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Kern County Superior Court
By Vanessa Castro, Deputy

Attorneys for Plaintiffs LEOBARDO BENITEZ,
RAMON ARAGON, and ELEAZAR DEL TORO,
on behalf of themselves and others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF KERN

LEOBARDO BENITEZ, RAMON
ARAGON, and ELEAZAR DEL TORO on
behalf of themselves and others similarly
situated,

Plaintiffs,

vs.

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

Defendants.

Case No. BCV-23-100472

CLASS ACTION

Assigned for All Purposes To:
Hon. Bernard C. Barmann Jr.
Division H

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

1. Failure to Pay Minimum Wages;
2. Violation of Labor Code § 226(a);
3. Reimbursement of Necessary
Expenditures Under Labor Code § 2802;
4. Penalties Pursuant to Labor Code § 203;
5. Violation of Business & Professions
Code § 17200 et seq.
6. Penalties Pursuant to Labor Code § 2699,
et seq.

DEMAND FOR JURY TRIAL

1 Plaintiffs LEOBARDO BENITEZ, RAMON ARAGON, and ELEAZAR DEL TORO,
2 (hereinafter collectively “Plaintiffs”) on behalf of themselves and all others similarly situated
3 (collectively, “Employees”; individually, “Employee”) complains of Defendants, and each of
4 them, as follows:

5 INTRODUCTION

6 1. Plaintiffs bring this action on behalf of themselves and all current and former
7 Employees within the State of California who, at any time four (4) years prior to the filing of this
8 lawsuit, are or were employed as non-exempt, hourly employees by Defendants MOGA
9 TRANSPORT INC., a California corporation, and DOES 1 through 50 (all defendants being
10 collectively referred to herein as “Defendants”). Plaintiffs allege that Defendants, and each of
11 them, violated various provisions of the California Labor Code, relevant orders of the Industrial
12 Welfare Commission (IWC) and California Business & Professions Code, and seeks redress
13 therefore.

14 2. Plaintiffs are residents of California and during the time period relevant to this
15 Complaint was employed by Defendants as a non-exempt hourly employee within the State of
16 California at Defendants’ facilities and offices in California. Plaintiffs and the other Class
17 members worked for Defendants in Kern County, and in other nonexempt positions, throughout
18 California and, and consistently worked at Defendants’ behest without being paid all wages due.
19 More specifically, Plaintiffs and the other similarly situated Class members were employed by
20 Defendants and worked at Defendants’ offices and other facilities where the conduct giving rise to
21 the allegations in this Class Action Complaint occurred. Upon information and belief, Plaintiffs
22 was employed by Defendants and (1) shared similar job duties and responsibilities, (2) was
23 subjected to the same policies and practices, and (3) endured similar violations at the hands of
24 Defendants as the other Employee Class members who served in similar and related positions.

25 3. Defendants had a policy or practice of paying Employees on a piece rate basis,
26 where Defendants would assign a rate for each delivery trip completed by Employees without
27 regard to the real-time hours worked by Plaintiff and the Employees both driving and in
28 performing the other tasks required of them by Defendants. In actuality, Employees were not

properly compensated, thus resulting in the improper calculation and underpayment of wages to Employees as well as a failure to pay Employees for all nonproductive time such as pre-trip and post-trip inspections and waiting for loading/unloading and Defendant provided them with inaccurate wage statements that prevented Plaintiffs and the Class from learning of these unlawful pay practices.

THE PARTIES

A. The Plaintiffs

4. Plaintiffs LEOBARDO BENITEZ, RAMON ARAGON, and ELEAZAR DEL TORO have resided in California and during the time period relevant to this Complaint was employed by Defendants as a non-exempt hourly employee within the State of California.

B. The Defendants

5. Defendant MOGA TRANSPORT, INC. ("MT") a California Corporation, with its principle executive offices in Bakersfield, California and has been listed as the employer on the wage statements issued to Plaintiffs during the relevant time period. MT lists a California address in Bakersfield, California with the California Secretary of State, and employs Class members in Kern County, including at Defendants' offices and facilities in Bakersfield, California, and throughout California and conducts business throughout California.

