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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

MIGUEL ROSALES, ELIO RUBEN ALONSO, JOHNNY MARQUEZ, and LEO PATINO, individually, and on behalf of all others similarly situated, and on behalf of the State of California and other aggrieved persons,

Plaintiffs,

v.

HARBOR DISTRIBUTING, L.L.C., a Delaware limited liability company,

Defendant.

Case No. 30-2023-01300842-CU-OE-CXC

SECOND AMENDED PAGA REPRESENTATIVE AND CLASS ACTION COMPLAINT:

1. Civil Penalties Under PAGA [Cal. Lab. Code § 2699, *et seq.*];
2. Failure to Pay All Wages Including Minimum and Overtime Wages in Violation of Labor Code §§ 204, 206, 226.2, 226.8, 227.3, 510, 1182.12, 1194, 1194.2, 1197;
3. Failure to Provide Meal Periods in Violation of Labor Code §§ 226.7, 512 and Wage Order 5-2001, § 11;
4. Failure to Provide Rest Periods in Violation of Labor Code §§ 226.7 and Wage Order 5-2001, § 12;
5. Failure to Provide Accurate Itemized Wage Statements in Violation of Labor Code §§226, 226.3, and 1174;
6. Failure to Pay Waiting Time Penalties in violation of Labor Code §§ 201, 202, 203;
7. Failure to Reimburse for Necessary Business Expenditures; Labor Code § 2802;
8. Violation of California's Quota Laws, Labor Code §§ 2100, *et seq.*;

9. Unfair Business Practices in Violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*; and
10. Violation of Fair Labor Standards Act ("FLSA") 29 U.S.C. § 201 *et seq.* (Failure to Pay Minimum and Overtime Compensation)

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Plaintiffs MIGUEL ROSALES, ELIO RUBEN ALONSO, JOHNNY MARQUEZ, and LEO PATINO ("Plaintiffs"), on information and belief, alleges as follows:

INTRODUCTION & PRELIMINARY STATEMENT

1. Plaintiffs bring this action against Defendant HARBOR DISTRIBUTING, L.L.C. ("HARBOR" or "Defendant") for California Labor Code violations and unfair business practices, including for civil penalties under the Private Attorneys General Act of 2004, California Labor Code §§ 2698 *et seq*. ("PAGA"), stemming from Defendant's failure to pay for all hours worked (minimum, straight time, and overtime wages), failure to provide meal periods, failure to authorize and permit rest periods, failure to pay all earned wages twice per month, failure to maintain accurate records of hours worked and meal periods, failure to timely pay final wages, failure to furnish accurate wage statements, and failure to comply with California's quota laws. Plaintiffs also allege that Defendant violated the Fair Labor Standards Act (FLSA) stemming from Defendant's failure to pay minimum wage and overtime compensation.

2. Plaintiffs bring the First Cause of Action individually and as a representative action under PAGA to recover civil penalties that are owed to them, the State of California, and past and present employees employed by Defendant in the State of California during the statute of limitations period for their PAGA claims (hereinafter referred to as "Aggrieved Employees," as defined more fully below).

3. Plaintiffs bring the Second through Tenth Causes of Action individually and as a class action on behalf of themselves and certain current and former employees of Defendant (hereinafter collectively referred to as the "Class" or "Class Members," as defined more fully below). The Class consists of Plaintiffs and all other persons who have been employed by Defendant in California as non-exempt employees in positions as warehouse workers or merchandisers during the statute of limitations period applicable to the claims pleaded here.

4. For over 50 years, California's courts and legislature have recognized that this State's wage-and-hour laws serve a compelling public interest of fostering a stable job market. Wages are not ordinary debts. Because of the economic position of the average worker and his or her family, it is essential to the public welfare that employers obey the wage-and-hour laws so that

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employees are promptly paid the minimum/overtime wages that the Legislature has required for employees. So fundamental are California's wage-and-hour laws that the Legislature has criminalized certain types of violations. In extending extra protection to deter violations of these underlying statutes, California has enacted PAGA to permit an individual to bring an action for PAGA penalties.

5. All California non-exempt employees in positions as warehouse workers or merchandisers during the relevant period are "Aggrieved Employees." The Aggrieved Employees worked for Defendant as hourly-paid or non-exempt employees within the applicable period.

6. Defendant owns/owned and operates/operated an industry, business, and establishment within the State of California, including Orange County. As such and based upon all the facts and circumstances incident to Defendant's business in California, Defendant is subject to the California Labor Code, Wage Orders issued by the Industrial Welfare Commission ("IWC"), and the California Business & Professions Code.

7. On information and belief, Defendant was on actual and constructive notice of the improprieties alleged herein and intentionally refused to rectify its unlawful policies. Defendant's violations, as alleged above, during all relevant times herein were willful and deliberate.

8. At all relevant times, Defendant was and is legally responsible for all of the unlawful conduct, policies, practices, acts and omissions as described in each and all of the foregoing paragraphs as the employer of Plaintiffs, the Class, and the Aggrieved Employees.

9. Plaintiffs seek monetary relief against Defendant on behalf of themselves, the Class, and Aggrieved Employees to recover, among other things, unpaid wages, liquidated damages, restitution, interest, attorneys' fees, costs, and penalties pursuant to Labor Code sections 201-204, 206, 208, 226, 226.7, 227.3, 351, 510, 512, 1182.12, 1194, 1194.2, 1197, 1198, 2100-2112, 2699, *et seq.*, 2802, and California Code of Civil Procedure section 1021.5.

THE PARTIES

A. Plaintiffs

12. Plaintiff MIGUEL ROSALES is a resident of Orange County, California who worked for Defendant in Orange County, California as an hourly-paid, non-exempt employee

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from approximately July 2021 to approximately November 2021.

13. Plaintiff JOHNNY MARQUEZ is a resident of Orange County, California who worked for Defendant in Orange County, California as an hourly-paid, non-exempt employee through approximately April 2023.

14. Plaintiff LEO PATINO is resident of Los Angeles County, California who worked for Defendant in Orange County, California as an hourly-paid, non-exempt employee from approximately August 2018 through approximately May 2022.

15. Plaintiff ELIO RUBEN ALONSO is a resident of Los Angeles County, California who worked for Defendant in Orange County, California as an hourly-paid, non-exempt employee from approximately October 2017 through approximately July 2022 whose job duties included a sundry of warehouse duties based on production and quotas in which ALONSO, the Class, and Aggrieved Employees are assigned or required to perform at a specified productivity speed, or perform a quantified number of tasks, or to handle or produce a quantified amount of material, within a defined time period and under which employees suffer adverse employment actions if they fail to complete the performance "standard" for Defendant.

B. <u>Defendant</u>

16. Plaintiffs are informed and believe, and based upon that information and belief alleges, that Defendant HARBOR is, and at all times herein mentioned, was:

(a) A business entity qualified to do business and actually conducting business in numerous counties throughout the State of California, including Orange County; and,

(b) The former employer of Plaintiffs, and the current and/or former employer of the Class and Aggrieved Employees, because Defendant suffered and permitted Plaintiffs, the Class, and the Aggrieved Employees to work, and/or controlled their wages, hours, or working conditions.

17. Defendant HARBOR, was and is a California Limited Lability Company, doing business in Orange County and elsewhere in California. HARBOR operates a delivery and distribution center in which it employed PLAINTIFFS in Orange County, California.

Defendant owns and operates delivery, warehouse, and servicing centers throughout California.

18. PLAINTIFFS are informed and believe, and thereon allege that at all times hereinafter mentioned, Defendant was and is subject to the Labor Code and IWC Wage Orders as an employer whose employees were and are engaged throughout this county and the State of California.

ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

10. Plaintiffs MIGUEL ROSALES, ELIO RUBEN ALONSO, JOHNNY MARQUEZ, and LEO PATINO worked for Defendant HARBOR in Orange County, California as hourly-paid, non-exempt employees from approximately August 2018 to approximately May 2023. At all times, Defendant paid Plaintiffs an hourly wage and classified them as non-exempt from overtime.

11. Throughout Plaintiff's employment, Defendant committed numerous Labor Code violations under state law. As discussed below, Plaintiffs' experience working for Defendant was typical and illustrative.

