203 Subclass**” means Class Members who separated their employment from MOGA anytime between December 29, 2017 *through* September 3, 2021.

1.10 The term “**Class Settlement Amount**” means the gross sum of One Million Six Hundred Thousand Dollars (\$1,600,000.00), which shall be the sum paid by Defendant to settle this Litigation. The combined total of any Attorneys’ Fees and Costs approved by the Court, any Service Enhancement approved by the Court to the named Plaintiffs, Settlement Administration Costs approved by the Court, a payment to the State of California Labor and Workforce Development Agency (“LWDA”) pursuant to the California Private

Attorneys General Act (“PAGA”), and the amounts paid to Settlement Class Members shall all come out of the Class Settlement Amount and shall not exceed the Class Settlement Amount. The corporate payroll tax obligation on the “wage” portion of the settlement to Settlement Class Members shall be paid from the Class Settlement Amount.

1.11 The term “**Court**” means the Superior Court of the State of California, County of Kern, and any appellate court which may review any orders entered by the Court related to this Settlement.

1.12 The term “**Execution**” refers to the signing of this Agreement by all signatories hereto.

1.13 The term “**Final Judgment**” refers to the final judgment entered by the Court.

1.14 “**Final Approval Hearing**” means a hearing for the purpose of: (i) determining the fairness, adequacy, and reasonableness of the Settlement Agreement, including but not limited to with respect to allocations for attorneys’ fees and costs, pursuant to class action procedures and requirements; (ii) determining the good faith of the Settlement Agreement; and (iii) entering Judgment. This hearing is intended to be the final approval hearing required under California Rule of Court 3.769(a).

1.15 The term “**Litigation**” means *Marie Barraza Vae v. MOGA Transport, Inc.* (Case No. BCV-20-103017 BCB) pending in the Superior Court of the State of California, County of Kern; the action of *Arturo Avila v. MOGA Transport, Inc.* (Case No. BCV-21-100056 BCB) which is pending in the Superior Court of the State of California, County of Kern and presently “consolidated” with the *Vae* action; and, *Daniel Ojeda v. MOGA Transport, Inc.* (Case No. CIVSB2111590) which is pending in the Superior Court of the State of California, County of San Bernardino.

1.16 The term “**Named Plaintiffs**” means the named plaintiffs in the Litigation, Ms. Marie Barraza Vae, Mr. Arturo Avila, and Mr. Daniel Ojeda. The Named Plaintiffs will seek to be designated as Settlement Class Representatives for the Settlement Class.

1.17 The term “**Net Settlement Amount**” means the Class Settlement Amount minus the combined total of any attorneys’ fees and costs approved by the Court, the amount for settlement administration costs approved by the Court, the Service Enhancements

approved by the Court, the PAGA Amount, and the employer's share of corporate payroll tax obligations on the "wage" portion of the settlement to the Settlement Class Members.

1.18 The term "**Notice**" means a document which has been agreed to by the Parties and subject to the Court's approval and which the Claims Administrator will mail to each Settlement Class Member, in both English and Spanish, explaining the terms of the Settlement, their gross wages received during the time period of January 1, 2017 through August 31, 2021, their eligibility status regarding being an LC 203 Subclass Class Member, their estimated share of the Net Settlement Amount, the opt-out procedure, the objection procedure, and the procedure related to disputing the stated gross wages received during the time period of January 1, 2017 through August 31, 2021/LC 203 Subclass eligibility during the Class Period.

1.19 The term "**Notice and Administration Costs**" or "**Settlement Administration Costs**" means all costs incurred by the Claims Administrator, including but not limited to the cost to: compare the class list against the National Change of Address ("NCOA") database maintained by the United States Postal Service; typeset, translate into Spanish, print, and mail the Notice to all Class Members in both English and Spanish; perform skip-tracing of returned mailings; calculating, tabulating, and mailing out payments to Class Members; payment of postage required to comply with this Agreement; responding to Class Member inquiries and addressing any challenges to the gross wages received or LC 203 Subclass status; and all other expenses, including tax reporting and fees to be paid by the Claims Administrator, necessary to administer the Settlement in accordance with this Agreement. Settlement Administration Costs shall not exceed \$15,000.

1.20 The term "**Opt-Out Letter**" refers to a written request to "opt-out" or "exclude" oneself from the Settlement sent by any Class Member who elects to be excluded from the Settlement Class. A Class Member must submit an opt-out letter to the Claims Administrator to exclude himself or herself from the Settlement and from the release of claims pursuant to this Settlement. Those who submit a valid and timely Opt-Out Letter will not be considered part of the Settlement Class after their valid and timely Opt-Out

Letter is received by the Claims Administrator and will have no standing to object to the Settlement.

1.21 “**Order Granting Final Approval of Class Action Settlement**” shall mean the order and judgment to be entered by the Court titled “Order Granting Motion for Final Approval of Class Action Settlement” and “Judgment.” The “Judgment,” shall constitute approval pursuant to California Rule of Court 3.769(a).

1.22 The term “**Parties**” means the Named Plaintiffs and Defendant.

1.23 The term “**PAGA**” means the California Labor Code Private Attorneys General Act (California Labor Code §§ 2698, *et seq.*).

1.24 The term “**LWDA Payment**” means \$60,000.00, which is seventy-five percent (75%) of the \$80,000.00 of the Class Settlement Amount that has been set aside by the Parties as PAGA civil penalties, and which will be payable to the California LWDA.

1.25 The term “**PAGA Amount**” means \$20,000.00, which is twenty-five percent (25%) of the \$80,000.00 of the Class Settlement Amount that has been set aside by the Parties as PAGA civil penalties, and which will be payable to PAGA Members.

1.26 The term “**PAGA Members**” means any Class Member who worked at any time from December 29, 2019 *through* September 3, 2021.

1.27 The term “**Released Claims**” has the definition provided in ¶ 7.1, below.

1.28 The term “**Service Enhancement**” means the amount of money to be requested by Class Counsel on behalf of Named Plaintiffs Marie Barraza Vae, Arturo Avila, and Daniel Ojeda, subject to Court approval, to compensate Named Plaintiffs for the efforts and risks they undertook on behalf of the Settlement Class.

1.29 The term “**Settlement**” means the compromise and settlement of the Litigation, as contemplated by this Agreement.

1.30 The term “**Settlement Class**” means all Claimants.

1.31 The term “**Settlement Class Period**” means the period of time from December 29, 2016 *through* September 3, 2021, which is the period of time applicable to the claims being released pursuant to Section 7 hereafter.

1.32 The term “**PAGA Period**” means December 29, 2019 *through* September 3, 2021.

1.33 The term “**Settlement Class Representatives**” means Marie Barraza Vae, Arturo Avila and Daniel Ojeda, who Class Counsel shall request be appointed by the Court as class representatives for purposes of the Settlement Class.

1.34 The term “**Settlement Disbursement Payments**” means the three (3) separate disbursements made by the Claims Administrator to Settlement Class Members, Class Counsel, the Settlement Class Representatives, the Claims Administrator, and the LWDA, pursuant to the Settlement, as specified in Section 6.3, below.

1.35 “**Final Effective Date**” or “**Effective Date**” refers to the date by which the following has occurred: (1) if no objections have been filed, the date of the Final Approval Order and Judgement; or (2) if objections are filed and overruled, and no appeal is taken, the Effective Date will be 65 calendar days after the entry of Judgment; or (3) in the event of an appeal from the Court’s overruling of objections to the settlement, then the Effective Date will be 20 calendar days after the appeal is dismissed or after an appellate decision affirming the Judgment become final and non-appealable. For purposes of determining the Final Effective Date, the Parties agree that only California Courts have jurisdiction over any such appeals, except for any appellate procedure over which the United States Supreme Court may exercise jurisdiction.