6. The true names and capacities, whether individual, corporate, associate, or whatever else, of the Defendants sued herein as Does 1 through 50, inclusive, are currently unknown to Plaintiffs, who therefore sues these Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiffs are informed and believe and thereon alleges that Defendants designated herein as Does 1 through 50, inclusive, and each of them, are legally responsible in some manner for the unlawful acts referred to herein. Plaintiffs will seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants designated herein as Does 1 through 50 when their identities become known.

7. Plaintiffs are informed and believes and thereon alleges that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, that Defendants carried out a joint scheme, business plan, or policy in all respects pertinent hereto, and that the acts of

1 each Defendant are legally attributable to the other Defendants. Furthermore, Defendants acted in
2 all respects as the employers or joint employers of Employees. Defendants, and each of them,
3 exercised control over the wages, hours or working conditions of Employees, or suffered or
4 permitted Employees to work, or engaged, thereby creating a common law employment
5 relationship, with Employees. Therefore, Defendants, and each of them, employed or jointly
6 employed Employees.

7 **JURISDICTION AND VENUE**

8 8. This Court has jurisdiction over this Action pursuant to California Code of Civil
9 Procedure § 410.10 and California Business & Professions Code § 17203. This Action is brought
10 as a Class Action on behalf of similarly situated Employees of Defendants pursuant to California
11 Code of Civil Procedure § 382. Venue as to Defendants is also proper in this judicial district
12 pursuant to California Code of Civil Procedure § 395 *et seq.* Upon information and belief, the
13 obligations and liabilities giving rise to this lawsuit occurred at least in part in Kern County and
14 Defendants maintain and operate company offices and facilities in Kern County, and employ
15 Plaintiffs and other Class members in Kern County and throughout California.

16 **FACTUAL BACKGROUND**

17 9. The Employees who comprise the Class and Collective, including Plaintiffs, are
18 nonexempt employees pursuant to the applicable Wage Order of the IWC. Defendants hire
19 Employees who work in nonexempt positions at the direction of Defendants in the State of
20 California. Plaintiffs and the Class Members were either not paid by Defendants for all hours
21 worked or otherwise were not paid at the appropriate minimum, regular rates based on the number
22 of assignments and the type of assignments Plaintiffs and the Class Members completed under a
23 piece rate calculation. Plaintiffs were paid by piece-rate while they were employed as employees
24 for Defendants for each delivery trip completed and as a result of paying Plaintiffs and Class
25 members in this way, Plaintiffs contend that Defendants, failed, to pay Plaintiffs and the Class
26 members all wages due and owing, including for nonproductive time such as pre-trip and post-trip
27 inspections and waiting for loading/unloading, and failed to furnish accurate wage statements, all
28 in violation of various provisions of the California Labor Code and applicable Wage Orders where

1 applicable.

2 10. Therefore, from at least four (4) years prior to the filing of this lawsuit and
3 continuing to the present, Defendants had a consistent policy or practice of failing to pay
4 Employees for all hours worked, and failing to pay minimum wage for all time worked as required
5 by California Law.

6 11. Additionally, from at least four (4) years prior to the filing of this lawsuit, and
7 continuing to the present, Defendants have consistently failed to provide Employees with timely,
8 accurate, and itemized wage statements, in writing, as required by California wage-and-hour laws.

9 12. From at least four (4) years prior to the filing of this lawsuit and continuing to the
10 present, Defendants have failed to reimburse Employees for expenses necessarily incurred in the
11 performance of their job duties for Defendants including, cell phone usage which was necessary to
12 perform their duties under Defendants' employ which was used throughout the course of
13 Employees' duties under Defendants' employ in violation of Labor Code § 2802.

14 13. Additionally from at least four (4) years prior to filing this lawsuit and continuing
15 to the present, Defendants have had a consistent policy of failing to pay all wages fur and owed to
16 Employees at the time of their termination of within seventy-two (72) hours of their resignation, as
17 required by California wage-and-hour laws.

