

DOUGLAS HAN (SBN 232858)
SHUNT TATAVOS-GHARAJEH (SBN 272164)
HALINA E. SZYMANSKI (SBN 341183)
JUSTICE LAW CORPORATION
751 N. Fair Oaks Avenue, Suite 101
Pasadena, California 91103
Telephone: (818) 230-7502
Facsimile: (818) 230-7259

Attorneys for Plaintiff

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

HAWKAR SOFY, individually, and on
behalf of other members of the general public
similarly situated;

Plaintiff,

v.

A.J.M. PACKAGING CORPORATION, a
Michigan corporation; and DOES 1 through
100, inclusive;

Defendants.

Case No.: 37-2022-00050407-CU-OE-CTL

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR DAMAGES**

- (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code §§ 226.7 and 512(a) (Unpaid Meal Period Premiums);
- (3) Violation of California Labor Code § 226.7 (Unpaid Rest Period Premiums);
- (4) Violation of California Labor Code §§ 1194 and 1197 (Unpaid Minimum Wages);
- (5) Violation of California Labor Code §§ 201 and 202 (Final Wages Not Timely Paid);
- (6) Violation of California Labor Code § 226(a) (Non-Compliant Wage Statements);
- (7) Violation of California Labor Code §§ 2800 and 2802 (Unreimbursed Business Expenses);
- (8) Violation of California Labor Code § 2698, *et seq.* (Private Attorneys General Act of 2004);
- (9) Violation of California Business & Professions Code § 17200, *et seq.*

DEMAND FOR JURY TRIAL

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

10/10/2023 at 03:56:00 PM

Clerk of the Superior Court
By Shiela Retez, Deputy Clerk

COMES NOW, Plaintiff HAWKAR SOFY (“Plaintiff”), individually, and on behalf of other members of the general public similarly situated, and on behalf of aggrieved employees pursuant to the Private Attorneys General Act (“PAGA”), and alleges as follows:

JURISDICTION AND VENUE

1. This class action is brought pursuant to the California Code of Civil Procedure section 382. The monetary damages and restitution sought by Plaintiff exceeds the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial.

2. This Court has jurisdiction over this action pursuant to the California Constitution, Article VI, Section 10, which grants the superior court “original jurisdiction in all other causes” except those given by statute to other courts. The statutes under which this action is brought do not specify any other basis for jurisdiction.

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

4. Venue is proper in this Court because, upon information and belief, Defendants maintain offices, have agents, and/or transact business in the State of California, including the County of San Diego. The majority of the acts and omissions alleged herein relating to Plaintiff took place in the State of California, County of San Diego. Defendants employed Plaintiff within the State of California, County of San Diego.

PARTIES

5. Plaintiff HAWKAR SOFY is an individual residing in the State of California, County of San Diego.

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1 6. Defendant A.J.M. PACKAGING CORPORATION, at all times herein
2 mentioned, was and is, upon information and belief, a Michigan corporation headquartered in
3 the State of California, and at all times herein mentioned, was and is, an employer whose
4 employees are engaged throughout the State of California, including the County of San Diego.

5 7. At all relevant times, Defendant A.J.M. PACKAGING CORPORATION was the
6 “employer” of Plaintiff within the meaning of all applicable California laws and statutes.

7 8. At all times herein relevant, Defendant A.J.M. PACKAGING CORPORATION
8 and DOES 1 through 100, and each of them, were the agents, partners, joint venturers, joint
9 employers, representatives, servants, employees, successors-in-interest, co-conspirators and
10 assigns, each of the other, and at all times relevant hereto were acting within the course and
11 scope of their authority as such agents, partners, joint venturers, joint employers,
12 representatives, servants, employees, successors, co-conspirators and assigns, and all acts or
13 omissions alleged herein were duly committed with the ratification, knowledge, permission,
14 encouragement, authorization, and consent of each defendant designated herein.

15 9. The true names and capacities, whether corporate, associate, individual or
16 otherwise, of Defendants DOES 1 through 100, inclusive, are unknown to Plaintiff, who sues
17 said defendants by such fictitious names. Plaintiff is informed and believes, and based on that
18 information and belief alleges, that each of the Defendants designated as a DOE is legally
19 responsible for the events and happenings referred to in this Complaint, and unlawfully caused
20 the injuries and damages to Plaintiff and the other class members as alleged in this Complaint.
21 Plaintiff will seek leave of court to amend this Complaint to show the true names and
22 capacities when the same have been ascertained.

23 10. Defendant A.J.M. PACKAGING CORPORATION and DOES 1 through 100
24 will hereinafter collectively be referred to as “Defendants.”

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1 11. Plaintiff further alleges that Defendants directly or indirectly controlled or
2 affected the working conditions, wages, working hours, and conditions of employment of
3 Plaintiff and the other class members so as to make each of said Defendants employers and
4 employers liable under the statutory provisions set forth herein.

5 **CLASS ACTION ALLEGATIONS**

6 12. Plaintiff brings this action individually and on behalf of all other members of the
7 general public similarly situated, and, thus, seeks class certification under Code of Civil
8 Procedure section 382.

9 13. The proposed class is defined as follows:

10 All current and former California-based (i.e., currently “residing” in California
11 with the intent to remain in California indefinitely) hourly-paid or non-exempt
12 employees of Defendants within the State of California at any time during the
13 period from four years preceding the filing of this Complaint to final judgment
14 to final judgment.

15 14. Plaintiff reserves the right to establish subclasses as appropriate.

