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12
13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **FOR THE COUNTY OF LOS ANGELES**

15 JESSY CORREA, as an individual and on
16 behalf of all others similarly situated,

17 Plaintiff,

18 v.

19 HARBOR DISTRIBUTING, LLC, a limited
liability company; and DOES 1 through 50,
inclusive,

20 Defendants.
21

Case No.: 19STCV37441

[Assigned for all purposes to Hon. William F.
Highberger, Dept. 10]

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28 **STIPULATION AND SETTLEMENT OF
CLASS, COLLECTIVE, AND
REPRESENTATIVE ACTIONS**

1 Subject to final approval by the Court, which counsel and the Parties agree to diligently
2 pursue and recommend in good faith, Plaintiffs Jessy Correa and Brittany Roderick (“Class
3 Representatives”), individually and on behalf of all other similarly situated persons and
4 aggrieved employees, on the one hand, and Defendant Harbor Distributing, LLC (“Defendant”),
5 on the other hand (collectively, the “Parties” and individually, a “Party”), hereby enter into this
6 Settlement and Release Agreement (“Settlement” or “Settlement Agreement”) as follows:

7 **I. DEFINITIONS**

8 As used in this Settlement, the following terms shall have the following meanings:

9 1. “Actions” refers collectively to two lawsuits filed by the Class Representative
10 Jessy Correa against Harbor Distributing, L.L.C. The first lawsuit is entitled *Jessy Correa v.*
11 *Harbor Distributing, LLC*, Case No. 19STCV37441 (the “Class Action”). The second lawsuit is
12 a PAGA-only representative action entitled *Jessy Correa v. Harbor Distributing, LLC*, Case No.
13 20STCV05329) (the “Representative Action”). Both lawsuits are assigned to Judge William
14 Highberger in the Superior Court of California, County of Los Angeles. As part of final approval
15 of the settlement in the Class Action, judgment will be entered for both the Class Action and
16 Representative Action, as set forth in greater detail below.

17 2. The “Class” refers to the following classes and group:

- 18 a) The “Driver Class” includes all truck drivers employed by Defendant in
19 California during the Settlement Class Period, as defined in this
20 Agreement. Individuals who opt out following distribution of the Class
21 Notice will not be part of the Driver Class. The Driver Class is estimated
22 to be about 725 persons through June 30, 2020.
- 23 b) The “Non-Driver Class” includes all non-exempt non-driver workers
24 employed by Defendant in California during the PAGA Claim Period, as
25 defined in this Agreement. Individuals who opt out following distribution
26 of the Class Notice will not be part of the Non-Driver Class. The Non-
27 Driver Class is estimated to be about 2,225 persons through June 30, 2020.
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1 c) “FLSA Collective Members” includes all Driver Class Members and all
2 Non-Driver Class Members employed by Defendant in California during
3 the FLSA Claim Period.

4 d) The “PAGA Aggrieved Employee Group” includes all members of the
5 Driver Class and all members of the Non-Driver Class employed by
6 Defendant in California during the PAGA Claim Period.

7 e) The “Driver Class” and “Non-Driver Class” are sometimes collectively
8 referred to as the “Settlement Class”

9 3. “Class Counsel” refers to Yoon Law, APC, and per Section V(B), if Eric Andrade
10 is added to the Second Amended Complaint, additionally Mahoney Law Group, APC, and if
11 Henry Linares Rodriguez is added to the Second Amended Complaint, additionally Hamner
12 Law Offices, APLC and Jose Garay APLC.

13 4. “Settlement Class Period” refers to the period from October 21, 2015 through the
14 earlier of (i) the date of preliminary approval of the Settlement, or (ii) November 11, 2020.

15 5. “Defense Counsel” refers to Seyfarth Shaw LLP.

16 6. “Effective Date” of the Settlement shall mean the date upon which both of the
17 following have occurred: (i) final approval of the Settlement is granted by the Superior Court of
18 California for the County of Los Angeles, or other court assuming jurisdiction of this matter, and
19 (ii) the Court’s Judgment approving the Settlement becomes Final. Final shall mean the latest of:
20 (i) if there is an appeal of the Court’s Judgment, the date the Judgment is affirmed on appeal, the
21 date of dismissal of such appeal, or the expiration of the time to file a petition for review with the
22 California Supreme Court; or, (ii) if a petition for review filed, the date of denial of the petition,
23 or the date the Judgment is affirmed pursuant to such petition; or (iii) if no appeal is filed, the
24 expiration date of the time for filing or noticing any appeal of the Judgment; or (iv) if the
25 California Labor & Workforce Development Agency (“LWDA”) has commenced an
26 investigation or issued a Citation prior to the date that the Judgment approving the Settlement is
27 no longer appealable, the date the LWDA concludes its investigation or resolves the Citation
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1 (whichever is later); or (v) if the LWDA objects to the Settlement, the date when the LWDA's
2 objection to the Settlement is resolved and no longer appealable.

3 7. "California Claims Period" refers to the period from October 21, 2015 through the
4 earlier of (i) the date of preliminary approval of the Settlement, or (ii) November 11, 2020.

5 8. "FLSA Claim Period" refers to the period from October 21, 2016 through the
6 earlier of (i) the date of preliminary approval of the Settlement, or (ii) November 11, 2020.

7 9. "PAGA Claim Period" refers to the period from December 6, 2018 through the
8 earlier of (i) the date of preliminary approval, or (ii) November 11, 2020.

9 10. "PAGA Settlement Fund" refers to the 25% portion of the PAGA Allocation that
10 will be distributed to the PAGA Aggrieved Employee Group on a pro rata basis based upon
11 Employment Days within the PAGA Claim Period.

12 11. "Participating Settlement Class Members" refers to all Settlement Class Members
13 who do not timely opt out of the Settlement. Any Settlement Class Member who opts out is
14 nevertheless bound by the Released PAGA Claims and shall receive their pro rata share of the
15 PAGA Settlement Fund.

16 12. "Participating Driver Class Members" refers to all Driver Class members who do
17 not timely opt out of the Settlement. Any Settlement Class Member who opts out is nevertheless
18 bound by the Released PAGA Claims and shall receive their pro rata share of the PAGA
19 Settlement Fund.

20 13. "Participating Non-Driver Class Members" refers to all Non-Driver Class
21 Members who do not timely opt out of the Settlement. Any Settlement Class Member who opts
22 out is nevertheless bound by the Released PAGA Claims and shall receive their pro rata share of
23 the PAGA Settlement Fund.

24 14. "Parties" collectively refers to the Class Representatives and Defendant.

25 15. "Released California Claims" means all California state-law claims as defined in
26 Section VI(A) during the California Claims Period that this Agreement will extinguish as to all
27 Participating Settlement Class Members. Settlement Class Members who request exclusion will
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1 nonetheless be bound by the Released PAGA Claims.

2 16. “Released FLSA Claims” means all claims under the Fair Labor Standards Act
3 during the FLSA Claim Period that FLSA Collective Members will release if they opt in to the
4 collective by accepting payment under this Agreement. Settlement Class Members who opt in to
5 the FLSA collective release all FLSA claims alleged, or that reasonably could have been alleged
6 based on the facts alleged in any complaint filed in the Actions.

7 17. “Released PAGA Claims” means all PAGA claims that this Agreement will
8 extinguish as to all Settlement Class Members that were raised, or reasonably could have been
9 raised, during the PAGA Claim Period under the Private Attorneys General Act, Labor Code
10 section 2698 *et seq.* and includes the release of all claims in any letter to the LWDA submitted
11 by any Class Representative and all claims alleged under PAGA in any complaint filed in the
12 Actions.

13 18. “Released Parties” refers to Defendant, and all of its former or present members,
14 parents, subsidiaries, business units, successors, predecessors, affiliates, officers, directors,
15 employees, insurers, directors, executors, attorneys, shareholders, profit sharing, savings, health,
16 and other employee benefit plans of any nature, the successors of such plans, and those plans’
17 respective current or former trustees and administrators, agents, employees, fiduciaries, and the
18 predecessors and successors, assigns, and legal representatives of all such entities and
19 individuals. “Released Parties” specifically includes Reyes Holdings, L.L.C., which is the sole
20 member of Harbor Distributing, L.L.C.

21 19. “Employment Days” refers to days of active employment as a member of a Class
22 during the corresponding relevant time period. There are no partial Employment Days.

23 20. “Settlement Class Members” refers to all members of each “Class” defined in
24 Paragraph 2 above.

25 **II. RECITALS**

26 A. On or about October 21, 2019, Class Representative filed a class action complaint
27 in Los Angeles County Superior Court, naming *Harbor Distributing, L.L.C.* as the defendant.
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1 On November 14, 2019, Class Representative filed a First Amended Complaint alleging failure
2 to provide meal and rest periods; failure to pay minimum wage for all hours worked, including
3 overtime; wage statement violations; waiting time penalties; failure to reimburse business
4 expenses; and violation of the Unfair Competition Law.

5 B. On or about November 15, 2019, Class Representative submitted a letter to the
6 Labor Workforce Development Agency pursuant to the Labor Code Private Attorneys General
7 Act (“PAGA”) alleging certain violations of the Labor Code and the Wage Order.

8 C. On or about February 10, 2020, Class Representative filed a PAGA-only
9 representative action in Los Angeles County Superior Court, naming *Harbor Distributing, LLC*
10 as the defendant.

11 D. On February 14, 2020, Class Representative filed a Notice of Related Case in the
12 Class Action, providing notice to the Court that she had filed the Representative Action that had
13 been assigned to a different department of the Los Angeles Superior Court.

14 E. On July 14, 2020, the Parties engaged in a mediation session with Mark Rudy.
15 With the assistance of the mediator, the Parties reached a settlement of the Actions, which
16 included the material terms contained in this Settlement Agreement.

17 F. Based on their investigation and evaluation of this case, Class Counsel has
18 concluded that the settlement described in this Settlement Agreement is fair, reasonable, and
19 adequate and is in the best interest of the Class in light of all known facts and circumstances,
20 defenses asserted by Defendant, adverse findings regarding liability, and numerous potential
21 appellate issues.

22 G. Neither this Settlement Agreement, nor any document referred to or contemplated
23 herein, nor any action taken to carry out the terms of this Settlement, is, may be construed as, or
24 may be used as, an admission, concession, or indication by or against Defendant of evidence of
25 any unlawful conduct, fault, wrongdoing or liability whatsoever.

26 H. The Parties now desire to fully, finally, and forever settle, compromise, and
27 discharge the claims released in this Settlement.
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1 **NOW, THEREFORE**, in consideration of the mutual covenants, promises, and
2 conditions set forth, the parties agree as follows:

3 **III. NON-ADMISSION OF LIABILITY**

4 A. By entering into this Settlement, Defendant, on behalf of itself and all Released
5 Parties, denies any liability for any of the claims in the Action as well as any potential or
6 unknown claims based on wage and hour violations under state or federal law.

7 B. Defendant specifically denies that it or any of the Released Parties has engaged in
8 any unlawful or wrongful conduct against the Class Representative or the Class.

9 C. Defendant further contends that, for purposes other than settlement, the Action is
10 not appropriate for class action or representative treatment.

11 **IV. STIPULATION TO CLASS AND CONDITIONAL CERTIFICATION SOLELY**
12 **FOR PURPOSES OF THE SETTLEMENT**

13 A. This Agreement is contingent upon approval by the Court of class certification
14 under California Code of Civil Procedure Section 382 for settlement purposes only. Defendant
15 does not waive, and instead expressly reserves, its right to challenge the propriety of class
16 certification, collective action certification, or representative treatment for any other purpose
17 should the Court not approve the Settlement.

18 B. The Parties stipulate to class and conditional certification for purposes of the
19 Settlement only. If the Court does not grant Preliminary and Final Approval of the Settlement,
20 the Parties need not stipulate to class and conditional certification, and the Parties will resume
21 litigation as if no settlement had been reached.

22 C. Evidence of this limited stipulation for settlement purposes only will not be
23 deemed admissible for any other purpose in this or any other proceeding.

24 D. Defendant's position is that, for any purpose other than settling this Action, this
25 matter is not appropriate for class, representative or collective action treatment and that evidence
26 of this limited stipulation for settlement purposes only will not be deemed admissible for any
27 purpose in this or any other proceeding. Defendant's position is that if this matter were to be
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1 litigated, class and conditional certification would be inappropriate, *inter alia*, because individual
2 issues predominate as to each of the claims alleged in the Action. Defendant’s position would be
3 that representative status would likewise be inappropriate because individual issues would
4 predominate and the action would be unmanageable.

5 **V. TERMS OF SETTLEMENT**

6 A. Gross Fund Value

7 1. Defendant shall pay a settlement payment in a total amount not to exceed
8 \$2,500,000.00 (the “Gross Fund Value”). The Gross Fund Value shall include all payments
9 made to Participating Settlement Class Members for wages (including overtime), expense
10 reimbursement, penalties, interest, and liquidated damages; attorneys’ fees and costs; costs of
11 settlement administration; and the Service Payment Award to Plaintiffs; and the PAGA Payment.

12 2. The Gross Fund Value as defined is based on acceptance of Defendant’s
13 representations that from October 21, 2015 through June 30, 2020, the Settlement Class
14 Members are estimated to have worked a total of approximately 175,000 Workweeks. The
15 estimated number of Workweeks is based upon the total of (a) the number of Workweeks from
16 October 21, 2015 through June 30, 2020 for the Driver Class, plus (b) the number of Workweeks
17 from December 4, 2018 through June 30, 2020 for the Non-Driver Class.

18 3. The Parties recognize that the Gross Fund Value is predicated upon the
19 total number of Workweeks provided by Defendant for these periods. In the event that the
20 Workweeks exceed the estimate stated in paragraph 2 above by more than 10%, the Gross Fund
21 Value shall be increased 1% for every percent above 10% that the actual Workweeks exceed the
22 estimated Workweeks. In other words, if the excess is 11%, then the increase to the Gross Fund
23 Value will be increased by 1%; if the excess is 12%, then the increase will be 2%.