18 14. In light of the foregoing, Employees bring this action pursuant to, inter alia, Labor
19 Code §§ 201, 202, 203, 204, 210, 226, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2,
20 1197, 1198, 1199, 2698, 2699, *et seq.*, and 2802.

21 15. Furthermore, pursuant to Business and Professions Code §§ 17200-17208,
22 Employees seek injunctive relief, restitution, and disgorgement of all benefits Defendants have
23 enjoyed from their violations of Labor Code.

24 **CLASS ALLEGATIONS**

25 16. Plaintiffs brings this class action on behalf of themselves an all others similarly
26 situated pursuant to Code of Civil Procedure § 382. Plaintiffs seek to represent a class defined as
27 follows: all nonexempt individuals employed by Defendants, at any time within four (4) years of
28 the filing of this lawsuit, within the State of California.

1 17. Further, Plaintiffs seeks to represent the following Subclasses composed of and
2 defined as follows:

3 a. Subclass 1. Minimum Wages Subclass. All Class members who were not
4 compensated for all hours worked for Defendants at the applicable minimum wage.

5 b. Subclass 2. Wage Statement Subclass. All Class members who, within the
6 applicable limitations period, were not provided with accurate itemized wage statements.

7 c. Subclass 3. Failure to Reimburse for Necessary Business Expenditures. All Class
8 members who were subject to Defendants failing to reimburse for expenses necessarily incurred in
9 the performance of Employees job duties for Defendants which were necessary to perform their
10 duties under Defendants' employ.

11 d. Subclass 4. Termination Pay Subclass. All Class members who, within the
12 applicable limitations period, either voluntarily or involuntarily separated from their employment
13 and were subject to Defendants' policy and/or practice of failing to timely pay wages upon
14 termination.

15 e. Subclass 5. UCL Subclass. All Class members who are owed restitution as a
16 result of Defendants' business acts and practices, to the extent such acts and practices are found to
17 be unlawful, deceptive, and/or unfair.

18 18. Plaintiffs reserves the right under California Rule of Court 3.765 to amend or
19 modify the class description with greater particularity or further division into subclasses or
20 limitation to particular issues.

21 19. This action has been brought and may properly be maintained as a class action
22 under the provisions of Code of Civil Procedure § 382 because there is a well-defined community
23 of interest in litigation and proposed class is easily ascertainable.

24 **A. Numerosity**

25 20. The potential members of the class as defined are so numerous that joinder of all
26 the member of the class is impracticable. While the precise number of class member has not been
27 determined at this time, Plaintiffs are informed and believe that Defendants employ or, during the
28 time period relevant to this lawsuit, employed more than 100 individuals were employed by

Defendant's within the State of California.

21. Accounting for employee turnover during the relevant time period increases this number substantially. Plaintiffs allege that Defendants' employment records will provide information as to the number and location of all class members.

B. Commonality

22. There are questions of law and fact common to the class that predominate over any questions affecting only individual class members. These common questions of law and fact include:

- a. Whether Defendants failed to pay Employees minimum wages for all hours worked, including for non-productive time;
- b. Whether Defendants failed to pay Employees wages for all hours worked;
- c. Whether Defendants violated Labor Code § 226(a);
- d. Whether Defendants failed to reimburse Employees for necessary business expenses;
- e. Whether Defendants violated Labor Code §§ 201, 202, and 203 by failing to pay wages and compensation due and owing at the time of termination of employment;
- f. Whether Defendants violated Business and Professions Code § 17200 et seq.;
- g. Whether Defendants are liable for penalties under Labor Code § 2699, et seq; and
- h. Whether Employees are entitled to equitable relief pursuant to Business and Professions Code § 17200 et seq.

C. Typicality

23. The claims of the named Plaintiffs are typical of those of the other Employees. Employees all sustained injuries and damages arising out of and caused by Defendant's common course of conducts in violation of statutes, as well as regulations that have the force and effect of law, as alleged herein.