2. **RECITALS**

2.1 On December 29, 2020, Plaintiff Marie Barraza Vae (“Plaintiff Vae”) filed suit in the Superior Court of California, County of Kern, against Defendant MOGA Transport, Inc. (*Case No. BCV-20-103017*) on behalf of a proposed class of all of Defendant’s truck drivers in the State of California at any time since December 29, 2016, for multiple wage and hour claims, including but not limited to, failure to pay all minimum wages, failure to pay separately and hourly for time spent on rest periods and other non-productive time, failure to provide accurate wage statements, failure to pay all wages owed upon separation of employment; and claims under the Business & Professions Code § 17200, *et seq.* (“UCL”). On December 29, 2021, Plaintiff Vae submitted a notice of new claim to

1 the California Labor and Workforce Development Agency (“LWDA”) in order to pursue
2 a claim under the Private Attorneys General Act (“PAGA”) based on the same claims.
3 On March 5, 2021, Plaintiff Vae filed a First Amended Complaint (“FAC”) to include her
4 PAGA claim. This case was originally assigned to the Honorable David R. Lampe for all
5 purposes in Dept. 11). On June 1, 2021, pursuant to a Joint Stipulation between the
6 Parties, the related action of *Arturo Avila v. MOGA Transport, Inc.* (Case No. BCV-21-
7 100056) was “consolidated” with the *Vae Action* and the consolidated action was then re-
8 assigned to the Honorable Bernard C. Barmann, Jr. in Dept. 10 until its conclusion. On
9 June 28, 2021, the parties appeared for their initial CMC at which time the matter was
10 designated as “complex” and the Court set a continued CMC for October 6, 2021 at 8:30
11 a.m.

12 On January 11, 2021, Plaintiff Arturo Avila (“Plaintiff Avila”) filed suit in the
13 Superior Court of California, County of Kern, against Defendant MOGA Transport, Inc.
14 (Case No. BCV-21-100056) on behalf of a proposed class of all current and former non-
15 exempt employees of Defendant MOGA TRANSPORT, INC. in the State of California at
16 any time since within the period beginning four (4) years prior to the filing of this action
17 and ending at the time this action settles or proceeds to final judgment, for multiple wage
18 and hour claims, including but not limited to, failure provide required meal periods,
19 failure to provide required rest periods, failure to pay overtime wages, failure to pay
20 minimum wages, failure to pay all wages during employment, failure to pay wages due to
21 discharged and quitting employees, failure to maintain required records, failure to furnish
22 accurate, itemized wage statements, and claims under the Business & Professions Code §
23 17200, *et seq.* (“UCL”). On January 11, 2021, Plaintiff Avila submitted a notice of new
24 claim to the LWDA in order to pursue a claim under the PAGA based on the same
25 claims. Pursuant to a Stipulation between the parties, the Action entitled *Arturo Avila v.*
26 *MOGA Transport, Inc.* (Case No. BCV-21-100056) was consolidated with the *Vae Action*
27 and then re-assigned to the Hon. Bernard C. Barmann, Jr. in Dept. 10 until its conclusion.

28 On April 29, 2021, Plaintiff Daniel Ojeda (“Plaintiff Ojeda”) filed suit in the

1 Superior Court of California, County of San Bernardino, against Defendant MOGA
2 Transport, Inc. (*Case No. CIVSB21115290*) on behalf of several classes of Defendant's
3 non-exempt employees for multiple wage and hour claims, including but not limited to,
4 failure to pay minimum wages for all time worked, failure to provide required rest
5 periods, failure to provide accurate wage statements, failure to pay all wages owed upon
6 termination of employment, and claims under the Business & Professions Code § 17200,
7 *et seq.* ("UCL"). On April 29, 2021, Plaintiff Ojeda submitted a notice of new claim to
8 the LWDA in order to pursue a claim under the PAGA based on the same claims. On
9 July 6, 2021, Plaintiff Ojeda filed a FAC to include his PAGA claim. The *Ojeda Action*
10 was assigned for all purposes to the Hon. David Cohn (Dept. S26).

11 Plaintiff Vae initiated formal discovery in March 2021. Defendant provided
12 substantive responses to Plaintiff's formal written discovery, including a list of class
13 member names and addresses and dates of employment for each class member.
14 Defendant produced several thousand pages of payroll records and payroll journals,
15 driver log sheets, Plaintiffs employment files, weekly time and pay sheets, and other
16 miscellaneous policies and procedures responsive to the discovery requests.

17 On September 3, 2021, after interviewing multiple Class Members, working with
18 a statistical consulting firm (Berger Consulting Group in Los Angeles) to assist with
19 constructing a damage model, and drafting a mediation brief, the Parties attended a full-
20 day private mediation before a well-respected and experienced wage and hour class
21 action mediator and retired California Superior Court Judge, the Hon. Joan Lewis [*Ret.*].
22 After a full-day mediation the parties were unable to reach an agreement on the principal
23 terms of a settlement and the following week Judge Lewis [*Ret.*] issued a "mediator's
24 proposal" calling for an "all-in" non-reversionary settlement amount of One Million Six
25 Hundred Thousand Dollars (\$1,600,000.00) to be paid by Defendant in three (3)
26 installments of \$533,333.33 each, on or before March 1, 2022, September 1, 2022, and
27 March 1, 2023. On September 13, 2021, the mediator advised the Parties that the
28 proposal was "accepted."

1 2.2 Named Plaintiffs and their counsel believe this Litigation is meritorious based on
2 applicable law or an extension thereof. Class Counsel represents that they have conducted
3 a thorough investigation into the facts of this case and have diligently pursued an
4 investigation of the claims against Defendants. Based on their own independent
5 investigation and evaluation, Class Counsel are of the opinion that the Settlement is fair,
6 reasonable, and adequate and is in the best interest of the Class Members in light of all
7 known facts and circumstances, including the risk of significant delay, the financial status
8 of Defendant, the defenses asserted by Defendant, class certification risk, trial risk, and
9 appellate risk.

10 2.3 Defendant has also actively investigated the facts surrounding the claims brought by
11 Plaintiffs on behalf of the putative class and has actively and aggressively defended
12 themselves from said claims. Defendant denies any liability or wrongdoing of any kind
13 associated with the claims alleged. Defendant further asserts that they have complied with
14 all applicable provisions of California statutory, regulatory, and common law and had a
15 good faith belief based on existing law that its practices were and are in compliance.
16 Defendant also has denied and continues to deny, *inter alia*, the allegations that the Class
17 Members have suffered damage; that Defendant in any way failed to pay Class Members
18 for all hours worked and at the lawful rate of pay; that Defendant violated any laws
19 regarding compensation; that Defendant failed to timely pay Class Members all wages
20 owed upon termination/resignation or otherwise when due; that Defendant failed to comply
21 with the law with respect to itemized wage statements; that Defendant violated the law
22 regarding meal breaks and rest periods; that Defendant failed to reimburse all incurred
23 business expenses; that Defendant engaged in any unlawful, unfair or fraudulent business
24 practices; that Defendant engaged in any wrongful conduct as alleged in the Litigation; or
25 that Class Members were harmed by the conduct alleged in the Litigation. Neither this
26 Agreement, nor any document referred to or contemplated herein, nor any action taken to
27 carry out this Agreement, is, may be construed as, or may be used as an admission,
28 concession or indication by or against Defendant of any fault, wrongdoing or liability

1 whatsoever.

2 2.4 The entry of Final Judgment in this Litigation shall resolve all claims that were alleged in
3 the operative First Amended Complaints filed in the Litigation, or which could have been
4 alleged based upon the facts set forth in the operative First Amended Complaints, with the
5 exception of any claims which might be retained by Settlement Class Members who
6 exclude themselves from the Settlement. The Parties agree to cooperate and take all steps
7 necessary and appropriate to obtain preliminary and final approval of this Settlement, and
8 to effectuate its terms.