16 15. The class is ascertainable and there is a well-defined community of interest in
17 the litigation:

18 a. Numerosity: The class members are so numerous that joinder of all class
19 members is impracticable. The membership of the entire class is
20 unknown to Plaintiff at this time; however, the class is estimated to be
21 greater than fifty (50) individuals and the identity of such membership is
22 readily ascertainable by inspection of Defendants’ employment records.

23 b. Typicality: Plaintiff’s claims are typical of all other class members’
24 claims as demonstrated herein. Plaintiff will fairly and adequately protect
25 the interests of the other class members with whom Plaintiff has a well-
26 defined community of interest.

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1 c. Adequacy: Plaintiff will fairly and adequately protect the interests of
2 each class member, with whom Plaintiff has a well-defined community
3 of interest and typicality of claims, as demonstrated herein. Plaintiff has
4 no interest that is antagonistic to the other class members. Plaintiff's
5 attorneys, the proposed class counsel, are versed in the rules governing
6 class action discovery, certification, and settlement. Plaintiff has
7 incurred, and during the pendency of this action will continue to incur,
8 costs and attorneys' fees, that have been, are, and will be necessarily
9 expended for the prosecution of this action for the substantial benefit of
10 each class member.

11 d. Superiority: A class action is superior to other available methods for the
12 fair and efficient adjudication of this litigation because individual joinder
13 of all class members is impractical.

14 e. Public Policy Considerations: Certification of this lawsuit as a class
15 action will advance public policy objectives. Employers of this great
16 state violate employment and labor laws every day. Current employees
17 are often afraid to assert their rights out of fear of direct or indirect
18 retaliation. However, class actions provide the class members who are
19 not named in the complaint anonymity that allows for the vindication of
20 their rights.

21 16. There are common questions of law and fact as to the class members that
22 predominate over questions affecting only individual members. The following common
23 questions of law or fact, among others, exist as to the members of the class:

24 a. Whether Defendants' failure to pay wages, without abatement or
25 reduction, in accordance with the California Labor Code, was willful;

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- 1 b. Whether Defendants failed to pay their hourly-paid or non-exempt
2 employees within the State of California for all hours worked, missed
3 meal periods and rest breaks in violation of California law;
- 4 c. Whether Defendants required Plaintiff and the other class members to
5 work over eight (8) hours per day and/or over forty (40) hours per week
6 and failed to pay the legally required overtime compensation to Plaintiff
7 and the other class members;
- 8 d. Whether Defendants properly calculated the regular rate for Plaintiff and
9 the other class members to worked overtime and earned incentive pay;
- 10 e. Whether Defendants deprived Plaintiff and the other class members of
11 meal and/or rest periods or required Plaintiff and the other class members
12 to work during meal and/or rest periods without compensation;
- 13 f. Whether Defendants failed to pay minimum wages to Plaintiff and the
14 other class members for all hours worked;
- 15 g. Whether Defendants failed to pay all wages due to Plaintiff and the other
16 class members within the required time upon their discharge or
17 resignation;
- 18 h. Whether Defendants failed to timely pay all wages due to Plaintiff and
19 the other class members during their employment;
- 20 i. Whether Defendants complied with wage reporting as required by the
21 California Labor Code, including, inter alia, section 226;
- 22 j. Whether Defendants failed to reimburse Plaintiff and the other class
23 members for necessary business-related expenses and costs;
- 24 k. Whether Defendants' conduct was willful or reckless;
- 25 l. Whether Defendants engaged in unfair business practices in violation of
26 California Business & Professions Code section 17200, *et seq.*;

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m. The appropriate amount of damages, restitution, and/or monetary penalties resulting from Defendants' violation of California law; and

n. Whether Plaintiff and the other class members are entitled to compensatory damages pursuant to the California Labor Code.

GENERAL ALLEGATIONS

17. During the relevant time period set forth herein, Defendants employed Plaintiff and other persons as hourly-paid or non-exempt employees within the State of California.

18. Defendants, jointly and severally, employed Plaintiff as an hourly-paid non-exempt employee during the relevant time period in the State of California, County of San Diego.

19. Defendants had the authority to hire and terminate Plaintiff and the other class members; to set work rules and conditions governing Plaintiff's and other class members' employment; and to supervise their daily employment activities.

20. Defendants exercised sufficient authority over the terms and conditions of Plaintiff and other class members' employment for them to be joint employers of Plaintiff and the other class members.

21. Defendants directly hired and paid wages and benefits to Plaintiff and the other class members.

22. Defendants continue to employ hourly-paid or non-exempt employees within the State of California.

23. Plaintiff and the other class members worked over eight (8) hours in a day, and/or forty (40) hours in a week during their employment with Defendants.

24. Plaintiff is informed and believes, and based thereon alleges, that Defendants engaged in a uniform policy and systematic scheme of wage abuse against their hourly-paid or non-exempt employees within the State of California. This scheme involved, inter alia, failing to pay them for all hours worked, missed meal periods, and missed rest breaks in violation of California law.

1 25. Plaintiff is informed and believes, and based thereon alleges, that Defendants
2 knew or should have known that Plaintiff and the other class members were entitled to receive
3 certain wages for overtime compensation and that Plaintiff and the other class members were
4 not receiving wages for overtime compensation.

5 26. Plaintiff is informed and believes, and based thereon alleges, that Defendants
6 failed to provide Plaintiff and the other class members the required rest and meal periods
7 during the relevant time period as required under the Industrial Welfare Commission Wage
8 Orders and thus they are entitled to any and all applicable penalties.

