Jose Garay (SBN 200494)
jose@garaylaw.com
JOSE GARAY, APLC
249 E. Ocean Blvd., Suite 814
Long Beach, CA 90802
Main: 949.208.3400

Scott Ernest Wheeler (SBN 187998)
THE WHEELER LAW FIRM, APC
250 West First Street, Suite 216
Claremont, CA 91711
Telephone: (909) 621-4988
Email: sew@scottwheelerlawoffice.com

Attorneys for Plaintiff PEDRO VILLANUEVA, individually, and on behalf of himself and others similarly situated,

SUPERIOR COURT OF CALIFORNIA

COUNTY OF RIVERSIDE

PEDRO VILLANUEVA, individually, and on behalf of himself and others similarly situated,

Plaintiff,

vs.

HARBOR FREIGHT TOOLS TEXAS, L.P. and DOES 1 to 50,

Defendants.

Case No.: CVRI2503311

SECOND AMENDED PAGA REPRESENTATIVE ACTION COMPLAINT FOR ENFORCEMENT OF THE PRIVATE ATTORNEYS GENERAL ACT (LABOR CODE SECTION 2698, ET. SEQ.)

DEMAND FOR JURY TRIAL

Plaintiff, PEDRO VILLANUEVA (hereinafter, "Plaintiff"), individually, and on behalf of himself and all others similarly situated, brings this Second Amended PAGA Representative Action Complaint ("Complaint" or "SAC") against Defendants, HARBOR FREIGHT TOOLS TEXAS, L.P. and DOES 1 through 50 (collectively, "Defendants"), and alleges as follows:

INTRODUCTION

1. This is a representative action pursuant to the Private Attorneys General Act ("PAGA") brought on behalf of Plaintiff and other aggrieved employees. The aggrieved employees consist of all current and former non-exempt employees employed by Defendants in the State of California during the applicable PAGA Period. Plaintiff reserves the right to amend this complaint to reflect a different PAGA Period as further discovery is conducted.

2. At all relevant times herein, Defendants have consistently maintained and enforced against Plaintiff and Aggrieved Employees the unlawful practices and policies set forth herein.

3. Plaintiff seeks injunctive and civil penalties against Defendants on behalf of himself and the Aggrieved Employees for violations of California Labor Code §§ 201, 202, 203, 204, 206, 208, 221, 226, 226.3. 226.7, 227.3, 432, 246, 510, 512, 558, 1174, 1182.12, 1194, 1194.2, 1197, 1198, 1198.5, 2100-2112, 2802, 2810.5, 2699 and California Code of Civil Procedure § 1021.5.

PARTIES

4. Plaintiff PEDRO VILLANUEVA is a California citizen and resides in Riverside County and was employed by Defendants. Defendants employed Plaintiff as a non-exempt, hourly employee during the applicable PAGA Period. Plaintiff PEDRO VILLANUEVA is a covered employee pursuant to California Labor Code §§ 2100-2112. Plaintiff was employed at Defendant's facility located at 24870 Nandina Ave., Moreno Valley, CA 92551.

5. Defendant HARBOR FREIGHT TOOLS TEXAS, L.P. is incorporated in Delaware and is doing business throughout California. HARBOR FREIGHT TOOLS TEXAS, L.P. conducts business throughout California, including Riverside County, among other counties and cities throughout California. HARBOR FREIGHT TOOLS TEXAS, L.P. owns and operates delivery, warehouse, and servicing centers throughout California, including the center in which it employed Plaintiff and is a covered employer pursuant to California Labor Code §§ 2100 *et seq.*

6. Defendants Does 1 through 25 are successors, predecessors, affiliates, subsidiaries, affiliates, and/or related companies of Defendants. On information and belief, these Doe defendants are joint employers and covered employers pursuant to California Labor Code § 2100 and are liable to Plaintiff and the Aggrieved employees.

7. Defendants DOES 26 through 50 are sued under fictitious names pursuant to California Code of Civil Procedure § 474 because Plaintiff does not know their true names or capacities. Plaintiff will seek leave of court to amend this Complaint and serve such fictitiously named Defendants when their names and capacities are ascertained. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 50 are or were the partners, joint employers, agents, owners, shareholders, managers, or employees of HARBOR FREIGHT TOOLS TEXAS, L.P. at all times relevant to this Complaint.

JURISDICTION AND VENUE

8. This Court has jurisdiction over this action pursuant to the California Constitution, Article VI, § 10 and California Code of Civil Procedure § 410.10. All claims alleged herein arise under California law for which Plaintiff seeks relief authorized by California law.

9. This Court has personal jurisdiction over Defendants because HARBOR FREIGHT TOOLS TEXAS, L.P. maintains a principal place of business in California and Defendants, on information and belief, have sufficient minimum contacts in Riverside, California, or otherwise intentionally avail themselves of the California market so as to render the exercise of jurisdiction over them by this Court consistent with traditional notions of fair play and substantial justice.

10. This Court is an appropriate venue for this action under California Code of Civil Procedure § 395 and § 395.5 because the acts that give rise to the causes of action alleged herein occurred in Riverside and throughout the State of California. Plaintiff hereby designates Riverside County, State of California as the place of proper venue. This Court has personal jurisdiction over Defendants because Defendants reside in, are incorporated in, have their main place of business in, and/or conducts business in the State of California, and a substantial portion of the acts, omissions, events, and transactions constituting the causes of action alleged herein occurred within the State

of California, and more specifically, in Riverside County. (See California Code of Civil Procedure § 410.10).