9 2.5 Each of the forgoing Recitals is incorporated into this Agreement as if fully set forth in the
10 body of the Agreement.

11 3. **CERTIFICATION OF SETTLEMENT CLASS**

12 3.1 The Settlement Class shall consist of *all current and former MOGA Transport, Inc. truck*
13 *drivers in California at any time since December 29, 2016 through September 3, 2021.*

14 3.2 The Parties and Class Counsel agree that, if approved, certification of the Settlement Class
15 is a conditional certification for settlement purposes only, and that if, for any reason, the
16 Court does not grant final approval of the Settlement, or if final approval is not given
17 following the appeal of any order by the Court, or if for any reason the Settlement Effective
18 Date does not occur, the certification of the Settlement Class for settlement purposes shall
19 be deemed null and void without further action by the Court or any of the Parties, each
20 Party shall retain all of their respective rights and shall be returned to their relative legal
21 positions as they existed prior to execution of this Agreement, and neither this Agreement,
22 nor any of its accompanying exhibits or any orders entered by the Court in connection with
23 this Agreement shall be admissible or used for any purpose in this Litigation or any other
24 legal proceeding, except for the enforcement of same.

25 3.3 The Parties and Class Counsel agree that, if approved, certification of the Settlement Class
26 for settlement purposes is in no way an admission by Defendant that class certification is
27 proper in any other wage and hour litigation, or any other litigation, against Defendant.
28

1 4. **TERMS OF SETTLEMENT**

2 4.1 Subject to the other terms and conditions contained in this Agreement, and in consideration
3 of the contemplated pleadings, releases and dismissals set forth in this Agreement, and
4 subject to Court approval, Defendant agrees that the Class Settlement Amount shall be One
5 Million Six Hundred Thousand Dollars (\$1,600,000.00).

6 4.1.1 Defendant shall pay the Class Settlement Amount in three (3) installments as
7 follows:

8 **Installment #1:** **\$533,333.33** to be paid on or before **March 1, 2022.**

9 **Installment #2:** **\$533,333.33** to be paid on or before **September 1, 2022.**

10 **Installment #3:** **\$533,333.34** to be paid on or before **March 1, 2023.**

11 4.1.2 Defendant will provide the Claims Administrator with all names, last known home
12 mailing addresses, social security numbers, hire and separation dates, and gross
13 wages paid during the time period of January 1, 2017 *through* August 31, 2021 for
14 each Class Member within five (5) business days of the Court granting Preliminary
15 Approval of the settlement, so the Claims Administrator can determine each Class
16 Members award, as well as their LC 203 Subclass eligibility.

17 4.2 Each PAGA Member shall receive a portion of the PAGA Amount proportionate to the
18 number of workweeks that he or she worked during the aforementioned time period. Each
19 PAGA Member who was employed by Defendant during the PAGA Period will be issued
20 a check for their share of the PAGA Amount regardless of whether they opt-out of the
21 Settlement. Except for those Class Members who opt-out of the Settlement, all Settlement
22 Class Members shall recover a share of the Net Settlement Amount. The Net Settlement
23 Amount shall be allocated as set forth below:

24 4.2.1 Each Settlement Class Member shall be awarded a pro-rata share based
25 upon a percentage equal to their gross wages received during the time
26 period of January 1, 2017 *through* August 31, 2021 divided by the total
27 gross wages received by all Settlement Class Members during the time
28 period of January 1, 2017 *through* August 31, 2021. Each Settlement

1 Class Member's respective share of the Net Settlement Amount shall be
2 calculated by multiplying the Net Settlement Amount, less all amounts to
3 be paid to the LC 203 Subclass Members, as addressed in Subsection 4.2.2
4 below, by a fraction, the numerator of which is the individual class
5 member's gross wages received during the time period of January 1, 2017
6 *through* August 31, 2021 and the denominator of which is the total of all
7 aggregate gross wages received by all Settlement Class Members during
8 the time period of January 1, 2017 *through* August 31, 2021. The
9 resulting number shall be the amount that each member of the Settlement
10 Class is eligible to receive, notwithstanding any additional amount as a
11 Member of the LC 203 Subclass.

12 4.2.2 The Parties agree to allocate the sum of Four Hundred Dollars (\$400.00)
13 to each Settlement Class Member who is also an LC 203 Subclass
14 Member for purposes of California Labor Code Section 203 penalties (the
15 "Section 203 Settlement Amount"), which shall be deducted **before** the
16 Net Settlement Amount is allocated across Settlement Class Members
17 based on the gross wages received during the time period of January 1,
18 2017 *through* August 31, 2021, in Paragraph 4.2.1. In the event the Court
19 determines that the Section 203 Settlement Amount needs to be modified
20 in some manner, the parties mutually agree to cooperate to make said
21 revision and reallocation within the Net Settlement Amount, without the
22 necessity for a revised Settlement Agreement.

23 4.2.3 The anticipated share of each Class Member who elects to "opt-out" of
24 the Settlement shall be re-distributed on a *pro rata* basis to all
25 participating, Settlement Class Members. Likewise, the anticipated share
26 of each respective LC 203 Subclass Member who elects to "opt-out" of
27 the Settlement shall be returned for inclusion in the Net Settlement
28 Amount and distributed on a *pro rata* basis to all participating Settlement

1 Class Members.

2 4.3 Class Counsel may request, subject to Court approval, that the Settlement Class
3 Representatives be paid a maximum Service Enhancement of up to Eight Thousand Dollars
4 (\$8,000.00) each, which shall be paid from the Class Settlement Amount. This request
5 shall not be opposed by Defendant. In the event the Court does not award the full requested
6 Service Enhancements, the remainder shall be re-distributed on a *pro rata* basis to all
7 participating Settlement Class Members. The Service Enhancements shall be paid to
8 Plaintiff Marie Barraza Vae, Arturo Avila, and Daniel Ojeda, in addition to their *pro rata*
9 shares of the Net Settlement. Any Court awarded Service Enhancements shall be paid to
10 the Class Representatives in-full at the time of the First Disbursement to the Settlement
11 Class Members.

12 4.4 Class Counsel shall apply to the Court for an award of Attorneys' Fees and Costs, which
13 shall be paid from the Class Settlement Amount. Defendant will not oppose Class
14 Counsel's application for an award of Attorneys' Fees in an amount up to thirty-five
15 (35.00%) of the Class Settlement Amount comprising Five Hundred Sixty Thousand
16 Dollars (\$560,000.00), plus Costs not to exceed Twenty-Five Thousand Dollars
17 (\$25,000.00). In the event the Court does not award the full requested Attorneys' Fees or
18 Costs, the remainder(s) shall be re-distributed on a *pro rata* basis to all participating
19 Settlement Class Members. Any Court awarded Attorneys' Fees to Class Counsel shall be
20 paid to Class Counsel in three (3) equal parts corresponding with each of the three (3)
21 disbursements to the Settlement Class Members. Any Court awarded Costs to Class
22 Counsel shall be paid to Class Counsel in-full at the time of the First Disbursement to the
23 Settlement Class Members.

24 4.4.1 The Parties agree that the Court's approval or denial of any request for
25 Attorneys' Fees and Costs or the Named Plaintiffs' Service Enhancements
26 are not conditions to this Agreement and are to be considered by the Court
27 separately from the fairness, reasonableness, adequacy, and good faith of
28 the settlement. Any order or proceeding relating to the application by Class

Counsel of an award for Attorneys' Fees and Costs or for Service Enhancement shall not operate to terminate or cancel this Agreement.

