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Assigned for All Purposes
Judge Randall J. Sherman
CX-105

8 Attorneys for Plaintiff, Samuel Martinez
9

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF ORANGE**

12
13
14 **SAMUEL MARTINEZ**, individually and on
behalf of other aggrieved employees,

15
16 Plaintiff,

17 v.
18

19 **KAUSAR INDUSTRIES, INC.** a corporation;
A & R Box & Packaging, a limited liability
20 company; and DOES 1-20, inclusive,
21

22 Defendants.
23

Case No.: 30-2022-01276206-CU-OE-CXC

**REPRESENTATIVE ACTION COMPLAINT
FOR:**

1. Civil Penalties Under the Private Attorneys General Act (California Labor Code §§ 2698, et seq.).

KJT LAWGROUP LLP
Jivalagian | Thomassian

Plaintiff Samuel Martinez brings this action on behalf of the State of California, and on behalf of other aggrieved employees pursuant to the California Private Attorneys General Act, and alleges the following:

I. INTRODUCTION

1. Plaintiff Samuel Martinez ("Plaintiff") brings this representative action to remedy wage- and-hour violations by defendants Kausar Industries, Inc., A & R Box & Packaging, and Does 1 through 20 (collectively, the "Defendants"). For at least one year prior to the filing of this action and through the present, Defendants have engaged in a uniform policy and systematic scheme of wage abuse against Plaintiff and other non-exempt employees of Defendants in violation of applicable California laws, including, without limitation, failing to pay minimum and reimbursements, and failing to furnish Plaintiff and other employees with accurate, itemized wage statements. As a result of these violations, Defendants are liable for civil penalties under the California Private Attorneys General Act, California Labor Code §§ 2698, *et seq.* ("PAGA").

II. THE PARTIES

2. Defendant Kausar Industries, Inc. is a packaging Materials industries in the city of Anaheim, California that provided business throughout the United States. At all times mentioned herein, Defendant Kausar Industries, Inc. was licensed to do business in the State of California and conducted and continues to conduct substantial business in the State of California. And at all times mentioned herein, Defendants Kausar Industries, Inc. was and is an employer covered by the California Labor Code and the applicable California Industrial Welfare Commission ("IWC") Wage Order.

3. Defendant A & R Box & Packaging is a business that provides boxes and shipping supplies to various businesses nationwide in the city of Anaheim, California and conducted and continues to conduct substantial business in the state of California. At all times mentioned herein, Defendant A & R Box & Packaging was and is employer covered by the California Labor Code and the California IWC Wage Order.

4. Plaintiff is unaware and ignorant of the true names and capacities of defendants sued herein as **Does 1 through 20**, inclusive, and for that reason sues said defendants by such fictitious names (the

“Doe Defendants”).

5. At all times herein relevant, Defendants Kausar Industries, Inc.; A & R Box & Packaging and the Doe Defendants, and each of them, were the agents, partners, joint-ventures, joint employers, alter-egos, representatives, servants, employees, successors-in-interest, co-conspirators and assigns, each of the other, and at times relevant hereto were acting with the course and cope of their authority as such agents, partners, joint-ventures, joint employers, alter-egos, representatives, servants, employees, successors-in-interest, co-conspirators and assigns, and all acts or omissions alleged herein were duly committed with the ratification, knowledge, permission, encouragement, authorization, and consent of each defendant designated herein. Plaintiff is informed and believes, and based thereon alleges that the acts of each Defendant are legally attributable to the other Defendants.

6. Plaintiff is informed and believes, and based thereon alleges that each of the Doe Defendants are legally responsible for the events and happenings referred to in this Complaint, and unlawfully caused the injuries and damages to Plaintiff and the other aggrieved employees as alleged in this Complaint. Plaintiff will file and serve an amendment to this Complaint alleging the true names and capacities of the Doe Defendants when such true names, capacities, and involvement is ascertained.