24 B. Filing of the Second Amended Complaint as the Operative Complaint

25 Upon receiving preliminary approval of this Settlement Agreement, the Parties agree
26 Class Representative Jessy Correa shall file a “Second Amended Complaint” in the Class Action
27 to add a claim for unpaid wages under the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.*
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1 (“FLSA”) and clarify that the expense reimbursement claim includes failure to reimburse
2 expenses for required protective equipment. The Second Amended Complaint shall confirm the
3 definitions of the Class, as defined above. The Parties agree Class Representative shall not be
4 required to seek leave of Court to file the Second Amended Complaint, unless otherwise required
5 by the Court. The Parties further agree that Defendant shall not be required to file a response to
6 the Second Amended Complaint unless final approval is denied, in which case Defendant shall
7 have 30 days after the denial of final approval to file a response to the Second Amended
8 Complaint. Any complaint contemplated by this Agreement is encompassed by the term
9 “Action,” as defined above. The Second Amended Complaint may add Eric Andrade, as a
10 named plaintiff, on condition that Mr. Andrade first dismiss the complaint he has filed in the
11 Orange County Superior Court entitled *Eric Andrade v. Harbor Distributing, LLC et al.*, Case
12 No. 30-2020-01139893-CU-OE-CXC. The Second Amended Complaint may add Henry Linares
13 Rodriguez as named plaintiffs, on condition that Mr. Rodriguez first dismiss the complaint he
14 filed in *Rodriguez et al. v. Harbor Distributing, LLC et al.*, U.S.D.C. No. 2:20-cv-05519 (Central
15 District of California). A draft of the Second Amended Complaint is attached hereto as “Exhibit
16 B”.

17 C. Employer’s Portion of Payroll Taxes

18 The Parties agree Defendant shall pay, separately from the Gross Fund Value, the
19 employer’s share of payroll taxes with respect to the portion of settlement benefits allocated to
20 wages.

21 D. PAGA Payment

22 1. Class Counsel shall request that the Court approve a PAGA Payment of an
23 amount not to exceed \$250,000 to cover any and all claims for civil penalties under PAGA based
24 on the alleged violations in the Actions and Class Representative’s letter to the LWDA. The
25 PAGA Payment will be deducted from the Gross Fund Value.

26 2. Seventy-five percent (75%) (\$187,500.00) of the PAGA Payment shall be
27 payable to the LWDA as the LWDA’s share of the settlement of civil penalties paid under this
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1 Settlement pursuant to PAGA, and twenty-five percent (25%) of the PAGA Payment (\$62,500)
2 will be allocated to the PAGA Settlement Fund for distribution to the PAGA Aggrieved
3 Employee Group. Defendant will not oppose this request. The payment to the LWDA shall be
4 paid out of the Gross Fund Value.

5 3. The pro rata portion of the \$62,500 “PAGA Settlement Fund” shall be
6 determined by dividing the total number of Employment Days worked during the PAGA Claim
7 Period into the PAGA Settlement Fund to arrive at a value per Employment Day for each eligible
8 member of the PAGA Aggrieved Employee Group. The value per Employment Day shall be
9 multiplied by the number of Employment Days worked by each eligible member of the PAGA
10 Aggrieved Employee Group during the PAGA Claim Period.

11 4. Defendant’s records shall be determinative for purposes of calculating the
12 number of Work Days during the Settlement Class Period and PAGA Claim Period.

13 5. If the Court approves only a lesser amount than that requested by Class
14 Counsel for the PAGA Payment, the other terms of the Settlement shall apply.

15 E. Class Counsel Payment of Attorneys’ Fees and Costs

16 1. Class Counsel shall request that the Court approve an award of attorneys’
17 fees in an amount not to exceed \$833,333.33 (*i.e.*, 33 and one-third percent of the Gross Fund
18 Value) and costs in an amount not to exceed \$50,000.00, subject to Court approval. Defendant
19 will not oppose this request. Attorneys’ fees and costs shall be paid out of the Gross Fund Value.

20 2. The Court’s approval of fees and costs requested by Class Counsel is not a
21 material term of the Settlement. If the Court does not approve or approves only a lesser amount
22 than that requested by Class Counsel for attorneys’ fees or costs, the other terms of the
23 Settlement shall still apply. The Court’s refusal to approve the attorneys’ fees or costs award
24 requested by Class Counsel does not give Plaintiff or Class Counsel any basis to abrogate the
25 Settlement. Any amount of requested attorneys’ fees or litigation costs not approved by the
26 Court shall flow through to the Net Fund Value.

1 F. Service Payment Award To Class Representative

2 1. Subject to Court approval, Defendant will not oppose the Class
3 Representatives' request for the Service Payment Award in an amount not to exceed \$15,000.00
4 each to be paid from the Gross Fund Value, for each of their services as Class Representative, in
5 addition to any payment each may otherwise be entitled to receive as a Participating Settlement
6 Class Member ("Service Payment Award"). The Service Payment Award shall be allocated as
7 1099 income, which shall not be subject to payroll taxes and withholdings and will be reported
8 on an IRS 1099 Form.

9 2. Each Class Representative will be responsible for correctly characterizing
10 this compensation for tax purposes and for paying any taxes owing on said amount.

11 G. Settlement Administration Fees And Costs

12 1. The Parties have selected Phoenix Settlement Administrators, to be the
13 third-party Settlement Administrator to disseminate the Notice of Class Action Settlement
14 ("Class Notice" a draft of which is attached hereto as "Exhibit A"), and to do, among other
15 things set forth in this Agreement, the formatting and printing of the Class Notice and other
16 documents to be mailed to the Settlement Class, handling the Settlement Class Data, updating
17 Settlement Class Members' mailing addresses before the initial mailing of the Class Notice,
18 calculating estimated Individual Settlement Payments, declarations regarding mailing, and as
19 may be required by the Court, providing weekly status reports, resolving disputed claims, issuing
20 Individual Settlement Payment checks, tax reporting, voiding uncashed checks, handling
21 uncashed checks, etc. The cost for administration of the Settlement is estimated to not exceed
22 \$25,000.

23 H. Net Fund Value

24 After deducting the portion of the PAGA Payment paid to the LWDA and the PAGA
25 Settlement Fund from the Gross Fund Value, the remaining amount after deduction of Court-
26 approved sums for the Class Representatives' Service Payment Award, Class Counsel's
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1 attorneys' fees and costs, and Settlement Administrator's fees and expenses, ("Net Fund Value")
2 will be distributed to Participating Settlement Class Members as set forth below.

3 **VI. CLAIMS RELEASED BY THIS SETTLEMENT**

4 A. **Released California Claims.** By operation of the Final Approval and Judgment,
5 and except as to rights that this Agreement creates, and upon compliance by Defendant with
6 Section VIII(A)(2) of this Agreement, each Settlement Class Member—and each Settlement
7 Class Member's executors, administrators, representatives, agents, heirs, successors, assigns,
8 trustees, spouses, or guardians—will release each Released Party from any claim of liability or
9 cause of action that was or could have been asserted in this Action or that is based on or arises
10 out of the facts alleged in this Action, including, without limitation, claims or causes of action
11 for unpaid wages, including overtime, for missed meal or rest breaks, for meal or rest break
12 penalties, for unreimbursed employee business expenses, for liquidated damages, for unlawful
13 deductions from wages, for conversion of wages, for record-keeping violations, for wage-
14 statement penalties, and for "waiting time" penalties, and any claim or cause of action under the
15 applicable California Wage Order and California Labor Code sections 98.6, 201, 202, 203, 204,
16 218, 218.5, 221-223, 226, 226.3, 226.7, 226.8, 510, 512, 558, 1102.5, 1174, 1174.5, 1194,
17 1194.2, 1197, 1198, 2800, 2802, as well as claims under Business and Professions Code section
18 17200 et seq., and Labor Code section 2698 *et seq.* based on alleged violations of the foregoing
19 Labor Code provisions. This Agreement is conditioned upon covenants by all Settlement Class
20 Members that they will not participate in any proceeding seeking damages or penalties as to the
21 released claims set forth above.

22 B. **Released FLSA Claims.** Any FLSA Collective Member who opts in to the FLSA
23 collective by cashing or depositing a settlement check from the FLSA Released Claims Amount
24 will release the FLSA Released Claims. FLSA Collective Members who do not cash or deposit a
25 settlement check from the FLSA Released Claims Amount do not release any FLSA claim.

26 C. **Released PAGA Claims.** All members of the PAGA Aggrieved Employee Group
27 release all claims arising under PAGA during the PAGA Claim Period. Upon final approval by
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1 the Court of this Settlement, and except as to the right to enforce the terms and conditions of this
2 Settlement Agreement, all members of the PAGA Aggrieved Employee Group, regardless of
3 whether they request to be excluded from this Settlement or not, fully release the Released
4 Parties from the Released PAGA Claims.

5 1. To effectuate the release of FLSA claims, one of the two settlement
6 checks sent to Participating Settlement Class Members who are also members of the FLSA Class
7 will contain language expressing a consent to opt into an FLSA collective action. Only those
8 FLSA Collective Members who cash a check with language expressing consent to opt into an
9 FLSA collective action will be deemed to have opted in and will have released the Released
10 FLSA Claims. Those individuals who cash a check issued with language expressing consent to
11 opt into an FLSA collective action do not release any claims under the FLSA for work performed
12 while in a non-exempt management position, or for work performed while residing outside of
13 California.

14 2. The Settlement Administrator will provide Defendant with copies of the
15 consents (i.e., copies of the endorsement side of settlement checks that contain the FLSA opt-in
16 language), plus a separate list of the names of the opt-ins, which Defendant's counsel shall file
17 with the Court in connection with the Settlement Administrator's declaration as to the
18 satisfactory completion of the obligations of the Settlement Administrator.

19 3. The Parties stipulate that beyond the Gross Fund Value and the
20 employer's share of taxes for any amount allocated to wages, Defendant shall not owe any
21 further monies to the Participating Settlement Class or to the State of California based upon the
22 claims made in the Action.

23 D. Additional Claims Released By Class Representatives

24 In addition to the Released Claims, upon the final approval by the Court of this
25 Settlement, each Class Representative will generally release any and all claims against the
26 Released Parties. This general release of all claims includes any and all claims arising from the
27 employment relationship with the Released Parties, or the termination thereof, including, without
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1 limitation, claims for discrimination, harassment, or retaliation pursuant to Title VII of the Civil
2 Rights Act of 1964, 42 U.S.C. Section 2000 *et seq.*, the California Fair Employment and
3 Housing Act, Cal. Gov't Code Section 12900 *et seq.*, or any claims for violation of public policy.
4 For the purpose of implementing a full and complete release and discharge of the Released
5 Parties, Class Representative expressly acknowledges that the release in this Paragraph is
6 intended to include in its effect, without limitation, all claims he did not know or suspect at the
7 time of execution hereof, regardless of whether the knowledge of such claims, or the facts upon
8 which they might be based, would materially have affected the settlement of this matter, and that
9 the consideration given under this Settlement is also for the release of those claims and
10 contemplates the extinguishment of any such claims. In furtherance of this Settlement, Class
11 Representative expressly waives all rights provided by California Civil Code section 1542, or
12 other similar statutes that Class Representative may have against any of the Released Parties.
13 Section 1542 states:

14
15 **A general release does not extend to claims that the creditor or**
16 **releasing party does not know or suspect to exist in his or her**
17 **favor at the time of executing the release and that, if known by**
18 **him or her, would have materially affected his or her**
19 **settlement with the debtor or released party.**

20 This general release and waiver of rights under California Civil Code Section 1542 shall
21 include any and all claims based on conduct or omissions that occurred at any time prior to the
22 preliminary approval of this Settlement.

23 **VII. NOTICE TO SETTLEMENT CLASS MEMBERS**

24 A. The Settlement Administrator will send a Class Notice to each member of the
25 Class by First Class U.S. Mail within forty (40) calendar days of preliminary approval of the
26 Settlement. The Class Notice will advise members of the Class of the settlement of the Action
27 and instruct them how to participate in the Settlement, or opt out of or object to the Settlement.
28 Members of the Class shall have the opportunity to lodge objections or opt out. Any member of
the Class who timely and validly opts out will receive only their share of the PAGA Settlement

1 Fund and will not be bound by the terms of the Settlement Agreement, except with respect to any
2 claims under PAGA released under this Agreement, and will not have any right to object, appeal,
3 or comment thereon. Tardy or untimely opt-out requests will not be accepted by the Settlement
4 Administrator and shall not be effective.

5 B. Defendant shall provide the Settlement Administrator within fifteen (15) calendar
6 days of preliminary approval with a class list containing the names, employee identification
7 numbers, last known addresses, start date(s) and end dates(s) of active employment for (1)
8 members of the Driver Class between October 21, 2015 to the earlier of (i) date of preliminary
9 approval of the Settlement, or (ii) November 11, 2020; (2) start date(s) and end dates(s) of active
10 employment for members of the Non-Driver Class between October 21, 2015 to the earlier of (i)
11 date of preliminary approval of the Settlement, or (ii) November 11, 2020. The class list shall
12 identify which members of the Driver Class received component pay at any time during the
13 Settlement Period. The class list shall also include social security numbers, the number of
14 Workweeks from October 21, 2015 through June 30, 2020 for the Driver Class, and the number
15 of Workweeks from December 4, 2018 through June 30, 2020 for the Non-Driver Class
16 (“Settlement Class Data”). The Settlement Administrator will calculate the number of
17 Employment Days based upon records provided by Defendant. This information is being
18 provided confidentially to the Settlement Administrator only, and the Settlement Administrator
19 shall treat the information as private and confidential and take all necessary precautions to
20 maintain the confidentiality of contact information of the Settlement Class. The Settlement
21 Administrator shall not share the Settlement Class Data with any other Party or counsel for any
22 of the Parties except Defendant. This information is to be used only to carry out the Settlement
23 Administrator’s duties as specified in this Settlement.

24 C. No claim form is required to receive a proportionate share of the Net Fund Value
25 or PAGA Settlement Fund. The Administrator will calculate and mail an Individual Settlement
26 Payment to each Participating Settlement Class Member.
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1 D. To provide the best notice practicable, any Class Notice returned to the Settlement
2 Administrator as non-deliverable with an updated mailing address affixed shall be sent by First
3 Class U.S. Mail to the forwarding address affixed thereto. If a Class Notice is returned as
4 undeliverable without a forwarding address affixed thereto, the Settlement Administrator shall
5 attempt to locate a current mailing address for the Settlement Class Member by skip tracing and
6 will mail the Class Notice to the updated address identified. If no current address can be located,
7 the Settlement Administrator shall reattempt at the same mailing address previously used for the
8 Settlement Class Member. If after the reattempt a Class Notice is returned as undeliverable, the
9 Class Notice for that individual will be deemed undeliverable.