4.4.2 Class Counsel agree that they are responsible for allocating the Attorneys' Fees and Costs approved by the Court among themselves and any other counsel that may have any other agreement with them. If a lien is asserted, the Claims Administrator will tender the Attorneys' Fees and Cost award to the Court and shall thereafter be released from any claim related to those payments. Class Counsel warrants and represents that there are no liens on the amounts to be paid pursuant to the terms of this Agreement and that no assignments of the claims to be released or the Attorneys' Fees and Costs to be paid pursuant to this Agreement have been made or attempted. Class Counsel agrees to defend, indemnify and hold harmless Defendant from any liability resulting from a breach of these representations and/or any lien or assignment.

4.5 The Parties agree that, subject to Court approval, payment to the Claims Administrator shall not exceed Fifteen Thousand Dollars (\$15,000.00). The Claims Administration Costs shall be paid from the Class Settlement Amount. In the event the Settlement Effective Date does not occur, any portion of the Settlement Administration Costs already incurred by the Claims Administrator shall be allocated so that Class Counsel and Defendant will each be responsible for one-half of said expenses. Any dispute relating to the Claims Administrator's ability and need to perform its duties shall be referred to the Court if it cannot be resolved by the Parties. The Claims Administrator shall regularly and accurately report to the Parties, in written form when requested, on the substance of the work performed. To the extent that the Claims Administrator Costs ultimately exceed \$15,000.00 and are approved by the Court, any additional amount will be deducted from the Class Settlement Amount. Any Court awarded Claims Administration Costs to the Claims Administrator shall be paid to the Claims Administrator in three (3) equal parts corresponding with each of the three (3) disbursements to the Settlement Class Members.

1 4.6 The Parties agree that Claims paid to Claimants shall be correctly and appropriately
2 allocated as follows:

3 4.6.1 The entirety of the Section 203 Settlement Amount shall be allocated to penalties
4 and characterized as 1099 income. The entirety of the PAGA Payment shall be
5 allocated to penalties and characterized as 1099 income.

6 4.6.2 Of the Net Settlement Amount remaining and to be distributed *pro rata* based on
7 gross wages received during the time period of January 1, 2017 *through* August 31,
8 2021, 25% shall be allocated to wages, and 75% shall be allocated to penalties and
9 interest, such that 1/4 shall be characterized as W-2 income and 3/4 shall be
10 characterized as 1099 income. Defendant's share of any employer-side payroll
11 taxes allocated to the payment of "wages" will be calculated based on the portion
12 allocated to the payment of wages and paid out of the Class Settlement Amount.
13 The Claims Administrator will be responsible for calculating and paying the payroll
14 taxes and withholdings owed.

15 4.6.3. Tax Liability. Defendant makes no representation as to the tax treatment or legal
16 effect of the payments called for hereunder, and Settlement Class Representatives
17 are not relying on any statement or representation by Defendant in this regard.
18 Settlement Class Representatives understand and agree that Class Members will be
19 solely responsible for the sufficiency of the payment of employee's taxes predicated
20 on the payments described herein, with the understanding that the Claims
21 Administrator is distributing the payroll tax withholdings and employers' share of
22 the wage portion of the payments, but not making any tax payment for the penalties
23 / interest.

24 4.7 The Parties agree to allocate a total of Eighty Thousand Dollars (\$80,000.00) towards
25 PAGA penalties. The Claims Administrator shall issue and mail a check to the State of
26 California LWDA for the LWDA Payment in the amount of Sixty Thousand Dollars
27 (\$60,000) (*i.e.* 75% share). The allocated PAGA penalties shall be paid from the Class
28 Settlement Amount at the time of the Third Disbursement to the PAGA Members. Should

the Court at the Preliminary Approval hearing, or the LWDA, deem that additional PAGA penalties need to be allocated, the Parties agree to revise the allocated PAGA penalties amount as deemed necessary without the need for a revised Settlement Agreement, the funds of which shall be paid from the Class Settlement Amount.

4.8 The payments made to Claimants pursuant to this Agreement are not being made for any other purpose and shall not be construed as compensation for purposes of determining eligibility for any health and welfare benefits or unemployment compensation, and no benefit, including but not limited to pension and/or 401(k), shall increase or accrue as a result of any payment made as a result of this Settlement or Agreement.

4.9 Checks issued to Claimants pursuant to this Agreement shall remain negotiable for a period of one-hundred eighty (180) days from the date of mailing by the Claims Administrator. Thereafter, and only after the 180 day negotiability period elapses after the Third Disbursement is completed to the Settlement Class Members, the Claims Administrator shall then cancel any uncashed checks and the corresponding amount(s) shall be sent in the Claimant's name to the Controller of the State of California to be held pursuant to the Unclaimed Property Law, California Code of Civil Procedure §§ 1500, *et seq.*, in the name of the Claimant and for the benefit of the Claimant until the Claimant claims his or her property. The Parties agree that this disposition results in no "unpaid residue or unclaimed or abandoned class member funds" as discussed in California Code of Civil Procedure section 384, subd.(b). The Parties agree and acknowledge that such uncashed funds shall be in a non-interest bearing Qualified Settlement Fund Account created pursuant to Internal Revenue Code Section 1.468B-1 up until the time of disbursement to the Controller of the State of California. No interest will have accrued prior to disbursement because the account has to be a checking account (non-interest bearing) in order to disburse. The Parties understand and agree that because no interest will have accrued on the uncashed funds prior to disbursement there will be no obligation on the part of Defendant, the Claims Administrator, or any other person to pay any interest upon disbursement of the uncashed funds to the Controller of the State of California under California Code of Civil Procedure

Section 384.

5. NOTICE OF THE SETTLEMENT

5.1 Within five (5) business days after the Court grants preliminary approval of this Settlement, Defendant shall provide to the Claims Administrator a listing of all Class Members, including the following information/data, in a Microsoft Excel spreadsheet: 1) full name; 2) last known home mailing address; 3) telephone number (*if available*); 4) Social Security Number; 5) dates of employment as a Class Member (including all separations and re-hires during the Class Period); and 6) gross wages paid to each Class Member during the time period of January 1, 2017 *through* August 31, 2021, in order for the Claims Administrator to be able to calculate the pro rata settlement amounts and to determine LC 203 Subclass eligibility and each Settlement Class Member's respective settlement share (hereinafter the "*Class List*"). The "*Class List*" shall be based on the data kept in the ordinary course of business in Defendants' business records, including but not limited to, tax documents and payroll records. The Parties agree that the contents of the Class List are confidential and shall not be shared with third parties other than the Claims Administrator, who shall also agree to maintain the confidentiality of the Class List and agree the Class List shall not be used for any purpose other than to administer the Class Settlement.

5.2 Subject to Court approval, the "Notice" shall be sent by the Claims Administrator to all Class Members, in both English and Spanish, by first class mail within five (5) business days of receipt of the Class List, except that the Notices relating to Named Plaintiffs (Vae, Avila, and Ojeda) shall be emailed to their respective Counsel.

5.3 Prior to mailing the Notice, the Claims Administrator shall process the Class List against the National Change of Address ("NCOA") Database maintained by the United States Postal Service ("USPS"). It shall be conclusively presumed that if the Notice is not returned as "undeliverable," the Settlement Class Member received the Notice Packet. With respect to Notice Packets that are returned as "undeliverable," if a forwarding address is provided by the USPS, the Claims Administrator shall re-mail the Notice within three (3) business days. If a Notice is "undeliverable" and no forwarding address is provided,

1 the Claims Administrator shall employ a more substantive skip-tracing procedure in order
2 to obtain updated address information and shall re-mail the Notice to those Settlement
3 Class Members for whom a new address is located. All such re-mailing shall occur within
4 (7) days of the Administrator's receipt of the returned notice and no later than the last day
5 of the Claims Period. In the case of such re-mailing, the Claims Deadline shall be the later
6 of (i) the original deadline, or (ii) fourteen (14) calendar days from the date of re-mailing.
7 If the Notice is returned after skip-tracing and re-mailing occurs, there shall be no further
8 skip-tracing but the Settlement Class Member shall still be bound by the release set forth
9 in Paragraph 7.1 and all other terms of this Settlement.

