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Attorneys for Plaintiff ERIC ANDRADE, as an individual and on behalf of all aggrieved employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE
CIVIL COMPLEX CENTER

Judge William Claster

ERIC ANDRADE, as an individual and
on behalf of all aggrieved employees,

Plaintiff,

v.

HARBOR DISTRIBUTING, LLC;
REYES HOLDINGS, LLC; and DOES
1 through 50, inclusive,

Defendants.

Case No.: 30-2020-01139893-CU-OE-CXC

COMPLAINT FOR DAMAGES

CX-104

1. Violation of the Private Attorneys' General Act, Labor Code §2698 et seq. for Recovery of Unpaid Wages and Overtime;
2. Violation of the Private Attorneys' General Act, Labor Code §2698 et seq for Failure to Provide Accurate Itemized Wage Statements;
3. Violation of the Private Attorneys' General Act, Labor Code §2698 et seq for Failure to Pay Wages Due Upon Termination of Employment;
4. Violation of the Private Attorneys' General Act, Labor Code § 2698 et seq. for Failure to Indemnify for Expenditures or Losses in Discharge of Duties; and
5. Violation of Bus. & Prof. Code § 17200 et seq. (Unfair Business Practices)

DEMAND FOR JURY TRIAL

1 Plaintiff ERIC ANDRADE ("ANDRADE" or "Plaintiff") complains and alleges as
2 follows:

3 **INTRODUCTION**

4 1. This is an action brought on behalf of Plaintiff and similarly aggrieved employees
5 who were subjected to one or more of the violations alleged herein ("Aggrieved Employees") by
6 Defendants HARBOR DISTRIBUTING, LLC ("HD") and REYES HOLDINGS, LLC
7 ("REYES") (hereinafter referred to as "Defendants") (collectively referred to as the "Parties.")
8 The term "RELEVANT TIME PERIOD" or "TIME PERIOD" is defined as one (1) year prior to
9 the filing of the Complaint. Plaintiff reserves the right to amend this complaint to reflect a
10 different "Time Period" as further discovery is conducted.

11 2. Plaintiff, individually, and on behalf of the Aggrieved Employees, seeks relief
12 against Defendants for their: (1) failure to pay all wages due, including regular and overtime
13 wages; (2) failure to provide accurate itemized wage statements; (3) failure to pay wages due
14 upon termination of employment; and (4) failure to reimburse for necessary business
15 expenditures. Plaintiff seeks penalties pursuant to Labor Code section 2608 et seq., the Private
16 Attorneys General Act of 2004 (hereinafter "PAGA") in connection with Defendants' Labor Code
17 violations.

18 3. Plaintiff further seeks equitable remedies in the form of declaratory relief, and
19 relief under Business and Professions Code section 17200 et seq. for unfair business practices.

20 4. At all relevant times herein, Defendants consistently maintained and enforced
21 against Plaintiff and Aggrieved Employees the following unlawful practices and policies: a)
22 willfully refusing to pay Plaintiff and Aggrieved Employees for all hours worked, including
23 minimum wage and overtime; b) willfully refusing to compensate Plaintiff and Aggrieved
24 Employees wages due and owing at the time Plaintiff's and Aggrieved Employees' employment
25 with Defendants ended; c) willfully refusing to furnish to Plaintiff and Aggrieved Employees
26 accurate itemized wage statements upon payment of wages; and d) willfully failing to reimburse
27 Plaintiff and Aggrieved Employees for necessary expenditures.

28 / / /

JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction over the causes of action alleged in this complaint because the Court is a court of general subject matter jurisdiction and is not otherwise excluded from exercising subject matter jurisdiction over said causes of action. The penalties recoverable for Plaintiff do not exceed seventy-five thousand dollars (\$75,000.00), and collectively amongst all aggrieved employees do not exceed five million dollars (\$5,000,000.00.)

6. Defendants are California limited liability companies doing business throughout the State of California, and specifically, in the County of Orange. There is no federal question at issue, as the issues herein are based solely on California statutes and law, including the Labor Code, Industrial Welfare Commission ("IWC") Wage Orders, Code of Civil Procedure, Business and Professions Code, and Rules of Court. By doing business in the state of California, Defendants have purposefully availed themselves of the state's jurisdiction. Accordingly, as personal jurisdiction over Defendants would be constitutional, California's long-arm statute provides that California courts may exercise personal jurisdiction over Defendants. (Code Civ. Pro., § 410.10.)

7. Venue is proper in the County of Orange, because Defendants perform business in the County of Orange, and the acts set forth herein occurred in the County of Orange.

