

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Maureen Duffy-Lewis

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

FRANCISCO ARECHIGA, as an individual
and on behalf of all other aggrieved
employees,

Plaintiff,

vs.

HARBOR FREIGHT TOOLS USA, INC., a
California Corporation; and DOES 1 through
100,

Defendants.

Case No. 20STCV10502

**REPRESENTATIVE ACTION
COMPLAINT:**

**(1) CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE § 2698 *et seq.*)**

UNLIMITED CIVIL CASE

1 Plaintiff Francisco Arechiga (“Plaintiff”), on behalf of himself and all other aggrieved
2 employees, hereby brings this Representative Action Complaint against Defendant Harbor
3 Freight Tools USA, Inc.; and DOES 1 to 100, inclusive (collectively “Defendants”), and on
4 information and belief alleges as follows:

5 **JURISDICTION**

6 1. Plaintiff, on behalf of himself and all other aggrieved employees, hereby brings
7 this representative action for recovery of civil penalties under California Labor Code §§ 2698 *et*
8 *seq.*

9 2. This Court has jurisdiction over Defendants because, upon information and belief,
10 Defendants are citizens of California, Defendants have sufficient minimum contacts in California,
11 or otherwise intentionally avail themselves to the California market so as to render the exercise
12 of jurisdiction over them by the California courts consistent with the traditional notions of fair
13 play and substantial justice.

14 **VENUE**

15 3. Venue as to each Defendant is proper in this judicial district pursuant to California
16 Code of Civil Procedure §§ 395(a) and 395.5, as at least some of the acts and omissions
17 complained of herein occurred in the County of Los Angeles. Further, at all times relevant herein
18 Plaintiff was employed by Defendants within the County of Los Angeles.

19 **PARTIES**

20 4. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
21 Plaintiff was, and currently is, a California resident, residing in the County of Los Angeles.
22 During the one year immediately preceding Plaintiff’s giving of the required notice under the
23 PAGA, and within the statute of limitations periods applicable to the cause of action pled herein,
24 Plaintiff was employed by Defendants as an hourly non-exempt employee.

25 5. Plaintiff is informed and believes, and based thereon alleges, that during the one
26 year preceding Plaintiff’s giving of the required notice under the PAGA and continuing to the
27 present, Defendants did (and do) business as a discount tool and equipment retailer and employed
28 Plaintiff and other similarly-situated hourly non-exempt employees within the County of Los

1 Angeles and, therefore, were (and are) doing business in the County of Los Angeles and the State
2 of California.

3 6. Plaintiff is informed and believes, and thereon alleges, that at all times mentioned
4 herein, Defendants were licensed to do business in California and the County of Los Angeles, and
5 were the employers of Plaintiff and the Aggrieved Employees (as defined in Paragraph 17).

6 7. Plaintiff does not know the true names or capacities, whether individual, partner,
7 or corporate, of the defendants sued herein as DOES 1 to 100, inclusive, and for that reason, said
8 defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to
9 amend this Representative Action Complaint when such true names and capacities are
10 discovered. Plaintiff is informed, and believes, and thereon alleges, that each of said fictitious
11 defendants, whether individual, partners, or corporate, were responsible in some manner for the
12 acts and omissions alleged herein, and proximately caused Plaintiff and the Aggrieved
13 Employees (as defined in Paragraph 17) to be subject to the unlawful employment practices,
14 wrongs, injuries and damages complained of herein.

15 8. Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned
16 herein, Defendants were and are the employers of Plaintiff and the Aggrieved Employees (as
17 defined in Paragraph 17).

18 9. At all times herein mentioned, each of said Defendants participated in the doing
19 of the acts hereinafter alleged to have been done by the named Defendant; and furthermore, the
20 Defendants, and each of them, were the agents, servants, and employees of each and every one
21 of the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned
22 were acting within the course and scope of said agency and employment. Defendants, and each
23 of them, approved of, condoned, and/or otherwise ratified each and every one of the acts or
24 omissions complained of herein.