12. PLAINTIFFS are informed and believe, and thereon allege, that Defendant knew or should have known it had a duty to compensate PLAINTIFFS, Class Members and Aggrieved Employees, and Defendant had the financial ability to pay such compensation but willfully, knowingly, and intentionally failed to do so all in order to increase Defendant's profits. Further, PLAINTIFFS, are informed and believe that Defendant further implemented an unlawful policy and practice of alleging that employees were "stealing time" when they failed to clock-in or clock-out at the designated scheduled time when in fact Defendant uses this strategy to terminate, reprimand, or retaliate against employees who complained of that Defendant's quota and production demands were unreasonable and violated Labor Code sections 2100 – 2112.

13. PLAINTIFFS are informed and believe that at all times Defendant tracked each and every workday and pay period, each shift, meal period, and rest period that was unlawful and in violation of California laws. Defendant was also fully cognization that it failed to maintain the proper temperature controls as required by the IWC Wage Orders and California law, as such, exposing them to further health and potentially OSHA safety requirements, which are illegal under California quota laws.

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14. PLAINTIFFS are informed and believe, and thereon allege, that Defendant knew or should have known it imposed systematic quota and production demands on PLAINTIFFS, Class Members and the Aggrieved Employees which violated the rights of employees pursuant to Labor Code sections 2100 *et. seq.* HARBOR had a duty to ensure its production demands did not interfere with PLAINTIFFS', Class Members' and the Aggrieved Employees' rights to lawful meal periods, rest periods, bathroom breaks, and/or expose them to safety hazards. HARBOR willfully, knowingly, and intentionally failed to establish quotas that did not harm PLAINTIFFS, Class Members and the Aggrieved Employees all in order to increase Defendant's profits without concern for employee safety.

A. **<u>Failure to Pay for All Hours Worked, Including Minimum, Straight Time, and Overtime Wages</u>**

15. Under California law, an employer must pay for all hours worked by an employee. "Hours worked" is the time during which an employee is subject to the control of an employer and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

16. Labor Code § 510 provides that employees in California shall not be employed more than eight hours in any workday or forty (40) hours in a workweek unless they receive additional compensation beyond their regular wages in amounts specified by law.

17. Labor Code §§ 1194 and 1198 also provide that employees in California shall not be employed more than eight hours in any workday unless they receive additional compensation beyond their regular wages in amounts specified by law. Additionally, Labor Code § 1198 states that the employment of an employee for longer hours than those fixed by the IWC is unlawful.

18. Throughout the statutory period, Defendant knew or should have known that PLAINTIFFS, Class Members and Aggrieved Employees were entitled to receive at least minimum, regular, overtime, and double times wages and that they were not receiving minimum, regular, overtime, and double time wages for all work that was required to be performed. Furthermore, upon January 1, 2022, HARBOR knew they had to provide PLAINTIFFS, Class Members, and Aggrieved Employees a written description of Defendant's quota production

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demands and failed to do so. During the Class Period, PLAINTIFFS, Class Members and Aggrieved Employees regularly worked in excess of eight (8) hours in a workday and/or 40 hours in a workweek, and double time for all hours worked in excess of 12 hours in a workday. In violation of the Labor Code and IWC Wage Orders, Defendant rounded, edited, and/or input the incorrect times for PLAINTIFFS', Class Members' and Aggrieved Employees' start times to reflect the scheduled start time instead of the actual start time which should have included time spent arriving early to work, and performing other preliminary duties and postliminary duties, and otherwise preparing for the workday. Defendant also rounded PLAINTIFFS', Class Members' and Aggrieved Employees' end time to reflect the scheduled end time despite working past those hours. As such, PLAINTIFFS, Class Members and Aggrieved Employees performed work off-the-clock without compensation. PLAINTIFFS, Class Members and Aggrieved Employees were not paid a split shift premium and were required to work shifts which were sufficiently long and were counted as "meal period" and "rest periods." While under the control of HARBOR they remained under the control of Defendant and were not paid the split shift interval. Defendant failed to compensate PLAINTIFFS, Class Members and Aggrieved Employees for all hours worked for work performed off-the clock and for reporting time pay, and overtime pay. Defendant failed to pay the appropriate and correct legal wages for bonus pay (i.e., premium pay, sick pay, vacation pay, overtime and double overtime) and vacation pay according to California law. Defendant violated Labor Code section 351 by illegally withholding tips and or engaging a tip pooling scheme with managers and other individuals not in the chain of service or who were involved in table services.

B. <u>Failure to Provide Meal Periods</u>

19. Under California law, employers have an affirmative obligation to relieve employees of all duty in order to take their first 30-minute, duty-free meal periods no later than the end of the fifth hour of work in a workday, and to allow employees to take their second 30-minute meal period no later than the end of the tenth hour of work in a workday. Further, employees are entitled to be paid one hour of additional wages for each workday they were not provided with a required meal period(s).

20. Despite these legal requirements, Defendant wrongfully failed to provide Plaintiffs, the Class and the Aggrieved Employees with their legally mandated 30-minute, uninterrupted, and duty-free meal period in a manner required by law. Defendant also continued to assert control over Plaintiffs, the Class and the Aggrieved Employees by, among other things, requiring, pressuring, or encouraging them to perform work tasks which could not be completed without working in lieu of taking mandatory meal periods, or by denying Plaintiffs, the Class and the Aggrieved Employees permission to take a meal period under the conditions required by law, and without properly compensating Plaintiffs, the Class and the Aggrieved Employees for meal periods that were not provided as required by law. Defendant also never informed Plaintiffs of their right to, nor permitted them to take, a second meal period when Plaintiffs worked at least ten hours of work in a workday and otherwise unlawfully pressured them to waive such breaks. Accordingly, Defendant at times did not to provide meal periods to Plaintiffs and the Aggrieved Employees in compliance with California law.

21. Plaintiffs, the Class and the Aggrieved Employees are thus entitled to be paid one hour of additional wages for each workday he or she was not provided with all required meal period(s). Defendant, however, at times failed to pay Plaintiffs, the Class and the Aggrieved Employees the additional wages to which they were entitled for meal periods that were not provided.

C. <u>Failure to Authorize and Permit Rest Periods</u>

22. California law requires Employers to authorize and permit breaks of ten uninterrupted minutes for each four hours of work or major fraction of four hours (i.e. more than two hours). Thus, for example, if an employee's work time is six hours and ten minutes, the employee is entitled to two rest breaks. Each failure to authorize rest breaks as so required is itself a violation of California's rest break laws.

23. Throughout the statutory period, Defendant tracked and maintained a record of each and every rest period that violated California law including when PLAINTIFFS, Class Members or Aggrieved Employees worked up to 16 to 17 hours in a workday. Defendant's quota demands were unreasonable and pressured PLAINTIFFS, Class Members and Aggrieved Employees to work

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through rest periods. PLAINTIFFS are informed and believe, and thereon allege, that Defendant knew or should have known that PLAINTIFFS, Class Members and Aggrieved Employees were entitled to receive a ten-minute, off-duty, uninterrupted rest period for every four (4) hours worked, or major fraction thereof, or payment of one (1) additional hour of pay at their regular rate of pay when they were not permitted to take a compliant rest period. Defendant enacted quotas that prevented PLAINTIFFS, Class Members and Aggrieved Employees from taking lawful rest periods. During the Class Period, PLAINTIFFS, Class Members and Aggrieved Employees regularly worked in excess of four (4) hours or major fraction thereof. In violation of the Labor Code and IWC Wage Orders, PLAINTIFFS, Class Members and Aggrieved Employees were not permitted to take compliant rest breaks, due to Defendant favoring production goals over employee rights. Defendant continued to assert control over Plaintiffs, the Class and the Aggrieved Employees by requiring, pressuring, or encouraging them to perform work tasks which could not be completed without working in lieu of taking mandatory rest periods, and by denying Plaintiffs, the Class and the Aggrieved Employees permission to take a rest period under the conditions required by law. Consequently, PLAINTIFFS, Class Members and Aggrieved Employees were not authorized or permitted to take rest breaks, including first, second, and third rest breaks.