11. The State of California, Riverside County, has jurisdiction in this matter because the individual claims are under the seventy-five thousand dollars ($75,000.00) individual jurisdictional threshold and the five million dollar ($5,000,000.00) aggregate jurisdictional threshold for federal court diversity jurisdiction. Further, there is no federal question at issue as the issues herein are based solely on the California Labor Code, Industrial Welfare Commission Wage Orders, Code of Civil Procedure and Rules of Court. Thus, the State of California, Riverside Superior Court, maintains the appropriate jurisdiction to hear this matter.

ARBITRATION

12. Plaintiff and Aggrieved Employees' claims as alleged herein are not subject to arbitration agreements. PAGA representative action claims waivers are not enforceable against employees engaged in interstate commerce as transportation workers. Defendants' arbitration agreement, if any, does not apply to this matter for the following reasons: (1) Plaintiff falls with the Transportation Workers Exemption and the FAA does not apply, and (2) Plaintiff's PAGA claims for civil penalties are not Covered Claims under Defendants' Arbitration Agreement, and (3) as the FAA does not apply to the parties, Defendants' agreement is unenforceable should it exist. Plaintiff picked, stowed, received, stored, and relocated within Defendants' warehouse products, goods, and merchandise with packaging labels foreign outside of California and the United States.

13. Although the FAA applies broadly and requires enforcement of certain arbitration agreements according to their terms, under the transportation worker exemption, "contracts of employment with seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce" are exempt from the FAA. 9 U.S.C. § 1; *Ortiz v. Randstad In House Services, LLC* (9th Cir. 2024) 95 F.4th 1152. The U.S. Supreme Court recently addressed the transportation workers exemption in *Southwest Airlines Co. v. Saxon* (2022), 596 U.S. 450, 456. The U.S. Supreme Court engaged in a two-step analysis to determine whether an employee qualified under the transportation workers exemption. *Id*. at 455-459. First, the Court "defined the relevant class

of workers. *Id*. at 455. Second, the Court then "determine whether that class of workers is 'engaged in foreign or interstate commerce.'" *Id*.

14. In this case, Plaintiff and other Aggrieved Employees were and are of the class of workers that engaged in foreign or interstate commerce. Plaintiff performed an essential function at Defendants' distribution centers, logistic facilities, fulfillment centers, and/or warehouses in Riverside County. Defendants ship products to locations throughout the country which arrive from destinations nationally and internationally. Plaintiff and/or Aggrieved Employees were responsible for tasks and duties essential to Defendants' business of moving products and goods throughout the county.

15. Plaintiff and Aggrieved Employees worked at the Defendants' warehouse location(s), which received and shipped goods and products, through both foreign and interstate streams of commerce. Plaintiff and other Aggrieved Employees were and are a class of workers who "played a direct and 'necessary role in the free flow of goods' across borders" and "actively engaged in transportation'" of such goods. *Saxon*, 596 U.S. at 458 (quoting *Circuit City Stores, Inc. v. Adams*, (2001) 532 U.S. 105, 121. In this case, the relevant goods and products were still moving in interstate commerce when Plaintiff and other Aggrieved Employees interacted with them, and Plaintiff played a necessary part in facilitating their continued movement.

16. As Plaintiff was "actively engaged" and "intimately involved with" the interstate commerce of goods and products, Plaintiff and Aggrieved Employees are exempt transportation workers under the FAA. As such, the FAA does not apply to the arbitration agreement, if one exists.

AGGRIEVED EMPLOYEES ALLEGATIONS

17. Plaintiff brings this representative action pursuant to California Labor Code § 2698 et seq. in his representative capacity on behalf of the State of California and all other Aggrieved Employees who were injured by Defendants' violations of the Labor Code and IWC Wage Orders during the applicable PAGA Period.

18. Plaintiff's and Aggrieved Employees' job duties, with Defendants included a sundry of warehouse duties subject to production targets and quotas. Under Defendants' quotas, Plaintiff and other 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 Defendants' facilities.

19. Plaintiff is informed and believes, and thereon alleges that at all times hereinafter mentioned, Defendants were and are subject to the Labor Code and IWC Wage Orders as employers, whose employees were and are engaged throughout this county and the State of California.

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

21. Plaintiff is informed and believes, and thereon alleges, that each of the Defendants directly or indirectly, through agents or other persons or entities, employed or otherwise exercised control over the wages, hours, and working conditions of Plaintiff and the Aggrieved Employees. Furthermore, each of the Defendants in all respects acted as the employer and/or joint employer of Plaintiff and the Aggrieved Employees.

22. Plaintiff is informed and believes, and thereon alleges, that each and all of the acts and omissions alleged herein were performed by, or are attributable to, the Defendants, acting as the agent, alter ego, agent, servant, joint ventures, co-conspirator, and/or partner for the other, within a common enterprise and legal authority to act on the other's behalf. The acts of any and all Defendants were in accordance with, and represent, the official policy of Defendants' facilities.

23. At all relevant times, Defendants, and each of them, acted within the scope of such agency or employment, or ratified each and every act or omission complained of herein. At all relevant times, Defendants, and each of them, aided and abetted the acts and omissions of each and all the other Defendants in proximately causing the civil penalties herein alleged.

24. Plaintiff is informed and believes, and thereon alleges, that each of said Defendants is in some manner intentionally, negligently, and/or otherwise responsible for the acts, omissions, occurrences, and transactions alleged herein.

25. **Waiting Time Penalties (Labor Code §§ 201-203):** Defendants failed to pay Plaintiff and Aggrieved Employees who separated from their employment all wages due and owing at the time of their separation, or within seventy-two (72) hours thereof, in violation of Labor Code §§ 201 and 202. As a result of Defendants' systematic failure to pay for all hours worked including uncompensated time spent in security check lines and COVID-19 screening protocols, and the failure to pay mandatory meal and rest period premiums, Plaintiff and Aggrieved Employees did not receive full payment of all wages owed upon separation.