THE PARTIES

Plaintiff

8. Mr. Andrade began his employment with Defendants in or about March 2013, as a truck driver. On or around January 30, 2019, Plaintiff was terminated by Defendants. Throughout the RELEVANT TIME PERIOD, Plaintiff worked for Defendants within the County of Orange during his employment. Plaintiff was always paid an hourly wage and was deemed a non-exempt hourly employee by Defendants. Plaintiff is accordingly entitled to compensation for all hours worked, overtime compensation, premium pay, and penalties from Defendants.

Defendants

9. Plaintiff is informed and believes, and based thereon alleges, that Defendant HD is a California limited liability company, which maintains its headquarters in Huntington Beach,

1 California, and is and/or was the employer of Plaintiff and similarly aggrieved employees during
2 the RELEVANT TIME PERIOD. Defendant owns and operates a beer distribution limited
3 liability company which delivers beer to locations throughout southern California, including
4 Orange County.

5 10. Plaintiff is informed and believes, and based thereon alleges, that Defendant
6 REYES is a California limited liability company, which maintains its headquarters in Chula Vista,
7 California, and is and/or was the employer of Plaintiff and similarly aggrieved employees during
8 the RELEVANT TIME PERIOD. Defendant owns and operates a beer distribution limited
9 liability company which delivers beer to locations throughout southern California, including
10 Orange County.

11 11. Plaintiff is ignorant of the true names, capacities, relationships, and extent of
12 participation in the conduct herein alleged of Defendants sued herein as DOES 1 through 50,
13 inclusive, but on information and belief alleges that said Defendant is legally responsible for the
14 violations alleged herein. Plaintiff will amend this complaint to allege the true names and
15 capacities of the DOE Defendants when ascertained.

16 12. Plaintiff is informed believes, and thereon alleges, that each Defendant acted in all
17 respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme,
18 business plan, or policy in all respects pertinent hereto, and the acts of each Defendant are legally
19 attributable to the other Defendants. Furthermore, Defendants operate as a joint venture and/or
20 single business enterprise, integrated enterprise and/or are agents of one another, are alter egos,
21 joint employers and conspire with one another to increase profits by engaging in the conduct
22 described in this complaint.

23 13. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
24 acted in all respects as the agent, servant, partner, joint venture, alter-ego, employee, proxy,
25 managing agent, and/or principal of the co-Defendants, and in performing the actions mentioned
26 below was acting, at least in part, within the course and scope of that authority as such agent,
27 proxy, servant, partner, joint venture, employee, alter-ego, managing agent, and/or principal with
28 the permission and consent of the co-Defendants. Plaintiff also alleges the acts of each Defendant

are legally attributable to the other Defendants.

PAGA ADMINISTRATIVE PREREQUISITE

14. Plaintiff brings this case as a representative action seeking penalties for the State of California in a representative capacity, as provided by the Private Attorney General Act, Labor Code section 2698 et seq. ("PAGA"), as an aggrieved employee, formerly employed by Defendants and did not receive all wages due, was not paid regular wages, was not paid overtime, was not provided with accurate wage statements, and was not reimbursed for necessary business expenditures.

15. Prior to filing this complaint on January 27, 2020, Plaintiff gave written notice by certified electronic mail to the Labor and Workforce Development Agency ("LWDA") and to Defendants of the specified provisions alleged to have been violated, including the facts and theories to support the alleged violation as required by Labor Code section 2699.3. A true and correct copy of Plaintiff's original letter sent to the LWDA on January 27, 2020, is attached hereto as "Exhibit A".

16. More than sixty-five (65) days have passed since Plaintiff submitted his January 27, 2020, notice to the LWDA and Defendants of the specific alleged Labor Code violations and the LWDA have not provided notice to Plaintiff of its intent to investigate such alleged violations. Plaintiff further has received no notice of Defendants' intent to cure any of the alleged violations. Therefore, Plaintiff has satisfied the administrative prerequisites for filing this action with regard to his January 27, 2020, PAGA notice.

FACTUAL ALLEGATIONS

17. This lawsuit arises out of an ongoing wrongful scheme by Defendants to deny their employees the benefits due under California's wage and hour laws for work performed in California. Defendants wrongfully refused to pay Plaintiff and the Aggrieved Employees regular wages, overtime compensation, and other statutory benefits mandated by California.

18. Labor Code section 1194 provides that notwithstanding any agreement to work for a lesser wage, an employee receiving less than the legal overtime compensation or minimum wage compensation is entitled to recover in a civil action the unpaid balance of their overtime

1 compensation and/or minimum wage compensation, including interest thereon, reasonable
2 attorneys' fees, and costs of suit.

3 19. Further, Business and Professions Code section 17203 provides that any person
4 who engages in unfair competition may be enjoined in any court of competent jurisdiction.
5 Business and Professions Code section 17204 provides that any person who has suffered actual
6 injury and has lost money or property as a result of the unfair competition may bring an action in
7 a court of competent jurisdiction.