24. Plaintiffs, the Class and the Aggrieved Employees are thus entitled to be paid one hour of additional wages for each workday he or she was not authorized and permitted to take all required rest periods. Defendant, however, at times failed to pay Plaintiffs, the Class and the Aggrieved Employees the additional wages to which they were entitled for rest periods and that they were not authorized and permitted to take.

D. <u>Failure to Pay All Earned Wages Twice Per Month</u>

25. Based on their failure to pay Plaintiffs and the Aggrieved Employees for all wages as discussed above, Defendant also violated Labor Code § 204.

26. Labor Code § 204 requires employers to pay employees all earned wages two times per month. Throughout the period applicable to this cause of action, employees were entitled to be paid twice a month at their regular rates, including all meal period premium wages owed, rest period premium wages owed, and wages owed for overtime hours worked. However, during all

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such times, Defendant at times failed and refused to pay the employees all wages due, and failed to pay those wages twice a month, in that employees were not paid all wages for all meal periods not provided by Defendant, all wages for all rest periods not authorized and permitted by Defendant, and all wages for all hours worked. As a result, Defendant owes employees the legally required wages not paid, and Plaintiffs and the Aggrieved Employees suffered damages in those amounts.

E. Failure to Maintain Accurate Records of Hours Worked and Meal Periods

27. Plaintiffs seek penalties under California Labor Code § 1174(d). Pursuant to California Labor Code § 1174.5, any person, including any entity, employing labor who willfully fails to maintain accurate and complete records required by California Labor Code § 1174 is subject to a penalty under § 1174.5. Pursuant to the applicable IWC Order § 7(A)(3), every employer shall keep time records showing when the employee begins and ends each work period. Meal periods and total hours worked daily shall also be recorded.

28. Defendant, however, failed to maintain accurate records of hours worked and all meal periods taken or missed by Plaintiffs and the Aggrieved Employees.

29. Defendant's failure to provide and maintain records required by the California Labor Code and applicable IWC Wage Orders deprived Plaintiffs and the Aggrieved Employees the ability to know, understand and question the accuracy and frequency of meal periods, and the accuracy of their hours worked stated in Defendant's records. Therefore, Plaintiffs and the Aggrieved Employees had no way to dispute the resulting failure to pay wages, all of which resulted in an unjustified economic enrichment to Defendant. As a direct result, Plaintiffs and the Aggrieved Employees have suffered and continue to suffer, substantial losses related to the use and enjoyment of such wages, lost interest on such wages and expenses and attorney's fees in seeking to compel Defendant to fully perform its obligation under state law, all to their respective damage in amounts according to proof at trial. As a result of Defendant's knowing failure to comply with the California Labor Code and applicable IWC Wage Orders, Plaintiffs and the Aggrieved Employees have also suffered an injury in that they were prevented from knowing, understanding, and disputing the wage payments paid to them.

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F. Failure to Timely Pay All Wages at Termination

30. Labor Code §§ 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

31. Within the applicable period, the employment of Plaintiffs and many other Class Members and Aggrieved Employees ended, i.e., was terminated by quitting or being discharged, and the employment of others will be terminated. However, during the relevant time period, Defendant failed, and continued to fail, to pay Plaintiffs and terminated Class Members and Aggrieved Employees, without abatement, all wages required to be paid by Labor Code sections 201 and 202 either at the time of discharge, or within seventy-two (72) hours of their leaving Defendant's employment. These unpaid wages include wages for unpaid work time (including minimum, straight time, and overtime wages), missed meal period premium wages, and missed rest period premium wages.

32. Defendant's conduct violates Labor Code §§ 201 and 202. Labor Code § 203 provides that if an employer willfully fails to pay wages owed, in accordance with sections 201 and 202, then the wages of the employee shall continue as a penalty wage from the due date, and at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

33. Accordingly, Plaintiffs, the Class and the Aggrieved Employees are entitled to recover from Defendant their additionally accruing wages for each day they were not paid, at their regular hourly rate of pay, up to thirty (30) days maximum pursuant to Labor Code § 203.

G. Failure to Furnish Accurate Itemized Wage Statements

34. Labor Code § 226(a) provides that every employer shall furnish each of his or her employees an accurate itemized wage statement in writing showing nine pieces of information, including: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-

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rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. An employee is presumed to suffer an injury if this information is missing. (Labor Code § 226(e)(2)(B)(iii).)

35. The statute further provides: "An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars ($50) for the initial pay period in which a violation occurs and one hundred dollars ($100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars ($4,000), and is entitled to an award of costs and reasonable attorney's fees." (Labor Code § 226(e)(1).)

36. Throughout the statutory period, Defendant failed to furnish Plaintiffs, the Class and the Aggrieved Employees with accurate, itemized wage statements showing all applicable hourly rates, and all gross and net wages earned (including correct hours worked, correct wages for meal periods that were not provided in accordance with California law, and correct wages for rest periods that were not authorized and permitted to take in accordance with California law). Because Defendant violated Labor Code § 226, Plaintiffs, the Class and similarly Aggrieved Employees suffered injury and damage to their statutorily protected rights. Accordingly, Plaintiffs, the Class and similarly Aggrieved Employees are entitled to recover damages from Defendant including the greater of their actual damages caused by Defendant's failure to comply with Labor Code § 226(a), or an aggregate penalty not exceeding four thousand dollars ($4,000) dollars per employee, or as otherwise permitted by PAGA based upon all bases of liability.

FLSA COLLECTIVE ACTION ALLEGATIONS

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37. Plaintiffs further bring the tenth cause of action, the FLSA claims as an "opt-in" collective action pursuant to 29 U.S.C. § 216(b) on their own behalf and on behalf of all other members of the general public similarly situated.

38. Plaintiffs seek to represent a FLSA Collective composed of and defined as follows:

> All persons who worked for any Defendant in California as an hourly-paid or non-exempt employee at any time during the period three years before the filing of the initial complaint in this action and ending when notice to the Class is sent. ("FLSA Collective" or "FLSA Collective Members").

39. Plaintiffs are informed and believe that the FLSA Collective Members consist of hundreds of individuals.

40. Plaintiffs may find it appropriate or necessary to amend the definition of those covered by the FLSA collective. Plaintiffs reserve the right to continue to refine the FLSA Collective definition. Similarly, although subclasses are not anticipated at this time, Plaintiffs reserve the right to allege or move for subclasses divided along any reasonable point of distinction that might exist among class member and the FLSA Collective.

41. Plaintiffs and the FLSA Collective Members are similarly situated in that they were/are all non-exempt employees of Defendant who were subject to Defendant's common practices, policies, and procedures of willfully and unlawfully failing to pay wages, without abatement or reduction, due for all hours worked, including and not limited to, minimum wages and overtime wages.

42. This Action is maintainable as an "opt-in" collective action pursuant to 29 U.S.C. § 216(b).

43. All potential members of the FLSA Collective should be given notice and be allowed to give their consent in writing to participate in — in other words, to opt into — the FLSA collective pursuant to 29 U.S.C. § 216(b).

<u>FIRST CAUSE OF ACTION</u>

(Civil Penalties Under the Private Attorneys General Act of 2004,

Cal. Lab. Code § 2698, *et seq*.)

44. Plaintiffs incorporate by reference and re-alleges all preceding paragraphs as though

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fully set forth herein.

45. At all times herein mentioned, Defendant was subject to the Labor Code of the State of California and the applicable IWC Orders.

46. California Labor Code § 2699(a) specifically provides for a private right of action to recover penalties for violations of the Labor Code: “Notwithstanding any other provision of law, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of herself or himself and other current or former employees pursuant to the procedures specified in Section 2699.3.”

47. On November 4, 2022, Plaintiff MIGUEL ROSALES gave written notice by online filing to the Labor and Workforce Development Agency (“LWDA”) and by certified mail to Defendant of the specific provisions of the Labor Code that Defendant has violated against Plaintiffs and current and former Aggrieved Employees, including the facts and theories to support the violations. Plaintiff ROSALES also paid the filing fee on November 4, 2022. Plaintiff ROSALES’s PAGA case number is LWDA-CM-917925-22 (*Rosales v. Harbor Distributing, LLC et al.)*.