26. Plaintiff is informed and believes, and thereon alleges, that Defendants' failure to pay all wages due was willful, as Defendants knew or should have known that Plaintiff and Aggrieved Employees were entitled to timely payment of all such wages. Pursuant to Labor Code § 203, Plaintiff and Aggrieved Employees are entitled to "waiting time penalties" in the form of continued wages for up to thirty (30) days for each separated employee who was not paid in accordance with the law.

27. **Unpaid Wages (Labor Code §§ 204, 210, 510, 1194, 1194.2, 1197, 1197.1, 1198)**: Defendants failed to pay Plaintiff and Aggrieved Employees all minimum, regular, overtime, and double time wages for all hours worked in violation of Labor Code §§ 204, 210, 510, 1194, 1194.2, 1197, 1197.1, and 1198. Plaintiff and Aggrieved Employees were systematically denied payment for all hours worked due to Defendants' mandatory "off-the-clock" procedures. Specifically, at the Nandina and Cactus facilities, Defendants required workers to undergo a rigorous security screening process both upon entering and exiting the warehouse. This process, which took approximately five (5) minutes to enter and two (2) minutes to exit, resulted in roughly seven (7) minutes of uncompensated work time per day for each Aggrieved Employee. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and Aggrieved Employees were entitled to receive at least minimum, regular, overtime, and double time wages and that they were not receiving such wages for all work that was required to be performed.

28. These seven minutes of daily labor occurred outside of the recorded shift times because Defendants required employees to pass through security check lines with metal detectors and mandatory COVID-19 screening protocols before they were permitted to access the Kronos

system to clock in, and after they had already clocked out for the day. Specifically, Defendants' COVID-19 protocols required Plaintiff and Aggrieved Employees to wait in socially-distanced lines to undergo temperature checks and respond to verbal or written health questionnaires regarding symptoms and potential exposure. These screenings were conducted by Defendants' agents or designated staff and were a mandatory condition of entry to the facility. Despite being under Defendants' exclusive control and performing tasks that were necessary and integral to Defendants' business operations during the pandemic, this time was systematically excluded from the employees' compensable hours.

29. Consequently, Plaintiff and Aggrieved Employees performed compensable labor while under Defendants' exclusive control without receiving the legal minimum wage or contractually agreed-upon wages, in further violation of Labor Code §§ 1194 and 1197. Plaintiff is informed and believes, and thereon alleges, that during the PAGA Period, Plaintiff and Aggrieved Employees regularly worked in excess of eight (8) hours in a workday and/or 40 hours in a workweek and/or in excess of 12 hours in a workday. Defendants' use of a 3-minute grace period and manual adjustments to the Kronos system further ensured that the time spent in security and health screenings remained uncompensated. On information and belief, Defendants did not accurately or appropriately compensate Plaintiff and Aggrieved Employees for the hours worked and failed to pay these wages on a timely basis as required by Labor Code § 204.

30. **Unlawful Deductions (Labor Code § 221):** Pursuant to Labor Code § 221, it is unlawful for any employer to collect or receive from an employee any part of wages previously paid by said employer to said employee. Defendants violated this section by implementing a system of unlawful wage recapture and illegal deductions through the manual manipulation of the Kronos system and the misapplication of performance metrics.

31. **Wage Statement Violations (Labor Code § 226):** Defendants failed to provide Plaintiff and Aggrieved Employees with complete and accurate itemized wage statements in violation of Labor Code § 226. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and Aggrieved Employees were entitled to receive accurate records and failed to abide by the requirements to pay and record each premium

pay and meal and rest period violation which Defendants tracked and recorded. In violation of the Labor Code and IWC Wage Orders, Plaintiff and Aggrieved Employees were not furnished with wage statements showing all required information, including, but not limited to, gross and net wages earned, total hours worked, all applicable hourly rates in effect, and the corresponding number of hours worked at each rate.

32. These wage statements were systematically inaccurate as a direct result of Defendants' failure to record and compensate for all hours worked. Specifically, the statements failed to reflect the estimated seven (7) minutes of daily labor performed during mandatory security check lines and COVID-19 screening protocols. Furthermore, because Defendants failed to include non-discretionary commissions in the Regular Rate of Pay calculation, the hourly rates and total wages displayed on the wage statements were legally deficient and did not reflect the true compensation earned by the Aggrieved Employees.

33. Plaintiff is informed and believes, and thereon alleges, that Defendants' failure to provide accurate wage statements was knowing and intentional, as Defendants maintained a systematic policy of manually editing Kronos time entries to avoid paying premiums and purposely excluded commissions from rate calculations to reduce labor costs. Consequently, Plaintiff and Aggrieved Employees were unable to promptly and easily determine from the wage statements alone the actual hours worked, the correct rates of pay, or the total wages owed to them, thereby suffering an injury under Labor Code § 226.

34. **Meal Period Violations (Labor Code §§ 226.7, 512):** Defendants failed to provide Plaintiff and Aggrieved Employees with timely, off-duty, and uninterrupted 30-minute meal periods for every five (5) hours of work, and second meal periods for every ten (10) hours of work, in direct violation of Labor Code §§ 226.7 and 512, and IWC Wage Order No. 9. Defendants knew or should have known that Plaintiff and Aggrieved Employees were entitled to these periods or, in the alternative, to the payment of one (1) additional hour of pay at their regular rate of pay for each non-compliant period. Defendants systematically failed to pay such premium wages, thereby triggering derivative violations of Labor Code § 204 for failing to pay all wages earned on a timely basis.