8 20. During all, or a portion of the RELEVANT TIME PERIOD, Plaintiff and
9 Aggrieved Employees were employed by Defendants in the State of California.

10 21. Throughout the Relevant Time Period, Plaintiff's regular compensation was
11 calculated by the number of cases of beer he delivered. Specifically, at the start of his shift,
12 Plaintiff was credited with one hundred thirty dollars (\$130.00) and was subsequently paid
13 approximately fourteen-cents (\$0.14) per case delivered. On average, Plaintiff delivered
14 approximately eight hundred (800) cases of beer per day. In addition, Plaintiff was paid
15 approximately ten dollars (\$10.00) per stop after the first ten (10) stops each day. Plaintiff
16 typically averaged between eleven (11) and twenty (20) stops per day. Plaintiff's average annual
17 salary was approximately seventy-three thousand dollars (\$73,000.00.)

18 22. Plaintiff and each of the Aggrieved Employees were non-exempt employees
19 covered under Labor Code section 510, and/or other applicable wage orders, regulations, and
20 statutes, and each of the Aggrieved Employees were not subject to an exemption for executive,
21 administrative and professional employees, which imposed obligations on the part of Defendant
22 to pay Plaintiff and Aggrieved Employees lawful overtime compensation. Plaintiff and Aggrieved
23 Employees were covered by Labor Code section 226.7 and other applicable wage orders,
24 regulations, and statutes which imposed an obligation on the part of Defendant to pay Plaintiff
25 and Aggrieved Employees rest and meal period compensation.

26 23. During the RELEVANT TIME PERIOD, Defendant was obligated to pay Plaintiff
27 and Aggrieved Employees for all hours worked. During the Relevant Time Period, Defendant
28 was obligated to pay Plaintiff and Aggrieved Employees minimum wages for all regular hours

1 worked.

2 24. During the RELEVANT TIME PERIOD, Defendants were obligated to pay
3 Plaintiff and Aggrieved Employees overtime compensation at one-and-a-half time for all hours
4 worked over eight (8) hours of work in one (1) day or forty (40) hours in one (1) week, and
5 double-time for hours worked in excess of twelve (12) in one day.

6 25. Plaintiff and each Aggrieved Employee primarily performed non-exempt work in
7 excess of the maximum regular rate hours set by the IWC in the applicable Wage Orders,
8 regulations or statutes, and therefore entitled the Plaintiff and Aggrieved Employees to overtime
9 compensation at time-and-a-half rate, and when applicable, double-time rates as set forth by the
10 applicable Wage Orders, regulations and/or statutes.

11 26. Aggrieved Employees ended their employment during the RELEVANT TIME
12 PERIOD, but were not paid the above due compensation for all hours worked, including minimum
13 wage for regular hours and overtime compensation, timely upon the termination of their
14 employment as required by Labor Code sections 201-203, are entitled to penalties as provided by
15 Labor Code section 203.

16 27. Throughout the RELEVANT TIME PERIOD, Defendants employed Plaintiff and
17 the Aggrieved Employees in non-exempt positions, such as delivery truck drivers throughout
18 California. Accordingly, these positions remain non-exempt from California's wage and hour
19 laws, yet Defendants failed to pay adequate overtime and otherwise pay all wages due to these
20 non-exempt employees as required by law.

21 28. During the RELEVANT TIME PERIOD, Defendants maintained a uniform
22 practice of requiring delivery truck drivers to work until all deliveries were completed for the day,
23 regardless of whether Plaintiff and Aggrieved Employees were on the clock or not. This "off-the-
24 clock" work amounted to approximately four (4) hours of overtime, at least three (3) days per
25 week. However, Defendants failed to compensate Plaintiff and the Aggrieved Employees the
26 required minimum wage and overtime compensation in violation of the Labor Code and the IWC
27 Wage Orders.

28 29. During the RELEVANT TIME PERIOD, Defendants required Plaintiff and

1 Aggrieved Employees to work off the clock and work beyond the eighth hour of their shift without
2 lawful compensation in violation of the various applicable Wage Orders, regulations and statutes,
3 and Defendants: (1) willfully failed and refused, and continue to fail and refuse, to pay
4 compensation for all hours worked, including minimum wage and lawful overtime compensation
5 to Plaintiff and Aggrieved Employees; and (2) willfully failed and refused, and continue to fail
6 and refuse, to pay due and owing wages promptly upon termination of employment to Plaintiff
7 and Aggrieved Employees.

8 30. Aggrieved Employees ended their employment during the RELEVANT TIME
9 PERIOD, but were not paid the above due compensation for all hours worked, including minimum
10 wage for regular hours and overtime compensation, timely upon the termination of their
11 employment as required by Labor Code sections 201-203, are entitled to penalties as provided by
12 Labor Code section 203.