25 10. At all times mentioned herein, Defendants, and each of them, were members of
26 and engaged in a joint venture, partnership, and common enterprise, and acting within the course
27 and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,
28 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and the

1 Aggrieved Employees (as defined in Paragraph 17).

2 **REPRESENTATIVE ACTION ALLEGATIONS**

3 11. Plaintiff worked for Defendants as a Senior Associate from approximately
4 November 2017 to May 2018. Thereafter, Plaintiff was promoted to Warehouse Supervisor and
5 worked for Defendant until he was terminated in approximately October 2019.

6 12. During Plaintiff's tenure with Defendants, Plaintiff routinely worked in excess of
7 8.0 hours per workday and/or in excess of 40.0 hours per workweek, but did not receive overtime
8 compensation at one and one-half times his regular rate of pay for working overtime hours.
9 Specifically, Plaintiff received non-discretionary incentive pay, including bonuses and/or other
10 forms of pay that are not excludable from an employee's "regular rate" of pay (hereinafter the
11 aforementioned forms of pay are collectively referred to as "Incentive Pay"). Despite Defendants
12 payment of Incentive Pay to Plaintiff, Defendants failed to properly calculate Plaintiff's "regular
13 rate" of pay, thereby causing Plaintiff to be underpaid for his required overtime wages.

14 13. Defendants failed to provide Plaintiff and other aggrieved employees with all
15 legally-compliant meal periods because they failed to provide Plaintiff and other aggrieved
16 employees with a timely, duty-free, and uninterrupted 30-minute meal period commencing before
17 the end of the fifth hour of work, and/or a second 30-minute meal period for shifts of over 10.0
18 hours. Specifically, Plaintiff's meal period was frequently "late" (i.e., starting after the
19 completion of the fifth hour of work), because although his shift generally began at approximately
20 4:00 p.m., Defendants' work demands frequently prevented him from taking a meal period until
21 well after the completion of the fifth hour of work. Further, upon information and belief,
22 Defendants' meal period policies/practices failed to provide Plaintiff and other aggrieved with a
23 second 30-minute meal period on occasions where they worked over 10.0 hours in a workday.
24 Defendants also failed to relinquish control over Plaintiff by requiring him to remain on the
25 premises and to keep his walkie-talkie on during his meal period. Notwithstanding these policies
26 and/or practices, for at least a portion of the liability period, Defendants failed to compensate
27 Plaintiff with the required meal period premium for each workday in which he experienced a meal
28 period violation as mandated by Labor Code § 226.7. While Plaintiff was paid meal period

premiums on numerous occasions, evidencing Defendants' systematic failure to provide meal periods, upon information and belief, no meal period premiums were paid in connection with the requirement that Plaintiff remain on-duty.

14. Defendants failed to authorize and permit Plaintiff from taking all required and legally-compliant rest periods due to Defendants' rest period policies/practices. Specifically, Defendants failed to always authorize and permit Plaintiff to take a timely first rest periods due to the workload. Additionally, Defendants failed to authorize and permit a second rest period for shifts in excess of 6.0 hours, and upon information and belief, failed to authorize and permit a third rest period for shifts of over 10.0 hours. Defendants also failed to relinquish control over Plaintiff as they required him to remain on the premises and be available to respond to inquiries through his walkie-talkie during his rest period, in violation of California law. On those occasions when Defendants failed to authorize and permit Plaintiff from taking the legally required and compliant rest periods to which he was entitled, Defendants also failed to compensate Plaintiff with the required rest period premium for each workday in which he experienced a rest period violation as mandated by Labor Code § 226.7. Upon information and belief, Defendants failed to maintain a payroll code or mechanism for the payment of rest period premiums under Labor Code § 226.7 for the entire duration of the liability period.

15. As a result of the aforementioned violations, Defendants failed to issue accurate and itemized wage statements to Plaintiff and other aggrieved employees because, among other things, the wage statements issued fail to reflect the correct regular rate of pay for overtime purposes, and all meal and rest period premiums for all meal and rest period violations.

16. As a further result of the violations articulated above, Defendants failed to timely pay Plaintiff and other aggrieved former employees all wages owed at the time of their respective separations from employment.