10 E. On the re-mailing of Class Notices by the Settlement Administrator to an updated
11 mailing address found through skip-tracing, provided by Class Counsel or as provided by the
12 Settlement Class Member (on the submission of a Change of Address form), the Settlement
13 Administrator shall keep a record of the postmark mailing dates for such re-mailed Class
14 Notices, and record all undelivered Class Notices.

15 **VIII. COMPUTATION AND DISTRIBUTION OF NET FUND VALUE AND CLASS**
16 **COUNSEL PAYMENT**

17 A. Deposit of Gross Fund Value

18 1. The Settlement Administrator shall establish a Qualified Settlement Fund
19 pursuant to Section 468B(g) of the Internal Revenue Code for purposes of administering the
20 Settlement. The Settlement Administrator shall furnish the Qualified Settlement Fund with its
21 own Employer ID Number and calculate all settlement checks and payroll deductions and
22 withholdings required under law based on information that will be confidentially furnished by
23 Defendant.

24 2. Within ten (10) business days after the Effective Date, Defendant shall
25 deposit the Gross Fund Value plus an amount sufficient for Employer's Portion of Payroll Taxes
26 into the Qualified Settlement Fund.
27
28

1 B. Formula For Calculating Individual Settlement Payments

2 The portion of the Net Fund Value available to pay Individual Settlement Payments to
3 Participating Settlement Class Member for settlement of all claims raised in the Action, as well
4 as claims that could have been raised based upon the facts alleged in the Action, shall be
5 determined as follows:

6 1. The payment to each Participating Settlement Class Member will be based
7 on the number of Employment Days of each Participating Settlement Class Member during the
8 Settlement Class Period based on Defendant's records. Defendant's employment records shall
9 be assumed correct for purposes of calculating the number of Employment Days for each
10 Participating Settlement Class Member.

11 2. The Net Fund Value shall be allocated as follows: 5% to the FLSA Class,
12 76% to the Driver Class and 19% to the Non-Driver Class.

13 3. Within the Driver Class, those members of the Driver Class who received
14 component pay shall have their Employment Days weighted at four times the value of members
15 of the Driver Class who did not receive component pay.

16 4. Within the Driver Class, Participating Driver Class Members shall receive
17 a proportionate sum of the Driver Class allocation referenced at Section VIII(B)(2) based on
18 their relative weighted Employment Days compared to all Participating Driver Class Members'
19 weighted Employment Days.

20 5. Within the Non-Driver Class, Participating Non-Driver Class Members
21 shall receive a proportionate sum of the Non-Driver Class allocation referenced at Section
22 VIII(B)(2) based on their relative Employment Days compared to all Participating Non-Driver
23 Class Members' Employment Days.

24 6. Within the FLSA Class, FLSA Class members shall receive a
25 proportionate sum of the FLSA Class allocation referenced at Section VIII(B)(2) based on their
26 relative Employment Days compared to all FLSA Class members' Employment Days.

27 7. Defendant's records with respect to Employment Days for each Settlement
28

1 Class Member shall be determinative for purposes of calculating amounts due under this
2 Agreement absent proof to the contrary.

3 C. Distribution of Net Fund Value to Participating Settlement Class Members

4 1. The settlement administrator shall distribute the Individual Settlement
5 Payment checks within thirty (30) calendar days after the Effective Date. Two checks shall be
6 issued. One check will be for FLSA Collective allocation and the other check will be for all non-
7 FLSA allocation(s). Any member of the Aggrieved Employee Group who opts out of
8 participating in the settlement shall be issued one check for his or her share of the PAGA
9 Payment.

10 2. Opt-in and release language regarding the release of the FLSA claim will
11 be printed on the Individual Settlement Payment checks, with instructions that endorsing,
12 cashing, or depositing such check constitutes consent under the FLSA to opt into the collective
13 action. The language to be included will be substantially similar to the following:

14 My endorsing, cashing, or depositing of this check constitutes my consent to join
15 the lawsuit entitled *Jessy Correa v. Harbor Distributing, LLC*, pending in the
16 Superior Court of the State of California for the County of Los Angeles, Case No.
17 19STCV37441, pursuant to the provisions of the Fair Labor Standards Act
("FLSA"), 29 U.S.C. Section 216(b).

18 3. If any Individual Settlement Payment check remains uncashed after one
19 hundred eighty (180) days of issuance from the date the check is issued, such check(s) will be
20 voided by the Settlement Administrator. Thereafter, the funds represented by any uncashed or
21 undeliverable checks shall be distributed to the Controller of the State of California to be held
22 pursuant to the Unclaimed Property Law, California Civil Code section 1500 *et seq.*, for the
23 benefit of those Participating Settlement Class Members who did not cash their checks until such
24 time that they claim their property. The Parties agree that this disposition results in no "unpaid
25 cash residue," or "unclaimed or abandoned funds" under California Civil Procedure Code section
26 384, as amended effective June 27, 2018, as the entire Net Fund Value will be paid out to the
27 Participating Settlement Class Members, whether or not all cash their payment checks.
28

1 Therefore, Defendant will not be required to pay any interest on said amount. The Parties agree
2 that this is “an equitable *cy pres* remedy” within the meaning of California Civil Procedure Code
3 section 384(c), and therefore the Parties are not subject to California Civil Procedure Code
4 section 384, including subdivision (b), for purposes of this Settlement Agreement.

5 4. The Settlement Administrator shall furnish its own Employer
6 Identification Number and calculate all Individual Settlement Payment checks and payroll
7 deductions based on information that will be confidentially furnished by Defendant. The
8 Settlement Administrator will prepare all necessary tax reporting and documentation with respect
9 to payments made pursuant to this Agreement. The Settlement Administrator will provide the
10 requisite IRS Forms 1099 and W2 to Participating Settlement Class Members together with the
11 Individual Settlement Payment. The tax documents shall reflect payment for the year in which
12 payment is made pursuant to this Settlement.

13 5. All payments to the PAGA Aggrieved Employee Group from the PAGA
14 Payment are 100% allocated to penalties.

15 6. Individual Settlement Payments shall be allocated for IRS Form 1099 and
16 W2 purposes as follows. Payments from the Net Fund Value paid for the FLSA Class shall be
17 allocated 5% to wages and 95% to liquidated damages and interest. Payments from the Net Fund
18 Value for Participating Driver Class Members and Participating Non-Driver Class Members
19 shall be allocated 10% to wages, 85% to penalties and interest and 5% to expense
20 reimbursement. All amounts allocated to wages shall be subject to applicable payroll taxes and
21 withholdings required under federal or state law and will be reported on an IRS Form W-2. Non-
22 wage amounts shall be reported on an IRS Form 1099.

23 7. For the portion of the Individual Settlement Payment allocated to wages,
24 the Settlement Administrator shall be responsible for calculating and submitting the appropriate
25 amount of the employees’ and employer’s share of payroll taxes and withholdings to the
26 appropriate state and federal tax authorities.
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1 8. None of the payments made pursuant to this Settlement will be considered
2 for purposes of determining eligibility for, vesting or participation in, calculation of, or
3 contributions to any welfare or benefit plans, including, without limitation, all plans, subject to
4 ERISA. The Parties agree that these payments do not represent any modification of any
5 employee’s previously-credited hours of service or other eligibility criteria under any employee
6 pension benefit plan, employee welfare benefit plan, or other program or policy. These
7 payments also will not be considered wages, compensation, or annual earnings for benefits in
8 any year for purposes of determining eligibility for, or benefit accrual within, any employee
9 pension benefit plan, employee welfare benefit plan, or other program or policy.

10 D. Class Counsel Payment

11 The Class Counsel Payment shall be distributed within thirty (30) days after the Effective
12 Date.

13 E. Settlement Administration Payment

14 Within thirty (30) days after the Effective Date, the Settlement Administrator shall deduct
15 the Court-approved sum for payment of its fee for administering the Settlement pursuant to its
16 terms.

17 **IX. OBJECTIONS AND OPTING OUT OF THE SETTLEMENT**

18 A. Objections To The Settlement

19 1. Participating Settlement Class Members desiring to object to the
20 Settlement should submit written objections to the Settlement using the procedures set forth in
21 the Notice of Class Action Settlement (“Class Notice”) postmarked no later than 30 calendar
22 days after the Class Notice of Settlement is mailed.

23 2. Participating Settlement Class Members may also appear at the Final
24 Fairness Hearing to present any objections.

25 B. Requests To Be Excluded From The Settlement

26 1. Settlement Class Members who wish to exclude themselves from the
27 Settlement (“opt-out”) may use the procedure set forth in the Class Notice. A request to opt-out
28

1 of the Settlement will be deemed to be timely if postmarked on or before 30 days of the initial
2 mailing of the Class Notice.

3 2. Class Members who timely submit a request for exclusion from the
4 Settlement may not also submit an objection to the Settlement as the Settlement no longer affects
5 them.

6 C. Defendant's Right To Revoke Based On Opt-Out Rate

7 Notwithstanding any other provision of this Memorandum, Defendant shall retain the
8 right, in the exercise of its sole discretion, to nullify the settlement within fifteen (15) business
9 days of receiving notice from the Settlement Administrator that ten (10) or more of the Class
10 Members have submitted timely and valid opt out forms. The Parties shall do nothing to
11 encourage or solicit Class Members to opt out or object to the Settlement. If Defendant exercises
12 the right to nullify the Settlement Agreement, then Defendant shall pay the cost of settlement
13 administration resulting from this Settlement Agreement being nullified.

14 **X. SCHEDULE FOR SEEKING COURT APPROVAL AND FAIRNESS HEARING**

15 The following procedures for obtaining the Court's approval shall be implemented with
16 respect to the Settlement, notifying the Settlement Class, and processing all benefits provided
17 under this Settlement:

18 A. Stay Of All Litigation

19 Pending preliminary and final approval of the Settlement, the Parties agree that there will
20 be a stay of all litigation activity in the Actions that is not reasonably necessary to submit this
21 Settlement to the Court and seek approval of the terms therein. The Parties will request that the
22 Court, in its preliminary approval of this settlement, enjoin Class Members from initiating or
23 prosecuting any proceeding on any claim to be released pursuant to this Memorandum, unless
24 and until the Class Member has opted out of the class in the manner described above. The
25 Parties agree that the transfer of the Representative Action as set forth above is reasonably
26 necessary to effectuate the Settlement.
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1 B. Request For Court Approval

2 Class Counsel will prepare and file a motion for preliminary approval, and share a draft
3 of this motion and the motion for final approval with Defense Counsel sufficiently prior to filing
4 so that Defense Counsel has time to provide Class Counsel with comments. Class Counsel shall
5 seriously consider in good faith Defense Counsel’s comments prior to filing either motion.

6 C. Duties of the Parties Following Final Court Approval

7 Following final approval of the Settlement, Class Counsel will submit a [proposed] Final
8 Order and Judgment that is mutually agreeable to the Parties approving the Settlement,
9 adjudicating the terms thereof to be fair, reasonable and adequate, directing consummation of all
10 terms and provisions in this Settlement and without affecting the finality of the Order Granting
11 Final Approval and Judgment, allowing the Court to retain jurisdiction of all matters relating to
12 the interpretation, administration, implementation, effectuation and enforcement of the Final
13 Approval Order and the Settlement Agreement.

14 **XI. MISCELLANEOUS PROVISIONS**

15 A. Tax Treatment And Tax Indemnification

16 Defendant, Class Counsel, and Defense Counsel are not giving any tax advice in
17 connection with the Settlement or any payments to be made pursuant to this Settlement.
18 Participating Class Members will be responsible for correctly characterizing the Individual
19 Settlement Payments for tax purposes and paying taxes due, if any.

20 B. Mutual Full Cooperation

21 Class Representatives, Defendant, Class Counsel, and Defense Counsel agree to
22 fully cooperate with each other to accomplish the terms of this Settlement, including, but not
23 limited to, execution of such documents and to take such other action as may reasonably be
24 necessary to implement the terms herein. The Parties agree to use their best efforts and any other
25 efforts that may become necessary by Order of the Court, or otherwise, to effectuate the terms of
26 this Settlement.
27
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1 C. Parties' Authority

2 The signatories hereto represent that they are fully authorized to enter into this Settlement
3 and are fully authorized to bind the Class Representatives, Settlement Class, and Defendant to all
4 terms stated herein.

5 D. Binding Nature of the Settlement

6 1. This Settlement shall be binding upon, and inure to the benefit of, the
7 successors or assigns of the Released Parties. Each Class Representative represents, covenants,
8 and warrants that each has not directly or indirectly, assigned, transferred, encumbered, any of
9 the Released Claims.

10 2. This Settlement shall be admissible and subject to disclosure in any
11 proceeding to enforce its terms, notwithstanding the mediation confidentiality provisions that
12 otherwise might apply under federal or state law. Notwithstanding the foregoing, this Settlement
13 may not be admitted into evidence or used in any proceeding except an action, motion or
14 proceeding to approve, interpret or enforce the terms of this Settlement.

15 3. Material amendments to this Settlement may be made only by a written
16 instrument signed by Class Counsel, the Class Representative, Defense Counsel, and Defendant.
17 Class Representative and Defendant authorize their respective counsel to make any immaterial
18 amendments or modifications to this agreement, including but not limited to formatting changes,
19 typographic corrections and any amendments to the draft Class Notice documents attached
20 hereto, by way of written instrument signed by Class Counsel and Defense Counsel on their
21 respective client's behalf. No rights under this Settlement may be waived except in writing.

22 E. Joint Drafting of Settlement Documents

23 1. Class Counsel and Defense Counsel have arrived at this Settlement as a
24 result of a series of informed and arm's-length negotiations, taking into account all relevant
25 factors, present and potential.
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1 2. This Settlement has been drafted jointly by Class Counsel and Defense
2 Counsel and, therefore, in any construction or interpretation of this Settlement, the same shall not
3 be construed against any of the Parties.

4 3. The Class Representative and Class Counsel agree that none of the
5 documents provided to them by Defendant shall be used for any purpose other than the
6 prosecution and Settlement of this Action.

7 F. Execution of the Settlement

8 This Settlement may be executed in one or more counterparts and by facsimile. All
9 executed copies of this Settlement and photocopies thereof shall have the same force and effect
10 and shall be as legally binding and enforceable as the original.