13 31. During the RELEVANT TIME PERIOD, Defendants failed and/or refused to
14 indemnify Plaintiff and Aggrieved Employees for necessary expenditures or losses incurred by
15 the employee in direct consequence of the discharge of their duties, or their obedience to the
16 directions of the employer. Specifically, Defendants did not reimburse Plaintiff and Aggrieved
17 Employees for the expense of laundering their work uniforms or from the use of their personal
18 cellular phones which were required to be used for business matters including, but not limited to,
19 communicating with supervisors and using their phone's GPS to locate customers.

20 **FIRST CAUSE OF ACTION**

21 **Violation of PAGA For Recovery of Unpaid Minimum Wage and Overtime**
22 **(Plaintiff Against All Defendants)**

23 32. Plaintiff realleges and incorporates by reference the preceding paragraphs of this
24 complaint as if fully set forth herein.

25 33. Plaintiff and Aggrieved Employees regularly worked over eight (8) hours per day
26 and forty (40) hours per week. Defendants failed to pay Plaintiff and Aggrieved Employees
27 minimum wage for all hours worked and overtime premium for hours worked in excess of over
28 eight (8) hours per day and/or forty (40) hours per week, for work performed for the Defendants.

1 Defendants failed to pay Plaintiff and Aggrieved Employees overtime premium for hours worked
2 in excess of eight (8) hours per day and forty (40) hours per week for work performed for
3 Defendants. Defendants failed to schedule Plaintiff and Aggrieved Employees in such a manner
4 that allowed Plaintiff and Aggrieved Employees to be relieved of their shift immediately, thereby
5 causing Plaintiff and Aggrieved Employees to work in excess of eight (8) hours per day and/or
6 forty (40) hours per week. In fact, Defendants' uniform practice required Plaintiff and Aggrieved
7 Employees to work until completing all deliveries each day, regardless of whether they were on
8 the clock or off-the-clock. As such, Plaintiff and Aggrieved Employees seek overtime wages in
9 an amount according to proof, which they earned and accrued one (1) year prior to filing this
10 complaint, according to proof, as part of the civil penalty pursuant to Labor Code section 558,
11 subdivision (a.)

12 34. Defendants willfully violated the Labor Code by failing to pay Plaintiff and
13 Aggrieved Employees all wages, including both minimum wage and overtime. Defendants have
14 regularly violated the Labor Code with respect to meeting the requirements of paying wages
15 earned, including minimum wage, overtime, double-time and remuneration when calculating the
16 employees' regular rate of pay, as herein before alleged. Defendants intentionally excluded
17 remuneration that must be included in all employees' regular rate of pay in order to avoid payment
18 of overtime wages and other benefits in violation of the Labor Code and the order issued by the
19 IWC. Thereby, Defendants are able to reduce their overhead and operating expenses and gain an
20 unfair advantage over competing delivery companies who comply with state law.

21 35. Since the LWDA has not indicated that it will be investigating more than sixty-
22 five (65) days since Plaintiff provided notice, and because Defendants took no corrective action
23 to remedy the allegations set forth above, Plaintiff, as a representative of the people of the State
24 of California, will seek any and all penalties otherwise capable of being collected by the Labor
25 Commission, the LWDA and/or the Department of Labor Standards Enforcement ("DLSE"). This
26 includes each of the following, as set forth in Labor Code section 2699.5, which provides that
27 section 2699.3, subdivision (a), applies to any alleged violation of the following provisions: 510
28 and 1194.

1 36. Plaintiff is informed and believes that Defendants have violated, and continue to
2 violate, provisions of the Labor Code and applicable Wage Orders related to the payment of
3 minimum wages and overtime.

4 37. Plaintiff, as a personal representative of the general public, will and does seek to
5 recover any and all penalties for each and every violation shown to exist or to have occurred
6 during the Relevant Time Period, in an amount according to proof, as to those penalties that are
7 otherwise only available to public agency enforcement actions. Funds recovered will be
8 distributed in accordance with the PAGA, with at least seventy-five percent (75%) of the penalties
9 recovered being reimbursed to the LWDA.

10 38. Additionally, Plaintiff and Aggrieved Employees are entitled to attorneys' fees and
11 costs pursuant to Labor Code sections 2699, subdivision (g)(1), 218.5, 1194, and prejudgment
12 interest.

13 **SECOND CAUSE OF ACTION**

14 **Violation of PAGA For Failure to Provide Accurate Itemized Wage Statements**

15 **(Labor Code sections 1174, 226, subdivision (A), (E))**

16 **(Plaintiff against All Defendants)**

17 39. Plaintiff and Aggrieved Employees reallege and incorporate by reference the
18 preceding paragraphs of this complaint as if fully set forth herein.