7. **Plaintiff Samuel Martinez** was employed by Defendants as a laborer and driver from March 2021 to July 5, 2021. Plaintiff Martinez’s tasks included loading and unloading trucks with supplies, driving to various locations to drop off supplies, and fixing boxes and supplies. At all times relevant to this Complaint, Defendants employed Plaintiff as an hourly, non-exempt employee and Defendants paid Plaintiff in whole or in part on an hourly basis. Plaintiff is an individual residing in the County of Orange.

8. At all times relevant to this Complaint, Defendants, and each of them, exercised control over the wages, hours, and working conditions of Plaintiff and other aggrieved employees; suffered and permitted Plaintiff and other aggrieved employees to work; and otherwise engaged Plaintiff and other aggrieved employees to work, so as to create an employer-employee relationship between Defendants and Plaintiff and other aggrieved employees. At all relevant times, Defendants were “employers” of Plaintiff and other aggrieved employees within the meaning of all applicable California state laws.

III. JURISDICTION AND VENUE

9. This Court has jurisdiction over this action under the California Constitution, Article VI, Section 10, which grants the Superior Court original jurisdiction in all causes except those given by statute to other courts. The statutes under which this action is brought do not specifically grant jurisdiction to any other court, and the issues are based solely on California statutes and law, including the California Labor Code, California IWC Wage Orders, California Code of Civil Procedure, California Civil Code, PAGA, and the California Business and Professions Code.

10. The California Superior Court has jurisdiction over Defendants, because they are citizens of California, have sufficient minimum contacts in California, and otherwise intentionally avail themselves to the California market, including establishing their principal place of business and transacting business in California.

11. Venue is proper in this Court, because the Defendants transact business in the County of Orange, including operating its facilities and maintaining their headquarters in the County of Orange.

IV. FACTUAL BACKGROUND

12. At all relevant times set forth in this Complaint, Defendants jointly employed Plaintiff and other aggrieved employees as hourly, non-exempt employees.

13. Plaintiff and other aggrieved employees were covered under one or more IWC Wage Orders, the California Labor Code provisions relating to wage-and-hour laws, and other applicable wage orders, regulations, and statutes, which imposed an obligation on the part of Defendants, among other things, to pay wages for all hours worked, to pay all wages due at separation of employment, to reimburse for all necessary business-related expenses, and to provide accurate wage statements.

14. Plaintiff is informed and believes, and based thereon alleges that Defendants engaged in a uniform policy and systematic scheme of wage abuse against its non-exempt employees, including, without limitation failing to provide timely, accurate itemized wage statements; and failing to pay, within the time constraints imposed by applicable laws, all earned compensation at separation of employment.

15. Plaintiff is informed and believes, and based thereon alleges that Defendants failed to provide

1 Plaintiff and other aggrieved employees' wages, for all hours worked, meaning the time during which
2 Plaintiff and other aggrieved employees were subject to the control of Defendants, including all the
3 time they were suffered or permitted to work. This was a result of Defendants' and other aggrieved
4 employees' uniform policy and practice of requiring Plaintiff and other aggrieved employees to work
5 off-the-clock without paying them for all the time they were under Defendants' control performing
6 pre-shift and post-shift duties. Additionally, Defendants established a consistent policy and practice of
7 rounding down the hours worked by Plaintiff and other aggrieved employees to the nearest quarter-
8 hour. In violation of California law, Defendants rounded the actual time worked and recorded by
9 Plaintiff and other aggrieved employees usually down, so that during their employment, employees
10 were paid far less than they would have been paid had they been paid for actual recorded time.

11 16. Plaintiff is informed and believes, and based thereon alleges that Defendants have unlawfully
12 failed to reimburse Plaintiff and other aggrieved employees for business expenditures and losses,
13 including without limitation, cell phone charges, required tools and equipment, uniform
14 maintenance, and travel expenses.

15 17. Plaintiff is informed and believes, and based thereon alleges that Defendants have unlawfully
16 failed to provide timely, accurate, itemized wage statements to Plaintiff.

17 18. Plaintiff is informed and believes, and based thereon alleges that Defendants have failed to
18 pay all compensation due and owing to Plaintiff and the other aggrieved employees upon separation.