48. On April 26, 2022, Plaintiffs ROSALES, MARQUEZ, and PATINO submitted an amended LWDA notice letter by online filing to the LWDA and certified mail to Defendant, thus again giving notice to Defendant of the specific provisions of the Labor Code that Defendant has violated against Plaintiffs and current and former Aggrieved Employees, including the facts and theories to support the violations. This April 26, 2022 letter amended the November 2, 2022 letter, including but not limited to by adding employees MARQUEZ and PATINO.

49. On May 4, 2022, Plaintiffs ROSALES, MARQUEZ, PATINO, and ALONSO submitted an amended LWDA notice letter by online filing to the LWDA and certified mail to Defendant, thus again giving notice to Defendant of the specific provisions of the Labor Code that Defendant has violated against Plaintiffs and current and former Aggrieved Employees, including the facts and theories to support the violations. This May 4, 2022 letter amended the April 26,

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2022 letter, including but not limited to by adding employee ALONSO.

50. The statute is tolled while Plaintiffs exhaust their administrative remedies with California's LWDA prior to suit, which is required by the statute. (*See* Labor Code § 2699.3(d).)

51. Sixty-five (65) days have elapsed since Plaintiffs provided notice, but the LWDA has not indicated that it intends to investigate Defendant's Labor Code violations discussed in the notice. Accordingly, Plaintiffs may commence a civil action to recover penalties under Labor Code § 2699 pursuant to § 2699.3 for the violations of the Labor Code described in this First Amended Complaint. These penalties include, but are not limited to, penalties under California Labor Code §§ 210, 226.3, 1174.5, 1197.1, and 2699(f)(2).

52. Based on the conduct described in this Complaint, Plaintiffs are entitled to an award of civil penalties on behalf of the State of California and similarly Aggrieved Employees of Defendant. The exact amount of the applicable penalties, in all, is in an amount to be shown according to proof at trial. These penalties are in addition to all other remedies permitted by law.

53. In addition, Plaintiffs seek an award of reasonable attorney's fees and costs pursuant to Labor Code § 2699(g)(1), which states, "Any employee who prevails in any action shall be entitled to an award of reasonable attorney's fees and costs."

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CLASS ALLEGATIONS

54. PLAINTIFFS bring this class action pursuant to Code of Civil Procedure section 382 on behalf of themselves and all others similarly situated who were injured by Defendant's violations of the Labor Code, Business and Professions Code sections 17200, *et seq*., and IWC WAGE ORDERS during the Class Period.

55. PLAINTIFFS's proposed Class consists of an is defined as follows:

Class

All current and former non-exempt employees employed by Defendant in the State of California in positions as warehouse workers or merchandisers within four years prior to the filing of this action to the date of class certification.

56. PLAINTIFFS also seek to certify the following subclass:

Waiting Time Subclass

All Class Members who separated from their employment with Defendant at any time within three years prior to the filing of this action to the date of class certification ("Subclass" or "Waiting Time Subclass").

57. Members of the Class and Subclass described above will be collectively referred to as "Class Members."

58. PLAINTIFFS reserve the right to modify or re-define the Class or Subclass, establish additional subclasses, or modify or re-define any class or subclass definition as appropriate based on investigation, discovery, and specific theories of liability.

59. There is a well-defined community of interest in this litigation and the proposed Class and Subclass are readily ascertainable.

60. **Commonality:** This action has been brought and may properly be maintained as a class action under the Code of Civil Procedure section 382 because there are common questions of law and fact as to the Class members that predominate over any questions affecting only individual members including, but not limited to, the following:

(a) Whether Defendant practices and policies violated California's quota laws by enacting quotas or production demands in violation of Labor Code sections 2100-2112;

(b) Whether Defendant paid Plaintiffs and Class Members all wages (including minimum, regular, overtime, and double time wages) for all hours worked, including the correct legal minimum wage, overtime, and double overtime rate when Plaintiffs and Class members were paid a bonus;

(c) Whether Defendant paid Plaintiffs and Class Members the correct legal wages for all hours worked, including the correct legal minimum wage, overtime and double overtime rate, premium wages, sick pay, and vacation pay when Defendant paid bonuses;

(d) Whether Defendant pays or vests sick pay wages in accordance with California law;

(e) Whether Defendant violated the vacation pay law in California pursuant to Labor Code section 227.3;

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(f) Whether Defendant violated California's reporting time pay rules;

(g) Whether Defendant's rounding policy and practice favored Defendant by systematically undercompensating PLAINTIFFS and Class Members;

(h) Whether Defendant compensated PLAINTIFFS and Class Members for time spent during rest periods and/or meal periods while under the control of HARBOR during split shifts;

(i) Whether Defendant paid PLAINTIFFS and Class Members the legal split-shift premium;

(j) Whether Defendant required PLAINTIFFS and Class Members to work off-the-clock without compensation;

(k) Whether Defendant required PLAINTIFFS and Class Members to incur business expenses without reimbursement;

(l) Whether Defendant provided PLAINTIFFS and Class Members with compliant meal periods or paid compensation in lieu thereof;

(m) Whether Defendant authorized and permitted compliant rest breaks to PLAINTIFFS and Class Members or paid compensation in lieu thereof;

(n) Whether Defendant paid PLAINTIFFS and Class Members for rest periods or paid compensation in lieu thereof;

(o) Whether Defendant failed to provide PLAINTIFFS and Class Members with accurate itemized wage statements;

(p) Whether Defendant failed to timely pay the PLAINTIFFS and Class Members all wages due immediately upon termination or within 72 hours of resignation;

(q) Whether Defendant's conduct was willful or reckless; and

(r) Whether Defendant engaged in unfair business practices in violation of Business and Professions Code sections 17200, *et seq*.

61. There is a well-defined community of interest. Further, PLAINTIFFS and Class Members have at times suffered common injuries as a result of Defendant's employment policies and practices. Looking to Defendant's employment policies and practices, the Court can adjudicate

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the lawfulness of those policies and practices on a class-wide basis, according to proof, and issue an award to PLAINTIFFS and Class Members accordingly. In addition, answers to common questions raised in this Complaint will advance resolution of each individual Class Member's claims.

62. **Numerosity**: The Class Members are so numerous that joinder of all members is impractical. Although the members of the entire Class and Subclass are unknown to PLAINTIFFS at this time, on information and belief, the class is estimated to be greater than 3,700 individuals.

63. **Ascertainability**: The identities of the Class Members are readily ascertainable by inspection of Defendant's employment and payroll records.

64. **Typicality:** The claims (or defenses, if any) of PLAINTIFFS are typical of the claims of the Class Members because Defendant's failure to comply with the provisions of California's wage and hour laws entitled each Class Member to similar pay, benefits, and other relief. The injuries sustained by PLAINTIFFS are also typical of the injuries sustained by Class Members because they arise out of and are caused by Defendant's common course of conduct as alleged herein.

65. **Adequacy:** PLAINTIFFS will fairly and adequately represent and protect the interests of all Class Members because it is in PLAINTIFFS' best interest to prosecute the claims alleged herein to obtain full compensation and penalties due to PLAINTIFFS and the Class Members. PLAINTIFFS' attorneys, as proposed class counsel, are competent and experienced in litigating large employment class actions and versed in the rules governing class action discovery, certification, and settlement. PLAINTIFFS have incurred and, throughout the duration of this action, will continue to incur attorneys' fees and costs that have been and will be necessarily expended for the prosecution of this action for the substantial benefit of the Class Members.

66. **Superiority:** The nature of this action makes use of class action adjudication superior to other methods. A class action will achieve economies of time, effort, and expense as compared with separate lawsuits and will avoid inconsistent outcomes because the same issues can be adjudicated in the same manner for the entire Class and Subclass at the same time. If appropriate, this Court can, and is empowered to, fashion methods to efficiently manage this case as a class action.

67. **Public Policy Considerations:** Employers in the State of California violate employment and labor laws every day. Current employees are often afraid to assert their rights out

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of fear of direct or indirect retaliation. Former employees are fearful of bringing actions because they believe their former employers might damage their future endeavors through negative references and/or other means. Class actions provide class members who are not named in the complaint with a type of anonymity that allows for the vindication of their rights while affording them privacy protections.