19 40. Labor Code section 226, subdivision (a), states in pertinent part that, "every
20 employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her
21 employees, either as a detachable part of the check, draft, or voucher paying the employee's
22 wages, or separately when wages are paid by personal check or cash, an accurate itemized
23 statement in writing showing: (1) gross wages earned; (2) total hours worked by the employee . .
24 . . ; (3) the number of piece-rate units earned . . . ; (4) all deductions . . . ; (5) net wages; (6) the
25 inclusive dates of the period for which the employee is paid; (7) the name of the employee and
26 only the last four digits of his or her social security number or an employee identification number
27 other than a social security number; (8) the name and address of the legal entity that is the
28 employer . . . ; and (9) all applicable hourly rates in effect during the pay period and corresponding

number of hours worked at each hourly rate by the employee...” (Lab. Code, § 226.)

41. Defendants knowingly and intentionally failed to provide timely and accurate itemized wage statements to Plaintiff and Aggrieved Employees in accordance with Labor Code section 226, subdivision (a), by failing to record the accurate number of hours worked, the accurate rate of pay for each hour worked, the accurate amount of premiums wages earned, the accurate net pay, and the accurate gross pay. Such failure caused injury to Plaintiff and Aggrieved Employees.

42. Plaintiff and Aggrieved Employees are entitled to damages under Labor Code section 226, subdivision (a), and the greater of all actual damages or fifty dollars (\$50.00) for the initial pay period in which a violation occurs and one-hundred dollars (\$100.00) per employee for each violation in each subsequent pay period, pursuant to Labor Code section 226, subdivision (e.)

43. Plaintiff, by virtue of his employment with Defendants, is an aggrieved employee with standing to bring an action under the PAGA. Plaintiff has satisfied all prerequisites to serve as a representative of the general public to enforce California’s labor laws, and the penalty provisions identified in Labor Code section 2699.5.

44. Plaintiff, as a representative of the people of the State of California, will seek any and all penalties otherwise capable of being collected by the Labor Commission and/or the DLSE. This includes each of the following, as set forth in Labor Code section 2699.5, which provides that section 2699.3(a) applies to any alleged violation of the following provisions: 201-203, 226, 510, 512, 1174, and 1194.

45. Plaintiff, as a personal representative of the general public, will and does seek to recover any and all penalties for each and every violation shown to exist or to have occurred during the RELEVANT TIME PERIOD, in an amount according to proof, as to those penalties that are otherwise only available to public agency enforcement actions. Funds recovered will be distributed in accordance with the PAGA, with at least seventy five percent (75%) of the penalties recovered being reimbursed to the LWDA.

46. Additionally, Plaintiff and Aggrieved Employees are entitled to attorneys’ fees and

costs pursuant to Labor Code section 2699, subdivision (g)(1), and prejudgment interest.

THIRD CAUSE OF ACTION

Violation of PAGA For Failure to Pay Wages Due Upon Termination of Employment

(Labor Code, sections 201, 203)

(Plaintiff against All Defendants)

47. Plaintiff and Aggrieved Employees reallege and incorporate by reference the preceding paragraphs of this complaint as if fully set forth herein.

48. Plaintiff and certain members of the Aggrieved Employees who ended their employment with Defendants during the RELEVANT TIME PERIOD, were entitled to be promptly paid both minimum wage and lawful overtime compensation and other premiums, as required by Labor Code sections 201 and 203.

49. Defendants refused and/or failed to promptly compensate Plaintiff and Aggrieved Employees wages owed as a result of Defendants' failure to pay both minimum and overtime compensation owed for work performed for Defendants.

50. Plaintiff, by virtue of his employment with Defendants, is an aggrieved employee with standing to bring an action under the PAGA and has suffered injury as to one or more violations committed by Defendants. Plaintiff has satisfied all prerequisites to serve as a representative of the general public to enforce California's labor laws, and the penalty provisions identified in Labor Code section 2699.5.

51. Plaintiff, as a representative of the people of the State of California, will seek any and all penalties otherwise capable of being collected by the Labor Commission and/or the DLSE. This includes each of the following, as set forth in Labor Code section 2699.5, which provides that section 2699.3, subdivision (a), applies to any alleged violation of the following provisions: 201-203, 226, 510, 512, 1174, and 1194.

52. Plaintiff, as a personal representative of the general public, will and does seek to recover any and all penalties for each and every violation shown to exist or to have occurred during the RELEVANT TIME PERIOD, in an amount according to proof, as to those penalties that are otherwise only available to public agency enforcement actions. Funds recovered will be

1 distributed in accordance with the PAGA, with at least seventy five percent (75%) of the penalties
2 recovered being reimbursed to the LWDA.

3 53. Additionally, Plaintiff and Aggrieved Employees are entitled to attorneys' fees and
4 costs pursuant to Labor Code section 2699, subdivision (g)(1), and prejudgment interest.