11 G. Continuing Jurisdiction

12 The Court shall retain jurisdiction over the implementation of this Settlement as well as
13 any and all matters arising out of, or related to, the implementation of this Settlement. The Court
14 shall not have jurisdiction to modify the terms of the Settlement without the consent of all of the
15 Parties.

16 H. No Undue Publicity

17 No Class Representative and Class Counsel will not make any public disclosure of the
18 Settlement until after the motion for preliminary approval is filed. Class Counsel will take all
19 steps necessary to ensure each Class Representative is aware of, and will encourage each to
20 adhere to, the restriction against any public disclosure of the Settlement until after the motion for
21 preliminary approval is filed. Following preliminary approval of the Settlement, each Class
22 Representative and Class Counsel will not initiate any communications with and, if contacted by
23 the media, will only discuss information publicly available. Class Counsel will take all steps
24 necessary to ensure the Class Representative is aware of, and will encourage him to adhere to,
25 the restriction against initiating any media comment. Class Counsel will not identify the name of
26 the Defendant or Defendant's counsel in any marketing or promotional communications.
27 Defendant's counsel will not identify the name of any Class Representative or Class Counsel in
28

1 any marketing or promotional communications. Nothing herein will restrict Class Counsel from
2 including publicly available information regarding the Settlement in future judicial submissions
3 regarding Class Counsel's qualifications and experience or speaking with Class Members.

4 I. Disputes

5 Any disputes arising out of or relating to this settlement that cannot be resolved by the
6 parties will be submitted to mediator Mark Rudy for resolution, including potential further
7 mediation. If the Parties cannot reach agreement, the Parties agree that Mark Rudy is authorized
8 to make a final and binding decision to resolve the dispute. The Parties will split the costs of the
9 mediator and all Parties will bear their own attorneys' fees and other costs incurred. Nothing in
10 this provision shall limit Class Counsel's ability to seek any such attorneys' fees and other costs
11 incurred as part of the Gross Fund Value herein.

12 **SO AGREED:**

13 Oct 7, 2020

14 Dated: September ____, 2020

**Plaintiff Jessy Correa, on behalf of himself and
the putative class and aggrieved employees**

16 
Jessy (Oct 7, 2020 21:04 PDT)

17 Jessy Correa

18 Dated: September ____, 2020

**Plaintiff Brittany Roderick, on behalf of herself
and the putative class**

21 _____
22 Brittany Roderick

23 Dated: September ____, 2020

**Plaintiff Eric Andrade, on behalf of himself and
the putative class and aggrieved employees**

26 _____
27 Eric Andrade

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10 this provision shall limit Class Counsel's ability to seek any such attorneys' fees and other costs
11 incurred as part of the Gross Fund Value herein.

12 **SO AGREED:**

13
14 Dated: September ____, 2020

**Plaintiff Jessy Correa, on behalf of himself and
the putative class and aggrieved employees**

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17 _____
Jessy Correa

18 **Oct 8, 2020**

19 Dated: September ____, 2020

**Plaintiff Brittany Roderick, on behalf of herself
and the putative class**

20
21 
Brittany Roderick (Oct 8, 2020 08:03 PDT)

22 _____
Brittany Roderick

23 Dated: September ____, 2020

**Plaintiff Eric Andrade, on behalf of himself and
the putative class and aggrieved employees**

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Eric Andrade

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3 regarding Class Counsel's qualifications and experience or speaking with Class Members.

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10 this provision shall limit Class Counsel's ability to seek any such attorneys' fees and other costs
11 incurred as part of the Gross Fund Value herein.

12 **SO AGREED:**

13
14 Dated: September ___, 2020

**Plaintiff Jessy Correa, on behalf of himself and
the putative class and aggrieved employees**

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16 _____
17 Jessy Correa

18 Dated: September ___, 2020

**Plaintiff Brittany Roderick, on behalf of herself
and the putative class**

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20 _____
21 Brittany Roderick

22
23 Dated: October 8, 2020

**Plaintiff Eric Andrade, on behalf of himself and
the putative class and aggrieved employees**

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25 
26 Eric andrade (Oct 8, 2020 17:51 PDT)
27 _____
28 Eric Andrade

1 Dated: September 25, 2020

Plaintiff Henry Linares Rodriguez, on behalf of himself and the putative class and aggrieved employees



Henry Linares Rodriguez

7 Dated: September ____, 2020

Defendant Harbor Distributing, LLC

By: Brian Nalley
Its: General Counsel

12 Dated: September ____, 2020

YOON LAW, APC

Kenneth H. Yoon
Attorneys for Plaintiffs Jessie Correa and Brittany Roderick and the Putative Class and Aggrieved Employees

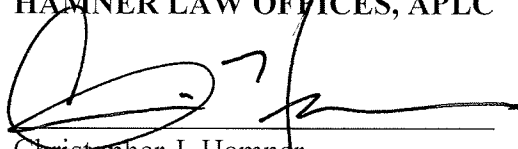
18 Dated: September ____, 2020

MAHONEY LAW GROUP, APC

Kevin Mahoney
Atoy H. Wilson
Attorneys for Plaintiff Eric Andrade and the Putative Class and Aggrieved Employees

23 Dated: September 25, 2020

HAMNER LAW OFFICES, APLC



Christopher J. Hamner
Attorneys for Plaintiff Henry Linares Rodriguez and the Putative Class and Aggrieved Employees

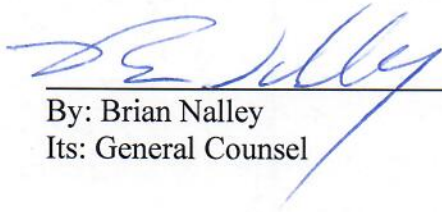
1 Dated: September ___, 2020

Plaintiff Henry Linares Rodriguez, on behalf of himself and the putative class and aggrieved employees

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5 Henry Linares Rodriguez

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7 Dated: September 25, 2020

Defendant Harbor Distributing, LLC

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11 By: Brian Nalley
12 Its: General Counsel

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14 Dated: September ___, 2020

YOON LAW, APC

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16 _____
17 Kenneth H. Yoon
18 Attorneys for Plaintiffs Jessy Correa and Brittany Roderick and the Putative Class and Aggrieved Employees

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20 Dated: September ___, 2020

MAHONEY LAW GROUP, APC

21
22 _____
23 Kevin Mahoney
24 Atoy H. Wilson
25 Attorneys for Plaintiff Eric Andrade and the Putative Class and Aggrieved Employees

26
27 Dated: September ___, 2020

HAMNER LAW OFFICES, APLC

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29 _____
30 Christopher J. Hamner
31 Attorneys for Plaintiff Henry Linares Rodriguez and the Putative Class and Aggrieved Employees

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Dated: September __, 2020

Plaintiff Henry Linares Rodriguez, on behalf of himself and the putative class and aggrieved employees

Henry Linares Rodriguez

Dated: September __, 2020

Defendant Harbor Distributing, LLC

By: Brian Nalley
Its: General Counsel

at 8
Dated: September __, 2020

YOON LAW, APC

[Signature]

Kenneth H. Yoon
Attorneys for Plaintiffs Jessy Correa and Brittany Roderick and the Putative Class and Aggrieved Employees

Dated: October 8, 2020

MAHONEY LAW GROUP, APC

[Signature]

Kevin Mahoney
Atoy H. Wilson
Attorneys for Plaintiff Eric Andrade and the Putative Class and Aggrieved Employees

Dated: September __, 2020


HAMNER LAW OFFICES, APLC

Christopher J. Hamner
Attorneys for Plaintiff Henry Linares Rodriguez and the Putative Class and Aggrieved Employees

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Dated: October 8, 2020

JOSE GARAY APLC



Jose Renato Garay
Attorneys for Plaintiff Henry Linares Rodriguez and
the Putative Class and Aggrieved Employees

Dated: September __, 2020

SEYFARTH SHAW LLP

David R. Jacobson
Reiko Furuta
Attorneys for Defendant Harbor Distributing, LLC

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Dated: September ___, 2020

JOSE GARAY APLC

Jose Renato Garay
Attorneys for Plaintiff Henry Linares Rodriguez and
the Putative Class and Aggrieved Employees

Dated: September 28, 2020

SEYFARTH SHAW LLP



David R. Jacobson
Reiko Furuta
Attorneys for Defendant Harbor Distributing, LLC

EXHIBIT A

LEGAL NOTICE:

If you were a truck driver employed by Harbor Distributing, Inc. (“Harbor” or “Defendant”) in California from October 21, 2015 to <<SETTLEMENT CLASS PERIOD END DATE>> or a non-exempt non-driver worker employed by Harbor in California from December 6, 2018 to <<PAGA CLAIM PERIOD END DATE>>, a class action settlement will affect your rights

*A court authorized this Notice. **Jessy Correa v. Harbor Distributing, LLC**, Case No. 19STCV37441*

- A class action lawsuit has been filed against Harbor Distributing, Inc. (“Harbor” or “Defendant”) on behalf of Class Members for the following claims: (1) meal and rest breaks, (2) overtime and minimum wages, (3) inaccurate wage statements, (4) unreimbursed expenses, (5) late payment of wages, and (6) unfair business practices, as well as for civil penalties under the Private Attorneys General Act (the “Action”).
- The claims of asserted in the lawsuit have been settled. The settlement is on behalf of the persons bringing the lawsuit (“Plaintiffs”) and the class of similarly situated current and former employees. You are receiving this notice because Harbor’s records indicate that you are a current or former employee who is entitled to participate in the settlement.
- The Court has preliminarily approved the settlement.

If you qualify as a Class Member, you will receive money if you participate in the settlement.

- Your legal rights are affected whether you act or don’t act. Please read this Class Notice carefully.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
DO NOTHING	You will be paid your respective share of the Settlement and you will give up any rights to sue for certain released claims (defined and as set forth below in Section 12).
EXCLUDE YOURSELF	You can exclude yourself from participating in the Settlement. If you exclude yourself, you will waive all rights under the Settlement, including the right to receive any share of the Settlement money. If you exclude yourself from the Settlement, you will retain all rights you personally may have against Harbor, as explained below, except with respect to released PAGA Claims, which are released regardless of exclusion and every aggrieved employee shall receive their pro rata share of the PAGA Settlement Fund.
OBJECT	Write to the Court about why you don’t agree with the settlement. The Court may or may not agree with your objection.

HOW MUCH CAN I GET?	Look at the last page of this Notice.
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- Your rights and options – and the deadlines to exercise them – are explained in this Notice.
- The Court in charge of this case still has to decide whether to issue final approval of the settlement. Payments will be made if the Court issues final approval of the settlement and after any appeals are resolved.

Questions? Call <<SETTLEMENT ADMIN PH NO>>
 Error! Unknown document property name.

EXHIBIT A

1. Why Did I Get This Notice Package?

You are not being sued. Plaintiffs sued Defendant in a class action on behalf of similar employees like you.

Harbor's records show that you were a truck driver in California from October 21, 2015 to <<SETTLEMENT CLASS PERIOD END DATE>> or a non-exempt non-driver worker employed by Defendant in California from December 6, 2018 to <<PAGA CLAIM PERIOD END DATE>>.

You received this Notice because you have a right to know about a proposed settlement of a class action lawsuit and about your options before the Court decides whether to issue final approval of the settlement. If the Court issues final approval, and after any objections and appeals are resolved, a Settlement Administrator appointed by the Court will make the payments provided for in the Settlement.

This Class Notice explains the lawsuit, the Settlement, your legal rights, what benefits are available, who is eligible for them and how to get them.

2. What Is This Lawsuit About?

Plaintiffs Jessy Correa, Brittany Roderick, Eric Andrade and Henry Rodriguez ("Plaintiffs") worked for Harbor as non-exempt employees in California. The Court has approved Plaintiffs to represent the Class.

The lawsuit alleges that Harbor engages in practices that violate California's labor and unfair competition laws and the federal Fair Labor Standards Act by failing to provide meal and rest periods, failing to pay all overtime compensation and minimum wages, failing to reimburse employees for all work-related expenses, failing to keep accurate records pursuant to Labor Code § 226, and failing to pay all wages on termination late payment of wages.

Plaintiffs seek compensation for meal and rest break premiums, unpaid minimum and overtime wages, reimbursements for work-related expenses, waiting time penalties, and damages or penalties relating to recordkeeping requirements. Harbor denies any liability whatsoever and denies that wages, damages, or penalties are owed, or that it acted contrary to California law or Federal law.

3. Do I Need to Hire an Attorney?

You do not need to hire your own attorney. You are already represented by Class Counsel (see Section 15 for contact information). However, you may hire your own attorney at your own expense if you choose to do so.

4. What Is Harbor's Position?

Harbor denies and continues to deny each of the claims and contentions. Harbor has agreed to the Settlement to avoid further protracted and expensive litigation regarding disputed claims.

5. Why Is There a Settlement?

Questions? Call <<SETTLEMENT ADMIN PH NO>>
Error! Unknown document property name.

EXHIBIT A

The Court did not decide in favor of Plaintiffs or Defendant. After a thorough investigation into the facts of this lawsuit, both sides agreed to a settlement after mediation with a neutral third party mediator and further post-mediation discussions. The class claims were settled because Class Counsel and the Plaintiffs believe that the amount of the settlement is fair and reasonable in light of the strength and weaknesses of the Parties' respective positions.

6. How Do I Know If I Am Part of the Settlement?

You are a member of the Class if you worked for Harbor as a truck driver in California from October 21, 2015 to <<SETTLEMENT CLASS PERIOD END DATE>> or as a non-exempt non-driver in California from December 6, 2018 to <<PAGA CLAIM PERIOD END DATE>>.

7. What Does the Settlement Provide?

Class Members who do not timely send a signed and returned valid request for exclusion will receive payments from the Net Fund Value. The Net Fund Value is the portion of the Gross Fund Value of \$2,500,000.00 available for distribution to Class Members who do not timely send a signed and returned valid request for exclusion after deduction of the Court-approved Class Counsel's attorneys' fees and costs, Service Payment Award, Settlement Administrator's fees and expenses, and PAGA Payment.

However, even if you decide to exclude yourself from the Settlement, you will still receive a civil penalty payment, as detailed in Section 12. The total payment you receive under the Settlement will be higher if you do not exclude yourself.

Deductions for Class Counsel's attorneys' fees and costs, Plaintiffs' Service Payment Awards, Settlement Administrator's fees and expenses, and PAGA Payment.