35. Pursuant to Labor Code § 2102, an employer shall not require an employee to meet

a quota that prevents compliance with meal or rest periods. Notwithstanding this mandate, Defendants enacted aggressive, undisclosed productivity quotas, such as requiring the loading of 6 to 8 trailers per day or handling 20 pallets per hour, which effectively prevented Plaintiff and Aggrieved Employees from taking lawful meal periods. At the Nandina and Cactus facilities, supervisors, including Luis Cervantes, Ivan Garcia, and Rigo, explicitly pressured employees to prioritize these quotas over their statutory breaks. Specifically, when trailers arrived during scheduled mealtimes, supervisors instructed Plaintiff and others to "unload those items first," frequently pushing meal periods beyond the fifth or tenth hour of work without compensation.

36. Plaintiff is informed and believes, and thereon alleges, that Defendants' supervisors and leads regularly manually edited Kronos time entries to misrepresent actual break times and avoid triggering premium pay obligations. Despite being forced to sign documents to "resolve" these issues with HR, Plaintiff and Aggrieved Employees never received the legal premium pay for their late, interrupted, or missed meal periods. Furthermore, the time spent in mandatory security check lines and COVID-19 screening protocols often encroached upon or further delayed the start of meal periods, ensuring that such periods were not provided within the legally mandated timeframes.

37. **Rest Period Violations (Labor Code § 226.7):** Defendants failed to authorize and permit Plaintiff and Aggrieved Employees to take a ten-minute, off-duty, and uninterrupted rest period for every four (4) hours worked, or major fraction thereof, in direct violation of Labor Code § 226.7 and IWC Wage Order No. 9. Defendants tracked and maintained records of these violations, including instances where Plaintiff and Aggrieved Employees worked 10-12 hours in a workday without receiving their first, second, or third rest breaks. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that employees were entitled to receive these periods or, in the alternative, one (1) additional hour of pay at their regular rate of pay for each non-compliant rest period.

38. Pursuant to the specific concerns raised regarding the "off-the-clock" nature of employer-mandated screenings, Defendants' rest period policies were per se non-compliant because mandatory security check lines with metal detectors and COVID-19 screening protocols effectively shortened or interrupted the ten-minute break period. Plaintiff and Aggrieved Employees were often

required to remain under Defendants' control or undergo screening procedures that encroached upon their rest time. As these periods were not "duty-free" and the employees remained subject to Defendants' control waiting in socially-distanced lines or passing through security Defendants failed to provide compliant rest periods.

39. At the Nandina and Cactus facilities, supervisors, including Luis Cervantes, Ivan Garcia, and Rigo, explicitly instructed Plaintiff and Aggrieved Employees to skip their authorized rest periods to meet production demands. Plaintiff was frequently told that production would be adversely affected if he stopped to take a break, leading him to miss or have his rest periods interrupted approximately two (2) times per week. Despite these direct mandates from management to skip breaks, Defendants systematically failed to pay Plaintiff and Aggrieved Employees the mandatory premium pay for every non-compliant rest period, further violating Labor Code § 204 by failing to pay these wages on a timely basis.

40. **Recovery Period Violations (Labor Code § 226.7):** Labor Code § 226.7 provides that employers must authorize and permit non-exempt employees to take recovery periods. Labor Code §226.7 subdivision (a) states: *"As used in this section, "recovery period" means a cooldown period afforded an employee to prevent heat illness."* Labor Code § 226.7, subdivision (b), provides that if an employer fails to provide employees with recovery periods in accordance with this section, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the recovery period is not provided. Despite this mandate, Defendants failed to provide Plaintiff and Aggrieved Employees with duty-free, uninterrupted recovery periods and failed to pay the required premium pay for such violations.

41. Throughout the PAGA Period, Defendants' supervisors and agents routinely knew that Aggrieved Employees were exposed to extreme temperatures at the Nandina and Cactus facilities and personally witnessed employees suffer health issues due to heat, yet did nothing to prevent such adverse consequences. Working conditions in the warehouse were particularly hazardous during the summer months from June to September, with temperatures reaching 115-120°F and insufficient ventilation. Although Defendants provided an air-conditioned break room, workers were only permitted to access it during official meal and rest breaks; Defendants maintained

no specific recovery period policy and failed to take affirmative action to make cooldown periods reasonably available.

42. Defendants had a duty to notify Plaintiff and Aggrieved Employees of their right to recovery periods but failed to do so. Plaintiff and Aggrieved Employees routinely would have requested recovery periods as a result of exhaustion and heat but were prevented from knowing they had a statutory right to take cooldown periods. On information and belief, Defendants' managers, supervisors, and agents routinely knew that employees were exposed to extreme temperatures and personally witnessed employees suffer health issues, yet did nothing to prevent Plaintiff and Aggrieved Employees from suffering heat illness and/or other adverse health consequences.

43. **Failure to Pay Paid Sick Leave at the Correct Rate (Labor Code § 246):** Under the Healthy Workplaces, Healthy Families Act of 2014 (Labor Code § 246), Defendants were required to compensate Plaintiff and Aggrieved Employees for Paid Sick Leave at their "regular rate of pay." Defendants violated this provision by intentionally excluding earned non-discretionary commissions from the sick leave rate calculation. As a result, whenever sick leave was utilized, Plaintiff and Aggrieved Employees received compensation at an unlawfully deflated rate, depriving them of their full statutory benefits.