10 **6. OPT-OUT, OBJECTION, AND DISTRIBUTION PROCESS**

11 6.1 The Notice shall set a date of forty-five (45) calendar days from the original mailing date
12 as the deadline by which members of the Settlement Class may submit their Opt-Out Letter,
13 objection to the Settlement, or dispute related to the stated gross wages received during the
14 time period of January 1, 2017 *through* August 31, 2021, and/or LC 203 Subclass
15 eligibility. No opt-out requests or objections will be honored if postmarked after the
16 Claims Deadline. All written Opt-Out Letters shall be sent to the Claims Administrator
17 only. All written Objections shall be sent to the Claims Administrator only. If a claimant
18 mistakenly sends a written Opt-Out Letter or written Objection to Class Counsel, or to
19 Defendant's Legal Counsel, the respective party will forward the documents, including the
20 mailing envelope evidencing the postmark date, to the Claims Administrator as soon as
21 possible.

22 6.2 Each Class Member who does not opt-out of the Settlement shall automatically be entitled
23 to their respective share of the Settlement. The amount that each Settlement Class Member
24 is eligible to receive under this Settlement shall be determined in accordance with the
25 formula set forth in Subsection 4.2.

26 6.3 Defendant will provide the Claims Administrator with sufficient funds via wire transfer to
27 pay each of the three (3) required installments as follows: **Installment #1** in the amount
28 of \$533,333.33 on or before March 1, 2022; **Installment #2** in the amount of \$533,333.33

on or before September 1, 2022; **Installment #3** in the amount of \$533,333.34 on or before March 1, 2023. No later than ten (10) calendar days after Defendant provides each of the respective installment payments to the Claims Administrator, the Claims Administrator shall then disburse the Settlement Disbursement Payment, as specified in this Agreement and approved by the Court.

6.4 Three (3) calendar days before each of the Settlement Disbursement Payments, Class Counsel shall deliver to the Claims Administrator written instructions signed by Class Counsel that describe the manner and mode of payment of such attorneys' fees and costs (and, in the absence of such instructions, such attorneys' fees and costs shall be sent by U.S. Mail), and a fully-executed Form W-9 with respect to each entity to whom the attorney's fees and costs shall be paid. The Claims Administrator will issue to Class Counsel an IRS Form 1099 for such amounts paid for attorneys' fees under this Settlement.

6.5 Opt-Out Letters.

6.5.1 A Class Member who wishes to opt-out from this Settlement, and from the release of claims pursuant to this Settlement, shall submit a signed, written "Opt-Out Letter" directly to the Claims Administrator. The Opt-Out Letter must include the Settlement Class Member's full legal name, home address, telephone number, and last four digits of their social security number (*for identity verification purposes*) and must state in substance: "I have read the Notice and I wish to opt out of the Settlement reached in the Vae, Avila and Ojeda cases against MOGA Transport, Inc. (Lead Case No. BCV-20-103017 BCB). I understand that by opting out of the Settlement I will not be bound by any judgment in the cases and will not be entitled to receive any payment from the Settlement." The Parties to this Agreement and their counsel agree that they will not solicit or encourage Class Members to opt-out or to object to this Settlement Agreement. The Claims Administrator shall promptly send a copy/scan of any Opt-Out Letter (including a copy/scan of the mailing envelope) to Class Counsel and Defense Counsel. For an Opt-Out Letter to be accepted it must be timely and valid. To be timely it must be postmarked by

the Claims Deadline.

6.5.2 A Settlement Class Member who submits an Opt-Out Letter is not eligible to recover a share of the Net Settlement Amount. Further, a Settlement Class Member who submits an Opt-Out Letter shall have no standing to object to the Settlement, or to appear at the Final Approval Hearing.

6.5.3 The Claims Administrator shall maintain a list of persons who have excluded themselves and shall provide such list to Class Counsel and Defense Counsel promptly upon request. The Claims Administrator shall retain the originals of all Opt-Out Letters (including the envelopes with the postmarks) received and shall make copies or the originals available to Class Counsel or Defendants Counsel upon request.

6.6 Objection to Settlement. A Settlement Class Member who has not opted-out of the Settlement who wishes to object to the Settlement must notify the Claims Administrator of their objection, in writing, on or before the Claims Deadline. The objection must state the Settlement Class Member's: (i) full legal name, home address, telephone number, last four digits of their social security number (*for identity verification purposes*); (ii) the words "Notice of Objection" or "Formal Objection"; (iii) in clear and concise terms the legal and factual arguments supporting the objection; (iv) a list identifying the witness(es) the objector may call to testify at the Final Approval Hearing; and (v) true and correct copies of any exhibit(s) the objector intends to offer at the Final Approval Hearing. Any Settlement Class Member who fails to make a timely and valid written objection as stated herein shall be deemed to have waived his or her right to object to the Settlement. Any Settlement Class Member whose objection is overruled will be deemed to be subject to the terms of this Settlement and the Court's Order of Final Approval. Any Class Member who "opts-out" of the Settlement shall not have standing to "object" to the Settlement, or to appear at the Final Approval hearing.

6.7 All Class Members who do not timely request exclusion from the Settlement will automatically receive payment under this Settlement as described above in Subsection 4.2,

which will be in the form of a Settlement Payment check and shall be bound by the release set forth in Paragraph 7.1 and all other pertinent terms of the Settlement.

6.8 In the event that Final Approval of this Settlement Agreement is not granted by the Court, neither the Settlement Agreement, nor any documents related to this Settlement or negotiations leading to the Settlement may be used as evidence for any purpose, and Defendants shall retain the right to challenge all claims and allegations in the Litigation, including but not limited to challenging class certification for any purpose other than settlement, and to assert all applicable defenses.

6.9 Should the Court decline to approve this Agreement in any material respect (except for approval of the award of Class Counsel's Attorneys' Fees and Costs or the class representative's Service Enhancements, or the amount allocated to PAGA), Defendant shall have no obligation to make any payments under this Agreement, and in the event that Defendant has made any such payment, such monies shall be returned promptly by the Claims Administrator to Defendant (minus Defendants' one-half share of any Administration Costs already reasonably incurred by the Claims Administrator; the other one-half share of any Administration Costs to be paid by Class Counsel).