5 **FOURTH CAUSE OF ACTION**

6 **Violation of PAGA for Failure to Reimburse for Necessary Expenditures,**

7 **Cal. Labor Code § 2802**

8 **(Plaintiff against Defendant and Does 1-50)**

9 54. Plaintiff and Aggrieved Employees reallege and incorporate by reference the
10 preceding paragraphs of this complaint as if fully set forth herein.

11 55. Labor Code section 2802 states, "An employer shall indemnify his or her
12 employee for all necessary expenditures or losses incurred by the employee in direct consequence
13 of the discharge of his or her duties..."

14 56. Plaintiff and the Aggrieved Employees were not reimbursed by Defendant for
15 necessary expenditures as a direct consequence of the discharge of their duties.

16 57. Defendant knowingly, willingly and intentionally attempted to offset the cost of
17 doing business on the Plaintiff and Aggrieved Employees.

18 58. Defendant had a practice and policy of requiring Plaintiff and Aggrieved
19 Employees to shoulder the burden of Defendant's cost of doing business by failing to reimburse
20 Plaintiff and Aggrieved Employees for necessary business expenditures, specifically the cost of
21 cell phone and cell phone service provider purchase by Plaintiff and Aggrieved Employees for
22 use in their employment while answering emails from their phones.

23 59. Accordingly, Plaintiff and Aggrieved Employees are entitled to an award of
24 "necessary expenditures or losses" shall include all reasonable costs, including, but not limited to,
25 attorney's fees and interest.

26 60. Plaintiff by virtue of his employment with Defendant and the Defendant's policy
27 of requiring Plaintiff and Aggrieved Employees to shoulder the burden of Defendant's cost of
28 doing business by failing to reimburse Plaintiff and Aggrieved Employees for necessary

1 expenditures, is an aggrieved employee with standing to bring an action under the PAGA. Plaintiff
2 has satisfied all prerequisites to serve as a representative of the general public to enforce
3 California's labor laws, and the penalty provisions identified in Labor Code section 2699.5.

4 61. Plaintiff, as a representative of the people of the State of California, will seek any
5 and all penalties otherwise capable of being collected by the Labor Commission and/or the DLSE.
6 This includes each of the following, as set forth in Labor Code section 2699.5, which provides
7 that section 2699.3, subdivision (a) applies to any alleged violation of the following provisions:
8 201-203, 226, 226.7, 510, 512, 1174, and 1194.

9 62. Plaintiff, as a personal representative of the general public, will and does seek to
10 recover any and all penalties for each and every violation shown to exist or to have occurred
11 during the RELEVANT TIME PERIOD, in an amount according to proof, as to those penalties
12 that are otherwise only available to public agency enforcement actions. Funds recovered will be
13 distributed in accordance with the PAGA, with at least seventy five percent (75%) of the penalties
14 recovered being reimbursed to the LWDA.

15 63. Additionally, Plaintiff and Aggrieved Employees are entitled to attorneys' fees and
16 costs pursuant to Labor Code section 2699, subdivision (g)(1), and prejudgment interest.

17 **FIFTH CAUSE OF ACTION**

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

19 **(Plaintiff against Defendant and Does 1-50)**

20 64. Plaintiff and Aggrieved Employees reallege and incorporate by reference the
21 preceding paragraphs of this complaint as if fully set forth herein.

22 65. Business and Professions Code sections 17200 et. seq. (also referred to herein as
23 the "Unfair Business Practices Act" or "Unfair Competition Law") prohibit unfair competition in
24 the form of any unlawful, unfair or fraudulent business act or practice.

25 66. Business and Professions Code section 17204 allows "any person who has suffered
26 injury in fact and has lost money or property as a result of such unfair competition" to prosecute
27 a civil action for violation of the Unfair Competition Law ("UCL.")

28 67. Labor Code section 90.5, subdivision (a) states that it is the public policy of

1 California to vigorously enforce minimum labor standards in order to ensure employees are not
2 required to work under substandard and unlawful conditions, and to protect employers who
3 comply with the law from those who attempt to gain competitive advantage at the expense of their
4 workers by failing to comply with minimum labor standards.

5 68. Beginning at an exact date unknown to Plaintiff, but at least four years prior to the
6 filing of this lawsuit, Defendant committed acts of unfair competition as defined by the Unfair
7 Business Practices Act, by engaging in the unlawful, unfair and fraudulent business practices and
8 acts described in this complaint including but not limited to violations of Labor Code sections
9 204, 1197, 1198 of the 226.7 and 512 as well as other statutes.

10 69. The violations of these laws and regulations, as well as of the fundamental
11 California public policies protecting workers, serve as unlawful predicate acts and practices for
12 purposes of Business and Professions Code sections 17200 et. seq.