44. **Failure to Calculate the Correct Regular Rate of Pay (Labor Code § 510):** In accordance with the compensation structure at Defendants' facilities, Plaintiff alleges that the "Regular Rate of Pay" used to calculate overtime and double-time compensation was systematically undercalculated. Defendants knowingly and intentionally failed to include all non-discretionary "commissions" and performance-based incentives in the regular rate calculation for Plaintiff and Aggrieved Employees.

45. By excluding these commissions, Defendants paid overtime and other wage premiums at a rate lower than the legally mandated weighted average. This failure to factor in the total compensation earned by the employees resulted in significant underpayments throughout the PAGA Period, in direct violation of Labor Code § 510 and applicable IWC Wage Orders.

46. **Failure to Maintain Accurate Payroll Records (Labor Code§ 1174):** Pursuant to Labor Code § 1174, Defendants were required to maintain accurate records of actual hours worked.

By failing to pay Aggrieved Employees proper wages, overtime, double time, premium pay, etc., and by not recording meal period start and end times, all discussed herein, Defendants failed to maintain proper employment records in accordance with Section 1174. In light of the forgoing, Plaintiff and Aggrieved Employees seek to recover penalties pursuant to Labor Code §§ 1174.5 and 2699, et seq. Defendants have also failed to comply with paragraph 7 of the applicable California IWC Wage Orders by failing to maintain time records showing when the employee begins and ends each work period, meal periods, wages earned pursuant to Labor Code § 226.7, and total daily hours worked by itemizing in wage statements all deductions from payment of wages and accurately reporting total hours worked by the Aggrieved Employees, and they are entitled to recover penalties pursuant to paragraph 20 of the applicable IWC Wage Orders.

47. **Reporting Time Violation (IWC Wage Order No. 9 / § 1198):** Pursuant to Section 5(A) of IWC Wage Order No. 9, Defendants were required to pay Plaintiff and Aggrieved Employees for at least half of their usual or scheduled day's work (but in no event less than two hours) for each workday they were required to report to work and did report, but were not put to work or were furnished less than half of their scheduled shift. In violation of Labor Code § 1198, which prohibits employment under conditions prohibited by the Wage Order, Defendants followed a uniform policy and practice of failing to pay reporting time pay.

48. Specifically, at the Nandina and Cactus facilities, Defendants frequently required Plaintiff and Aggrieved Employees to report for scheduled workdays but would, on occasion, send them home within the first two (2) hours of work because there was insufficient work available for the staff present. On such days when Defendants required employees to report only to be sent home early due to the lack of available tasks, Defendants failed to pay the required reporting time wages at the employees' regular rate of pay.

49. Reporting time pay constitutes wages that remain unpaid despite employees being under Defendants' exclusive control and unable to use their time for their own purposes. Defendants' failure to pay these wages at the time they were earned constitutes a direct violation of the mandatory requirements set forth in the applicable IWC Wage Order and the California Labor Code.

50. **Failure to Reimburse Business Expenses (Labor Code § 2802):** Pursuant to Labor Code § 2802, an employer must indemnify an employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties.

51. Defendants required Plaintiff and Aggrieved Employees to use their personal cellular phones as a condition of employment to perform work-related tasks, including but not limited to, accessing work schedules, communicating with supervisors (including Luis, Ivan, and Rigo) regarding shift changes, and utilizing company-mandated applications for operational purposes.

52. Defendants failed to provide a monthly stipend or any other form of reimbursement for the business use of these personal devices and the associated data plans.

53. Defendants' uniform policy of requiring the use of personal resources for business purposes without reimbursement constitutes a direct violation of Labor Code § 2802.

54. **Wage Notice Violations (Labor code § 2810.5):** Pursuant to Labor Code § 2810.5, Defendants were required to provide Plaintiff and Aggrieved Employees, at the time of hiring, with a written notice containing specific information regarding their rate of pay, including any allowances and the basis thereof (e.g., whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise). Defendants failed to provide accurate written notices to Plaintiff and Aggrieved Employees that reflected the true nature of their compensation.

55. Specifically, while Plaintiff and Aggrieved Employees earned non-discretionary commissions and performance-based incentives, Defendants failed to disclose in writing how these commissions were calculated, the frequency of their payment, or their impact on the overall wage structure. This lack of transparency prevented employees from understanding their legal right to have these commissions included in their regular rate of pay for overtime and other premium calculations.

56. **Aggrieved Employees Required to Meet Quotas that Prevented Compliance with Safety Laws:** Defendants failed to maintain temperature controls as required by Labor Code sections 2102 et. seq., and the applicable IWC Wage Order(s). As such, Plaintiff and, on information and belief, the Aggrieved Employees suffered exhaustion, dehydration and other physiological injuries because they were required to meet Defendants' unlawful quotas and

prevented them from complying with the IWC Wage Orders § 15 which states:

15. TEMPERATURE

(A) The temperature maintained in each work area shall provide reasonable comfort consistent with industry-wide standards for the nature of the process and the work performed.

(B) If excessive heat or humidity is created by the work process, the employer shall take all feasible means to reduce such excessive heat or humidity to a degree providing reasonable comfort. Where the nature of the employment requires a temperature of less than 60° F., a heated room shall be provided to which employees may retire for warmth, and such room shall be maintained at not less than 68°.

(C) A temperature of not less than 68° shall be maintained in the toilet rooms, resting rooms, and change rooms during hours of use.

(D) Federal and State energy guidelines shall prevail over any conflicting provision of this section.