D. Adequacy of Representation

24. Plaintiffs will fairly and adequately represent and protect the interest of Employees. Counsel who represents Employees are experienced and competent in litigating employment class

actions.

E. Superiority of Class Action

25. A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all Employees is not practicable, and questions of law and fact common to all Employees predominate over any questions affecting only individual Employees. Each Employee has been damaged and is entitled to recovery by reason of Defendants' illegal policies or practices of failing to compensate Employees properly.

26. Class action treatment will allow those persons similarly situated to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system. Plaintiffs are unaware of any difficulties in managing this case that should preclude class action.

FIRST CAUSE OF ACTION

FAILURE TO PAY MINIMUM WAGES

(Against All Defendants)

27. Plaintiffs re-allege and incorporate all preceding paragraphs, as though set forth in full herein.

28. Defendants failed to pay Employees minimum wages for all hours worked. Employees were paid on a piece rate basis, where Defendants would pay Employees for each delivery trip completed. In actuality, Defendants consistently required Employees to work non-productive hours, or "waiting time," without compensation in violation of California State law. Specifically, Employees were not paid except for those times such as pre- and post-trip inspections and waiting for loading/unloading. Employees experienced waiting time during the work day which was uncompensated.

29. California Labor Code § 1197, entitled "Pay of Less Than Minimum Wage" states:

The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.

///

1 30. The applicable minimum wages fixed by the commission for work during the
2 relevant period is found in the Wage Orders. Pursuant to the Wage Orders, Employees are
3 therefore entitled to double the minimum wage during the relevant period.

4 31. The minimum wage provisions of California Labor Code are enforceable by private
5 civil action pursuant to California Labor Code § 1194(a) which states:

6 Notwithstanding any agreement to work for a lesser wage, any
7 employee receiving less than the legal minimum wage or the legal
8 overtime compensation applicable to the employee is entitled to
9 recover in a civil action the unpaid balance of the full amount of
this minimum wage or overtime compensation, including interest
thereon, reasonable attorney's fees and costs of suit.

10 32. As described in California Labor Code §§ 1185 and 1194.2, any action for wages
11 incorporates the applicable Wage Order of the California Industrial Welfare Commission.

12 33. California Labor Code § 1194.2 also provides for the following remedies:

13 In any action under Section 1194 . . . to recover wages because of
14 the payment of a wage less than the minimum wages fixed by an
15 order of the commission, an employee shall be entitled to recover
liquidated damages in an amount equal to the wages unlawfully
16 unpaid and interest thereon.

17 34. Defendants have the ability to pay minimum wages for all time worked and have
18 willfully refused to pay such wages with the intent to secure for Defendants a discount upon this
19 indebtedness with the intent to annoy, harass, oppress, hinder, delay, or defraud Employees.

20 35. Wherefore, Employees are entitled to recover the unpaid minimum wages
21 (including double minimum wages), liquidated damages in an amount equal to the minimum
22 wages unlawfully unpaid, interest thereon and reasonable attorney's fees and costs of suit pursuant
23 to California Labor Code § 1194(a).

24 **SECOND CAUSE OF ACTION**
25 **VIOLATION OF LABOR CODE § 226(a)**
26 **(Against All Defendants)**

27 36. Plaintiffs re-allege and incorporate all preceding paragraphs, as though set forth in
28 full herein.

1 37. California Labor Code § 226(a) requires an employer to furnish each of his or her
2 employees with an accurate, itemized statement in writing showing the , total hours worked, the
3 number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-
4 rate basis, the inclusive dates of the period for which the employee is paid, and the corresponding
5 number of hours worked at each hourly rate; these statements must be appended to the detachable
6 part of the check, draft, voucher, or whatever else serves to pay the employee's wages; or, if
7 wages are paid by cash or personal check, these statements may be given to the employee
8 separately from the payment of wages; in either case the employer must give the employee these
9 statements twice a month or each time wages are paid.