13 70. The acts and practices described above constitute unfair, unlawful and fraudulent
14 Business Practices, and unfair competition, within the meaning of Business and Professions Code
15 sections 17200 et. seq. Among other things, the acts and practices have forced Plaintiff and other
16 similarly situated employees to labor for many hours without receiving the meal and rest periods
17 and minimum wage and overtime compensation, to which they are entitled by law, while enabling
18 Defendant to gain an unfair competitive advantage over law-abiding employers and competitors.

19 71. As a direct and proximate result of Defendant's acts, Plaintiff and Aggrieved
20 Employees have suffered injury in fact in being denied their statutorily entitled meal and rest
21 periods and full compensation for hours of labor. As a result of Defendant's unlawful acts of
22 unfair competition, Plaintiff and Aggrieved Employees have lost money and property in the form
23 of a loss of wages, meal and rest period premiums, and money spent on necessary expenditures
24 in an amount to be proven at trial.

25 72. Business and Professions Code section 17203 provides that a court may make such
26 orders or judgments as may be necessary to prevent the use or employment by any person of any
27 practice which constitutes unfair competition.

28 73. Business and Professions Code section 17203 provides that the court may restore

1 to any person in interest any money or property that may have been acquired by means of such
2 unfair competition. Plaintiff and Aggrieved Employees are entitled to restitution pursuant to
3 Business and Professions Code section 17203 for all wages and payments unlawfully withheld
4 from employees, including the fair value of the meal and rest periods taken away from them,
5 during the four (4) year period prior to the filing of this complaint.

6 74. Business and Professions Code section 17202 provides, "Notwithstanding section
7 3369 of the Civil Code, specific or preventative relief may be granted to enforce a penalty,
8 forfeiture, or penal law in a case of unfair competition." Plaintiff and Aggrieved Employees are
9 entitled to enforce all applicable penalty provisions of the Labor Code pursuant to Business and
10 Professions Code section 17202.

11 75. Plaintiff's success in this action will enforce important rights affecting public
12 interest, and in that regard, Plaintiff sues on behalf of the general public, as well as himself and
13 other similarly situated employees. Plaintiff and Aggrieved Employees seek and are entitled to
14 restitution, civil penalties, and declaratory relief, and all other equitable remedies owing them.

15 76. Plaintiff herein takes upon herself enforcement of these laws and lawful claims.
16 There is a financial burden involved in pursuing this action, the action is seeking to vindicate a
17 public right, and it would be against the interests of justice to penalize Plaintiff by forcing him to
18 pay attorney's fees from the recovery in this action. Attorney's fees are appropriate pursuant to
19 Code of Civil Procedure section 1021.5 and otherwise.

20 **PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiff and Aggrieved Employees pray for judgment as follows:

- 22 1. For civil penalties for each violation for Plaintiff and each Aggrieved Employee as
23 provided by law, including, but not limited to, those civil penalties provided by statute,
24 provided by PAGA and for unpaid wages pursuant to Labor Code section 558;
- 25 2. For costs of suit and expenses incurred herein pursuant to Labor Code section 2699,
26 subdivision (g), and any other statutory basis or pursuant to the Rules of Court;
- 27 3. For reasonable attorneys' fees pursuant to Labor Code section 2699, subdivision (g),
28 and any other statutory basis; and

1 4. For all such other and further relief as the Court may deem just and proper.

2
3 Dated: April 2, 2020

MAHONEY LAW GROUP, APC

4 By:



5 Kevin Mahoney, Esq.

6 Atoy H. Wilson, Esq.

7 Attorney for Plaintiff ERIC ANDRADE, as an
8 individual and on behalf of all aggrieved
9 employees
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Dated: April 2, 2020

By:

-18-

Exhibit A



Kevin Mahoney, Esq.
(562) 590-5550 phone
(562) 590-8400 facsimile
kmahoney@mahoney-law.net

January 27, 2020

Via Certified Electronic Mail

LABOR AND WORKFORCE DEVELOPMENT AGENCY
PAGAFilings@dir.ca.gov

VIA U.S. MAIL & CERTIFIED MAIL# 7019 2280 0002 0214 1568

Return Receipt Requested

Reyes Holdings, LLC
9500 West Bryn Mawr
Suite 700
Rosemont, IL 60018

VIA U.S. MAIL & CERTIFIED MAIL# 7019 2280 0002 0214 1544

Return Receipt Requested

Harbor Distributing, LLC
5901 Bolsa Avenue
Huntington Beach, CA 92647

VIA U.S. MAIL & CERTIFIED MAIL# 7019 2280 0002 0214 1551

Return Receipt Requested

Harbor Distributing, LLC
6250 N. River Road, Suite 9000
Rosemont, IL 60018

Re: Eric Andrade v. Harbor Distributing, LLC

**NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO
LABOR CODE SECTION § 2698 ET SEQ.**

To: California Labor and Workforce Development Agency; Harbor Distributing, LLC

From: Eric Andrade, on behalf of himself and other aggrieved employees who were subject to the Employer's wage and hour policies as set forth below.