7. **COMPREHENSIVE WAIVER AND RELEASE**

7.1 Subject to final approval by the Court of the Settlement and upon the Settlement Effective Date, Named Plaintiffs and Settlement Class Members who do not opt-out of the Settlement (collectively, "*Releasing Settlement Class Members*"), will be deemed to have, and by operation of the Order of Final Approval will have, expressly and irrevocably released, acquitted, and forever discharged Defendant, its shareholders, officers, directors, agents, current and former employees, partners, attorneys, insurers, ERISA plan administrators, subsidiaries, affiliates, and their respective predecessors, successors, and assigns (collectively referred to as the "*Released Parties*") from any and all claims, rights, demands, damages, debts, accounts, duties, costs including attorneys' fees (other than those costs and fees required to be paid pursuant to this Settlement Agreement), liens, charges, complaints, causes of action, obligations, liabilities, penalties, interest, or causes of action

1 arising between December 29, 2016 and September 3, 2021, and that were alleged in the
2 operative Complaints in either the *Vae*, *Avila*, or *Ojeda* Actions (*Lead Case No. BCV-20-*
3 *103017 BCB*) or that could have been alleged or otherwise raised based on the factual
4 allegations pled in the operative pleading in the Lawsuits, including claims that have been
5 or could have been pled as wage and hour violations under California law based on the
6 factual allegations set forth in the operative pleadings in the Lawsuit, including without
7 limitation: (i) any and all claims involving any alleged failure to pay minimum and straight-
8 time wages for work performed; (ii) any and all claims involving any alleged failure to
9 authorize and permit legally compliant rest periods, or to pay premiums for non-compliant
10 rest periods, or to pay such premiums at the regular rate of compensation; (iii) any alleged
11 claims involving any alleged failure to provide legally compliant meal breaks, or to pay
12 premiums for non-compliant meal periods, or to pay such premiums at the regular rate of
13 compensation; (iv) any and all claims involving any alleged failure to pay all owed wages
14 each and every pay period; (v) any and all claims involving any allegation that Defendant
15 allowed or required employees to bear any of the costs associated with the operation of
16 Defendant's business, including but not limited to any claims arising under California
17 Labor Code §§ 2800 and 2802; (vi) any and all claims involving any alleged failure to
18 timely pay wages, including but not limited to any claim that Defendant violated California
19 Labor Code §§ 201 or 202, and any claim for waiting time penalties under California Labor
20 Code § 203; (vii) any and all claims involving any alleged failure to keep accurate records
21 or to issue proper wage statements to employees, including but not limited to any claim
22 that Defendants wage statements do not comply with California Labor Code § 226; (viii)
23 any and all claims for failure to comply with the Unfair Competition Law (Business and
24 Professions Code § 17200 *et seq.*); (ix) all damages, penalties, interest, costs (including
25 attorneys' fees) and other amounts recoverable under said claims or causes of action as to
26 the facts and/or legal theories alleged or which could have been pled as wage and hour
27 violations under California law based on the factual allegations set forth in the operative
28 Complaint (collectively, the "Released Claims"). This Release also covers all claims for

1 interest, attorneys' fees and costs related to the Class Action and all claims for failure to
2 timely pay final wages to all separated Class Members who are members of the LC 203
3 Subclass. The Releasing Settlement Class Members will be deemed to have specifically
4 acknowledged that this Release reflects a compromise of disputed claims. In addition,
5 PAGA Members, regardless of whether they opt-out of the Settlement, will also release all
6 claims for civil penalties under the PAGA with respect only to the underlying wage and
7 hour claims that were pled in the Operative Complaints (the "PAGA Released Claims").
8 The period of the PAGA Released Claims is limited to the PAGA Period.

9 7.1.1 With regard to the Released Claims, the Releasing Settlement Class Members also
10 waive and release all claims for attorneys' fees and costs incurred by Releasing
11 Settlement Class Members or by Class Counsel in connection with the Litigation
12 and the Settlement of the Litigation.

13 7.1.1.1. As a material term of this Agreement, Named Plaintiffs Marie Barraza
14 Vae, Arturo Avila, and Daniel Ojeda, in their individual capacities and
15 with respect to their individual claims only, hereby agree to release the
16 Released Parties from all claims, demands, rights, liabilities and causes of
17 action of any and every nature and description whatsoever, known or
18 unknown, asserted or that might have been asserted, whether in tort,
19 contract, or for violation of any state or federal statute, rule or regulation
20 arising out of, relating to, or in connection with any act or omission by or
21 on the part of any of the Released Parties committed or omitted prior to
22 the execution hereof, including a waiver of California Civil Code § 1542.

23 This General Release includes any unknown claims that Named
24 Plaintiffs Marie Barraza Vae, Arturo Avila, and Daniel Ojeda do not know
25 or suspect to exist in their favor at the time of the General Release, which,
26 if known by them, might have affected their Settlement with, and release
27 of, the Released Parties or might have affected their decision not to object
28 to this Settlement or the General Release.

1 With respect to the General Release, Named Plaintiffs Marie
2 Barraza Vae, Arturo Avila, and Daniel Ojeda stipulate and agree that,
3 upon the execution of this Agreement, they shall be deemed to have, and
4 by operation of the Final Judgment shall have, expressly waived and
5 relinquished, to the fullest extent permitted by law, the provisions, rights
6 and benefits of Section 1542 of the California Civil Code, or any other
7 similar provision under state or federal law as to the generally released
8 claims. Section 1542 provides as follows:

9 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT**
10 **THE CREDITOR OR RELEASING PARTY DOES NOT KNOW**
11 **OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME**
12 **OF EXECUTING THE RELEASE, AND THAT IF KNOWN BY**
13 **HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS**
14 **OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED**
15 **PARTY.**

16 8. **DUTIES OF THE PARTIES PRIOR TO PRELIMINARY COURT APPROVAL**

17 8.1 Upon execution of this Agreement, Class Counsel shall apply to the Court for the entry of
18 an order granting Preliminary Approval of the Settlement substantially in the following
19 form:

20 8.1.1 Scheduling a Final Approval hearing on the question of whether the proposed
21 Settlement should be finally approved as fair, reasonable, and adequate as to the
22 proposed Settlement Class;

23 8.1.2 Approving as to form and content the proposed Class “Notice;”

24 8.1.3 Directing the mailing of the Notice by first class mail, in English and Spanish, to
25 the Settlement Class Members;

26 8.1.4 Preliminarily approving the Settlement; and

27 8.1.5 Approving Dychter Law Offices, APC, Law Offices of Raphael A. Katri, Labor
28 Law PC, Haines Law Group, APC, and Sani Law, APC, as Class Counsel,

1 approving Ms. Marie Barraza Vae and Mr. Arturo Avila and Mr. Daniel Ojeda as
2 Settlement Class Representatives, and approving Atticus Administration as the
3 Claims Administrator.

4 8.2 Defendant and their counsel shall cooperate with Class Counsel as necessary to obtain
5 Preliminary Approval and Final Approval of this Settlement.

6 8.3 In addition, concurrent with applying to the Court for the entry of an order granting
7 Preliminary Approval of the Settlement, Class Counsel shall take all necessary steps to
8 inform the LWDA of the Settlement Agreement in accordance with Labor Code section
9 2699(1)(2).

10 9. **DUTIES OF THE PARTIES FOLLOWING PRELIMINARY COURT**
11 **APPROVAL**

12 9.1 Following Preliminary Approval by the Court of the Settlement, Class Counsel will submit
13 a proposed Final Judgment. The proposed Final Judgment shall:

14 9.1.1 Approve the Settlement, adjudging the terms thereof to be fair, reasonable, and
15 adequate and directing consummation of its terms and provisions;

16 9.1.2 Approve an award of attorneys' fees and reimbursement of costs to Class Counsel;

17 9.1.3 Approve any Service Enhancement to the Settlement Class Representatives;

18 9.1.4 Certify the Settlement Class for settlement purposes only in accordance with
19 Section 3 of this Agreement; and,

20 9.1.5 Permanently bar the Settlement Class Representatives and all Releasing Settlement
21 Class Members from further prosecuting any of the Released Claims against
22 Defendant. Named Plaintiffs Marie Barraza Vae, Arturo Avila, and Daniel Ojeda
23 shall have been deemed to have executed a full and final release, pursuant to Civil
24 Code Section 1542, and shall not be permitted to submit an opt-out or objection to
25 the Settlement.

26 9.2 Defendants and their Counsel shall cooperate with Class Counsel as necessary to obtain
27 Final Approval and the Court's final judgment.
28

9.3 Within ten (10) calendar days after either (1) Final Approval, if the Settlement is approved or (2) entry of order denying the Settlement, if the Court does not approve the Settlement, Plaintiff's Counsel will provide a copy of the Court's judgment or order to the LWDA pursuant to Labor Code section 2699(1)(3).