9 27. Plaintiff is informed and believes, and based thereon alleges, that Defendants
10 knew or should have known that Plaintiff and the other class members were entitled to receive
11 all timely and complete meal periods or payment of one additional hour of pay at Plaintiff's
12 and the other class members' regular rate of pay when a meal period was missed, late or
13 interrupted, and that Plaintiff and the other class members did not receive all timely and proper
14 meal periods or payment of one additional hour of pay at their regular rate of pay when a meal
15 period was missed.

16 28. Plaintiff is informed and believes, and based thereon alleges, that Defendants
17 knew or should have known that Plaintiff and other class members were entitled to receive all
18 timely rest periods without interruption or payment of one additional hour of pay at Plaintiff
19 and the other class members' regular rate of pay when a rest period was missed, late or
20 interrupted, and that Plaintiff and the other class members did not receive all rest periods or
21 payment of one additional hour of pay at their regular rate of pay when a rest period was
22 missed.

23 29. Plaintiff is informed and believes, and based thereon alleges, that Defendants
24 knew or should have known that Plaintiff and the other class members were entitled to receive
25 at least minimum wages for compensation and that Plaintiff and the other class members were
26 not receiving at least minimum wages for all hours worked.

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1 30. Plaintiff is informed and believes, and based thereon alleges, that Defendants
2 knew or should have known that Plaintiff and the other class members were entitled to receive
3 the wages owed to them upon discharge or resignation, including overtime and minimum
4 wages and meal and rest period premiums, and that Plaintiff and the other class members did
5 not, in fact, receive such wages owed to them at the time of their discharge or resignation.

6 31. Plaintiff is informed and believes, and based thereon alleges, that Defendants
7 knew or should have known that Plaintiff and the other class members were entitled to receive
8 complete and accurate wage statements in accordance with California law, but, in fact,
9 Plaintiff and the other class members did not receive complete and accurate wage statements
10 from Defendants. The deficiencies included, inter alia, the failure to include the total number
11 of hours worked by Plaintiff and the other class members.

12 32. Plaintiff is informed and believes, and based thereon alleges, that Defendants
13 knew or should have known that Plaintiff and the other class members were entitled to
14 reimbursement for necessary business-related expenses.

15 33. Plaintiff is informed and believes, and based thereon alleges, that Defendants
16 knew or should have known that Defendants had to keep complete and accurate payroll records
17 for Plaintiff and the other class members in accordance with California law, but, in fact, did
18 not keep complete and accurate payroll records for Plaintiff and the other class members.

19 34. Plaintiff is informed and believes, and based thereon alleges, that Defendants
20 knew or should have known that they had a duty to compensate Plaintiff and the other class
21 members pursuant to California law, and that Defendants had the financial ability to pay such
22 compensation, but willfully, knowingly, and intentionally failed to do so, and falsely
23 represented to Plaintiff and the other class members that they were properly denied wages, all
24 in order to increase Defendants' profits.

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35. During the relevant time period set forth herein, Defendants failed to pay overtime wages to Plaintiff and the other class members for all hours worked. Plaintiff and other class members were required to work more than eight (8) hours per day and/or forty (40) hours per week without overtime compensation.

36. During the relevant time period set forth herein, Defendants failed to provide the requisite uninterrupted and timely meal and rest periods to Plaintiff and the other class members.

37. During the relevant time period set forth herein, Defendants failed to pay Plaintiff and the other class members at least minimum wages for all hours worked.

38. During the relevant time period set forth herein, Defendants failed to pay Plaintiff and the other class members the wages owed to them upon discharge or resignation.

39. During the relevant time period set forth herein, Defendants failed to provide complete or accurate wage statements to Plaintiff and the other class members.

40. During the relevant time period set forth herein, Defendants failed to keep complete or accurate payroll records for Plaintiff and the other class members.

41. During the relevant time period set forth herein, Defendants failed to properly compensate Plaintiff and the other class members pursuant to California law in order to increase Defendants' profits.

42. California Labor Code section 218 states that nothing in Article 1 of the Labor Code shall limit the right of any wage claimant to “sue directly . . . for any wages or penalty due to him [or her] under this article.”

FIRST CAUSE OF ACTION

(Violation of California Labor Code §§ 510 and 1198)

(Against A.J.M. PACKAGING CORPORATION and DOES 1 through 100)

43. Plaintiff incorporates by reference the allegations contained in Paragraphs 1 through 42, and each and every part thereof with the same force and effect as though fully set forth herein.

1 44. California Labor Code section 1198 and the applicable Industrial Welfare
2 Commission (“IWC”) Wage Order provide that it is unlawful to employ persons without
3 compensating them at a rate of pay either time-and-one-half or two-times that person’s regular
4 rate of pay, depending on the number of hours worked by the person on a daily or weekly
5 basis.

6 45. Specifically, the applicable IWC Wage Order provides that Defendants are and
7 were required to pay Plaintiff and the other class members employed by Defendants, who
8 work(ed) more than eight (8) hours in a day or more than forty (40) hours in a workweek, at
9 the rate of time-and-one-half for all hours worked in excess of eight (8) hours in a day or more
10 than forty (40) hours in a workweek.

11 46. The applicable IWC Wage Order further provides that Defendants are and were
12 required to pay Plaintiff and the other class members overtime compensation at a rate of two
13 times their regular rate of pay for all hours worked in excess of twelve (12) hours in a day.