19 **V. PAGA REPRESENTATIVE ACTION ALLEGATIONS**

20 19. At all relevant times, PAGA was applicable to Plaintiff and his employment with
21 Defendants. PAGA provides for a civil penalty to be assessed and collected by the Labor and
22 Workforce Development Agency ("LWDA") for violations of the California Labor Code. As an
23 alternative, these civil penalties may be recovered through a civil action brought by an aggrieved
24 employee on behalf of himself and other current or former employees.

25 20. Plaintiff is an "aggrieved employee" as defined by PAGA, because he is a current
26 employee of Defendants, and one or more of the alleged violations were committed against him.

27 21. On May 25, 2022 Plaintiff gave written notice of Defendants' violations of various
28 provisions of the California Labor Code and IWC Wage Order No. 4-2001 to (a) the LWDA by

1 filing with the LWDA through the LWDA website and (b) to Defendants by certified mail.

2 22. The LWDA did not provide notice of its intention to investigate Defendants' violations
3 within 65 calendar days of the May 25, 2022 notice.

4 23. In doing so, Plaintiff has satisfied the administrative prerequisites under PAGA to
5 recover civil penalties against Defendants, in addition to the other remedies, for violations of
6 California Labor Code §§ 201-203, 226, 226.7, 510, 511, 512(a), 1194 *et seq.*, 1198, and 2802.

7 **VI. CAUSE OF ACTION**

8 **FIRST CAUSE OF ACTION**

9 **Private Attorneys General Act**

(California Labor Code §§ 2698, *et seq.* [PAGA])

10 (By Plaintiff Against Defendants)

11 24. Plaintiff incorporates by reference and re-alleges paragraphs set forth above as though
12 set forth fully herein. Plaintiff alleges as follows as representative cause of action on behalf of himself.

13 25. PAGA authorizes an aggrieved employee, on behalf of him/herself or other current or
14 former employees, to bring a civil action to recover civil penalties against his or her employer
15 pursuant to the procedures specified in California Labor Code § 2699.3. Plaintiff is an aggrieved
16 employee within the meaning of PAGA, and pursuant to PAGA, Plaintiff is entitled to recover civil
17 penalties on behalf of himself and against whom one or more of the alleged violations were
18 committed. If employee prevails as private attorney general, the employer may be subject to civil
19 penalties, of which the aggrieved employee is entitled to 25 percent.

20 26. Plaintiff has complied with the procedures for bringing suit under PAGA. Specifically,
21 on or about May 25, 2022, Plaintiff gave written notice of Defendants' violations — including the facts
22 and theories to support the violations — of various provisions of the California Labor Code and IWC
23 Wage Order No. 4-2001 to (a) the LWDA by filing with the LWDA through the LWDA website
24 and (b) to Defendants by certified mail.

25 27. Pursuant to California Labor Code § 2699.3, the LWDA must give written notice by
26 certified mail to the parties that it intends to investigate the alleged violations of the California Labor
27 Code within 60 days of the date of the complainant's written notice and now more than 65 days have
28 passed since the notice and the LWDA did not provide the parties notice that it intended to

investigate his claims.

28. During the applicable time period preceding the filing of Plaintiff's notice to the LWDA, Defendants violated California Labor Code §§ 201-203, 226, 226.7, 510, 511, 512(a), 1194 *et seq.*, 1198, and 2802, and the IWC Wage Order No. 4-2001 provisions, as alleged in more detail above.

29. Pursuant to California Labor Code § 2699, Plaintiff, individually, requests and is entitled to receive from Defendants statutory penalties against Defendants, including but not limited to:

- a. Penalties under California Labor Code § 2699(f)(2) in the amount of a \$100 for each aggrieved employee per pay period for the initial violation, and \$200 for each aggrieved employee per pay period for each subsequent violation;
- b. Penalties under California Code of Regulations Title 8, § 11040 in the amount of \$50 for each aggrieved employee per pay period for the initial violation, and \$100 for each aggrieved employee per pay period for each subsequent violation;
- c. Pursuant to California Labor Code § 226(e), the greater of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of \$4,000;
- d. Pursuant to California Labor Code § 558(a), violations of California Labor Code § 512(a) and IWC Wage Order No. 4-2001 shall be subject to a civil penalty as follows:
 - (i) for any initial violation, \$50 for each underpaid employee for each pay period for which the employee was underpaid; (ii) for each subsequent violation \$100 for each underpaid employee for each pay period for which the employee was underpaid; and
- e. Any and all additional penalties and sums as provided by the California Labor Code.