10. MUTUAL FULL COOPERATION

10.1 The Parties agree to cooperate fully with each other to accomplish the terms of this Settlement, including but not limited to, execution of all necessary documents and to take such other action as may reasonably be necessary to implement the terms of this Settlement. The Parties shall use their best efforts, including all efforts contemplated by this Agreement and any other efforts that may become necessary by order of the Court, or otherwise, to effectuate the terms of this Settlement. As soon as practicable after execution of this Agreement Class Counsel shall, with the assistance and cooperation of Defendant and their counsel, take all necessary steps to secure the Court's Final Judgment.

10.2 If a Party cannot reasonably comply with an obligation under this Agreement by the deadline set forth herein applicable to that obligation, that Party may apply to the Court for a reasonable extension of time to fulfill that obligation. Consent to such a request for an extension will not be unreasonably withheld by the other Party.

11. STATEMENT OF NO ADMISSION

11.1 Nothing contained in this Agreement shall be construed or deemed an admission of liability, culpability, or wrongdoing on the part of Defendant and Defendant denies liability therefor. Nor shall this Agreement constitute an admission by Defendant as to any interpretation of laws or as to the merits, validity, or accuracy of any claims made against it in the Litigation or the propriety of class certification for any purpose other than settlement. Likewise, nothing in this Agreement shall be construed or deemed an admission with regards to the validity of any of Defendant's defenses or affirmative defenses. Each of the Parties has entered into this Settlement with the intention to avoid further disputes and litigation with the attendant inconvenience and expenses.

1 11.2 This Agreement, and all related documents, and all other actions taken in implementation
2 of the Settlement, including any statements, discussions, or communications, and any
3 materials prepared, exchanged, issued, or used during the course of the negotiations leading
4 to this Agreement are settlement documents and shall be inadmissible in evidence and shall
5 not be used for any purpose in any judicial, arbitral, administrative, investigative, or other
6 court, tribunal, forum, or proceeding, including any wage and hour or other litigation
7 against Defendant, for any purpose, except in an action or proceeding to approve, interpret,
8 or enforce the terms of this Agreement, and except as required by Court Order.

9 11.3 The Notice, Opt-Out Letters, and any other evidence produced or created by any Settlement
10 Class Member in connection with the claims procedures pursuant to this Settlement, and
11 any actions taken by Defendant in response to such Opt-Out Letters, the calculations by
12 the Claims Administrator, or other evidence, do not constitute, are not intended to
13 constitute, and will not be deemed to constitute an admission by Defendant of any violation
14 of any federal, state, or local law, statute, ordinance, regulation, rule, or executive order, or
15 any obligation or duty at law or in equity.

16 11.4 In the event that this Agreement is not approved by the Court, any appellate court, or
17 otherwise fails to become effective and enforceable, or is terminated, Defendant will not
18 be deemed to have waived, limited, or affected in any way any of its objections or defenses
19 in the Litigation.

20 12. **VOIDING THE AGREEMENT**

21 12.1 In the event that this Settlement is not approved, or if for any reason the Settlement
22 Effective Date does not occur, the Settlement shall be deemed null, void and unenforceable
23 and shall not be used nor shall it be admissible in any subsequent proceedings either in this
24 Court or in any other judicial, arbitral, administrative, investigative, or other court, tribunal,
25 forum, or other proceeding, including without limitation any wage and hour, or other
26 litigation against Defendant.

27 12.2 In the event that the Court does not approve the Attorneys' Fees and Costs in the amount
28 requested by Class Counsel, or in the event that the Attorneys' Fees and Costs requested

by Class Counsel are reduced, that finding shall not be a basis for rendering the entire Agreement null, void, or unenforceable. Class Counsel retains their right to appeal any decision by the Court regarding the Attorneys' Fees and Costs.

12.3 If more than ten percent (10%) of the Class Members submit valid and timely Opt-Out Letters, then Defendant, at its sole option, may withdraw from this Settlement by giving notice to Class Counsel and the Claims Administrator within three (3) business days of receipt by Defendant's Counsel of the final report of the number of opt-outs from the Claims Administrator after the Opt-Out Submission Deadline. If Defendant exercises such option, they will be solely responsible for all settlement administration costs.

13. PARTIES' AUTHORITY

13.1 The respective signatories to this Agreement each represent that they are fully authorized to enter into this Settlement and bind the respective Parties to its terms and conditions.

14. NO PRIOR ASSIGNMENTS

14.1 The Parties represent, covenant, and warrant that they have not directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action, or right released and discharged in this Settlement.

15. NOTICES

15.1 Unless otherwise specifically provided herein, all notices, demands, or other communications given hereunder shall be in writing and shall be deemed to have been duly given as of: (i) the date given, if given by hand delivery; (ii) within one business day, if sent by overnight delivery services such as Federal Express or similar courier; or (iii) on the third business day after mailing by United States registered or certified mail, return receipt requested. All notices given under this Agreement shall be addressed as follows:

15.1.1 To the Class:

Danny Yadidsion, Esq.
LABOR LAW PC
100 Wilshire Blvd., Ste. 700
Santa Monica, CA 90401
Telephone: (310) 494-6082
E-Mail: danny@laborlawpc.com

Alexander I. Dychter, Esq.
Dychter Law Offices, APC
180 Broadway, Suite 1835
San Diego, CA 92101
Telephone: (619) 487-0777
Facsimile: (619) 330-1827
E-Mail: alex@dychterlaw.com

Sam Sani, Esq.
SANI LAW, APC
15720 Ventura Blvd., Ste. 405
Encino, CA 91436
Telephone: (310) 935-0405
Facsimile: (310) 935-0409
E-Mail: ssani@sanilawfirm.com

15.1.2 **To Defendant:**

Shane K. Anderies, Esq.
ANDERIES & GOMES LLP
505 Montgomery Street, Floor 11
San Francisco, California 94111
Telephone: (415) 217-8802
Facsimile: (415) 217-8803
E-Mail: sanderies@andgolaw.com

16. **CONFIDENTIALITY**

16.1 Named Plaintiffs and Class Counsel agree that prior to the filing of the Motion for Preliminary Approval, they will keep the terms of this Settlement confidential except for purposes of communicating with Defendant or the Court. Except as set forth in Paragraph 16.2 below, any confidentiality associated with the terms of this Settlement shall expire upon the filing by Class Counsel of the Motion for Preliminary Approval with the Court, except that the negotiations and discussions preceding submission of the Settlement to the Court for preliminary approval shall remain strictly confidential, unless otherwise agreed to by the Parties or unless otherwise ordered by the Court.

16.2 Plaintiffs and Class Counsel agree not to issue a press release, or post on a website or any form of social media, or to advertise the terms of the settlement with Defendant. Plaintiffs and Class Counsel further agree that if contacted by the press regarding this case, they will only state that the lawsuit exists and has been resolved.

17. **MISCELLANEOUS PROVISIONS**

17.1 Construction. The Parties agree that the terms and conditions of this Agreement are the result of lengthy, intensive arms-length negotiations between the Parties and that this Agreement shall not be construed in favor of or against any party by reason of the extent to which any party or her or his counsel participated in the drafting of this Agreement.

17.2 Captions and Interpretations. Paragraph titles or captions contained in this Agreement are a matter of convenience and for reference, and in no way define, limit, extend, or describe

the scope of this Settlement or any provision. Each term of this Agreement is contractual and not merely a recital.