Class Counsel will ask the Court to award attorneys' fees in the amount of \$833,333.33, which represents thirty three and one-third percent (33 1/3%) of the Gross Fund Value and litigation costs estimated not to exceed \$50,000 from the Gross Fund Value. In addition, Class Counsel will ask the Court to authorize Service Payment Awards from the Gross Settlement Amount in the total amount of \$60,000, or \$15,000 to each of the Plaintiffs. These amounts are to compensate Plaintiffs for the risks, time and expense of each of their involvement in this Action. This payment is in addition to whatever payment Plaintiffs are otherwise entitled to as Class Members. The Settlement Administrator will also be reimbursed for the expense of notifying the Class Members of the Settlement, processing claims and requests for exclusions submitted by Class Members and distributing Individual Settlement Payments. Settlement Administrator costs are estimated at \$20,750. Finally, Class Counsel will ask the Court to approve the payment in the amount of \$250,000.00 for claims under the Private Attorneys General Act of 2004, California Labor Code § 2698 *et seq.*, (PAGA) of which \$187,500.00 will be awarded to the State of California, and \$62,500.00 will be awarded to the PAGA Aggrieved Employee Group, as described in Section 12.

8. What Can I Get From the Settlement?

Participating Settlement Class Members (Class Members who do not opt-out) will be paid out of the Net Fund Value. Payments from the Net Fund Value paid for the FLSA Class shall be allocated 5% to wages and 95% to liquidated damages and interest. Payments from the Net Fund Value for Participating Driver Class Members and Participating Non-Driver Class Members shall be allocated 10% to wages, 85% to

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penalties and interest and 5% to expense reimbursement. All amounts allocated to wages shall be subject to applicable payroll taxes and withholdings required under federal or state law and will be reported on an IRS Form W-2. Non-wage amounts shall be reported on an IRS Form 1099. Payments from the PAGA Settlement Fund are non-wage amounts.

As part of the Settlement, Harbor shall pay, separately from the Gross Fund Value, the employer's share of payroll taxes with respect to the portion of settlement benefits allocated to wages.

If you do nothing after receiving this notice, you will be a participating settlement class member and will receive your share of the settlement after the Court approves the Settlement. The estimated amount you will be paid as a participating settlement class member is listed on the last page of this Notice.

Any Class Member who excludes themselves from the Settlement ("opts out") is nevertheless bound by the Released PAGA Claims and shall receive their share of the \$250,000 PAGA Settlement Fund (a pro rata share of the \$62,500 remaining after the State of California is paid its required 75% share of the \$250,000 PAGA Payment).

9. How Was My Share Calculated?

The payment to each Participating Settlement Class Member will be based on the number of Employment Days of each Participating Settlement Class Member during their respective settlement period)October 21, 2015 to <<SETTLEMENT CLASS PERIOD END DATE>> for drivers, and October 21, 2018 for non-drivers.

The Net Fund Value shall be allocated as follows: 5% to the FLSA Class, 76% to the Driver Class and 19% to the Non-Driver Class. The following collectively represent the "Class":

1. The "Driver Class" includes all truck drivers employed by Defendant in California during the period October 21, 2015 to <<SETTLEMENT CLASS PERIOD END DATE>>.
2. The "Non-Driver Class" includes all non-exempt non-driver workers employed by Defendant in California during the period December 6, 2018 to <<PAGA CLAIM PERIOD END DATE>>.
3. "FLSA Collective Members" includes all Driver Class Members and all Non-Driver Class Members employed by Defendant in California during the period October 21, 2016 to <<FLSA CLAIM PERIOD END DATE>>.
4. The "PAGA Aggrieved Employee Group" includes all members of the Driver Class and all members of the Non-Driver Class employed by Defendant in California during the period December 6, 2018 to <<PAGA CLAIM PERIOD END DATE>>.

"Employment Days" refers to days of active employment as a member of a Class during the corresponding relevant time period. There are no partial Employment Days. Payments to each Participating Class Member is allocated based on the number of Employment Days as a member of each of the above four groups during their respective time periods. The PAGA Aggrieved Employee Group share in the PAGA Settlement Fund is based on relative Employment Days within that group.

Thus, for example, if a Participating Class Member is a member of the Non-Driver Class, PAGA Aggrieved Employee Group, and is a FLSA Collective Member, then that individual would receive allocations from membership in each of those three groups, but no allocation from the Driver Class because they were not a member of that group.

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Within the Driver Class, those members of the Driver Class who received component pay shall have their Employment Days weighted at four times the value of the Employment Days worked by members of the Driver Class who did not receive component pay.

With respect to Employment Days for each Settlement Class Member, Defendant's records shall be determinative for purposes of calculating amounts due to Class Members under this Agreement absent proof to the contrary.

10. How Can I Get Payment?

You do not need to take any action to qualify for payment. However, if you dispute the Employment Days as stated at the end of this notice (next to your estimated amount), you must contact the Settlement Administrator to register your dispute. You must email, mail or fax the Settlement Administrator with the details of your dispute and any documentary evidence (for example, paystubs). The deadline for submitting a dispute regarding the number of Employment Days is the same as the opt-out deadline: <<OPT OUT DEADLINE>>. If you do nothing, you will receive your Individual Settlement Payment and be bound by the terms of the settlement (including the Released Claims described in Section 12 below).

California law protects Class Members from retaliation by their employer based on their decision to participate in a class action settlement.

11. When Would I Get My Payment?

The Court will hold the Final Approval Hearing on or about <<date>> in Department 10 of the California Superior Court for the County of Los Angeles, 312 North Spring Street, Los Angeles, California 90012, to decide whether to approve the settlement.

If the Court approves the settlement, your settlement share will be mailed to you within approximately 4 months from the date of final judgment, unless there are objections, appeals, or other challenges to the final judgment. It is always uncertain when these issues can be resolved, and resolving them can take time.

12. What Rights Do I Give Up If I Participate or Do Nothing?

Unless you exclude yourself, you will remain a Class Member, and you will be bound by the terms of the settlement, including releasing the Released California Claims described below. That means that you will be unable to sue, or to continue to sue, or be part of any other lawsuit about the Released Claims. It also means that all of the Court's orders will apply to you and legally bind you.

Released Claims

By operation of the Final Approval and Judgment, and upon compliance by Defendant with its payment obligations under this Agreement, and except as to rights that this Agreement creates, each Settlement Class Member—and each Settlement Class Member's executors, administrators, representatives, agents, heirs, successors, assigns, trustees, spouses, or guardians—will release each Released Party from any claim of liability or cause of action that was or could have been asserted in this Action or that is

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based on or arises out of the facts alleged in this Action, including, without limitation, claims or causes of action for unpaid wages, including overtime, for missed meal or rest breaks, for meal or rest break penalties, for unreimbursed employee business expenses, for liquidated damages, for unlawful deductions from wages, for conversion of wages, for record-keeping violations, for wage-statement penalties, and for “waiting time” penalties, and any claim or cause of action under the applicable California Wage Order and California Labor Code sections 98.6, 201, 202, 203, 204, 218, 218.5, 221-223, 226, 226.3, 226.7, 226.8, 510, 512, 558, 1102.5, 1174, 1174.5, 1194, 1194.2, 1197, 1198, 2800, 2802, as well as claims under Business and Professions Code section 17200 et seq., and Labor Code section 2698 et seq. based on alleged violations of the foregoing Labor Code provisions.

This Agreement is conditioned upon covenants by all Settlement Class Members that they will not participate in any proceeding seeking damages or penalties as to the released claims set forth above.

If you are a FLSA Collective Member you will receive a separate check which represents your allocation as part of the FLSA Class. If you choose to cash or deposit this FLSA settlement check, you will be opting into the FLSA collective and will release all claims under the Fair Labor Standards Act alleged, or that reasonably could have been alleged based on the facts alleged in any complaint filed in the Actions during the period October 21, 2016 to <<FLSA CLAIM PERIOD END DATE>>. If you are a FLSA Collective Member and you do not cash or deposit that separate FLSA settlement check, you will not release any FLSA claim.

Any Settlement Class Member regardless of opting out nevertheless is bound by the Released PAGA Claims and shall receive their pro rata share of the PAGA Settlement Fund based on their relative Employment Days within the period December 6, 2018 to <<PAGA CLAIM PERIOD END DATE>>. Because PAGA claims are penalties on behalf of the State of California and claims for penalties directly on behalf of employees, the Court has already approved the settlement of these claims and there is no opportunity to opt out. If the Court approves the Settlement, all PAGA claims will be extinguished as to all Settlement Class Members that were raised, or reasonably could have been raised, during the period December 6, 2018 to <<PAGA CLAIM PERIOD END DATE>> under the Private Attorneys General Act, Labor Code section 2698 et seq. and includes the release of all claims in any letter to the LWDA submitted by any Class Representative and all claims alleged under PAGA in any complaint filed in the Actions.

13. How Do I Exclude Myself from the Settlement?

If you do not wish to participate in the settlement, you may exclude yourself (generally called “opting out”) by submitting a written opt-out request to the Settlement Administrator. As noted above, excluding yourself from the Settlement does not exclude you from the Released PAGA Claims.

In order to opt-out, you must (1) mail a written signed statement saying: “I wish to opt out from the Correa v. Harbor Settlement.”; (2) state your name (and former names, if any), current address, telephone number and the last four digits of your Social Security number; (3) be post-marked no later than <<OPT-OUT DEADLINE>>.

You must sign the request for exclusion personally and may not have someone else sign for you, nor may you submit a request for exclusion on behalf of a group. Your request for exclusion must be signed and returned via United States first class mail postmarked no later than << Notice Response Deadline >> to:

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Phoenix Settlement Administrators

Address

Phone: (*) ***-******

Facsimile: (*) ***-******

If you submit a timely request for exclusion, then upon its receipt you shall no longer be a member of the Class, you shall be barred from participating in any portion of the settlement (except the Released PAGA Claims), you may not object and you shall receive no benefits from the settlement (except your pro rata share of the PAGA Payment). If you wish, you may pursue, at your own expense, any claims you may have against Harbor. If you do not submit a complete and timely written request for exclusion, you will be included in the Class, and be bound by the terms of the settlement (including the Released Claims described in Section 12 herein).

Do not submit both an objection and request for exclusion. If you submit both, the request for exclusion will be valid, and you will be excluded from the settlement class.

14. When Is the Final Approval and Fairness Hearing?

The Court will hold a Final Approval Hearing in Department 10 of the California Superior Court for the County of Los Angeles, 312 North Spring Street, Los Angeles, California 90012, on <<date and time>> or such other, later date as the Court may authorize, to determine whether the settlement is fair, reasonable, and adequate; and if there are objections, the Court will consider them. The Court will also be asked to approve Class Counsel's request for attorneys' fees and litigation costs, Plaintiffs' Service Payment Awards, the Settlement Administration Costs, and the PAGA Payment.

The hearing may be continued without further notice to Class Members, however, notice may be posted on the Settlement Administrator's website. It is not necessary for you to appear at this hearing unless you have timely filed an objection or notice of intention to appear with the Court. Notice of the final judgment will be posted on the Settlement Administrator's website.

The Settlement Administrator's website for this matter is: www.beveragedistributionclasssettlement.com.

15. How Do I Object to the Settlement and Appear at the Final Approval and Fairness Hearing?

You may object to the terms of the settlement before the Final Approval Hearing. The Court will consider and rule on your objection. If the Court rejects your objection, you will still be bound by the terms of the settlement. To object, you must mail a written objection to the Settlement Administrator (at the address in Section 13 herein).

Any written objection must contain a statement of your objections to this Settlement, a statement advising whether you plan to address the Court at the Final Approval Hearing, and any legal briefs, papers or memoranda you propose to submit to the Court. Your objection must also state your full name, address, telephone number, and the approximate dates of your employment at Harbor. To be valid and effective, any objections to approval of the settlement must be postmarked no later than <<OPT-OUT DEADLINE>>. DO NOT TELEPHONE THE COURT.

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You do not have to attend the hearing regarding final approval, but you may do so at your own expense. If you send an objection, you do not have to come to Court to talk about it, but you can if you want to. As long as you mailed your written objection on time, the Court will consider it. You may also hire and pay your own lawyer to attend the final approval hearing, but it is not necessary.

Due to social distancing procedures, please visit lacourt.org for the most recent courtroom policies for attending the hearing in person. There are also options to use the Court’s online appearance system LACourtConnect. Please visit <https://www.lacourt.org/lacc/> for more information on appearing by telephone or video conference. There is a small fee, and there is procedure for fee waiver.

The court will hear from any class member who attends the final approval hearing and asks to speak regarding his or her objection.

If the court approves the settlement despite any objections, you will receive your settlement proceeds and will be bound by the terms of the settlement (including the Released Claims described in section 12 herein).

16. How Do I Get Additional Information?

The above is a summary of the basic terms of the settlement. For the precise terms and conditions of the settlement, you should consult the detailed Stipulation and Settlement of Class, Collective, and Representative Actions between Plaintiffs and Defendant, which is on file with the Clerk of the Court, case number 19STCV37441. The pleadings and other records in this litigation, including the settlement agreement, may be examined at any time during regular business hours at the Office of the Clerk of the California Superior Court for the County of Los Angeles, subject to current COVID-19 restrictions. Please visit www.LACourt.org for the Court’s latest access policies. You may also request a copy of the Settlement Agreement from Class Counsel.

If you have any questions, you can call the Settlement Administrator at (800) _____ or Class Counsel at the telephone number(s) listed below.

CLASS COUNSEL	
Kenneth H. Yoon Stephanie E. Yasuda Brian G. Lee YOON LAW, APC One Wilshire Blvd., Suite 2200 Los Angeles, California 90017 Telephone: (213) 612-0988	Kevin Mahoney Atoy H. Wilson MAHONEY LAW GROUP, APC 249 E. Ocean Boulevard, Suite 814 Long Beach, CA 90802 Telephone: (562) 590-5550
Christopher J. Hamner HAMNER LAW OFFICES, APLC 26565 West Agoura Road, Suite 200-197 Calabasas, California 91302 Telephone: (888) 416-6654	Jose Renato Garay JOSE GARAY APLC 249 E Ocean Blvd., Ste. 814 Long Beach, CA 90802-4899 Telephone: (949) 208-3400

PLEASE DO NOT WRITE OR TELEPHONE THE COURT OR THE OFFICE OF THE CLERK FOR INFORMATION REGARDING THIS SETTLEMENT OR THE CLAIM PROCESS.