10 38. Defendants failed to provide Employees with accurate itemized wage statements in
11 writing, as required by the Labor Code. Specifically, the wage statements given to Employees by
12 Defendants failed to include the total hours worked by the Employees, the number of piece-rate
13 units earned and any applicable piece rate Employees were paid the inclusive dates of the period
14 for which the Employees were paid, all applicable hourly rates in effect during the pay period and
15 the corresponding number of hours worked at each hourly rate by the employee, account for wages
16 all of which Defendants knew or reasonably should have known were owed to Employees, as
17 alleged hereinabove.

18 39. As a direct and proximate cause of Defendants' violation of Labor Code § 226(a),
19 Employees suffered injuries, including among other things confusion over whether they received
20 all wages owed them, the difficulty and expense involved in reconstructing pay records, and
21 forcing them to make mathematical computations to analyze whether the wages paid in fact
22 compensated them correctly for all hours worked.

23 40. Pursuant to Labor Code §§ 226(a) and 226(e), Employees are entitled to recover
24 the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation
25 occurs and one hundred dollars (\$100) for each violation in a subsequent pay period, not
26 exceeding an aggregate penalty of four thousand dollars (\$4,000). They are also entitled to an
27 award of costs and reasonable attorneys' fees.

28 **THIRD CAUSE OF ACTION**

1 **FAILURE TO REIMBURSE FOR NECESSARY BUSINESS EXPENDITURES**
2 **IN VIOLATION OF LABOR CODE § 2802**
3 **(Against All Defendants)**

4 41. Plaintiffs re-allege and incorporate all preceding paragraphs, as though set forth in
5 full herein.

6 42. Under Labor Code § 2802(a) an employer must indemnify its employees for all
7 necessary expenditures or losses incurred by the employee in direct consequence of the discharge
8 of his or her duties, or of his or her obedience to the directions of the employer.

9 43. Employees incurred necessary expenditures in the performance of their job duties
10 for Defendants, such as cell phone usage which was necessary to perform their duties under
11 Defendants' employ. From four (4) years prior to the original filing of this lawsuit and continuing
12 to the present, Defendants consistently failed to reimburse Employees for these necessarily
13 incurred business expenses.

14 44. As a result of the unlawful acts of Defendants, Employees have been deprived of
15 reimbursement in amounts to be determined at trial; they are entitled to recovery of such amounts,
16 plus interest and penalties thereon, attorneys' fees, and costs.

17 **FOURTH CAUSE OF ACTION**
18 **VIOLATION OF LABOR CODE § 203**
19 **(Against All Defendants)**

20 45. Plaintiffs re-allege and incorporate all preceding paragraphs, as though set forth in
21 full herein.

22 46. Numerous Employees are no longer employed by Defendants; they either quit
23 Defendants' employ or were fired therefrom.

24 47. Defendants failed to pay these Employees all wages due and certain at the time of
25 termination or within seventy-two (72) hours of resignation.

26 48. The wages withheld from these Employees by Defendants remained due and owing
27 for more than thirty (30) days from the date of separation of employment.

28 49. Defendants' failure to pay wages, as alleged above, was willful in that Defendants

1 knew wages to be due but failed to pay them; this violation entitles these Employees to penalties
2 under Labor Code § 203, which provides that an employee's wages shall continue until paid for up
3 to thirty (30) days from the date they were due.

4 **FIFTH CAUSE OF ACTION**

5 **VIOLATION OF BUSINESS & PROFESSIONS CODE § 17200 ET SEQ.**

6 **(Against All Defendants)**

7 50. Plaintiffs re-allege and incorporate all preceding paragraphs, as though set forth in
8 full herein.

9 51. Plaintiffs, on behalf of themselves, Employees, and the general public, brings this
10 claim pursuant to Business & Professions Code § 17200 et seq. The conduct of Defendants as
11 alleged in this Complaint has been and continues to be unfair, unlawful, and harmful to Employees
12 and the general public. Plaintiffs seek to enforce important rights affecting the public interest
13 within the meaning of Code of Civil Procedure
14 § 1021.5.

