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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

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Clerk of the Superior Court
By Sophia Felix, Deputy Clerk

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

MICHAEL CLEMENT, individually and on
behalf of all others similarly situated,

Plaintiffs,

vs.

MATHESON TRI-GAS, INC. and DOES 1
through 50, inclusive,

Defendants.

Case No. 37-2023-00021220-CU-OE-CTL

CLASS ACTION

CLASS ACTION COMPLAINT

1. Failure to Reimburse Business Expenses
2. Unfair Competition

1 Plaintiff MICHAEL CLEMENT, individually and on behalf of all others similarly (“Plaintiff”)
2 brings this CLASS ACTION COMPLAINT against Defendants MATHESON TRI-GAS and DOES
3 1 through 50, inclusive (collectively “Defendants”), alleging as follows:

4 **INTRODUCTION**

5 1. This is a class action for Defendants’ failure to reimburse personal cell phone expenses
6 to employees under the California Labor Code. Plaintiff and class members used their personal phones
7 as an integral part of their employment, with no reasonable alternative to communicate with
8 dispatchers or customers.

9 2. Defendants employed Plaintiff and class members in San Diego County and in the State
10 of California.

11 3. Plaintiff brings this action to recover the damages, plus interest, penalties, attorney fees,
12 and costs.

13 **JURISDICTION & VENUE**

14 4. Jurisdiction of this action is proper in this Court under Article VI, Section 10 of the
15 California Constitution as the causes of action are premised upon violations of California law.

16 5. The monetary damages and restitution sought exceed the minimal jurisdiction limits of
17 the Superior Court.

18 6. This Court has jurisdiction over Defendants because, upon information and belief,
19 Defendants have sufficient minimum contacts in California, or otherwise intentionally avail
20 themselves to the California economy so as to render the exercise of jurisdiction over them by the
21 California courts consistent with traditional notions of fair play and substantial justice.

22 7. Venue is proper in this Court under Code of Civil Procedure sections 393(a), 395,
23 and/or 395.5 because, upon information and belief, Defendants conduct business and committed some
24 of the alleged violations in this county.

25 8. The value of Plaintiff’s individual claims is less than \$75,000 and the value of the class
26 claims is less than \$5,000,000. There is no federal question at issue.

PARTIES

A. Plaintiff Michael Clement

9. Plaintiff is an individual over 18 years of age who worked for Defendants in California as a non-exempt employee from about 2016 to December 2020. Plaintiff worked as a Bulk Driver.

B. Defendants

10. Defendant Matheson Tri-Gas is a Delaware corporation that maintains operations and conducts business throughout the State of California, including in this county.

11. The true names and capacities, whether individual, corporate, or otherwise, of the parties sued as DOES 1 through 50, are presently unknown, unascertainable, or uncertain, and are sued by such fictitious names under Code of Civil Procedure section 474. Upon information and belief, each of DOES 1 through 50 constitutes a legal employer or is otherwise legally responsible in some manner for the acts and omissions alleged herein. This Complaint may be amended to reflect their true names and capacities once ascertained.

12. Upon information and belief, Defendants in this action are employers, co-employers, joint employers, and/or part of an integrated employer enterprise, as each of the Defendants exercised control over the wages, hours, and working conditions of the employees, suffered and permitted them to work, and otherwise engaged them as employees under California law.

13. Upon information and belief, at least some of the Defendants have common ownership, common management, interrelationship of operations, and centralized control over labor relations and are therefore part of an integrated enterprise and thus jointly and severally responsible for the acts and omissions alleged herein, including pursuant to Labor Code sections 558, 558.1, and 1197.1.

14. Upon information and belief, Defendants acted in all respects pertinent to this action as an alter-ego, agent, servant, joint employer, joint venturer, co-conspirator, partner, in an integrated enterprise, or in some other capacity on behalf of all other co-defendants, such that the acts and omissions of each defendant may be legally attributable to all others.

1 **CLASS ALLEGATIONS**

2 15. This action is brought individually and on behalf of the following class pursuant to
3 Code of Civil Procedure section 382:

- 4 a. All current and former non-exempt employees who worked for Defendants in
5 California at any time from four years (plus the additional 178-day statutory
6 tolling period under Emergency Rule 9) prior to the filing of this action through
7 date of class certification.

8 16. Plaintiff reserves the right to establish various subclass definitions as appropriate at the
9 class certification stage, according to proof.

10 17. The class is ascertainable and shares a well-defined community of interest in this
11 litigation:

- 12 a. Numerosity: The class is estimated to exceed 50 individuals, although the
13 precise membership of the entire class is unknown at this time. The class is so
14 numerous that joinder of all class members is impracticable. The identities of
15 class members is ascertainable by inspection of Defendants' employment and
16 payroll records.
- 17 b. Typicality: Plaintiff's claims are typical of the claims of the other class
18 members. They were subject to the same policies and practices of Defendants,
19 which resulted in losses to the class. Proof of common unlawful business
20 practices, which Plaintiff experienced, will establish the right of the class to
21 recover on the causes of action alleged herein.
- 22 c. Adequacy: Plaintiff is an adequate class representative; will take all necessary
23 steps to protect the class members' interests adequately and fairly; has no
24 interest antagonistic to other class members; and is represented by attorneys
25 who have substantial experience prosecuting, defending, resolving, and
26 litigating wage and hour class, collective, and representative actions in
27 California state and federal courts.
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1 d. Superiority: A class action is superior to other means for adjudicating this
2 dispute. Individual joinder is impractical. Class treatment will allow for
3 common issues to be resolved in a single forum, simultaneously, and without
4 duplication of effort and expense.