30. Pursuant to California Labor Code § 2699(i), civil penalties recovered by aggrieved employees shall be distributed as follows: "75 percent to the Labor and Workforce Development Agency for enforcement of labor laws, including the administration of this part, and for education of employers and employees about their rights and responsibilities under this code, to be continuously appropriated to supplement and not supplant the funding to the agency for those purposes; and 25

percent to the aggrieved employees.”

31. Pursuant to California Labor Code §§ 2699(a) and (f), and 2699.5, and 2699(g)(1), Plaintiff is entitled to an award of reasonable attorneys’ fees and costs. To that end, Plaintiff seeks all relief entitled under PAGA for any penalties assessed against Defendants as a result of Defendants’ California Labor Code violations, plus attorneys’ fees and costs.

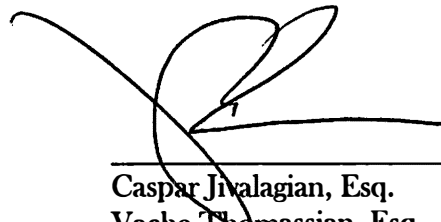
VI. PRAYER FOR RELIEF

Wherefore, Plaintiff, on behalf of the State of California pursuant to PAGA, prays for an award and judgment against Defendants jointly and severally, as follows:

1. For penalties and attorneys’ fees pursuant to PAGA;
2. That the Court declare, adjudge, and decree that Defendants violated California Labor Code §§ 201-203, 226, 226.7, 510, 511, 512(a), 1194 *et seq.*, 1198, and 2802, and IWC Wage Order No. 4-2001 provisions;
3. For civil penalties pursuant to California Labor Code §§ 2699(a), (f), and (g) plus costs and attorneys’ fees under California Labor Code § 218.5, 226(e), and 2699(g) for violations of California Labor Code §§ 201-203, 226, 226.7, 510, 511, 512(a), 1194 *et seq.*, 1198, and 2802, and IWC Wage Order No. 4-2001 provisions; and
4. For such other and further relief as the Court deems appropriate.

DATED: August 15, 2022

KJT LAW GROUP, LLP
ADAMS EMPLOYMENT COUNSEL



Caspar Jivalagian, Esq.
Vache Thomassian, Esq.
Christopher A. Adams, Esq.
Attorneys for Plaintiff,
Samuel Martinez

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(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

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INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you **must** complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

Auto (22)—Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/Wrongful Death
Product Liability (*not asbestos or toxic/environmental*) (24)
Medical Malpractice (45)
Medical Malpractice—Physicians & Surgeons
Other Professional Health Care Malpractice
Other PI/PD/WD (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
Intentional Infliction of Emotional Distress
Negligent Infliction of Emotional Distress
Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice (*not medical or legal*)
Other Non-PI/PD/WD Tort (35)

Employment

Wrongful Termination (36)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease Contract (*not unlawful detainer or wrongful eviction*)
Contract/Warranty Breach—Seller Plaintiff (*not fraud or negligence*)
Negligent Breach of Contract/Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case—Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage (*not provisionally complex*) (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ—Administrative Mandamus
Writ—Mandamus on Limited Court Case Matter
Writ—Other Limited Court Case Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal—Labor Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims (*arising from provisionally complex case type listed above*) (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment (*non-domestic relations*)
Sister State Judgment
Administrative Agency Award (*not unpaid taxes*)
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

RICO (27)
Other Complaint (*not specified above*) (42)
Declaratory Relief Only
Injunctive Relief Only (*non-harassment*)
Mechanics Lien
Other Commercial Complaint Case (*non-tort/non-complex*)
Other Civil Complaint (*non-tort/non-complex*)

Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition (*not specified above*) (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief From Late Claim
Other Civil Petition