14 47. California Labor Code section 510 codifies the right to overtime compensation
15 at one-and-one-half times the regular hourly rate for hours worked in excess of eight (8) hours
16 in a day or forty (40) hours in a week or for the first eight (8) hours worked on the seventh
17 day of work, and overtime compensation at twice the regular hourly rate for hours worked in
18 excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the seventh day
19 of work.

20 48. During the relevant time period set forth herein, Plaintiff and the other class
21 members worked in excess of eight (8) hours in a day, and/or in excess of forty (40) hours in
22 a week.

23 49. During the relevant time period set forth herein, Defendants intentionally and
24 willfully failed to pay overtime wages owed to Plaintiff and the other class members.

25 50. Defendants’ failure to pay Plaintiff and the other class members the unpaid
26 balance of overtime compensation, as required by California laws, violates the provisions of
27 California Labor Code sections 510 and 1198, and is therefore unlawful.
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1 51. Pursuant to California Labor Code section 1194, Plaintiff and the other class
2 members are entitled to recover unpaid overtime compensation, as well as interest, costs, and
3 attorneys' fees.

4 **SECOND CAUSE OF ACTION**

5 **(Violation of California Labor Code §§ 226.7 and 512(a))**

6 **(Against A.J.M. PACKAGING CORPORATION and DOES 1 through 100)**

7 52. Plaintiff incorporates by reference the allegations contained in paragraphs 1
8 through 51, and each and every part thereof with the same force and effect as though fully set
9 forth herein.

10 53. During the relevant time period set forth herein, the IWC Order and California
11 Labor Code sections 226.7 and 512(a) were applicable to Plaintiff's and the other class
12 members' employment by Defendants.

13 54. During the relevant time period set forth herein, California Labor Code section
14 226.7 provides that no employer shall require an employee to work during any meal or rest
15 period mandated by an applicable order of the California IWC.

16 55. During the relevant time period set forth herein, the applicable IWC Wage Order
17 and California Labor Code section 512(a) provide that an employer may not require, cause or
18 permit an employee to work for a work period of more than five (5) hours per day without
19 providing the employee with a meal period of not less than thirty (30) minutes, except that if
20 the total work period per day of the employee is no more than six (6) hours, the meal period
21 may be waived by mutual consent of both the employer and employee.

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1 56. During the relevant time period set forth herein, the applicable IWC Wage Order
2 and California Labor Code section 512(a) further provide that an employer may not require,
3 cause, or permit an employee to work for a work period of more than ten (10) hours per day
4 without providing the employee with a second uninterrupted meal period of not less than thirty
5 (30) minutes, except that if the total hours worked is no more than twelve (12) hours, the
6 second meal period may be waived by mutual consent of the employer and the employee only
7 if the first meal period was not waived.

8 57. During the relevant time period set forth herein, Plaintiff and the other class
9 members who were scheduled to work for a period of time no longer than six (6) hours, and
10 who did not waive their legally-mandated meal periods by mutual consent, were required to
11 work for periods longer than five (5) hours without an uninterrupted meal period of not less
12 than thirty (30) minutes and/or without a rest period.

13 58. During the relevant time period set forth herein, Plaintiff and the other class
14 members who were scheduled to work for a period of time no longer than twelve (12) hours,
15 and who did not waive their legally-mandated meal periods by mutual consent, were required
16 to work for periods longer than ten (10) hours without an uninterrupted meal period of not less
17 than thirty (30) minutes and/or without a rest period.

18 59. During the relevant time period set forth herein, Plaintiff and the other class
19 members who were scheduled to work for a period of time in excess of six (6) hours were
20 required to work for periods longer than five (5) hours without an uninterrupted meal period
21 of not less than thirty (30) minutes and/or without a rest period.

22 60. During the relevant time period set forth herein, Plaintiff and the other class
23 members who were scheduled to work for a period of time in excess of twelve (12) hours were
24 required to work for periods longer than ten (10) hours without an uninterrupted meal period
25 of not less than thirty (30) minutes and/or without a rest period.

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1 61. During the relevant time period set forth herein, Defendants intentionally and
2 willfully required Plaintiff and the other class members to work during meal periods and failed
3 to compensate Plaintiff and the other class members the full meal period premium for work
4 performed during meal periods.

5 62. During the relevant time period set forth herein, Defendants failed to pay
6 Plaintiff and the other class members the full meal period premium due pursuant to California
7 Labor Code section 226.7.

8 63. Defendants' conduct violates applicable IWC Wage Order and California Labor
9 Code sections 226.7 and 512(a).

10 64. Pursuant to the applicable IWC Wage Order and California Labor Code section
11 226.7(b), Plaintiff and the other class members are entitled to recover from Defendants one
12 additional hour of pay at the employee's regular rate of compensation for each workday that
13 the meal or rest period is not provided.

14 **THIRD CAUSE OF ACTION**

15 **(Violation of California Labor Code § 226.7)**

16 **(Against A.J.M. PACKAGING CORPORATION and DOES 1 through 100)**

17 65. Plaintiff incorporates by reference the allegations contained in paragraphs 1
18 through 64, and each and every part thereof with the same force and effect as though fully set
19 forth herein.

20 66. During the relevant time period set forth herein, the applicable IWC Wage Order
21 and California Labor Code section 226.7 were applicable to Plaintiff's and the other class
22 members' employment by Defendants.

23 67. During the relevant time period set forth herein, California Labor Code section
24 226.7 provides that no employer shall require an employee to work during any rest period
25 mandated by an applicable order of the California IWC.