57. Specifically, at the Nandina and Cactus facilities, where temperatures routinely reached between 115°F and 120°F during the summer months, Defendants enforced aggressive and undisclosed productivity targets, such as requiring the loading of 6 to 8 trailers per day or handling a minimum of 20 pallets per hour, without providing affirmative cooling measures or adequate recovery periods. Consequently, Aggrieved Employees were forced to prioritize these high-speed production demands over their own physical safety and statutory right to a healthful work environment, in direct violation of the health and safety standards mandated by the Labor Code and the IWC Wage Orders.

58. **Defendants Failed to Disclose Quotas & Enforces Silent Quotas Which Have Not Been Disclosed:** Starting January 1, 2022, Defendants were required to provide each new hire a written description of each quota the Defendants required Plaintiff and Aggrieved Employees to work under. This includes the number of tasks to be performed or materials that must be produced or handled within a time period, and any potential adverse employment action that could result from failing to meet quotas as defined by Labor Code 2100 *et. seq.*

59. Plaintiff and Aggrieved Employees routinely worked more than twelve hours in Defendants' warehouses and logistics centers throughout California, including the Nandina and Cactus facilities, where Defendants strictly enforced unlawful and undisclosed quotas . Defendants knew they had a duty to disclose written quotas in compliance with California's quota laws and failed to comply with its legal duty despite the advice of its legal counsel, opting instead to enforce "silent" productivity standards such as the loading of 6 to 8 trailers per day or handling 20 pallets per hour.

60. Defendants had and have the financial ability to comply with California's quota laws, but willfully, knowingly and intentionally refuse to comply despite its profit and financial strength. Plaintiff is informed and believes, and thereon alleges, that at all times herein mentioned, Defendants were advised by skilled lawyers, employees, and other professionals who were knowledgeable about California's wage and hour laws, employment and personnel practices, and the requirements of California law.

61. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known they imposed systematic quota and production demands on Plaintiff and Aggrieved Employees which violated the rights of employees pursuant to Labor Code sections 2100 et. seq. Defendants knew and has known at all times herein referenced that it requires and required Plaintiff and Aggrieved Employees "…*to meet a quota that prevents compliance with meal or rest breaks, 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"* in violation of *Labor* Code 2102.

62. Defendants willfully, knowingly. and intentionally failed to establish quotas that did not harm Plaintiff and Aggrieved Employees in order to increase Defendants' profits without concern for employee safety. Defendants' quotas required Plaintiff and Aggrieved Employees to meet quantified work and production targets and quotas relating to their warehouse duties.

63. **Defendants' Warehouse Employees are Covered Employees**: Defendants are a covered employer and maintains, implements, and enforces illegal quotas. Plaintiff and Aggrieved Employees are subject to quotas and are protected by Labor Code section 2100(h) which states:

"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."***

(Emphasis added)

64. Defendants measure, analyze, store, evaluate, and/or rate warehouse employees' performance based on employee work speed data and subsequently take adverse action against them for failing to meet undisclosed quotas. Labor Code section 2100 states:

> ***(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."*
>
> (emphasis added)

65. Defendants store, track, and analyze employees' speed data to measure performance and take adverse employment action against employees in violation of Labor Code § 2102, which states:

> ***Section 2102 - Employees not required to meet improper quotas***
>
> *An employee shall not be required to meet a quota that prevents compliance with meal or rest breaks, 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 breaks, 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.

66. Plaintiff and Aggrieved Employees, as alleged throughout this complaint, were required to meet excessive quotas. Defendants could comply with the law by complying with the law and refuse to do so. Defendants' claim they do not have, maintain, implement, or require quotas of any of its warehouse employees.

67. **Defendants Change Quotas Daily and Fails to Disclose New Quotas:** Defendants failed to advise and/or disclose to new hires the written quota description as required by Labor Code section 2101. Moreover, Defendants change their quotas regularly and do not provide a written disclosure to warehouse employees after each quota is updated or changed.

68. Defendants failed to disclose Plaintiff's quota after he demanded his written disclosures pursuant to Labor Code section 2014, which states:

> ***Section 2104 - Employee requests for written descriptions***
> ***(a)(1)*** *If a current or former employee believes that meeting a quota caused a violation of their right to a meal or rest break or required them to violate any occupational health and safety laws in the Labor Code or division standards, they have the right to request, and the employer shall provide, a written description of each quota to which the employee is subject and a copy of the most recent 90 days of the employee's own personal work speed data.*
>
> ***(a)(2)*** *If a former employee requests a written description of the quotas to which they were subject and a copy of their own personal work speed data pursuant to paragraph (1), the employer shall provide 90 days of the former employee's quotas and personal work speed data for the 90 days prior to the date of the employee's separation from the employer.****(3)*** *A former employee is limited to one request pursuant to this subdivision.*
>
> ***(b)*** *An employer that receives a written or oral request for information pursuant to subdivision (a) shall comply with the request as soon as practicable, but no later than 21 calendar days from the date of the request.*

69. Plaintiff, through their counsel of record, served on Defendants a demand for a written description of the quotas they were subject to. Defendants ignored their request. More than 21 days have passed since the request for a written description, and Defendants refuse to comply with the law. As such, Plaintiff is forced to both file a lawsuit and/or file for injunctive relief for himself and on behalf of Aggrieved Employees.