17. Based on the foregoing, Plaintiff seeks to represent himself and other aggrieved employees, as defined by Labor Code § 2699(c), who have been aggrieved by the Labor Code violations discussed herein.

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FIRST CAUSE OF ACTION
PRIVATE ATTORNEYS GENERAL ACT
(AGAINST ALL DEFENDANTS)

18. Plaintiff re-alleges and incorporates by reference all prior paragraphs as though fully set forth herein.

19. Defendants have committed several Labor Code violations against Plaintiff and other aggrieved employees. Plaintiff, an “aggrieved employee” within the meaning of Labor Code § 2698 *et seq.*, acting on behalf of himself and other aggrieved employees, brings this representative action against Defendants to recover the civil penalties due to Plaintiff, other aggrieved employees, and the State of California according to proof, including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200.00 for each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each initial violation; and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for each initial violation and \$200.00 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided, based on the following Labor Code violations:

- a. Failing to pay Plaintiff and other aggrieved employees all earned overtime compensation in violation of Labor Code §§ 204, 510, 558, 1194, and 1198;
- b. Failing to provide all legally required meal periods, or to pay premium pay in lieu thereof, to Plaintiff and other aggrieved employees at the regular rate of pay in violation of Labor Code §§ 226.7, 512, 558, and 1198;
- c. Failing to authorize and permit all legally required rest periods, or to pay premium pay in lieu thereof, to Plaintiff and other aggrieved employees at the regular rate of pay in violation of Labor Code §§ 226.7, 516, 558, and 1198;

- d. Failing to furnish Plaintiff and other aggrieved employees with complete, accurate, itemized wage statements in violation of Labor Code § 226;
- e. Failing to timely pay all final wages due to Plaintiff and other aggrieved employees in violation of Labor Code §§ 201, 202, and 203;
- f. Failing to pay Plaintiff and other aggrieved employees all earned wages at least twice during each calendar month in violation of Labor Code § 204; and
- g. Failing to maintain accurate records on behalf of Plaintiff and other aggrieved employees in violation of Labor Code § 1174.

20. On or about January 9, 2020, Plaintiff notified Defendant Harbor Freight Tools USA, Inc., via certified mail, and the California Labor and Workforce Development Agency (“LWDA”) via its website, of Defendants’ violations of the California Labor Code and Plaintiff’s intent to bring a claim for civil penalties under California Labor Code § 2698 *et seq.* with respect to violations of the California Labor Code identified in Paragraph 19 (a)-(g). Now that sixty-five days have passed from Plaintiff notifying Defendants of these violations, Plaintiff has exhausted his administrative requirements for bringing a claim under the Private Attorneys General Act with respect to these violations.

21. Plaintiff was compelled to retain the services of counsel to file this court action to protect his interests and the interests of other aggrieved employees, and to assess and collect the civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys’ fees and costs, which he is entitled to receive under California Labor Code § 2699.

PRAYER

WHEREFORE, Plaintiff prays for judgment for himself and for all others on whose behalf this suit is brought against Defendants, jointly and severally, as follows:

1. Upon the First Cause of Action, for civil penalties due to Plaintiff, other aggrieved employees, and the State of California according to proof pursuant to Labor Code §§ 558 and 2699(a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200 for each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount

1 unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent violation
2 pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation
3 and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per
4 pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent violation
5 pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for each initial
6 violation and \$200 for each subsequent violation per employee per pay period for those violations
7 of the Labor Code for which no civil penalty is specifically provided, based on the Labor Code
8 violations identified in Paragraph 19 (a)-(g);

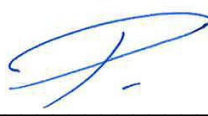
9 2. On all causes of action, for attorneys' fees and costs as provided by Labor Code §
10 2699(g) and Code of Civil Procedure § 1021.5; and

11 3. For such other and further relief the Court may deem just and proper.

12
13 Dated: March 16, 2020

Respectfully submitted,
HAINES LAW GROUP, APC

14
15 By:



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Attorney for Plaintiff