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1 68. During the relevant time period set forth herein, the applicable IWC Wage Order
2 provides that “[e]very employer shall authorize and permit all employees to take rest periods,
3 which insofar as practicable shall be in the middle of each work period” and that the “rest
4 period time shall be based on the total hours worked daily at the rate of ten (10) minutes net
5 rest time per four (4) hours or major fraction thereof” unless the total daily work time is less
6 than three and one-half (3 ½) hours.

7 69. During the relevant time period set forth herein, Defendants required Plaintiff
8 and the other class members to work four (4) or more hours without authorizing or permitting
9 a ten (10) minute rest period per each four (4) hour period worked.

10 70. During the relevant time period set forth herein, Defendants willfully required
11 Plaintiff and the other class members to work during rest periods and failed to pay Plaintiff
12 and the other class members the full rest period premium for work performed during rest
13 periods.

14 71. During the relevant time period set forth herein, Defendants failed to pay
15 Plaintiff and the other class members the full rest period premium due pursuant to California
16 Labor Code section 226.7.

17 72. Defendants’ conduct violates applicable IWC Wage Orders and California Labor
18 Code section 226.7.

19 73. Pursuant to the applicable IWC Wage Orders and California Labor Code section
20 226.7(b), Plaintiff and the other class members are entitled to recover from Defendants one
21 additional hour of pay at the employees’ regular hourly rate of compensation for each workday
22 that the rest period was not provided.

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1 **FOURTH CAUSE OF ACTION**

2 **(Violation of California Labor Code §§ 1194 and 1197)**

3 **(Against A.J.M. PACKAGING CORPORATION and DOES 1 through 100)**

4 74. Plaintiff incorporates by reference the allegations contained in paragraphs 1
5 through 73 and each and every part thereof with the same force and effect as though fully set
6 forth herein.

7 75. During the relevant time period set forth herein, California Labor Code sections
8 1194 and 1197 provide that the minimum wage to be paid to employees, and the payment of
9 a lesser wage than the minimum so fixed, is unlawful.

10 76. During the relevant time period set forth herein, Defendants failed to pay
11 minimum wages to Plaintiff and the other class members as required, pursuant to California
12 Labor Code sections 1194 and 1197.

13 77. Defendants' failure to pay Plaintiff and the other class members the minimum
14 wage as required violates California Labor Code sections 1194 and 1197. Pursuant to those
15 sections, Plaintiff and other class members are entitled to recover the unpaid balance of their
16 minimum wage compensation as well as interest, costs, and attorney's fees, and liquidated
17 damages in an amount equal to the wages unlawfully unpaid and interest thereon.

18 78. Pursuant to California Labor Code section 1194.2, Plaintiff and the other class
19 members are entitled to recover liquidated damages in an amount equal to the wages
20 unlawfully unpaid and interest thereon.

21 **FIFTH CAUSE OF ACTION**

22 **(Violation of California Labor Code §§ 201 and 202)**

23 **(Against A.J.M. PACKAGING CORPORATION and DOES 1 through 100)**

24 79. Plaintiff incorporates by reference the allegations contained in paragraphs 1
25 through 78, and each and every part thereof with the same force and effect as though fully set
26 forth herein.

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1 80. During the relevant time period set forth herein, California Labor Code sections
2 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid
3 at the time of discharge are due and payable immediately, and if an employee quits his or her
4 employment, his or her wages shall become due and payable not later than seventy-two (72)
5 hours thereafter, unless the employee has given seventy-two (72) hours notice of his or her
6 intention to quit, in which case the employee is entitled to his or her wages at the time of
7 quitting.

8 81. During the relevant time period set forth herein, Defendants intentionally and
9 willfully failed to pay Plaintiff and the other class members who are no longer employed by
10 Defendants their wages, earned and unpaid, within seventy-two (72) hours of their leaving
11 Defendants' employ.

12 82. Defendants' failure to pay Plaintiff and the other class members who are no
13 longer employed by Defendants their wages, earned and unpaid, within seventy-two (72) hours
14 of their leaving Defendants' employ, is in violation of California Labor Code sections 201 and
15 202.

16 83. California Labor Code section 203 provides that if an employer willfully fails to
17 pay wages owed, in accordance with sections 201 and 202, then the wages of the employee
18 shall continue as a penalty from the due date thereof at the same rate until paid or until an
19 action is commenced; but the wages shall not continue for more than thirty (30) days.

20 84. Plaintiff and the other class members are entitled to recover from Defendants the
21 statutory penalty wages for each day they were not paid, up to the thirty (30) day maximum
22 as provided by Labor Code section 203.

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1 **SIXTH CAUSE OF ACTION**

2 **(Violation of California Labor Code § 226(a))**

3 **(Against A.J.M. PACKAGING CORPORATION and DOES 1 through 100)**

4 85. Plaintiff incorporates by reference the allegations contained in paragraphs 1
5 through 84, and each and every part thereof with the same force and effect as though fully set
6 forth herein.

7 86. During the relevant time period set forth herein, California Labor Code section
8 226(a) provides that every employer shall furnish each of his or her employees an accurate
9 itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the
10 employee, (3) the number of piece-rate units earned and any applicable piece rate if the
11 employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made
12 on written orders of the employee may be aggregated and shown as one item, (5) net wages
13 earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of
14 the employee and his or her social security number, (8) the name and address of the legal
15 entity that is the employer, and (9) all applicable hourly rates in effect during the pay period
16 and the corresponding number of hours worked at each hourly rate by the employee. The
17 deductions made from payments of wages shall be recorded in ink or other indelible form,
18 properly dated, showing the month, day, and year, and a copy of the statement or a record of
19 the deductions shall be kept on file by the employer for at least three years at the place of
20 employment or at a central location within the State of California.