17.3 Modification. This Settlement may not be changed, altered, or modified, except in a writing signed by the Parties, and approved by the Court. Notwithstanding the forgoing, the Parties agree that any dates contained in this Agreement may be modified by agreement of the Parties without Court approval if the Parties agree and cause exists for such modification. This Settlement may not be discharged except by performance in accordance with its terms or by a writing signed by the Parties.

17.4 Integration Clause. This Agreement and any other documents delivered pursuant hereto contain the entire agreement between the Parties relating to the resolution of the Litigation, and all prior or contemporaneous agreements, understandings, representations, and statements, whether oral or written and whether by a Party or such Party's legal counsel, are merged in this Agreement. No rights under this Settlement may be waived except in writing and signed by the Party against whom such waiver is to be enforced.

17.5 Binding on Assigns. This Settlement shall be binding upon, and inure to the benefit of, the Parties and their respective heirs, trustees, executors, administrators, successors, and assigns.

17.6 Class Counsel and Settlement Class Representative Signatories. It is agreed that because the Settlement Class Members are so numerous, it is impossible or impractical to have each Settlement Class Member execute this Settlement. The Notice will provide all Settlement Class Members with a summary of the Settlement and will advise all Settlement Class Members of the binding nature of the release. The Notice shall have the same force and effect as if this Settlement were executed by each Settlement Class Member.

17.7 Counterparts and Electronic Signatures. This Agreement may be executed by facsimile signature, *pdf* signature, or signature in compliance with the Uniform Electronic Transaction Act, and in any number of counterparts, and when each party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and,

1 when taken together with other signed counterparts, shall constitute one and the same
2 Agreement, which shall be binding upon and effective as to all Parties.

3 17.8 Applicable Law. This Agreement shall be governed by California law without regard to
4 its choice of law or conflicts of law principles or provisions.

5 17.9 Enforcement of the Settlement Agreement. In the event that one or more of the Parties to
6 this Settlement Agreement institutes any legal action, arbitration, or other proceeding
7 against any other party or Parties to enforce the provisions of this Settlement Agreement
8 or to declare rights and/or obligations under this Settlement Agreement, the successful
9 Party or Parties shall be entitled to recover from the unsuccessful Party or Parties
10 reasonable attorneys' fees and costs, including expert witness fees incurred in connection
11 with any enforcement actions.

12 17.10 Retention of Jurisdiction by the Court. Following approval of the Settlement and the
13 Court's entry of the Order of Final Approval, the Court shall retain jurisdiction for the
14 purpose of addressing any issues which may arise with respect to the administration of the
15 Settlement or the enforcement of the Settlement's terms pursuant to California Code of
16 Civil Procedure section 664.6.

17 *[Signature Pages Follow]*
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IT IS SO STIPULATED:

Dated: Oct 25, 2021

Individually and on behalf of the Class



Marie Barraza Vae (Oct 25, 2021 19:10 PDT)

Marie Barraza Vae

Individually and on behalf of the Class

Dated: _____

Arturo Avila

Individually and on behalf of the Class

Dated: _____

Daniel Ojeda

Dated: _____

Defendant MOGA Transport, Inc.

By: _____
Harwinder Singh
Director

1 **IT IS SO STIPULATED:**

2

Individually and on behalf of the Class

3

4 Dated: _____

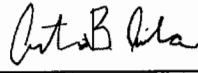
Marie Barraza Vae

5

Individually and on behalf of the Class

6

7 Dated: 10 / 26 / 2021 _____


Arturo Avila

8

Individually and on behalf of the Class

9

10 Dated: _____

Daniel Ojeda

11

12 Dated: _____

Defendant MOGA Transport, Inc.

13

By: _____
Harwinder Singh
Director

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Individually and on behalf of the Class

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4 Dated: _____

Marie Barraza Vae

5

Individually and on behalf of the Class

6

7 Dated: _____

Arturo Avila

8

Individually and on behalf of the Class

9

10 Dated: Oct 25, 2021

Daniel Ojeda
Daniel Ojeda (Oct 25, 2021 15:01 PDT)

Daniel Ojeda

11

12 Dated: _____

Defendant MOGA Transport, Inc.

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14

By: _____
Harwinder Singh
Director

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Individually and on behalf of the Class

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4 Dated: _____

Marie Barraza Vae

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Individually and on behalf of the Class

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Arturo Avila

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Individually and on behalf of the Class

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10 Dated: _____

Daniel Ojeda

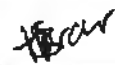
11

12 Dated: 10/26/21

Defendant MOGA Transport, Inc.

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By: 

Harwinder Singh
Director

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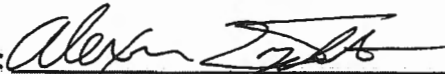
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1 **APPROVED AS TO FORM AND CONTENT:**

2 **On Behalf of Plaintiffs and the Class**

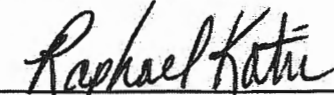
3 Dated: 10/26/2021

DYCHTER LAW OFFICES, APC

4
5 By: 
6 Alexander I. Dychter, Esq.

7 Dated: 10/26/21

Law Offices of Raphael A. Katri

8
9 By: 
10 Raphael A. Katri, Esq.

11 Dated: _____

LABOR LAW PC

12 By: _____
13 Danny Yadidsion, Esq.

14 Dated: _____

HAINES LAW GROUP, APC

15 By: _____
16 Paul K. Haines, Esq.

17 Dated: _____

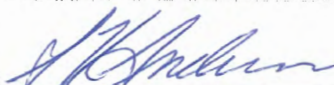
SANI LAW, APC

18 By: _____
19 Sam Sani, Esq.

20 **On Behalf of Defendant**

21 Dated: 10/26/2021

ANDERIES & GOMES LLP

22
23 By: 
24 Shane K. Anderies, Esq.
25 Counsel for Defendant
26
27
28

1 **APPROVED AS TO FORM AND CONTENT:**

2 **On Behalf of Plaintiffs and the Class**

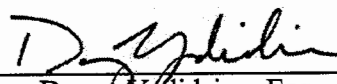
3 Dated: _____ **DYCHTER LAW OFFICES, APC**

4
5 By: _____
6 Alexander I. Dychter, Esq.

7 Dated: _____ **Law Offices of Raphael A. Katri**

8
9 By: _____
Raphael A. Katri, Esq.

10 Dated: 10/26/2021 _____

11
12 By:  _____
Danny Yaddison, Esq.

13 Dated: _____ **HAINES LAW GROUP, APC**

14
15 By: _____
Paul K. Haines, Esq.

16 Dated: _____ **SANI LAW, APC**

17
18 By: _____
Sam Sani, Esq.

19
20 **On Behalf of Defendant**

21 Dated: _____ **ANDERIES & GOMES LLP**

22
23 By: _____
Shane K. Anderies, Esq.
24 Counsel for Defendant

25
26
27
28

1 **APPROVED AS TO FORM AND CONTENT:**

2 **On Behalf of Plaintiffs and the Class**

3 Dated: _____ **DYCHTER LAW OFFICES, APC**

4
5 By: _____
6 Alexander I. Dychter, Esq.

7 Dated: _____ **Law Offices of Raphael A. Katri**

8
9 By: _____
Raphael A. Katri, Esq.

10 Dated: _____ **LABOR LAW PC**

11
12 By: _____
Danny Yadidsion, Esq.

13 Dated: October 25, 2021 **HAINES LAW GROUP, APC**

14
15 By: 
Paul K. Haines, Esq.

16 Dated: October 25, 2021 **SANI LAW APC**

17
18 By: 
Sam Sani, Esq.

19
20 **On Behalf of Defendant**

21 Dated: _____ **ANDERIES & GOMES LLP**

22
23 By: _____
24 Shane K. Anderies, Esq.
25 Counsel for Defendant
26
27
28