70. **Quotas Interfered with Employees' Use of Bathroom Facilities*:*** Plaintiff and Aggrieved Employees were restricted in their ability to use the bathroom facilities as a result of

Defendants' unlawful quota requirements, as alleged herein and above. Employees were monitored by Defendants' leads and/or supervisors and were instructed to minimize the use of the bathroom facilities or were restricted to use bathroom facilities until the designated break time. As such, Defendants violated Labor Code sections 2100 *et. seq.*

71. **Illegal Quotas Created Safety/OSHA Risks and/or Increased Injury Rates***:* On information and belief, hundreds of employees have suffered quota related injuries. On information and belief, Defendant's unwritten policy, which is implemented through supervisors and managers, is to eliminate injured employees. While Defendants sometimes offer light duty positions and tasks the reality is injured employees were targeted for elimination for one well known reason: the perception and false belief that injured employees could not meet Defendants' illegal quotas. Ultimately, injured employees are categorized as unproductive employees and are terminated for "low performance."

72. **Quotas Adversely Impacted Meal & Rest Periods***:* Defendants knew that Plaintiff and Aggrieved Employees were entitled to receive legal meal periods. Defendants enacted quotas that prevented Plaintiff and Aggrieved Employees from complying with California's meal period laws. During the PAGA Period, Plaintiff and Aggrieved Employees regularly worked in excess of five (5) and/or ten (10) hours per workday. In violation of the Labor Code and IWC Wage Orders, Plaintiff and Aggrieved Employees did not receive compliant lunches because of Defendants' unlawful quotas.

73. Defendants maintained excessive quota demands which interfered with Plaintiff and Aggrieved Employees' ability to take legal meal periods and in fact it prevented them from complying with California law regarding lunches. For example, employees were monitored, reprimanded, and discouraged from taking meal periods. Employees were required under the penalty of reprimand or termination to clock in and out for meal periods. This ruse was implemented and required by Defendants for unlawful purposes. In reality, the unwritten meal period policy was to work through meal period or punished. If Defendants can demonstrate employees clocked in and out for lunch, then it can falsely argue that it did comply with California law in defending the many lawsuits accusing it of violating California breaks' laws. The reality was, is, and will continue to

be that Defendants' quotas are excessive and can only be met if Plaintiff and Aggrieved Employees work through meal periods or take shortened meal periods.

74. **On Duty/On Call Breaks:** Defendants also violated Labor Code section 2103 because it required and continues to require on duty or on call breaks and routinely interrupted breaks. Defendants know when warehouse employees are working through breaks to meet quotas in violation of Labor Code § 2103 which states, "***(n)****otwithstanding subdivision (a), consistent with existing law, meal and rest breaks are not considered productive time unless the employee is required to remain on call. Ca. Lab. Code § 2103.*

75. Plaintiff and Aggrieved Employees were regularly and routinely required to remain on call to meet quotas. Defendants required employees to regularly monitor quota statistics and receive and respond to messages when on breaks.

76. The quota laws clearly state that *"… an employee cannot be required to meet a quota that prevents compliance with meal or rest breaks, use of bathroom facilities (including reasonable travel time to and from bathrooms), or compliance with occupational health and safety standards. A quota that prevents compliance with meal or rest breaks, 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 is unlawful and may not be the basis for an adverse employment action.* ***A quota may be illegal if it directly or indirectly precludes employees from exercising these statutory rights. For example, a quota that requires that employees always be engaged in productive activity during work hours would be unlawful as it would directly prevent employees from taking meal and rest periods and prevent them from using bathroom facilities during work hours or exercising their rights regarding health and safety standards.*** *Similarly, a quota may not be so high that if an employee takes meal and rest breaks, goes to the bathroom, or attempts to exercise their rights under occupational health and safety standards, they will fail to meet the quota. Such a quota indirectly precludes an employee from exercising these statutory rights and is also unlawful. An employer cannot take adverse employment action against an employee for failing to meet an unlawful quota or a quota that has not been disclosed to the employee.*" *See* Lab. Code § 2102; *see* Lab. Code § 2103; *see* DLSE FAQ summary and description of California's quota

laws at https://www.dir.ca.gov/dlse/FAQ_warehousequotas.htm.

77. **Quotas Adversely Impacted Aggrieved Employees Right to Take Legal Rest Breaks:** Defendants knew that Plaintiff and Aggrieved Employees were entitled to legal rest breaks. Defendants enacted quotas that prevented Plaintiff and Aggrieved Employees from complying with California rest period laws.

78. On information and belief, Defendants take adverse employment action against employees who choose and/or insist on a legal rest break. Plaintiff and Aggrieved Employees were monitored, reprimanded, and discouraged from using bathroom facilities until their designated time for rest breaks. However, this policy and practice was implemented and encouraged by Defendants' supervisory and/or managerial personnel such that if Plaintiff and Aggrieved Employees worked through rest break or took shortened rest breaks, they could meet Defendants' quota requirements.

79. Defendants also implemented an illegal policy requiring Plaintiff and Aggrieved Employees to "waive" meal periods. Plaintiff and Aggrieved Employees were required to sign meal period waivers when in fact many employees did not want to sign waivers because they wanted a break. Plaintiff and, on information and belief, and Aggrieved Employees also complained about Defendants' unlawful breaks policies, as evidenced by the many lawsuits for breaks violations, and faced retaliation and termination in violation of Labor Code section 2105 which states:

> ***Section 2105 - Rebuttable presumption of unlawful retaliation for adverse action against employees; conditions***
>
> *For purposes of this part, there shall be a rebuttable presumption of unlawful retaliation if an employer in any manner discriminates, retaliates, or takes any adverse action against any employee within 90 days of the employee doing either of the following:*
>
> ***(a)** Initiating the employee's first request in a calendar year for information about a quota or personal work speed data pursuant to subdivision (a) of Section 2104.*

(b) *Making a complaint related to a quota alleging any violation of Sections 2101 to 2104, inclusive, to the commissioner, the division, other local or state governmental agency, or the employer.*

80. **Injunctive Relief:** Plaintiff and Aggrieved Employees were and continue to labor under the constant threat of Defendants' adverse employment action in violation of Labor Code §§ 2100 *et. seq.*

81. Defendants knew or should have known that their quotas were and continued to be illegal. Defendants new and know their quotas require Plaintiff and Aggrieved Employees to expose themselves to OSHA hazards and other safety hazards. Defendants have been sued many times for violating California's wage and hour laws. Despite prior, current and future litigation, Defendants will continue to violate California's quota laws absent a jury award in Plaintiff and the Aggrieved Employees favor.