21 87. Defendants have intentionally and willfully failed to provide Plaintiff and the
22 other class members with complete and accurate wage statements. The deficiencies include
23 but are not limited to: the failure to include the total number of hours worked by Plaintiff and
24 other class members.

25 88. As a result of Defendants' violation of California Labor Code section 226(a),
26 Plaintiff and the other class members have suffered injury and damage to their statutorily
27 protected rights.
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1 89. More specifically, Plaintiff and the other class members have been injured by
2 Defendants' intentional and willful violation of California Labor Code section 226(a) because
3 they were denied both their legal right to receive, and their protected interest in receiving,
4 accurate and itemized wage statements pursuant to California Labor Code section 226(a).

5 90. Plaintiff and the other class members are entitled to recover from Defendants the
6 greater of their actual damages caused by Defendants' failure to comply with California Labor
7 Code section 226(a), or an aggregate penalty not exceeding four thousand dollars per
8 employee.

9 91. Plaintiff and the other class members are also entitled to injunctive relief to
10 ensure compliance with this section, pursuant to California Labor Code section 226(g).

11 **SEVENTH CAUSE OF ACTION**

12 **(Violation of California Labor Code §§ 2800 and 2802)**

13 **(Against A.J.M. PACKAGING CORPORATION and DOES 1 through 100)**

14 92. Plaintiff incorporates by reference the allegations contained in paragraphs 1
15 through 91, and each and every part thereof with the same force and effect as though fully set
16 forth herein.

17 93. Pursuant to California Labor Code sections 2800 and 2802, an employer must
18 reimburse its employee for all necessary expenditures incurred by the employee in direct
19 consequence of the discharge of his or her job duties or in direct consequence of his or her
20 obedience to the directions of the employer.

21 94. Defendants have intentionally and willfully failed to reimburse Plaintiff and the
22 other class members for all necessary business-related expenses and costs. Plaintiff and the
23 other class members are entitled to recover from Defendants their business-related expenses and
24 costs incurred during the course and scope of their employment, plus interest accrued from the
25 date on which the employee incurred the necessary expenditures at the same rate as judgments
26 in civil actions in the State of California.

27 ///

1 **EIGHTH CAUSE OF ACTION**

2 **(Violation of California Labor Code § 2698, *et seq.*)**

3 **(Against A.J.M. PACKAGING CORPORATION and DOES 1 through 100)**

4 95. Plaintiff incorporates by reference the allegations contained in paragraphs 1
5 through 94, and each and every part thereof with the same force and effect as though fully set
6 forth herein.

7 96. PAGA expressly establishes that any provision of the California Labor Code
8 which provides for a civil penalty to be assessed and collected by the California Labor and
9 Workforce Development Agency (“LWDA”), or any of its departments, divisions,
10 commissions, boards, agencies, or employees for a violation of the California Labor Code,
11 may be recovered through a civil action brought by an aggrieved employee on behalf of
12 himself or herself, and other current or former employees.

13 97. On May 23, 2018, the Court of Appeal published its decision in the case *Huff v.*
14 *Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th 745, clarifying that an employee
15 who brings a representative action and who was affected by at least one of the violations
16 alleged in the complaint has standing to pursue penalties on behalf of the state not only for
17 that violation, but also for violations affecting other employees and can recover penalties.

18 98. On January 13, 2023, Plaintiff provided written notice to the California Labor
19 and Workforce Development Agency (“LWDA”) and Defendant of the specific provisions of
20 the Labor Code he contends were violated and the theories supporting his contentions. Plaintiff
21 believes that on or about March 20, 2023, the sixty-five (65) days’ notice period expired, and
22 the LWDA did not take any action to investigate or prosecute this matter. Thus, Plaintiff has
23 exhausted his administrative remedies.

24 99. Plaintiff and the other non-exempt employees are “aggrieved employees” as
25 defined by California Labor Code section 2699(c) in that they are all current or former
26 employees of Defendants, and one or more of the alleged violations was committed against
27 them.
28

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

2 100. At all times relevant herein, Defendants were required to compensate their non-
3 exempt employees minimum wages for all hours worked and overtime wages for all hours
4 worked in excess of eight (8) hours in a day or forty (40) hours in a workweek, pursuant to the
5 mandates of Labor Code sections 510, 1194, 1197, and 1198.

6 101. As a pattern and practice, Defendants failed to compensate Plaintiff and other
7 aggrieved employees for all hours worked, resulting in a failure to pay all minimum wages
8 and overtime wages, where applicable.

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

10 102. At all times relevant herein, Defendants were required to authorize and permit
11 their non-exempt employees to take a 10-minute rest break for every four (4) hours worked or
12 major fraction thereof and were further required to provide their non-exempt employees with
13 a 30-minute meal period for every five (5) hours worked, pursuant to the mandates of Labor
14 Code sections 226.7 and 512.

15 103. As a pattern and practice, Defendants failed to provide Plaintiff and other
16 aggrieved employees with legally mandated meal periods and rest breaks and failed to pay
17 proper compensation for this failure.

18 **Failure to Timely Pay Wages During Employment**

19 104. At all times relevant herein, Defendants were required to pay their employees
20 within a specified time period, pursuant to the mandate of Labor Code section 204.

21 105. As a pattern and practice, Defendants regularly failed to pay Plaintiff and other
22 aggrieved employees all wages due and owing them within the required time period.