SECOND CAUSE OF ACTION

(Failure to Pay All Wages Including Minimum and Overtime Wages in Violation of Labor Code §§ 204, 206, 226.2, 226.8, 227.3, 510, 1182.12, 1194, 1194.2, 1197)

68. Plaintiffs incorporate by reference and re-alleges all preceding paragraphs as though fully set forth herein.

69. Defendant failed to pay Plaintiffs and Class Members all wages (including minimum, regular, overtime, and double time wages) for all hours worked, including the correct legal minimum wage, overtime, and double overtime rate when Plaintiffs and Class Members.

70. Defendant failed to pay Plaintiffs and Class Members the correct legal wages for all hours worked, including the correct legal minimum wage, overtime and double overtime rate, premium wages, sick pay, and vacation pay when Defendant paid bonuses.

71. Defendant failed to pay or vest sick pay wages in accordance with California law.

72. Defendant failed to pay vacation pay law in California pursuant to Labor Code section 227.3.

73. At all times herein relevant, Defendant had a duty to comply with Labor Code sections 204, 206, 227.3, 510, 1182.12, 1194, 1194.2, 1197, 1198, 2802, the applicable IWC Wage Orders, and all applicable local minimum wage ordinances in effect throughout California.

74. Labor Code section 204 and the IWC Wage Orders require timely payment of all wages owed on regularly scheduled paydays at least twice during each calendar month, on days designated in advance by the employer as the regular paydays. All wages in earned in excess of the normal work period must be paid no later than the payday for the next regular payroll period.

75. Labor Code section 206 provides that in case of a dispute over wages, the employer shall pay, without condition and promptly under the Labor Code all wages conceded due, leaving

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to the employee all remedies he/she is otherwise entitled to as to any balance claimed.

76. The IWC Wage Orders define "hours worked" as "the time during which an employee is subject to the control of an employer and includes all time the employee is suffered or permitted to work, whether or not required to do so" including nonproductive time and legal wages when bonusses were paid.

77. Defendant failed to pay the correct reporting time pay in accordance with California law.

78. Defendant further violated Labor Code section 351 through its illegal pool tipping and tip forfeiture policy illegally withholding wages of tipped employees.

79. Labor Code section 510 and the IWC Wage Orders require that employers pay employees for all overtime hours at a rate of one and one-half times the employee's regular rate of pay for hours worked in excess of eight hours in one workday, 40 hours in one workweek, and after the first eight hours on the seventh consecutive workday in one work week. Labor Code section 510 and the IWC Wage Orders further require that employers pay employees double their regular rate of pay for hours work in excess of 12 hours in a workday and after eight hours on the seventh consecutive workday in one workweek. Labor Code section 510 requires payment of overtime wages at one- and one-half times the "regular rate of pay," including split shift premium pay, reporting time pay, sick pay, and vacation pay.

80. Labor Code section 1182.12 sets forth the minimum hourly wage that must be paid to all employees in California for all hours worked. Local minimum wage ordinances may provide for higher minimum wage rates that must be paid to employees for all hours worked in those locales where each local ordinance is in effect. Labor Code section 1197 affirms that it is unlawful to pay less than the state or local minimum wage, whichever is higher, for any hour of work.

81. Labor Code section 1194 requires that employers pay employees at least the legal minimum wage rate for all hours worked, notwithstanding any agreement to work for a lesser wage. Labor Code section 1194 further authorizes any employee receiving less than the legal minimum wage applicable to the employee to recover in a civil action the unpaid balance of the full amount of wages, along with interest thereon, reasonable attorneys' fees and costs of suit.

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82. Labor Code section 1194.2 authorizes the recovery of liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon for unpaid wage violations.

83. Labor Code section 1198 prohibits employers from employing for longer hours or less favorable conditions than those set forth in the Labor Code, IWC Wage Orders, or as otherwise set by the Labor Commissioner.

84. In violation of California law, Defendant has knowingly and willfully refused to perform their obligations and compensate PLAINTIFFS and Class Members for all wages earned as alleged above.

85. Defendant's failure to pay PLAINTIFFS and Class Members all earned minimum and regular wages in accordance with Labor Code sections 204, 206, 510, 1182.12, 1194, 1194.2, 1197, 1198, the applicable IWC Wage Orders, and all applicable local minimum wage ordinances in effect throughout California, PLAINTIFFS and Class Members are entitled to recover the full amount of unpaid wages, liquidated damages, prejudgment interest, and statutory penalties, along with attorneys' fees and costs in amounts that will be established at trial.

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THIRD CAUSE OF ACTION

(Failure to Provide Meal Periods in Violation of Labor Code §§ 226.7, 512 and Wage Order 5-2001, § 11)

86. Plaintiffs incorporate by reference and re-alleges all preceding paragraphs as though fully set forth herein.

87. At all relevant times, Defendant had a duty to comply with Labor Code sections 226.7 and 512, and the applicable IWC Wage Orders and the requirements of Labor Code sections 2100-2112.

88. Labor Code section 512 and the IWC Wage Orders prohibit an employer from employing any person for a work period of more than 5 hours per day without providing the employee with a meal period of not less than 30 minutes (commencing before the employee's fifth hour of work), except that if the total work period per day is no more than 6 hours, the meal period may be waived by mutual consent of the employer and employee. A second meal period of not less than 30 minutes is required if an employee works more than 10 hours per day and must begin

before the employee's tenth hour of work, except if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and employee, but only if the first meal period was not waived. An employer must relieve an employee of all duties during meal periods.

89. The applicable IWC Wage Orders state that "[u]nless the employee is relieved of all duty during a 30-minute meal period, the meal period shall be considered an 'on duty' meal period and counted as time worked."

90. Labor Code section 226.7(b) and the IWC Wage Orders prohibit an employer from requiring any employee to work during a meal period mandated by any California statute, regulation, standard or order. If an employer fails to provide an employee with a meal period in accordance with state law, Labor Code section 226.7(c) and the IWC Wage Orders require that the employer pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal period is noncompliant.

91. During the Class Period, PLAINTIFFS and Class Members did not receive compliant meal periods when working more than five (5) and/or 10 hours per day because Defendant provided only about two (1) rest breaks per workweek. As such, Defendant failed to provide PLAINTIFFS and Class Members with all required meal periods, including second meal periods.

92. During the relevant time period, Defendant failed to pay PLAINTIFFS and Class Members meal period premiums for noncompliant meal periods pursuant to Labor Code section 226.7(b) and the applicable IWC Wage Order.

93. As a result of Defendant's failure to provide compliant meal periods and pay meal period premiums to PLAINTIFFS and Class Members in accordance with the IWC Wage Orders and Labor Code sections 226.7 and 512, PLAINTIFFS and Class Members suffered and continue to suffer a loss of wages and compensation.

94. Because PLAINTIFFS and Class Members were and/or are entitled to such meal periods or "premium pay" in lieu thereof, they are entitled to such payment per shift in an amount according to proof. To the extent such unpaid premiums are deemed unpaid wages, PLAINTIFFS

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will also seek pre- and post-judgment interest as provided by law at 10% per annum, in an amount according to proof.

95. Also, pursuant to Code of Civil Procedure section 1021.5, PLAINTIFFS will seek attorneys' fees and costs from Defendant in an amount subject to proof and approved by the Court.

FOURTH CAUSE OF ACTION

(Failure to Provide Rest periods in Violation of Labor Cde §§ 226.7
and Wage Order 5-2001, § 12)

96. Plaintiffs incorporate by reference and re-alleges all preceding paragraphs as though fully set forth herein.

97. At all relevant times, Defendant had a duty to comply with Labor Code sections 226.7, 2100 et seq. and the applicable IWC Wage Orders.

98. The IWC Wage Orders require employers to authorize and permit all employees to take 10-minute duty-free rest periods for each four hours worked, or major faction thereof.

99. If an employer fails to provide an employee with a rest period in accordance with California law, Labor Code section 226.7(c) and the IWC Wage Orders require that the employer pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the rest period is noncompliant.