82. Plaintiff and Aggrieved Employees are entitled to injunctive relief under California Labor Code section 2108, compelling Defendants 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.

FIRST CAUSE OF ACTION

Representative Action for Civil Penalties

[Cal. Lab. Code §§ 2698- 2699.5]

(On Behalf of Plaintiff and all Other Aggrieved Employees against all Defendants)

83. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as though fully set forth herein.

84. Under Labor Code section 2699.3(a), a plaintiff may bring a cause of action under PAGA only after giving the LWDA and the employer notice of the Labor Code sections alleged to have been violated.

85. Plaintiff gave written notice of the specified provisions alleged to have been violated, including the facts and theories to support the alleged violations, as required by Labor Code section

2699.3. This written notice was provided via certified mail to Defendants and to the LWDA by electronically filing the notice via the Department of Industrial Relations' website on June 5, 2025 (LWDA-CM-1103301-25). Plaintiff amended his written notice on May 14, 2026.

86. Pursuant to Labor Code section 2699(a), any provision of the Labor Code that provides for a civil penalty to be assessed and collected by the LWDA or any of its departments, divisions, commissions, boards, agencies or employees for violation of the code may, as an alternative, be recovered through a civil action brought by an Aggrieved Employees on behalf of themselves and other current or former employees pursuant to the procedures specified in Labor Code section 2699.3.

87. For all provisions of the Labor Code except those for which a civil penalty is specifically provided, Labor Code section 2699(f) imposes upon Defendants a penalty of one hundred dollars ($100.00) for each Aggrieved Employee per pay period for the initial violation and two hundred dollars ($200.00) for each Aggrieved Employee per pay period for each subsequent pay period in which Defendants violated these provisions of the Labor Code.

88. Defendants' conduct violates numerous Labor Code sections, including, but not limited to, the following:

a) Violations of Labor Code §§ 201, 202, 203, 204, 206, 208, 221, 226, 226.3. 226.7, 227.3, 432, 246, 510, 512, 558, 1174, 1182.12, 1194, 1194.2, 1197, 1198, 1198.5, 2100-2112, 2802, 2810.5, 2699 and California Code of Civil Procedure § 1021.5.

89. Plaintiff is an "Aggrieved Employee" because he was employed by the alleged violators and had one or more of the alleged violations committed against him and therefore is properly suited to represent the interests of all other Aggrieved Employees.

90. Plaintiff has exhausted the procedural requirements under Labor Code section 2699.3 as to Defendants and are therefore able to pursue a claim for penalties on behalf of himself and all other Aggrieved Employees under PAGA.

91. Pursuant to Labor Code sections 2699(a), 2699.3 and 2699.5, Plaintiff is entitled to recover civil penalties, in addition to other remedies, for violations of the Labor Code sections cited above and alleged throughout this Complaint.

92. For bringing this action, Plaintiff is entitled to attorney's fees and costs incurred herein.

PRAYER FOR RELIEF

Plaintiff, individually and on behalf of all others similarly situated, pray for relief and judgment against Defendants, jointly and severally, as follows:

a. For PAGA Penalties, civil penalties pursuant to California Labor Code Section 2698, *et seq.*;

b. For recovery of attorneys' fees and costs provided by California Labor Code §§ 226, 1194, 2699, and California Code of Civil Procedure § 1021.5;

c. For injunctive relief pursuant to California Labor Code §§ 2100 *et. seq.*; and,

d. For such other relief as the Court deems just and proper.

Dated: November 3, 2026

JOSE GARAY, APLC

&

THE WHEELER LAW FIRM, APC

By: _____

Jose Garay, Esq.
Attorneys for Plaintiff

Scott Ernest Wheeler, Esq.
Attorneys for Plaintiff

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial on all issues so triable.

Dated: November 3, 2026

JOSE GARAY APLC

&

THE WHEELER LAW FIRM, APC

By: 

Jose Garay, Esq.
Attorneys for Plaintiff

Scott Ernest Wheeler, Esq.
Attorneys for Plaintiff

PROOF OF SERVICE

Code of Civ. Proc. Section 1013a, subd. (3)

STATE OF CALIFORNIA, COUNTY OF RIVERSIDE

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 249 E. Ocean Blvd., Ste. 814, Long Beach, CA 90802.

On **November 3, 2026** I served copies of the following document(s): **SECOND AMENDED COMPLAINT.** I served the document(s) on the person(s) below as follows:

Greg Labate, Esq. Eric T. Angel, Esq. Sheppard, Mullin, Richter & Hampton LLP 650 Town Center Driver, 10th Floor Costa Mesa, CA 92626	Attorneys for Defendant HARBOR FREIGHT TOOLS TEXAS, L.P. Telephone: (714) 513-5100 Email: glabate@sheppard.com eangel@sheppard.com

The document(s) were served by the following means:

☒ **By electronic service:** Based on a court order, I caused the document(s) to be sent to the persons at the electronic service addresses listed above by transmission through ONE LEGAL.

☒ **(State):** I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on **November 3, 2026**, at Long Beach, California.

/s/ Nicole Pierson
Nicole Pierson