23 **Failure to Timely Pay Wages Upon Termination**

24 106. At all times relevant herein, Defendants were required to pay their employees
25 all wages owed in a timely fashion at the end of employment, pursuant to the mandates of
26 Labor Code sections 201 through 204.

27 ///

107. As a pattern and practice, as a result of Defendants' Labor Code violations alleged above, Defendants failed to pay Plaintiff and other aggrieved former employees their final wages, pursuant to the mandates of Labor Code sections 201 to 204. Accordingly, Defendants owe waiting time penalties pursuant to Labor Code section 203.

Failure to Provide Complete and Accurate Wage Statements

108. At all times relevant herein, Defendants were required to keep *accurate* records regarding their California employees, pursuant to the mandates of Labor Code sections 226 and 1174.

109. As a pattern and practice, as a result of Defendants' various Labor Code violations, Defendants failed to keep accurate records regarding Plaintiff and other aggrieved employees. Specifically, Defendants failed in their affirmative obligation to keep accurate records regarding Plaintiff's and other aggrieved employees' gross wages earned, total hours worked, net wages earned, as well as all deductions, all applicable hourly rates, and the number of hours worked at each hourly rate.

Failure to Reimburse Business Expenses

110. At all times relevant herein, Defendants were required to reimburse their employees for any and all necessary expenditures or losses incurred by the employees in direct consequences of the discharge or his or her duties, pursuant to the mandates of Labor Code sections 2800 and 2802.

111. As a pattern and practice, Defendants regularly failed to reimburse Plaintiff and other aggrieved employees for all business expenses incurred and owed to them within the required time period.

Penalties

112. Pursuant to California Labor Code section 2699, Plaintiff, individually, and on behalf of other current and former aggrieved employees, requests and is entitled to recover from Defendants, and each of them, civil penalties, interest, attorneys' fees and costs pursuant, as well as all statutory penalties against Defendants, and each of them, including but not

1 limited to:

- 2 a. Penalties under California Labor Code section 2699 in the amount of a
3 hundred dollars (\$100) for each aggrieved employee per pay period for
4 the initial violation, and two hundred dollars (\$200) for each aggrieved
5 employee per pay period for each subsequent violation;
- 6 b. Penalties under California Code of Regulations Title 8 section 11040 in
7 the amount of fifty dollars (\$50) for each aggrieved employee per pay
8 period for the initial violation, and one hundred dollars (\$100) for each
9 aggrieved employee per pay period for each subsequent violation;
- 10 c. Penalties under California Labor Code section 210 in addition to, and
11 entirely independent and apart from, any other penalty provided in the
12 California Labor Code in the amount of a hundred dollars (\$100) for
13 each aggrieved employee per pay period for the initial violation, and
14 two hundred dollars (\$200) for each aggrieved employee per pay period
15 for each subsequent violation;
- 16 d. Penalties under Labor Code section 1197.1 in the amount of a hundred
17 dollars (\$100) for each aggrieved employee per pay period for the
18 initial violation, and two hundred fifty dollars (\$250) for each
19 aggrieved employee per pay period for each subsequent violation;
- 20 e. Wages under California Labor Code section 558 in addition to, and
21 entirely independent and apart from, any other penalty provided in the
22 California Labor Code;
- 23 f. Any and all additional penalties as provided by the Labor Code and/or
24 other statutes; and
- 25 g. Attorneys' fees and costs pursuant to Labor Code sections 210, 1194,
26 and 2699, and any other applicable statute.

27 ///

1 **NINTH CAUSE OF ACTION**

2 **(Violation of California Business & Professions Code § 17200, *et seq.*)**

3 **(Against A.J.M. PACKAGING CORPORATION and DOES 1 through 100)**

4 113. Plaintiff incorporates by reference the allegations contained in paragraphs 1
5 through 112, and each and every part thereof with the same force and effect as though fully
6 set forth herein.

7 114. Defendants' conduct, as alleged herein, has been, and continues to be unfair,
8 unlawful and harmful to Plaintiff, the other class members, to the general public, and
9 Defendants' competitors. Accordingly, Plaintiff seeks to enforce important rights affecting
10 the public interest within the meaning of Code of Civil Procedure section 1021.5.

11 115. Defendants' activities as alleged herein are violations of California law, and
12 constitute unlawful business acts and practices in violation of California Business &
13 Professions Code section 17200, *et seq.*

14 116. A violation of California Business & Professions Code section 17200, *et seq.*
15 may be predicated on the violation of any state or federal law. In this instant case, Defendants'
16 policy and practice of requiring Plaintiff and the other class members work overtime hours
17 without paying them proper compensation violate California Labor Code sections 510 and
18 1198. Additionally, Defendants' policy and practice of requiring Plaintiff and the other class
19 members, to work through their meal and rest periods without paying them proper
20 compensation violate California Labor Code sections 226.7 and 512(a). Moreover,
21 Defendants' policy and practice of failing to timely pay wages to Plaintiff and the other class
22 members violate California Labor Code sections 201 and 202. Defendants also violated
23 California Labor Code sections 226(a), 1194, 1197, 2800 and 2802.

24 117. As a result of the herein described violations of California law, Defendants
25 unlawfully gained an unfair advantage over other businesses.

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1 118. Plaintiff and the other class members have been personally injured by
2 Defendants' unlawful business acts and practices as alleged herein, including but not
3 necessarily limited to the loss of money and/or property.

4 119. Pursuant to California Business & Professions Code section 17200, *et seq.*,
5 Plaintiff and the other class members are entitled to restitution of the wages withheld and
6 retained by Defendants during a period that commences four years prior to the filing of this
7 Complaint; an award of attorneys' fees pursuant to California Code of Civil procedure section
8 1021.5 and other applicable laws; and an award of costs.