100. During the relevant time period, Defendant did not implement a compliant rest break policy or practice by providing only one (1) break per workday. As such, Defendant failed to provide PLAINTIFFS and Class Members with all required rest periods, including second and third rest periods.

101. During the relevant time period, Defendant failed to pay PLAINTIFFS and Class Members rest period premiums for noncompliant rest periods pursuant to Labor Code section 226.7(b) and the applicable IWC Wage Order.

102. As a result of Defendant's failure to provide compliant rest periods and pay rest period premiums to PLAINTIFFS and Class Members in accordance with the IWC Wage Orders and Labor Code sections 226.7 and 516, PLAINTIFFS and Class Members suffered and continue to suffer a loss of wages and compensation.

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103. Because PLAINTIFFS and Class Members were and/or are entitled to such rest periods or "premium pay" in lieu thereof, they are entitled to such payment per shift in an amount according to proof. To the extent such unpaid premiums are deemed unpaid wages, PLAINTIFFS will also seek pre- and post-judgment interest as provided by law at 10% per annum, in an amount according to proof.

104. Also, pursuant to Code of Civil Procedure section 1021.5, PLAINTIFFS will seek attorneys' fees and costs from Defendant in an amount subject to proof and approved by the Court.

FIFTH CAUSE OF ACTION

(Failure to Provide Accurate Itemized Wage Statements in Violation of Labor Code §§226, 226.3, and 1174)

105. Plaintiffs incorporate by reference and re-alleges all preceding paragraphs as though fully set forth herein.

106. At all relevant times, Defendant had a duty to comply with Labor Code section 226.

107. Labor Code section 226(a) requires that, semimonthly or at the time of each payment of wages, employers must furnish each employee with an accurate itemized wage statement in writing that accurately shows (1) gross wages earned, (2) total number of hours worked, (3) the number of any piece-rate units earned and all applicable piece rates, (4) all deductions made from wages, (5) net wages earned, (6) the inclusive dates of the pay period, (7) the name and last four digits or employment identification number of the employee, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect and the corresponding number of hours worked at each hourly rate. Defendant failed to include all hours worked and accumulated vacation, sick pay and hours worked. Defendant failed to include all earned tips, split shifts and record reporting time pay.

108. Labor Code section 226(e)(1) authorizes an employee suffering injury as a result of a knowing and intentional failure by an employer to provide an accurate itemized wage statement to recover the greater of all actual damages or $50 for the initial pay violation and $100 for each violation in a subsequent pay period, not to exceed an aggregate penalty of $4,000 per employee, in addition to an award of costs and attorneys' fees.

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109. During the relevant time period, Defendant have knowingly and intentionally failed to comply with Labor Code section 226(a) on wage statements that were provided to PLAINTIFFS and Class Members. The deficiencies include, among other things, Defendant's failure to correctly state the gross and net wages earned, the total hours worked, all applicable hourly rates in effect during the pay period, and the corresponding number of hours worked at each hourly rate.

110. As a result of Defendant's violation of California Labor Code section 226(a), PLAINTIFFS and Class Members have suffered injury and damage to their statutorily protected rights. Specifically, PLAINTIFFS and Class Members have been injured by Defendant's intentional violation of California Labor Code section 226(a) because they were denied both their legal right to receive, and their protected interest in receiving, accurate itemized wage statements under California Labor Code section 226(a). PLAINTIFFS have had to file this lawsuit in order to determine the extent of the underpayment of wages, thereby causing PLAINTIFFS to incur expenses and lost time. PLAINTIFFS would not have had to engage in these efforts and incur these costs had Defendant provided the accurate wages earned. This has also delayed PLAINTIFFS' ability to demand and recover the underpayment of wages from Defendant.

111. Defendant's violations of California Labor Code section 226(a) prevented PLAINTIFFS and Class Members from knowing, understanding, and disputing the wages paid to them, and resulted in an unjustified economic enrichment to Defendant. As a result of Defendant's knowing and intentional failure to comply with California Labor Code section 226(a), PLAINTIFFS and Class Members have suffered an injury, and the exact amount of damages and/or penalties is all in an amount to be shown according to proof at trial.

112. PLAINTIFFS and Class Members are also entitled to injunctive relief under California Labor Code section 226(h), compelling Defendant to comply with California Labor Code section 226, and seek the recovery of attorneys' fees and costs incurred in obtaining this injunctive relief.

SIXTH CAUSE OF ACTION

(Failure to Pay Waiting Time Penalties in violation of Labor Cde §§ 201, 202, 203)

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113. Plaintiffs incorporate by reference and re-alleges all preceding paragraphs as though fully set forth herein.

114. At all relevant times, Defendant had a duty to comply with Labor Code sections 201, 202, and 203. Defendant failed to comply with these final paycheck requirements with respect to PLAINTIFFS and Waiting Time Subclass Members.

115. Labor Code section 201 requires that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.

116. Labor Code section 202 requires that if "an employee not having a written contract for a definite period" quits, the employee's wages shall become due and payable no later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

117. Labor Code section 203 provides that if an employer willfully fails to pay, without abatement or reduction, any wages of an employee who is discharged or quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced, but that the wages shall not continue for more than 30 days per employee.

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SEVENTH CAUSE OF ACTION

(Failure to Reimburse for Necessary Business Expenditures; Labor Code § 2802)

118. Plaintiffs incorporate by reference and re-alleges all preceding paragraphs as though fully set forth herein.

119. Pursuant to Labor Code §2802, Defendant is required to reimburse PLAINTIFFS for business expenses incurred in the direct consequences of the discharge of their duties for Defendant, including expenses associated with the purchase of equipment such as benches, impact drills, and lasers.

120. Within the four years before the filing of this Complaint and continuing until the present time, PLAINTIFFS have been required to incur expenses as a condition of and in the discharge of their employment duties and have thereby incurred expenses for these items.

121. Defendant has failed to reimburse PLAINTIFFS for said expenses.

122. Pursuant to Labor Code section 2802, subsection (a), PLAINTIFFS will seek to recover work related expenses for themselves and the putative class. Pursuant to Labor Code, section 2802, subsection (b), PLAINTIFFS will seek attorneys' fees and litigation costs in an amount subject to proof and approved by the Court.

EIGHTH CAUSE OF ACTION

(Violation of California's Quota Laws, Labor Code §§ 2100)

123. Plaintiffs incorporate by reference and re-alleges all preceding paragraphs as though fully set forth herein.

124. At all relevant times, Defendant had a duty to comply with Labor Code §§ 2100, *et seq*.

125. California's quota laws require Defendant to implement and maintain quota and production demands consistent with Labor Code sections 2100 – 2112. The Code sections require the following:

LABOR CODE SECTION 2100

(d) *"Employee" means a nonexempt employee who works at a warehouse distribution center.*

(e)

(1) *"Employee work speed data" means information an employer collects, stores, analyzes, or interprets relating to an individual employee's performance of a quota, including, but not limited to, quantities of tasks performed, quantities of items or materials handled or produced, rates or speeds of tasks performed, measurements or metrics of employee performance in relation to a quota, and time categorized as performing tasks or not performing tasks.*

(2) *"Employee work speed data" does not include qualitative performance assessments, personnel records, or itemized wage statements pursuant to Section 226, except for any content of those records that includes employee work speed data as defined in this part.*

(f) *"Employer" means a person who directly or indirectly, or through an agent or any*

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other person, including through the services of a third-party employer, temporary service, or staffing agency or similar entity, employs or exercises control over the wages, hours, or working conditions of 100 or more employees at a single warehouse distribution center or 1,000 or more employees at one or more warehouse distribution centers in the state. For purposes of this definition, all employees of an employer's commonly controlled group, as that term is defined in Section 25105 of the Revenue and Taxation Code, shall be counted in determining the number of employees employed at a single warehouse distribution center or at one or more warehouse distribution centers in the state.