5 e. Public Policy Considerations: Certification of this lawsuit as a class action
6 advances the State of California's strong public interest in ensuring its
7 approximately millions of employed residents are properly paid the wages they
8 earned for the hours they worked. Class actions provide a mechanism for
9 enforcement of labor laws and allow for vindication of employee rights by
10 unnamed class members.

11 18. Common questions of law and fact as to the class members predominate over questions
12 affecting only individual members. The common questions of law and fact exist as to whether the
13 employment policies and practices formulated by Defendants and applied to the class members
14 constitute violations of California law.

15 **GENERAL ALLEGATIONS**

16 19. Plaintiff and class members worked for Defendants and were compensated on an hourly
17 basis as nonexempt employees.

18 20. Plaintiff and class members were required to use their personal cell phones to
19 communicate with dispatch and customers. Defendants failed to provide any type of reimbursement
20 to Plaintiff and class members for such costs.

21 21. Plaintiff and class members, many of whom were truck drivers, used their phones
22 because they were not given tablets or radios that allowed for communications.

23 22. They used their phones but were not reimbursed or provided with a monthly stipend to
24 compensate for such use.

25 23. This action seeks to recover the balance of the unpaid reimbursements, plus attorneys'
26 fees and costs.

1 **FIRST CAUSE OF ACTION**

2 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

3 **Violation of Labor Code § 2802**

4 24. All outside paragraphs of this Complaint are incorporated into this section.

5 25. Defendants willfully failed in their affirmative obligation to reimburse Plaintiff and the
6 Reimbursement Class for all necessary expenditures, losses, expenses, and costs incurred by them in
7 direct discharge of the duties of their employment, in violation of Labor Code section 2802.

8 26. Defendants' unlawful acts and omissions deprived Plaintiff and class members of
9 lawful reimbursements for business expenses in amounts to be determined at trial. Plaintiff and class
10 members are entitled to recover the amount unreimbursed expenses of Plaintiff and class members in
11 addition to interest, attorneys' fees, and costs to the extent permitted by law, including under Labor
12 Code section 2802.

13 **SECOND CAUSE OF ACTION**

14 **UNFAIR COMPETITION**

15 **Violation of Business and Professions Code §§ 17200 *et seq.***

16 27. All outside paragraphs of this Complaint are incorporated into this section.

17 28. Defendants have engaged and continue to engage in unfair and/or unlawful business
18 practices in the State of California in violation of California Business and Professions Code § 17200
19 by committing the foregoing wage and hour violations alleged throughout this Complaint.

20 29. Defendants' dependance on these unfair and/or unlawful business practices deprived
21 Plaintiff and continue to deprive other class members of compensation to which they are legally
22 entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage to
23 Defendants over competitors who have been and/or are currently employing workers in compliance
24 with California's wage and hour laws. These failures constitute unlawful, deceptive, and unfair
25 business acts and practices in violation of Business and Professions Code section 17200 *et seq.*

26 30. Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged in this
27 Complaint, and Plaintiff, as an individual and on behalf of others similarly situated, seeks full
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1 restitution of the moneys as necessary and according to proof to restore all monies withheld, acquired,
2 and/or converted by Defendants pursuant to Business and Professions Code §§ 17203 and 17208.

3 31. Plaintiff does not have an adequate remedy at law for past or future violations, to the
4 extent the statute of limitations on each of the alleged causes of action do not extend to the four year
5 limitation provided under the UCL or to the extent the underlying Labor Code and IWC Wage Order
6 violations do not provide a private right of action.

7 32. Plaintiff and class members are entitled to injunctive relief against Defendants,
8 restitution, and other equitable relief to return all funds over which Plaintiff and class members have
9 an ownership interest and to prevent future damage and the public interest under Business and
10 Professions Code § 17200 *et seq.* Plaintiff and class members are further entitled to recover interest,
11 attorneys' fees, and costs to the extent permitted by law, including under Code of Civil Procedure
12 § 1021.5.

13 **PRAYER**

14 Plaintiff prays for judgment as follows:

- 15 a. For certification of this action as a class action;
- 16 b. For appointment of Plaintiff as the class representative;
- 17 c. For appointment of above-captioned counsel for Plaintiff as Class Counsel;
- 18 d. For division of class members into appropriate classes and/or subclasses according to
19 proof;
- 20 e. For recovery of damages in amount according to proof;
- 21 f. For all recoverable pre- and post-judgment interest;
- 22 g. For recovery of all civil and statutory penalties and liquidated damages;
- 23 h. For disgorgement of all amounts wrongfully obtained;
- 24 i. For restitution and injunctive relief;
- 25 j. For reasonable attorneys' fees and costs of suit, including expert fees, to the extent
26 permitted by law, including (without limitation) under Labor Code §§ 218.5, 2802, and
27 Code of Civil Procedure section 1021.5; and
28

1 k. For such other relief the Court deems just and proper.

2
3 Dated: May 17, 2023

Ferraro Vega Employment Lawyers, Inc.

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5 Nicholas J. Ferraro

6 *Attorneys for Plaintiff Michael Clement*