Factual Statement

Please note that this firm, Mahoney Law Group, APC, represents the interests of Mr. Eric Andrade ("Mr. Andrade" or "Employee"), who intends to file a complaint alleging various Labor Code violations and seeking civil penalties under the Private Attorneys General Act of 2004, Labor Code sections 2698 *et seq.* ("PAGA"), on behalf of himself and all other aggrieved employees.

Theories of Labor Code Violations and Remedies

Harbor Distributing, LLC, a California Foreign Limited Liability Company duly formed under the laws of the state of Delaware is a distributor of beer. Reyes Holdings, LLC is a global food and beverage distribution holding company, operating one of the largest beer distribution networks in the United States with Harbor Distributing, LLC as one of its assets. (hereinafter collectively "Employer"). Mr. Andrade began his employment with Employer in or around March 2013 as an hourly non-exempt employee, at Employer's 5901 Bolsa Avenue, Huntington Beach, California location, where he remained employed until on or about January 30, 2019.

Mr. Andrade alleges Employer violated various sections of the Labor Code, including sections 201, 202, 203, 226, 227.3, 510, 512, 1174, 1194, and 2802, by failing to pay Mr. Andrade and all other aggrieved employees all wages owed, including minimum wage and overtime, failing to provide accurate wage statements and maintain accurate payroll records, and failing to provide all wages earned at end of employment. Mr. Andrade and similarly aggrieved employees consist of identifiable, current, and/or former similarly situated persons who worked for Employer in non-exempt positions in California during the liability period of one year prior to the filing of a complaint alleging a PAGA cause of action.

Employer failed to pay Mr. Andrade and other aggrieved employees for all hours worked at the legally mandated wage rates. Throughout Mr. Andrade's employment, Employer failed to compensate Mr. Andrade for all hours worked including, overtime, and double-time overtime wages. Mr. Andrade and other aggrieved employees were regularly required to work until all deliveries were finished, regardless of whether they were off the clock.

Mr. Andrade and other aggrieved employees were required to pay for necessary business expenditures, for which Employer did not compensate them. Mr. Andrade and other aggrieved employees were required to wear a uniform containing the company logo. Mr. Andrade had to bear the expense of laundering his uniform and did not receive any type of compensation from his employer. On occasion, Mr. Andrade and other aggrieved employees also had to use their personal cell phones for business matters such as communicating with supervisors and using their phone's GPS to locate customers, all without reimbursement. Employer's failure to provide full and complete reimbursement for all necessary business expenditures incurred by Mr. Andrade and other aggrieved employees is in violation of Labor Code 2802 and actionable under PAGA.

As a result of Employer's failure to pay all wages owed as described herein, Employer further failed to keep accurate payroll records and failed to provide Mr. Andrade and other aggrieved employees with complete and accurate wage statements showing the actual hours

worked and premium wages earned per pay period. This conduct is in violation of Labor Code sections 226 and 1174 and is actionable under PAGA.

By failing to include on Mr. Andrade's and other aggrieved employees' pay stubs full compensation for all hours worked, Employers failed to keep accurate payroll records and failed to provide Mr. Andrade and other aggrieved employees with complete and accurate wage statements with the accurate number of hours worked, accurate rate of pay for each hour worked, accurate number of premium wage earned, accurate reimbursements owed, and accurate net and gross wages earned. This conduct is in violation of Labor Code sections 226 and 1174 and is actionable under PAGA.

As a further result of Employers' failure to pay all wages owed as described herein, Employers also violated Labor Code sections 201, 202, and 203, due to its uniform policy, practice, and procedure of failing to pay all wages earned to former employees at the time their employment ended.

The facts and claims contained herein are based on the information available at the time of this writing. Therefore, if through discovery and/or expert review, Mr. Andrade becomes aware of additional compensation owed or losses incurred by Mr. Andrade or by any other aggrieved employee of the Employer, Mr. Andrade expressly reserves the right to revise these facts and/or add any new claims by amending the claim letter or by adding applicable causes of action to the complaint which will relate back to the date of this letter.

Mr. Andrade will bring his lawsuit on behalf of himself and all other aggrieved employees who were employed by Employer. Please advise Mahoney Law Group at the address below if the LWDA has any objection to my client including PAGA claims in his complaint. We look forward to your response, and please feel free to contact our office if you have any questions, comments or concerns.

Mahoney Law Group, APC
Kevin Mahoney
249 E. Ocean Blvd., Suite 814
Long Beach, CA 90802
Tel: (562) 590-5550
Email: kmahoney@mahoney-law.net

Sincerely,

A handwritten signature in black ink, appearing to read 'Kevin Mahoney', with a long horizontal flourish extending to the right.

Kevin Mahoney, Esq.
MAHONEY LAW GROUP, APC