BY ORDER OF THE CALIFORNIA SUPERIOR COURT

PLEASE VERIFY YOUR NAME AND ADDRESS:

«Barcode» Claim #: MIM-«Claim»-«CD» «MailRec»

Name/Address Corrections (if any):

«First1» «Last1»

«c/o»

«Address1» «Address2»

«City»,«ST» «ZIP» «Country»

Your Estimated Claim Amount is << INDIVIDUAL EST. CLAIM AMOUNT>>

[You are a FLSA Collective Member and your Estimated Claim Amount includes an estimated allocation for FLSA of <<EST. FLSA AMOUNT>>]

Your Estimated Claim Amount is based on the following number of Employment Days: <<EST. EE DAYS>>

EXHIBIT B

1 KENNETH H. YOON (State Bar No. 198443)
STEPHANIE E. YASUDA (State Bar No. 265480)
2 BRIAN G. LEE (State Bar No. 300990)

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3 One Wilshire Blvd., Suite 2200
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4 Telephone: (213) 612-0988

5 Kevin Mahoney, Esq. (SBN: 235367)
Atoy H. Wilson (SBN: 305259)
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Telephone No.: 562-590-5550
8 Facsimile No.: 562-590-8400

9 Christopher J. Hamner, Esq. (SBN 197117)
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11 Telephone: (888) 416-6654

12 Jose Renato Garay (SBN 200494)
13 **JOSE GARAY APLC**
249 E Ocean Blvd., Ste. 814
14 Long Beach, CA 90802-4899
(949) 208-3400

15 Attorneys for Plaintiffs Jessy Correa, Brittany Roderick,
16 Eric Andrade, and Henry Linares Rodriguez

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

19 JESSY CORREA, BRITTANY RODERICK,
ERIC ANDRADE, and HENRY LINARES
20 RODRIGUEZ, each as individuals and on
behalf of all others similarly situated,

21
22 Plaintiff,
v.

23 HARBOR DISTRIBUTING, LLC, a limited
24 liability company, and DOES 1 through 50,
inclusive,

25 Defendants.
26
27
28

Case No.: 19STCV37441

[Assigned for all purposes to the Hon.
William F. Highberger, Dept. 10]

**SECOND AMENDED CLASS ACTION
COMPLAINT FOR DAMAGES FOR:**

**(1) VIOLATION OF LABOR CODE
SECTIONS 226.7 AND 512;**

**(2) VIOLATION OF LABOR CODE
SECTIONS 1194 AND 510;**

**(3) VIOLATION OF LABOR CODE
SECTION 226;**

**(4) VIOLATION OF LABOR CODE
SECTIONS 201-204;**

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- (5) VIOLATION OF LABOR CODE SECTION 2802;**
 - (6) BUSINESS AND PROFESSIONS CODE SECTION 17200 *et seq.***
 - (7) VIOLATION LABOR CODE § 2698 *et seq.***
 - (8) VIOLATION OF THE FAIR LABOR STANDARDS ACT, 29 U.S.C. § 201 *et seq.***
- DEMAND FOR JURY TRIAL**

1 Plaintiffs Jessy Correa, Brittany Roderick, Eric Andrade, and Henry Linares Rodriguez
2 (“Plaintiffs”) hereby submits their Complaint for Damages against Defendants Harbor
3 Distributing, LLC, and DOES 1 through 50, inclusive (collectively, “Defendants”), on behalf
4 of themselves and the Class of other similarly situated current and former employees of
5 Defendants for meal period and rest break wages, minimum and overtime wages, unpaid
6 expense reimbursements, and penalties as follows:

7 **INTRODUCTION**

8 1. This class action is brought pursuant to Labor Code §§ 203, 226, 226.3, 226.7,
9 510, 512, 1194, 2802 Industrial Welfare Commission (“IWC”) Wage Order 9-2001 (codified
10 as California Code of Regulations Title 8 § 11090), Business and Professions Code § 17200 *et*
11 *seq.* (Unfair Competition Law (“UCL”)), and 29 U.S.C. § 201 *et seq.* (Federal Labor Standards
12 Act (“FLSA”).

13 2. This Complaint challenges Defendants’ systemic illegal employment practices
14 resulting in violations of the stated provisions of the Labor Code, Business and Professions
15 Code and the FLSA against the identified class of employees.

16 3. Plaintiffs are informed and believe and thereon alleges Defendants joint and
17 severally acted intentionally and with deliberate indifference and conscious disregard to the
18 rights of all employees in (1) failing to provide meal periods and rest breaks, (2) failing to pay
19 all minimum and overtime wages under state and federal law, (3) failing to provide accurate
20 wage statements, (4) failing to pay all wages due and owing upon termination of employment;
21 and (5) failing to reimburse all necessary work-related expenses.

22 **JURISDICTION AND VENUE**

23 4. This class action is brought pursuant to California Code of Civil Procedure §
24 382 and the FLSA, 29 U.S.C. § 216(b). The monetary damages sought by Plaintiffs exceed the
25 minimal jurisdictional limits of the Superior Court and will be established according to proof at
26 trial. The damages sought by Plaintiffs individually are less than \$75,000.00 each.

27 5. This Court has jurisdiction over this action pursuant to California Constitution,
28 Article VI, Section 10, which grants the Superior Court original jurisdiction in all causes

1 except those given by statute to other courts. The statutes under which this action is brought do
2 not specify any other basis for jurisdiction.

3 **6.** This Court has jurisdiction over the violations of Labor Code §§ 203, 226,
4 226.3, 226.7, 510, 512, 1194, 2802, the UCL, and the FLSA.

5 **7.** This Court has jurisdiction over all Defendants because, upon information and
6 belief, each party has sufficient minimum contacts in California, or otherwise intentionally
7 avails itself of California law so as to render the exercise of jurisdiction over it by the
8 California courts consistent with traditional notions of fair play and substantial justice.

9 **8.** Venue is proper in this Court because, upon information and belief, the named
10 Defendants transact business and/or have offices in this county, and the acts and omissions
11 alleged herein took place in this county.

12 **PARTIES**

13 **9.** Plaintiff Jessy Correa is an individual residing in the State of California. He
14 was employed by Defendants within the statutory time period and worked both as a driver and
15 a warehouse worker.

16 **10.** Plaintiff Brittany Roderick is an individual residing in the State of California.
17 She is employed by Defendants and works as a non-exempt employee performing sales work
18 and is not a driver.

19 **11.** Plaintiff Eric Andrade began his employment with Defendants in or about
20 March 2013, as a truck driver. On or around January 30, 2019, Plaintiff Andrade was
21 terminated by Defendants. Since April 2019, Plaintiff Andrade worked for Defendants within
22 the County of Orange during his employment. He was always paid an hourly wage and was
23 deemed a non-exempt hourly employee by Defendants. He is accordingly entitled to
24 compensation for all hours worked, overtime compensation, premium pay, and penalties from
25 Defendants.

26 **12.** Plaintiff Henry Linares Rodriguez is a California resident. Mr. Rodriguez is a
27 current truck driver for Defendants.

28 **13.** Plaintiffs are informed and believe and thereon allege that Defendant Harbor

1 Distributing, LLC is a limited liability company licensed to do business and actually doing
2 business in the State of California, including the County of Los Angeles.

3 **14.** Plaintiffs do not know the true names or capacities, whether individual, partner
4 or corporate, of Defendants sued herein as DOES 1 through 50, inclusive, and for that reason,
5 said Defendants are sued under such fictitious names, and Plaintiff prays for leave to amend
6 this complaint when the true names and capacities are known. Plaintiffs are informed and
7 believe and thereon allege that each of Defendants designated as a DOE was responsible in
8 some way for the matters alleged herein and proximately caused Plaintiffs and members of the
9 general public and the Class to be subject to the illegal employment practices, wrongs and
10 injuries complained of herein.

11 **15.** At all times herein mentioned, Defendants, and each of them, were agents,
12 partners, joint venturers, representatives, servants, employees, successors-in-interest, co-
13 conspirators and assigns, each of the other, and at all times relevant hereto were acting within
14 the course and scope of their authority as such agents, partners, joint venturers, representatives,
15 servants, employees, successors, co-conspirators and assigns, and that all acts or omissions
16 alleged herein were duly committed with ratification, knowledge, permission, encouragement,
17 authorization and consent of each Defendant designated herein.

18 **16.** As such, and based upon all the facts and circumstances incident to Defendants’
19 business in California, Defendants are subject to Labor Code §§ 203, 226, 226.7, 510, 512,
20 1194, 2802, IWC Wage Order 9-2001, the UCL, and the FLSA.

21 **CLASS ACTION ALLEGATIONS**

22 **17. Definition:** Plaintiff seeks class certification pursuant to California Code of
23 Civil Procedure § 382 of the Class. The “Class” refers to the following Classes:

- 24 **a.** The “Driver Class” includes all truck drivers employed by Defendant in
25 California during the period October 21, 2015 to the present.
- 26 **b.** The “Non-Driver Class” includes all non-exempt non-driver workers
27 employed by Defendant in California during the period December 6,
28 2018 to the present;

1 **18. Numerosity:** The members of the Class are so numerous that joinder of all
2 members would be impractical, if not impossible. The identities of the members of the Class
3 are readily ascertainable by review of Defendants’ records, including payroll records.

4 **19. Adequacy of Representation:** Plaintiffs are fully prepared to take all necessary
5 steps to represent fairly and adequately the interests of the Class defined above. Plaintiffs’
6 attorneys are ready, willing and able to fully and adequately represent the Class and Plaintiffs.
7 Plaintiffs’ attorneys have prosecuted and settled wage-and-hour class actions in the past and
8 currently have a number of wage-and-hour class actions pending in California courts.

9 **20.** Defendants administered a corporate policy, practice and/or procedure of (1)
10 failing to pay all meal period wages and rest break wages, (2) failing to pay all overtime wages
11 and minimum wages, (3) failing to provide accurate wage statements, (4) failing to timely pay
12 all wages due and owing upon termination of employment, (5) failing to reimburse all
13 necessary work-related expenses, including personal protective equipment for Covid-19, and
14 (6) engaging in unfair business practices. Plaintiff alleges this corporate conduct is
15 accomplished with the advance knowledge and designed intent to willfully withhold
16 appropriate wages for work performed members of the Class.

17 **21. Common Question of Law and Fact:** There are predominant common
18 questions of law and fact and a community of interest amongst Plaintiffs and the claims of the
19 Class concerning whether Defendants’ policies and practices regularly denied Class Members
20 meal and rest break wages, overtime and minimum wages, and reimbursement for necessary
21 work-related expenses.

22 **22. Typicality:** The claims of Plaintiffs are typical of the claims of all members of
23 the Class. Plaintiffs are members of the Class and have suffered the alleged violations of
24 California Labor Code §§ 201-204, 226, 226.3, 226.7, 510, 512, 1194, 2802, IWC Wage Order
25 No. 9-2001, and the UCL. Plaintiffs each worked at least one shift in excess of six hours during
26 which each were not provided all duty-free, legally mandated meal periods. Plaintiffs each
27 worked at least one shift of 3.5 hours or greater during which each were not authorized and
28 permitted all duty-free, legally mandated rest breaks. Plaintiffs each performed work for which

1 each was not paid all wages due, including overtime. Plaintiffs each received inaccurate wage
2 statements during their employment. Plaintiffs Correa and Andrade's employment terminated
3 during the statutory period.

4 **23.** The California Labor Code upon which Plaintiffs base their claims are broadly
5 remedial in nature. These laws and labor standards serve an important public interest in
6 establishing minimum working conditions and standards. These laws and labor standards
7 protect the average working employee from exploitation by employers who may seek to take
8 advantage of superior economic and bargaining power in setting onerous terms and conditions
9 of employment.

10 **24.** The nature of this action and the format of laws available to Plaintiffs and
11 members of the Class identified herein make the class action format a particularly efficient and
12 appropriate procedure to redress the wrongs alleged herein. If each employee were required to
13 file an individual lawsuit, the corporate Defendants would necessarily gain an unconscionable
14 advantage since it would be able to exploit and overwhelm the limited resources of each
15 individual plaintiff with their vastly superior financial and legal resources. Requiring each
16 Class Member to pursue an individual remedy would also discourage the assertion of lawful
17 claims by employees who would be disinclined to file an action against their former and/or
18 current employer for real and justifiable fear of retaliation and permanent damage to their
19 careers at subsequent employment.

20 **25.** The prosecution of separate actions by the individual Class Members, even if
21 possible, would create a substantial risk of (a) inconsistent or varying adjudications with
22 respect to individual Class Members against the Defendants and which would establish
23 potentially incompatible standards of conduct for the Defendants, and/or (b) adjudications with
24 respect to individual Class Members which would, as a practical matter, be dispositive of the
25 interest of the other Class Members not parties to the adjudications or which would
26 substantially impair or impede the ability of the Class Members to protect their interests.
27 Further, the claims of the individual members of the Classes are not sufficiently large to
28 warrant vigorous individual prosecution considering all of the concomitant costs and expenses.

1 **26.** Such a pattern, practice and administration of corporate policy regarding illegal
2 employee compensation described herein is unlawful and creates an entitlement to recovery by
3 Plaintiffs and the Class identified herein, in a civil action, for the unpaid balance of the full
4 amount of meal period and rest break premiums, overtime wages and minimum wages, and
5 penalties, including interest thereon, attorneys' fees and costs of suit, as well as consequential
6 damages.

7 **27.** Proof of a common business practice or factual pattern, which Plaintiffs
8 experienced and are representative of, will establish the right of each Class Member to
9 recovery on the causes of action alleged herein.

10 **28.** The Class is commonly entitled to a specific fund with respect to the
11 compensation illegally and unfairly retained by Defendants. This action is brought for the
12 benefit of the entirety of all Class and will result in the creation of a common fund.

13 **COLLECTIVE ACTION ALLEGATIONS**

14 **29.** Definition: Plaintiffs bring, on behalf of themselves and all similarly situated
15 individuals, a proposed FLSA Collective Class of all Defendants' non-exempt employees in
16 California during the period October 21, 2016 to present that elect to opt-in to this action
17 pursuant to FLSA, 29 U.S.C. § 216(b).

18 **30.** Upon information and belief, Defendants suffered and permitted Plaintiffs and
19 the Collective Class to work more than 40 hours per week without appropriate overtime
20 compensation. Upon information and belief, Defendants suffered and permitted Plaintiffs and
21 the Collective Class to work without appropriate minimum wage compensation.