15 52. Plaintiffs are a "person" within the meaning of Business & Professions Code
16 § 17204, has suffered injury, and therefore has standing to bring this cause of action for injunctive
17 relief, restitution, and other appropriate equitable relief.

18 53. Business & Professions Code § 17200 et seq. prohibits unlawful and unfair
19 business practices.

20 54. Wage-and-hour laws express fundamental public policies. Paying employees their
21 wages etc., are fundamental public policies of California. Labor Code § 90.5(a) articulates the
22 public policies of this State vigorously to enforce minimum labor standards, to ensure that
23 employees are not required or permitted to work under substandard and unlawful conditions, and
24 to protect law-abiding employers and their employees from competitors who lower costs to
25 themselves by failing to comply with minimum labor standards.

26 55. Defendants have violated statutes and public policies. Through the conduct alleged
27 in this Complaint Defendants have acted contrary to these public policies, have violated specific
28 provisions of the Labor Code, and have engaged in other unlawful and unfair business practices in

1 violation of Business & Professions Code § 17200 et seq.; which conduct has deprived Plaintiffs,
2 and all persons similarly situated, and all interested persons, of the rights, benefits, and privileges
3 guaranteed to all employees under the law.

4 56. Defendants' conduct, as alleged hereinabove, constitutes unfair competition in
5 violation of the Business & Professions Code § 17200 et seq.

6 57. Defendants, by engaging in the conduct herein alleged, by failing to pay wages,
7 etc., either knew or in the exercise of reasonable care should have known that their conduct was
8 unlawful; therefore their conduct violates the Business & Professions Code § 17200 et seq.

9 58. As a proximate result of the above-mentioned acts of Defendants, Employees have
10 been damaged, in a sum to be proven at trial.

11 59. Unless restrained by this Court Defendants will continue to engage in such
12 unlawful conduct as alleged above. Pursuant to the Business & Professions Code this Court should
13 make such orders or judgments, including the appointment of a receiver, as may be necessary to
14 prevent the use by Defendants or their agents or employees of any unlawful or deceptive practice
15 prohibited by the Business & Professions Code, including but not limited to the disgorgement of
16 such profits as may be necessary to restore Employees to the money Defendants have unlawfully
17 failed to pay.

18 **SIXTH CAUSE OF ACTION**

19 **PENALTIES PURSUANT TO LABOR CODE § 2699, ET SEQ.**

20 **(Against All Defendants)**

21 60. Plaintiffs re-allege and incorporate all preceding paragraphs, as though set forth in
22 full herein.

23 61. Plaintiffs and Employees are aggrieved employees as defined under Labor Code §
24 2699(c) in that they suffered the violations alleged in this Complaint and were employed by the
25 alleged violators, Defendants.

26 62. Plaintiffs seeks penalties under Labor Code §§ 2698 and 2699 for Defendants'
27 violation of all Labor Code provisions included under Labor Code § 2699.5 and includes the
28 penalty provisions, without limitation, based on the following California Labor Code sections:

201, 202, 203, 204, 210, 226, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1199, 2698, 2699, *et seq.*, and 2802.

63. The penalties shall be allocated as follows: 75% to the Labor and Workforce Development Agency (LWDA) and 25% to the affected employee.

64. Employees also seek any and all penalties and remedies set forth in Labor Code § 558, which states:

(a) Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall be paid to the affected employee.

(b) If upon inspection or investigation the Labor Commissioner determines that a person had paid or caused to be paid a wage for overtime work in violation of any provision of this chapter, or any provision regulating hours and days of work in any order of the Industrial Welfare Commission, the Labor Commissioner may issue a citation. The procedures for issuing, contesting, and enforcing judgments for citations or civil penalties issued by the Labor Commissioner for a violation of this chapter shall be the same as those set out in Section 1197.1.

(c) The civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law.