(h) *"Quota" means a work standard under which an employee is assigned or required to perform at a specified productivity speed, or perform a quantified number of tasks, or to handle or produce a quantified amount of material, within a defined time period and under which the employee may suffer an adverse employment action if they fail to complete the performance standard.*

(1) *"Warehouse distribution center" means an establishment as defined by any of the following North American Industry Classification System (NAICS) Codes, however that establishment is denominated:*

LABOR CODE SECTION 2102

An employee shall not be required to meet a quota that prevents compliance with meal or rest periods, use of bathroom facilities, including reasonable travel time to and from bathroom facilities, or occupational health and safety laws in the Labor Code or division standards. An employer shall not take adverse employment action against an employee for failure to meet a quota that does not allow a worker to comply with meal and rest periods, or occupational health and safety laws in the Labor Code or division standards, or for failure to meet a quota that has not been disclosed to the employee pursuant to Section 2101.

LABOR CODE SECTION 2103

(b) *Notwithstanding subdivision (a), consistent with existing law, meal and rest*

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breaks are not considered productive time unless the employee is required to remain on call.

126. Defendant's violations of California Labor Code sections 2100 - 2112 prevented PLAINTIFFS and Class Members from knowing, understanding and disputing the wages paid to them, meal and period violations, inability to take restroom breaks, and exposed them to unreasonable health hazards and resulted in an unjustified economic enrichment to Defendant. As a result of Defendant's knowing and intentional failure to comply with California Labor Code section 2100 *et. seq.*, PLAINTIFFS and Class Members have suffered an injury, and the exact amount of damages and/or penalties is all in an amount to be shown according to proof at trial.

127. PLAINTIFFS and Class Members are also entitled to injunctive relief under California Labor Code section 2108, compelling Defendant to comply with California Labor Code sections 2100 *et. seq*., and seek the recovery of attorneys' fees and costs incurred in obtaining this injunctive relief.

NINTH CAUSE OF ACTION

(Unfair Business Practices in Violation of Cal. Bus. & Prof. Code §§ 17200)

128. Plaintiffs incorporate by reference and re-alleges all preceding paragraphs as though fully set forth herein.

129. PLAINTIFFS bring this claim individually and on behalf of Class Members.

130. Business & Professions Code section 17200 ("UCL") prohibits unfair competition in the form of any unlawful, unfair, or fraudulent business act or practice.

131. Business and Professions Code section 17204 allows "any person who has suffered injury in fact and has lost money or property as a result of such unfair competition" to prosecute a civil action for violation of the UCL.

132. Labor Code section 90.5, subdivision (a) states it is the public policy of California to vigorously enforce minimum labor standards in order to ensure employees are not required to work under substandard and unlawful conditions, and to protect employers who comply with the law from those who attempt to gain competitive advantage at the expense of their workers by failing to comply with minimum labor standards.

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133. Beginning at an exact date unknown to PLAINTIFFS, but at least since the date four years prior to the filing of this complaint, Defendant has committed acts of unfair competition as defined by the Unfair Business Practices Act, by engaging in the unlawful, unfair, and fraudulent business practices and acts described in this complaint, including, but not limited to, violations of Labor Code sections 201-204, 206, 226, 226.7, 227.3, 351, 510, 512, 1182.12, 1194, 1194.2, 1197, 1198, 2100-2112, 2802 as well as other statutes.

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

135. As a result of these actions, PLAINTIFFS, on information and belief, allege that Defendant is able to unfairly compete with other comparable companies in the State of California in violation of Business & Professions Code sections 17000 *et. seq.* and sections 17200 *et. seq.* Due to these unlawful, unfair, and/or fraudulent business practices, Defendant has gained a competitive advantage over other comparable companies doing business in the State of California.

136. The victims of these unlawful, unfair, and/or fraudulent business practices include, but are not limited to, PLAINTIFFS, putative class members, competing businesses in the State of California, and the general public. PLAINTIFFS are informed and believe, and thereon allege, that Defendant performed the above-mentioned acts with the intent of gaining an unfair competitive advantage and thereby injuring PLAINTIFFS, putative class members, other competitors, and the general public.

137. PLAINTIFFS' success in this action will enforce important rights affecting the public interest and public policy. In this regard, PLAINTIFFS sues on behalf of the public as well as on behalf of themselves.

138. Business and Professions Code sections 17203 provides that a court may make such orders or judgments as may be necessary to prevent the use or employment by any person of any practice which constitutes unfair competition. Injunctive relief is necessary and appropriate to prevent Defendant from repeating its unlawful, unfair, and fraudulent business acts and business practices alleged above.

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139. Business and Professions Code section 17203 provides that the Court may restore to any person in interest, any money or property that may have been acquired by means of such unfair competition. PLAINTIFFS and the Class are entitled to restitution pursuant to Business and Professions Code section 17203 for wages and payments unlawfully withheld from employees, including the fair value of the meal and rest periods and other losses alleged herein, during the four-year period prior to the filing of this complaint. All remedies are cumulative pursuant to Business & Professions Code section 17205.

140. Business and Professions Code section 17202 provides: "Notwithstanding section 3369 of the Civil Code, specific or preventative relief may be granted to enforce a penalty, forfeiture, or penal law in a case of unfair competition." PLAINTIFFS and Class are entitled to enforce all applicable penalty provisions of the Labor Code pursuant to Business and Professions Code section 17202.

141. PLAINTIFFS request injunctive relief pursuant to Business & Professions Code section 17203 to enjoin Defendant from continuing the unfair/unlawful business practices alleged herein.

142. PLAINTIFFS take upon enforcement of these laws and lawful claims. There is a financial burden involved in pursuing this action. The action is seeking to vindicate a public right, and it would be against the interests of justice to penalize PLAINTIFFS by forcing PLAINTIFFS to pay attorneys' fees from the recovery in this action. Attorneys' fees are appropriate pursuant to Code of Civil Procedure section 1021.5 and others.

<u>TENTH CAUSE OF ACTION</u>

(Against All Defendants for Violation of Fair Labor Standards Act, 29 U.S.C. § § 201 et seq. ("FLSA")

143. Plaintiffs incorporate by reference and re-alleges all preceding paragraphs as though fully set forth herein.

144. 115. At all material times set forth herein, the FLSA provided:

> [No] employer shall employ any of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise

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> engaged in commerce or in the production of goods in commerce, for a workweek longer than forty hours unless such employee received compensation for his employment in excess of the hours above specified at a rate of not less than one and one-half times the regular rate at which he is employed.

29 U.S.C. § 207(a) (l).

145. At all times relevant to this action, Defendant was engaged in interstate commerce or in the production of goods for commerce, as defined by the FLSA.

146. At all times relevant to this action, Plaintiffs were employees of Defendant within the meaning of 29 U.S.C. § 203 (e)(l) of the FLSA.

147. Plaintiffs and the FLSA Collective Members are or were non-exempt employees of Defendant.

148. At all times relevant to this action, Plaintiffs and the Collective Class have either (1) engaged in commerce; or (2) engaged in the production of goods for commerce; or (3) were employed in an enterprise engaged in commerce or in the production of goods for commerce.

149. At all times relevant to this action, Defendant required Plaintiffs and the collective Class to continue to perform work during their rest and meal periods ("off-the-clock work"), yet Defendant failed to pay these employees the federally mandated minimum wage and overtime compensation for all services performed.

150. The off-the-clock work performed by Plaintiffs and the Collective class for every work shift is an essential part of their job and these activities and the time associated with these activities is not *de minimis* and is ultimately uncompensated work time.

151. Pursuant to the FLSA, 29 U.S.C. § 206, Plaintiffs and the other FLSA Collective Members were entitled to receive minimum wages for all hours worked.

153. At all material times set forth herein, Defendant's failure to pay Plaintiffs and the other FLSA Collective Members minimum wages for all hours worked, as required by the FLSA, violated the provisions of the FLSA and was therefore unlawful. Moreover, Defendant's failure to pay Plaintiffs and the other FLSA Collective Members' minimum wages was and is a result of a uniform policy or practice to deny them compensation at least at a minimum wage rate.

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154. At all material times set forth herein, Plaintiffs and the other FLSA Collective Members worked in excess of forty (40) hours in a workweek; however, the proper overtime compensation was not paid by Defendant. As such, Defendant owes Plaintiffs and the other FLSA Collective Members compensation for work in excess of forty (40) hours in a workweek at an overtime rate.