22 **31.** Defendants' unlawful conduct has been widespread, willful, repeated, and
23 consistent, and has caused significant damages to Plaintiffs and the Collective Class.

24 **32.** Defendants are liable under the FLSA for failing to properly compensate
25 Plaintiffs and the Collective Class, and as such, notice should be sent to the Collective Class.
26 Upon information and belief, many similarly situated current and former employees of
27 Defendants who have been denied proper overtime pay in violation of the FLSA would benefit
28 from the issuance of a Court-supervised notice of the instant lawsuit and the opportunity to join

1 in the instant lawsuit. Those similarly-situated employees are known to Defendants and are
2 readily identifiable through Defendants' records.

3 **FIRST CAUSE OF ACTION**

4 **VIOLATION OF LABOR CODE SECTION 226.7**

5 **REGARDING MEAL PERIOD AND REST BREAK WAGES**

6 **(AGAINST ALL DEFENDANTS BY ALL PLAINTIFFS ON BEHALF OF**
7 **THE CLASS)**

8 **33.** Plaintiffs re-allege and incorporate by reference paragraphs 1 through 32 as
9 though fully set forth herein.

10 **34.** In accordance with the mandates of the California Labor Code and the
11 applicable IWC Wage Order, Plaintiffs and the Class had the right to take a 10-minute rest
12 break for every four (4) hours worked or major fraction thereof, and a 30-minute meal period
13 for every five (5) hours worked.

14 **35.** As a pattern and practice, Defendants regularly did not provide employees with
15 their meal periods and rest breaks and did not provide proper compensation for this failure.

16 **36.** Defendants' policy of failing to provide Plaintiffs and the Class with legally
17 mandated meal periods and rest breaks is a violation of California law.

18 **37.** Defendants willfully failed to pay employees whom they did provide the
19 opportunity to take meal periods and rest breaks the premium compensation set out in Labor
20 Code § 226.7 and the applicable IWC Wage Order, and Plaintiffs and the Class are owed
21 wages for meal period and rest break premiums as set forth above.

22 **38.** Such a pattern, practice and administration of corporate policy as described
23 herein is unlawful and creates an entitlement to recovery by Plaintiffs and the Class identified
24 herein, in a civil action, for the balance of the unpaid premium compensation pursuant to Labor
25 Code § 226.7 and the applicable IWC Wage Order, including interest thereon.

26 **39.** Defendants' willful failure to provide Plaintiffs and the Class the wages due and
27 owing them upon separation from employment results in continuation of wages up to thirty
28 (30) days from the time the wages were due. Therefore, Plaintiffs and Class Members who

1 have separated from employment are entitled to compensation pursuant to Labor Code § 203.

2 **SECOND CAUSE OF ACTION**

3 **VIOLATION OF LABOR CODE SECTION 1194**

4 **REGARDING OVERTIME AND MINIMUM WAGES**

5 **(AGAINST ALL DEFENDANTS BY PLAINTIFFS CORREA AND ANDRANDE ON**
6 **BEHALF OF THE CLASS)**

7 **40.** Plaintiffs re-allege and incorporate by reference paragraphs 1 through 39 as
8 though fully set forth herein.

9 **41.** At all times relevant herein, Defendants were required to compensate their non-
10 exempt employees minimum wages for all hours worked and overtime wages for all hours
11 worked over eight (8) hours in a day or forty (40) hours in a workweek.

12 **42.** As a pattern and practice, Defendants regularly failed to compensate their
13 employees for all hours worked, resulting in a failure to pay all minimum wages and, where
14 applicable, overtime wages.

15 **43.** This resulted in Plaintiffs and the Class receiving total wages in an amount less
16 than minimum wage and, when applicable, deprived Plaintiff and the Class of overtime wages.

17 **44.** Such a pattern, practice and administration of corporate policy regarding illegal
18 employee compensation as described herein is unlawful and creates an entitlement to recovery
19 by Plaintiffs and the Class in a civil action, for the unpaid balance of the full amount of
20 minimum and overtime wages owing, including liquidated damages, interest, attorneys' fees,
21 and costs of suit according to the mandate of California Labor Code § 1194.

22 **45.** Defendants' willful failure to provide Plaintiff and the Class the wages due and
23 owing them upon separation from employment results in continuation of wages up to thirty
24 (30) days from the time the wages were due. Therefore, Plaintiffs and Class Members who
25 have separated from employment are entitled to compensation pursuant to Labor Code § 203.

1 **THIRD CAUSE OF ACTION**

2 **VIOLATION OF LABOR CODE SECTION 226**

3 **REGARDING RECORD KEEPING**

4 **(AGAINST ALL DEFENDANTS BY ALL PLAINTIFFS ON BEHALF OF**
5 **THE CLASS)**

6 **46.** Plaintiffs re-allege and incorporate by reference paragraphs 1 through 45 as
7 though fully set forth herein.

8 **47.** In violation of Labor Code § 226, Defendants failed in their affirmative
9 obligation to keep *accurate* records for their California employees. For example, as a result of
10 Defendants' various Labor Code violations, Defendants failed to keep accurate records of
11 Plaintiffs and the Class gross wages earned, total hours worked, net wages earned, and all
12 applicable hourly rates and the number of hours worked at each hourly rate. Plaintiff received
13 at least one such wage statement during his employment with Defendants.

14 **48.** Such a pattern, practice and uniform administration of corporate policy as
15 described herein is unlawful and creates an entitlement to recovery by the Plaintiffs and the
16 Class identified herein, in a civil action, for all damages and/or penalties pursuant to Labor
17 Code § 226, including interest thereon, penalties, reasonable attorneys' fees, and costs of suit
18 according to the mandate of California Labor Code § 226.

19 **FOURTH CAUSE OF ACTION**

20 **VIOLATION OF LABOR CODE SECTION 203**

21 **REGARDING WAITING TIME PENALTIES**

22 **(AGAINST ALL DEFENDANTS BY PLAINTIFF'S CORREA AND ANDRADE ON**
23 **BEHALF OF THE CLASS)**

24 **49.** Plaintiffs re-allege and incorporate by reference paragraphs 1 through 48 as
25 though fully set for herein.

26 **50.** At all times relevant herein, Defendants were required to pay their employees
27 all wages owed in a timely fashion at the end of employment pursuant to California Labor
28 Code §§ 201 to 204.

1 **51.** As a result of Defendants’ alleged Labor Code violations alleged above,
2 Defendants regularly failed to pay Plaintiff and the Class and Subclasses (a), (b), (c), (d), (e),
3 and (f) their final wages pursuant to Labor Code §§ 201 to 204 and accordingly owe waiting
4 time penalties pursuant to Labor Code § 203.

5 **52.** The conduct of Defendants and their agents and employees as described herein
6 was willfully done in violation of Plaintiffs and the Class’s rights, and done by managerial
7 employees of Defendants.

8 **53.** Defendants’ willful failure to provide Plaintiffs and the Class the wages due and
9 owing them upon separation from employment results in a continuation of wages up to thirty
10 (30) days from the time the wages were due. Therefore, Plaintiffs and Class Members who
11 have separated from employment are entitled to compensation pursuant to Labor Code § 203.

12 **FIFTH CAUSE OF ACTION**

13 **VIOLATION OF LABOR CODE SECTION 2802**

14 **REGARDING REIMBURSEMENT OF BUSINESS EXPENSES**

15 **(AGAINST ALL DEFENDANTS BY ALL PLAINTIFFS ON BEHALF OF THE CLASS)**

16 **54.** Plaintiffs re-allege and incorporate by reference paragraphs 1 through 53as
17 though fully set for herein.

18 **55.** In violation of Labor Code § 2802, Defendants failed in their obligation to
19 reimburse its employees for business expenses incurred. For example, Defendants failed to
20 reimburse its employees for costs incurred using personal mobile telephones for business
21 purposes and personal protective equipment for Covid-19.

22 **56.** Such a pattern, practice and administration of corporate policy as described
23 herein is unlawful and creates an entitlement to recovery by the Plaintiffs and the Class in a
24 civil action, for all damages and/or penalties pursuant to Labor Code § 2802, including interest
25 thereon, penalties, reasonable attorneys’ fees, and costs of suit according to the mandate of
26 California Labor Code § 2802.

27 **SIXTH CAUSE OF ACTION**

28 **FOR VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17200 et seq.**

1 **(AGAINST ALL DEFENDANTS BY ALL PLAINTIFFS ON BEHALF OF**
2 **THE CLASS)**

3 **57.** Plaintiff re-alleges and incorporates by reference paragraphs 1 through 48 as
4 though fully set for herein.

5 **58.** Defendants, and each of them, have engaged and continue to engage in unfair
6 and unlawful business practices in California by practicing, employing and utilizing the
7 employment practices outlined above, inclusive, to wit, by knowingly denying employees: (1)
8 all meal period wages and rest break premiums, (2) all overtime wages and minimum wages,
9 (3) accurate wage statements, and (4) all wages due and owing upon termination of
10 employment.

11 **59.** Defendants’ utilization of such business practices constitutes unfair, unlawful
12 competition and provides an unfair advantage over Defendants’ competitors.

13 **60.** The acts complained of herein occurred within the last four years preceding the
14 filing of the complaint in this action.

15 **61.** Defendants have engaged in unlawful, deceptive and unfair business practices,
16 as proscribed by California Business and Professions Code § 17200 *et seq.*, including those set
17 forth above, thereby depriving Plaintiff and the Class and Subclasses the minimum working
18 condition standards and conditions due to them under the California laws and IWC Wage
19 Orders as specifically described therein.

20 **62.** Plaintiff seeks, on his own behalf, and on behalf of other members of the Class
21 and Subclasses who are similarly situated, full restitution of monies, as necessary and
22 according to proof, to restore any and all monies withheld, acquired and/or converted by the
23 Defendants by means of the unfair practices complained of herein.

24 **SEVENTH CAUSE OF ACTION**

25 **FOR VIOLATION OF PAGA**

26 **(AGAINST ALL DEFENDANTS BY ALL PLAINTIFFS CORREA, ANDRANDE AND**
27 **RODRIGUEZ ON BEHALF OF ALL AGGRIEVED EMPLOYEES)**

28 **63.** Plaintiffs re-allege and incorporate by reference paragraphs 1 through 62 as

1 though fully set for herein.

2 **64.** Labor Code § 2698 et seq. (the Private Attorneys General Act of 2004
3 (“PAGA”)) expressly establishes that any provision of the California Labor Code which
4 provides for a civil penalty to be assessed and collected by the LWDA, or any of its
5 departments, divisions, commissions, boards, agencies or employees for a violation of the
6 California Labor Code, may be recovered through a civil action brought by an aggrieved
7 employee on behalf of himself or herself, and other current or former employees.

8 **65.** Plaintiffs seek to recover all applicable and available PAGA remedies pursuant
9 to Labor Code § 2699, as well as attorneys’ fees, costs, and/or other damages as permitted by
10 PAGA through a representative action pursuant to the PAGA and the California Supreme
11 Court in *Arias v. Superior Court*, 46 Cal. 4th 969 (2009). Therefore, Plaintiffs are not required
12 to, nor do they, seek class certification of the PAGA claims under Code of Civil Procedure §
13 382.

14 **66.** On November 15, 2019, Plaintiff Correa provided written notice to the LWDA
15 and Defendants of the specific provisions of the Labor Code he contends were violated, and the
16 theories supporting his contentions. To date, he has not received a response.

17 **67.** Plaintiff Andrade gave written notice by certified electronic mail to the Labor
18 and Workforce Development Agency (“LWDA”) and to Defendants of the specified provisions
19 alleged to have been violated, including the facts and theories to support the alleged violation
20 as required by Labor Code § 2699.3.

21 **68.** Plaintiff Rodriguez filed a PAGA complaint online with the LWDA and served
22 Defendants by certified mail as prescribed by the Labor Code. A copy of each of the three
23 letters is attached as Exhibit B.

24 **69.** Plaintiffs and the other non-exempt employees are “aggrieved employees” as
25 defined by California Labor Code § 2699(c) in that they are all current or former employees of
26 Defendants, and one or more of the alleged violations was committed against them.

27 **70.** Plaintiffs bring this cause of action for violations of the following underlying
28 California Labor Code sections: 201 to 204, 226, 226.3, 226.7, 256, 510, 512, 558, 1174,

1 1194, 1194.2, 1194.5, 1197, 1197.1, 1198, 2802, and Industrial Welfare Commission (“IWC”)
2 Wage Order No. 9-2001 (codified as California Code of Regulations, title 8, § 11160).

3 **Failure to Pay Minimum and Overtime Wages**

4 **71.** At all times relevant herein, Defendants were required to compensate their non-
5 exempt employees minimum wages for all hours worked and overtime wages for all hours
6 worked in excess of eight (8) hours in a workday and forty (40) hours in a workweek, pursuant
7 to the mandate of Labor Code §§ 510, 558, 1194, 1194.2, 1197, 1197.1, and 1198.

8 **72.** As a pattern and practice, Defendants failed to compensate Plaintiffs and other
9 similarly-situated current and former employees for all hours worked. Specifically, Defendants
10 paid Plaintiffs and other aggrieved employees based on a component pay system, in which
11 Defendants paid workers based in part based on the number of items/cases that were delivered
12 to customers within a work day, without regard for the number of hours actually worked. Thus,
13 Defendants failed to properly provide aggrieved employees with wages for all hours actually
14 worked and for all overtime wages earned at the correct regular rate despite constructive and
15 actual knowledge of the hours of work being performed.

16 **73.** This resulted in a failure to compensate Plaintiffs and other aggrieved
17 employees at the applicable overtime rate for all overtime hours worked.

18 **Failure to Provide Meal Periods and Rest Breaks**

19 **74.** In accordance with the mandates of the California Labor Code and the
20 applicable IWC Wage Order, Plaintiffs and other aggrieved employees had the right to take a
21 10-minute rest break for every four (4) hours worked or major fraction thereof, and a 30-
22 minute meal period for every five (5) hours worked.

23 **75.** As a pattern and practice, Defendants regularly failed to provide Plaintiffs and
24 other aggrieved employees their full duty-free meal periods and rest breaks and did not provide
25 proper compensation for this failure.

26 **Failure to Timely Pay Wages During and Upon Termination of Employment**

27 **76.** At all times relevant herein, Defendants were required to pay their employees in
28 a timely fashion pursuant to the mandate of Labor Code §§ 201 to 204.