66. Labor Code § 226.3 provides that “[a]ny employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the required in subdivision (a) of Section 226.” To the extent that Labor Code § 226.3 applies, Plaintiff and Employees also seeks such penalties on.

67. Plaintiffs have exhausted their administrative remedy by sending a certified letter to the LWDA and Defendants postmarked on February 14, 2023. The LWDA has not provided notice of its intent to investigate the alleged violations within 65 calendar days of the postmark date of the letters.

RELIEF REQUESTED

WHEREFORE, Plaintiffs prays for the following relief:

1. For an order certifying this action as a class action;
2. For liquidated damages in the amount equal to the unpaid minimum wage and interest thereon, from at least four (4) years prior to the filing of this action, according to proof;
3. For penalties pursuant to Labor Code § 226(e) for Employees, as may be proven;
4. For penalties pursuant to Labor Code § 203 for all Employees who quit or were fired in an amount equal to their daily wage times thirty (30) days, as may be proven;
5. For restitution for unfair competition pursuant to Business & Professions Code § 17200 et seq., including disgorgement or profits, as may be proven;
6. For penalties pursuant to Labor Code § 2699, *et seq.*, as may be proven;
7. For compensatory damages in the amount of all previously unreimbursed business expenditures necessarily incurred by Employees in the discharge of their job duties for Defendants from four (4) years prior to the original filing of this action, as may be proven;
8. For an order enjoining Defendants and their agents, servants, and employees, and all persons acting under, in concert with, or for them, from acting in derogation of any rights or duties adumbrated in this Complaint;
9. For all general, special, and incidental damages as may be proven;
10. For an award of pre-judgment and post-judgment interest;
11. For an award providing for the payment of the costs of this suit;
12. For an award of attorneys' fees; and
13. For such other and further relief as this Court may deem proper and just.

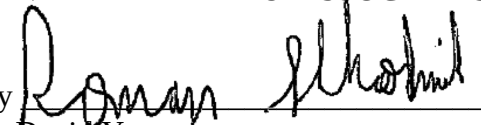
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1 DATED: April 19, 2023

DAVID YEREMIAN & ASSOCIATES, INC.

2
3 By



David Yeremian

Roman Shkodnik

Attorneys for Plaintiffs

LEOBARDO BENITEZ, RAMON

ARAGON, and ELEAZAR DEL TORO and
the putative class

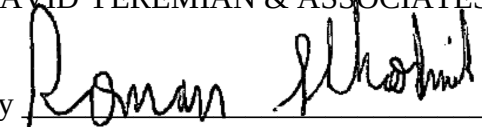
DEMAND FOR JURY TRIAL

Plaintiffs hereby demand trial of their claims by jury to the extent authorized by law.

DATED: April 19, 2023

DAVID YEREMIAN & ASSOCIATES, INC.

By



David Yeremian
Roman Shkodnik
Attorneys for Plaintiffs
LEOBARDO BENITEZ, RAMON
ARAGON, and ELEAZAR DEL TORO and
the putative class

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I am employed in the aforesaid county, State of California; I am over the age of 18 years and not a party to the within action; my business address is 2540 Foothill Blvd., Suite 201 La Crescenta, CA 91214.

On April 19, 2023, I served the foregoing: **FIRST AMENDED CLASS ACTION COMPLAINT** in Interested Parties in this action by placing a true copy thereof, enclosed in a sealed envelope, addressed as follows:

Moga Transportation, Inc.
Sukhdev Singh, Agent for Service
9306 Via Lugano
Bakersfield, CA 93312

[X] (BY MAIL) I placed such envelope with postage thereon fully paid in the United States mail at La Crescenta, California. I am “readily familiar” with this firm’s practice of collecting and processing correspondence for mailing. It is deposited with U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than 1 day after date of deposit for mailing in affidavit.

[X] (COURTESY COPY BY ELECTRONIC TRANSMISSION) by use of email by scanning the documents and any and all documents and emailing them to email addresses above

[X] (STATE) I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on April 19, 2023, at La Crescenta, California.

Natalia Bermudes
Natalia Bermudes