155. Defendant is aware or should have been aware that federal law required it to pay Plaintiffs and the FLSA Collective Class minimum wage and overtime premiums for all hours worked in excess of forty (40) hours per work week.

156. Defendant failed to compensate Plaintiffs and the Collective Class their minimum wages and overtime compensation due.

157. At all material times set forth herein, Defendant's failure to pay Plaintiffs and the other FLSA Collective Members the unpaid balance of overtime compensation, as required by the FLSA, violated the provisions of the FLSA and was therefore unlawful. Moreover, Defendant's failure to pay Plaintiffs and the other FLSA Collective Members overtime compensation was and is a result of a uniform policy or practice to deny overtime compensation to them.

158. At all material times Defendant's failure to pay Plaintiffs and the other FLSA Collective Members was the result of Defendant's willful, knowing, and intentional violation of the provisions of the FLSA, or alternatively Defendants' reckless disregard for the requirements of those provisions. At all relevant times set forth, Defendant was aware that its uniform policies and practices are illegal and that Plaintiffs and the other FLSA Collective Members must be compensated for the work performed in excess of forty (40) hours per work week pursuant to these uniform policies and practices. Therefore, the foregoing Defendant's conduct, as alleged, constitutes willful violation of the FLSA, within the meaning of 29 U.S.C. § 255(a).

159. As a result, Plaintiffs and the FLSA Collective must be paid the federally mandated rate of 150% of each employee's regular hour wages for work weeks of 40 hours or more. (29 U.S.C. § 207.)

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160. Defendant's violations of the FLSA were knowing and willful. Defendant could have easily accounted for and compensated Plaintiffs and the FLSA Collective in conformity with the law but have failed to do so.

161. As a result of Defendant's unlawful conduct, Plaintiffs and the other FLSA Collective Members have suffered damages in an amount, subject to proof, to the extent they were not paid minimum wages for all hours actually worked.

162. Plaintiffs have consented to join in this action and the FLSA Collective.

163. Plaintiffs and FLSA Collective Members are therefore entitled to recover damages in an amount equal to the unpaid minimum wages and overtime wages due and owing, along with liquidated damages in an equal amount) costs, interest and attorney's fees as provided for in 29 U.S.C. § 216.

PRAYER FOR RELIEF

Plaintiffs, individually and on behalf of all similarly situated and aggrieved employees, with respect to the First Cause of Action for PAGA claims, pray for relief and judgment against Defendant as follows:

PAGA

1. That the Court declare, adjudge and decree that Defendant violated the California Labor Code by failing to pay for all hours worked (minimum, straight time, and overtime wages), failing to provide meal periods, failing to authorize and permit rest periods, failing to pay all earned wages twice per month, failing to maintain accurate records of hours worked and meal periods, failing to timely pay final wages, failing to furnish accurate wage statements, and failing to indemnify for necessary expenditures;

2. An award of civil penalties on behalf of themselves and all similarly aggrieved employees pursuant to PAGA;

3. Pre-judgment and post-judgment interest at the maximum rate allowed;

4. Attorneys' fees and costs reasonably incurred;

5. Injunctive and declaratory relief to the extent allowed by PAGA;

CLASS CERTIFICATION

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Further, Plaintiffs, individually, and on behalf of all others similarly situated only with respect to the class claims (the Second through Tenth Causes of Action), pray for relief and judgment against Defendant as follows:

6. For certification of this action as a class action, including certifying the Class and the Subclass alleged by PLAINTIFFS;

7. For appointment of PLAINTIFFS ELIO RUBEN ALONSO, MIGUEL ROSALES. JOHNNY MARQUEZ, and LEO PATINO as the class representatives;

8. For appointment of PLAINTIFFS' counsel as Class Counsel;

9. For compensatory damages in an amount according to proof with interest thereon;

10. For economic and/or special damages in an amount according to proof with interest thereon;

12. For damages, monetary relief, wages, premiums, benefits, and penalties, including interest thereon;

13. For vacation pay pursuant to Labor Code section 227.3;

14. For expense reimbursements pursuant to Labor Code section 208;

15. For waiting time penalties pursuant to Labor Code section 203;

16. For split-shift premiums, according to proof;

17. For reporting time pay, according to proof;

18. For liquidated damages pursuant to Labor Code section 1194.2;

19. For unreimbursed expenses pursuant to Labor Code section 2802;

20. For statutory penalties to the extent permitted by law, including those pursuant to the Labor Code and IWC Wage Orders;

21. For restitution to PLAINTIFFS and Class Members of all money and property unlawfully acquired by Defendant through unfair or unlawful business practices pursuant to Business and Professions Code sections 17200 *et seq.*;

22. For an order requiring Defendant to restore and disgorge all funds to each employee acquired by means of any act or practice declared by this Court to be unlawful, unfair, or fraudulent and, therefore, constituting unfair competition under Business and

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Professions Code sections 17200, *et seq*.;

23. For prejudgment interest on all sums recovered pursuant to Labor Code section 218.6 and Civil Code sections 3287 and 3289;

24. For post judgment interest on all amounts awarded to PLAINTIFFS and Class Members as provided by law;

25. For recovery of attorneys' fees and costs provided by Labor Code sections 226, 1194, and Code of Civil Procedure section 1021.5;

26. For injunctive relief pursuant to Labor Code section 2108;

FLSA COLLECTIVE CERTIFICATION

27. For an order certifying that the tenth cause of action of this Complaint may be maintained as a collective action pursuant to 29 U.S.C. § 216(b) and that prompt notice of this action be issued to potential members of the opt-in FLSA Collective, apprising them of the pendency of this action, and permitting them to assert timely FLSA claims;

28. Designation of Plaintiffs as representatives for the FLSA claims as to the FLSA Collective;

29. Designation of Plaintiffs' attorneys as counsel for the FLSA Collective as to the FLSA claims;

30. That Defendant provide to Class Counsel immediately the names and most current/last known contact information (address, e-mail and telephone numbers) of all FLSA Collective Members;

31. That the Court declare, adjudge, and decree that Defendant violated the FLSA 29 U.S.C. §§ 206 and 207 by willfully failing to pay minimum and overtime wages to Plaintiffs and the other members of the FLSA Collective;

32. For general and unpaid wages at minimum and overtime wage rates;

33. For liquidated damages equal to the amount of unpaid compensation;

34. For pre-judgment interest on any unpaid compensation from the date such amounts were due;

35. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to the FLSA, U.S.C. § 216(b);

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31. As to all causes of action, any additional relief as the Court deems just and proper.

Respectfully submitted,

Dated: June 25, 2024

WILSHIRE LAW FIRM

By: ______________________________
John G. Yslas
Aram Boyadjian
Andrew Sandoval
Attorneys for Plaintiffs

DEMAND FOR JURY TRIAL

Plaintiffs demand a trial by jury as to all causes of action triable by jury.

Dated: June 25, 2024

WILSHIRE LAW FIRM

By: ______________________________
John G. Yslas
Aram Boyadjian
Andrew Sandoval
Attorneys for Plaintiffs

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PROOF OF SERVICE

MIGUEL ROSALES v.HARBOR DISTRIBUTING, L.L.C.
30-2023-01300842-CU-OE-CXC

STATE OF CALIFORNIA)
) ss
COUNTY OF LOS ANGELES)

I, Matthew Krout, state that I am employed in the aforesaid County, State of California; I am over the age of eighteen years and not a party to the within action; my business address is 3055 Wilshire Blvd., 12th Floor, Los Angeles, California 90010. My electronic service address is mkrout@wilshirelawfirm.com.

On **July 16, 2024**, I served the foregoing:

SECOND AMENDED COMPLAINT

on the interested parties listed below by placing a true copy thereof, enclosed in a sealed envelope by following one of the methods of service as follows:

SEE ATTACHED SERVICE LIST

(X) **BY ELECTRONIC SERVICE:** Based on a court order or an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the person at the email addresses listed above using One Legal.

I declare under the penalty of perjury under the laws of the State of California, that the foregoing is true and correct.

Executed on **July 16, 2024**, at Los Angeles, California.

Matthew Krout

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