1 **77.** As a result of Defendants’ Labor Code violations alleged above, Defendants
2 failed to pay Plaintiffs and the other aggrieved employees all wages due them within the time
3 periods specified by Labor Code §§ 201-204 during and upon termination of employment.

4 **Failure to Provide Complete and Accurate Wage Statements**

5 **78.** At all times relevant herein, Defendants were required to keep accurate records
6 regarding their California employees pursuant to the mandate of Labor Code §§ 226 and
7 1174(d).

8 **79.** As a result of Defendants’ various Labor Code violations, Defendants failed to
9 keep accurate records regarding Plaintiffs and other similarly-situated current and former
10 employees. For example, Defendants failed in their affirmative obligation to keep accurate
11 records regarding Plaintiffs and other similarly-situated current and former employees’ gross
12 wages earned, total hours worked, net wages earned, and all applicable hourly rates and the
13 number of hours worked at each hourly rate.

14 **Failure to Reimburse Necessary Work-Related Expenses**

15 **80.** At all times relevant herein, Defendants were required to indemnify their
16 employees for all necessary expenditures or losses incurred in direct consequence of the
17 discharge of the employees’ duties, or of the employees’ obedience to the directions of the
18 employer pursuant to California Labor Code § 2802.

19 **81.** As a pattern and practice, Defendants failed to reimburse Plaintiffs and other
20 aggrieved employees for all necessary work-related expenses, including, but not limited to,
21 expenses incurred in the use of their personal mobile telephones for work purposes and for
22 personal protective equipment for Covid-19.

23 **Damages**

24 **82.** Pursuant to Labor Code § 2699, Plaintiffs, individually and on behalf of other
25 current and former aggrieved employees, request and are entitled to recover from Defendants,
26 and each of them, unpaid wages, civil penalties, interest, attorneys’ fees and costs pursuant, as
27 well as all statutory penalties against Defendants, and each of them, including but not limited
28 to:

- 1 **a.** Penalties under Labor Code § 2699 in the amount of a hundred dollars
2 (\$100) for each aggrieved employee per pay period for the initial
3 violation, and two hundred dollars (\$200) for each aggrieved employee
4 per pay period for each subsequent violation;
- 5 **b.** Penalties under Labor Code § 210 in the amount of a hundred dollars
6 (\$100) for each aggrieved employee per pay period for the initial
7 violation, and two hundred dollars (\$200) for each aggrieved employee
8 per pay period for each subsequent violation, plus 25% of the amount
9 unlawfully withheld;
- 10 **c.** Penalties under Labor Code § 256 in the amount of 30 days pay per
11 aggrieved former employee;
- 12 **d.** Penalties under Labor Code § 226.3 in the amount of two hundred fifty
13 dollars (\$250) per employee per initial violation and one thousand
14 dollars (\$1,000) per employee for each subsequent violation;
- 15 **e.** Penalties under Labor Code § 558 in the amount of fifty dollars (\$50) for
16 each aggrieved employee per pay period for the initial violation, and one
17 hundred dollars (\$100) for each aggrieved employee per pay period for
18 each subsequent violation;
- 19 **f.** Penalties under Labor Code § 1197.1 in the amount of one hundred
20 dollars (\$100) for each aggrieved employee per pay period for the initial
21 violation, and two hundred fifty dollars (\$250) for each aggrieved
22 employee per pay period for each subsequent violation;
- 23 **g.** An amount sufficient to recover unpaid wages under Labor Code § 558;
- 24 **h.** An amount sufficient to recover unpaid wages under Labor Code §
25 1197.1;
- 26 **i.** Any and all additional penalties and sums as provided by the Labor
27 Code and/or other statutes; and
- 28 **j.** Attorneys' fees and costs pursuant to Labor Code §§ 210, 1194, 2699,

1 2802, and any other applicable statute.

2 **EIGHTH CAUSE OF ACTION**

3 **VIOLATION OF THE FAIR LABOR STANDARDS ACT, 29 U.S.C. § 201 et seq.**

4 **REGARDING UNPAID MINIMUM AND OVERTIME WAGES**

5 **(AGAINST ALL DEFENDANTS BY ALL PLAINTIFFS AND THE PROPOSED FLSA**
6 **COLLECTIVE)**

7 **83.** Plaintiffs re-allege and incorporate by reference paragraphs 1 through 82 as
8 though fully set for herein.

9 **84.** Plaintiffs bring, on behalf of themselves and all similarly-situated individuals, a
10 proposed FLSA Collective class as defined as follows:

11 **a.** All Defendants' non-exempt employees in California during the period
12 October 21, 2016 to present that elect to opt-in to this action pursuant to
13 FLSA, 29 U.S.C. § 216(b).

14 **85.** Plaintiffs have each consented in writing to be a part of this action pursuant to
15 29 U.S.C. § 216(b). Signed consent forms are attached hereto as Exhibit A.

16 **86.** The overtime and minimum wage provisions set forth in the FLSA apply to
17 Defendants and protect Plaintiffs and the FLSA Collective.

18 **87.** At all times relevant, Plaintiffs and the members of the FLSA Collective were
19 or have been employees within the meaning of 29 U.S.C. §§ 203(e) and 207(a). Defendants
20 employed Plaintiffs and the members of the FLSA Collective as their employer.

21 **88.** At all relevant times, Defendants have been, and continue to be, "employers"
22 engaged in interstate commerce and/or the production of goods for commerce, within the
23 meaning of the FLSA, 29 U.S.C. §§ 203. At all relevant times, Defendants have employed and
24 continue to employ employees, including members of the FLSA Collective.

25 **89.** The FLSA, 29 U.S.C. § 207, requires employers to pay non-exempt employees
26 one and one-half times the regular rate of pay for all hours worked over forty (40) hours per
27 workweek.

28 **90.** During the applicable statutory period, Defendants suffered and permitted

1 Plaintiffs and the FLSA Collective to routinely work more than forty (40) hours in a workweek
2 without proper overtime compensation. Therefore, in violation of the FLSA, Defendant failed
3 to properly compensate Plaintiffs and members of the proposed FLSA Collective for all hours
4 worked in excess of forty (40) hours in a workweek.

5 **91.** Plaintiffs and the FLSA Collective are not exempt from the overtime
6 requirements of the FLSA under 29 U.S.C. §213, and Defendants' regular, repeated, and
7 knowing failure to compensate Plaintiffs and the FLSA Collective at the required overtime rate
8 constitutes willful violation of the FLSA.

9 **92.** Because Defendants; violations of the FLSA, as described in this Complaint,
10 have been willful and intentional, a three-year statute of limitations applies pursuant to 29
11 U.S.C. § 255.

12 **93.** As a result of Defendants' violations of the FLSA, Plaintiffs and the members
13 of the FLSA Collective have suffered damages by being denied minimum and overtime wages
14 in accordance with the FLSA in amounts to be determined at trial, and are entitled to recovery
15 of such amounts, liquidated damages, prejudgment interest, attorneys' fees, costs, and other
16 compensation pursuant to 29 U.S.C. 201 *et seq.*

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiffs prays for judgment for themselves and all others on
19 whose behalf this suit is brought against Defendants, jointly and severally, as follows:

- 20 1. For an order certifying the proposed Class;
- 21 2. For an order appointing Plaintiffs as representatives of the Class as described
22 herein;
- 23 3. For an order appointing counsel for Plaintiffs as counsel for the Class;
- 24 4. Upon the First Cause of Action, for all meal period and rest break wages owed,
25 and for costs;
- 26 5. Upon the Second Cause of Action, for all minimum wages owed and overtime
27 wages owed, and for costs and attorney's fees;
- 28 6. Upon the Third Cause of Action, for damages or penalties pursuant to statute as

1 set forth in California Labor Code § 226, and for costs and attorneys' fees;

2 7. Upon the Fourth Cause of Action, for all minimum wages owed and overtime
3 wages owed, and for waiting time wages according to proof pursuant to
4 California Labor Code §203 and for costs and attorneys' fees;

5 8. Upon the Fifth Cause of Action, for damages or penalties pursuant to statute as
6 set forth in California Labor Code § 2802, and for costs and attorneys' fees;

7 9. Upon the Sixth Cause of Action, for restitution to Plaintiff and other similarly
8 affected members of the general public of all funds unlawfully acquired by
9 Defendants by means of any acts or practices declared by this Court to be in
10 violation of Business and Professions Code § 17200 *et seq.*; and

11 10. Upon the Seventh Cause of Action, for civil penalties and wages pursuant to
12 statute as set forth in Labor Code § 2698 *et seq.*, for Defendants' violations of
13 Labor Code §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 256, 510, 512, 558,
14 1194, 1197.1, 1198, and 2802;

15 11. Upon the Eighth Cause of Action, for: (1) designation of this action as a
16 collective action on behalf of Plaintiffs and those similarly situated; (2) prompt
17 issuance of notice pursuant to 29 U.S.C. § 216(b) to those similarly situated
18 individuals; (3) judgment against Defendants for willful violation of the FLSA;
19 (4) an award to Plaintiffs and those similarly situated for the amount of unpaid
20 minimum wage and overtime compensation owed, an equal amount as
21 liquidated damages, appropriate civil penalties, attorney's fees and prejudgment
22 interest (to the extent liquidated damages are not awarded); and

23 12. On all causes of action for attorneys' fees, interest, and costs as provided by
24 California Labor Code §§ 210, 218.6, 226, 1194, 2699, 2802, Code of Civil
25 Procedure § 1021.5 and 29 U.S.C. § 216(b), and for such other and further relief
26 the Court may deem just and proper.

27
28

1 Dated: September 22, 2020

YOON LAW, APC

2
3 By: _____

4 Kenneth H. Yoon
5 Stephanie E. Yasuda
6 Brian G. Lee

7 Attorneys for Plaintiffs Jessy Correa, Brittany
8 Roderick, Eric Andrade, and Henry Linares
9 Rodriguez

DEMAND FOR JURY TRIAL

10 Plaintiffs, for themselves and the Class and Subclasses, hereby demands a jury
11 trial as provided by California law.

12 Dated: September 22, 2020

YOON LAW, APC

13 By: _____

14 Kenneth H. Yoon
15 Stephanie E. Yasuda
16 Brian G. Lee

17 Attorneys for Plaintiffs Jessy Correa, Brittany
18 Roderick, Eric Andrade, and Henry Linares
19 Rodriguez

DEMAND FOR JURY TRIAL

20 Plaintiffs, for themselves and the aggrieved employees, hereby demands a jury trial as
21 provided by California law.

22 Dated: September 22, 2020

YOON LAW, APC

23 By: _____

24 Kenneth H. Yoon
25 Stephanie E. Yasuda
26 Brian G. Lee

27 Attorneys for Plaintiffs Jessy Correa, Brittany
28 Roderick, Eric Andrade, and Henry Linares
Rodriguez

1 **CONSENT TO BECOME A PARTY PLAINTIFF**

2 *Correa v. Harbor Distributing, LLC*
3 Los Angeles County Superior Court Case No. 19STCV37441

4 Complete and Mail, Fax, or E-mail to:

5 Yoon Law, APC
6 One Wilshire Blvd., Suite 2200
7 Los Angeles, CA 90012
8 Phone: (213) 612-0988 / Fax: (213) 947-1211
9 E-mail: kyoon@yoonlaw.com

10 By signing below, I state I have been employed by Harbor Distributing, LLC within the
11 past three (3) years and that I hereby consent to join this lawsuit seeking unpaid overtime
12 wages, including minimum wage and/or overtime, based on Harbor Distributing, LLC's
13 violations of the Fair Labor Standards Act, 29 U.S.C. §§ 201 *et. seq.*

14 I hereby designate Yoon Law, APC and any other attorneys with whom they may
15 associate to represent me for all purposes of this action.

16 _____
17 Date Signature
18 _____
19 Jessy Correa

1 **CONSENT TO BECOME A PARTY PLAINTIFF**

2 *Correa v. Harbor Distributing, LLC*
3 Los Angeles County Superior Court Case No. 19STCV37441

4 Complete and Mail, Fax, or E-mail to:

5 Yoon Law, APC
6 One Wilshire Blvd., Suite 2200
7 Los Angeles, CA 90012
8 Phone: (213) 612-0988 / Fax: (213) 947-1211
9 E-mail: kyoon@yoonlaw.com

10 By signing below, I state I have been employed by Harbor Distributing, LLC within the
11 past three (3) years and that I hereby consent to join this lawsuit seeking unpaid overtime
12 wages, including minimum wage and/or overtime, based on Harbor Distributing, LLC's
13 violations of the Fair Labor Standards Act, 29 U.S.C. §§ 201 *et. seq.*

14 I hereby designate Yoon Law, APC and any other attorneys with whom they may
15 associate to represent me for all purposes of this action.

16 _____
17 Date

18 _____
19 Signature

20 _____
21 Brittany Roderick

1 **CONSENT TO BECOME A PARTY PLAINTIFF**

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3 Los Angeles County Superior Court Case No. 19STCV37441

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9 E-mail: kyoon@yoonlaw.com

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11 past three (3) years and that I hereby consent to join this lawsuit seeking unpaid overtime
12 wages, including minimum wage and/or overtime, based on Harbor Distributing, LLC's
13 violations of the Fair Labor Standards Act, 29 U.S.C. §§ 201 *et. seq.*

14 I hereby designate Yoon Law, APC and any other attorneys with whom they may
15 associate to represent me for all purposes of this action.

16 _____
17 Date

18 _____
19 Signature

20 _____
21 Eric Andrade

1 **CONSENT TO BECOME A PARTY PLAINTIFF**

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3 Los Angeles County Superior Court Case No. 19STCV37441

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6 One Wilshire Blvd., Suite 2200
7 Los Angeles, CA 90012
8 Phone: (213) 612-0988 / Fax: (213) 947-1211
9 E-mail: kyoon@yoonlaw.com

10 By signing below, I state I have been employed by Harbor Distributing, LLC within the
11 past three (3) years and that I hereby consent to join this lawsuit seeking unpaid overtime
12 wages, including minimum wage and/or overtime, based on Harbor Distributing, LLC's
13 violations of the Fair Labor Standards Act, 29 U.S.C. §§ 201 *et. seq.*

14 I hereby designate Yoon Law, APC and any other attorneys with whom they may
15 associate to represent me for all purposes of this action.

16 _____
17 Date

18 _____
19 Signature

20 _____
21 Henry Linares Rodriguez