9 **DEMAND FOR JURY TRIAL**

10 Plaintiff, individually, and on behalf of other members of the general public similarly
11 situated, requests a trial by jury.

12 **PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiff, individually and on behalf of all other members of the
14 general public similarly situated, prays for relief and judgment against Defendants, jointly and
15 severally, as follows:

16 **Class Certification**

- 17 1. That this action be certified as a class action;
18 2. That Plaintiff be appointed as representative of the Class;
19 3. That counsel for Plaintiff be appointed as Class Counsel; and
20 4. That Defendants provide to Class Counsel immediately the names and most
21 current contact information (address, e-mail and telephone numbers) of all class members.

22 **As to the First Cause of Action**

- 23 5. That the Court declare, adjudge and decree that Defendants violated California
24 Labor Code sections 510 and 1198 and applicable IWC Wage Orders by willfully failing to
25 pay all overtime wages due to Plaintiff and the other class members;

- 26 6. For general unpaid wages at overtime wage rates and such general and special
27 damages as may be appropriate;
28

1 7. For pre-judgment interest on any unpaid overtime compensation commencing
2 from the date such amounts were due;

3 8. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
4 California Labor Code section 1194; and

5 9. For such other and further relief as the court may deem just and proper.

6 **As to the Second Cause of Action**

7 10. That the Court declare, adjudge and decree that Defendants violated California
8 Labor Code sections 226.7 and 512 and applicable IWC Wage Orders by willfully failing to
9 provide all meal periods (including second meal periods) to Plaintiff and the other class
10 members;

11 11. That the Court make an award to Plaintiff and the other class members of one
12 (1) hour of pay at each employee's regular rate of compensation for each workday that a meal
13 period was not provided;

14 12. For all actual, consequential, and incidental losses and damages, according to
15 proof;

16 13. For premium wages pursuant to California Labor Code section 226.7(b);

17 14. For pre-judgment interest on any unpaid wages from the date such amounts were
18 due;

19 15. For reasonable attorneys' fees and costs of suit incurred herein; and

20 16. For such other and further relief as the court may deem just and proper.

21 **As to the Third Cause of Action**

22 17. That the Court declare, adjudge and decree that Defendants violated California
23 Labor Code section 226.7 and applicable IWC Wage Orders by willfully failing to provide all
24 rest periods to Plaintiff and the other class members;

25 18. That the Court make an award to Plaintiff and the other class members of one
26 (1) hour of pay at each employee's regular rate of compensation for each workday that a rest
27 period was not provided;

1 19. For all actual, consequential, and incidental losses and damages, according to
2 proof;

3 20. For premium wages pursuant to California Labor Code section 226.7(b);

4 21. For pre-judgment interest on any unpaid wages from the date such amounts were
5 due; and

6 22. For such other and further relief as the court may deem just and proper.

7 **As to the Fourth Cause of Action**

8 23. That the Court declare, adjudge and decree that Defendants violated California
9 Labor Code sections 1194 and 1197 by willfully failing to pay minimum wages to Plaintiff
10 and the other class members;

11 24. For general unpaid wages and such general and special damages as may be
12 appropriate;

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

15 26. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
16 California Labor Code section 1194(a);

17 27. For liquidated damages pursuant to California Labor Code section 1194.2; and

18 28. For such other and further relief as the court may deem just and proper.

19 **As to the Fifth Cause of Action**

20 29. That the Court declare, adjudge and decree that Defendants violated California
21 Labor Code sections 201, 202, and 203 by willfully failing to pay all compensation owed at
22 the time of termination of the employment of Plaintiff and the other class members no longer
23 employed by Defendants;

24 30. For all actual, consequential, and incidental losses and damages, according to
25 proof;

26 31. For statutory wage penalties pursuant to California Labor Code section 203 for
27 the other class members who have left Defendants' employ;
28

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

33. For such other and further relief as the court may deem just and proper.

As to the Sixth Cause of Action

34. That the Court declare, adjudge and decree that Defendants violated the record keeping provisions of California Labor Code section 226(a) and applicable IWC Wage Orders as to Plaintiff and the other class members, and willfully failed to provide accurate itemized wage statements thereto;

35. For actual, consequential and incidental losses and damages, according to proof;

36. For statutory penalties pursuant to California Labor Code section 226(e);

37. For injunctive relief to ensure compliance with this section, pursuant to California Labor Code section 226(g); and

38. For such other and further relief as the court may deem just and proper.

As to the Seventh Cause of Action

39. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 2800 and 2802 by willfully failing to reimburse Plaintiff and the other class members for all necessary business-related expenses as required by California Labor Code sections 2800 and 2802;

40. For actual, consequential and incidental losses and damages, according to proof;

41. For the imposition of civil penalties and/or statutory penalties;

42. For punitive damages and/or exemplary damages according to proof at trial;

43. For reasonable attorneys' fees and costs of suit incurred herein; and

44. For such other and further relief as the court may deem just and proper.

As to the Eighth Cause of Action

45. For civil penalties pursuant to Labor Code section 2699 *et seq.*, for Defendants' violations of Labor Code sections 201, 202, 203, 204, 221, 222, 223, 224, 226, 226(a), 226(e), 226(h), 226.3, 226.7, 510, 512, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and

2802;

46. For costs and attorneys' fees pursuant to Labor Code sections 210, 218.5, 1194, 2699, and any other applicable statute; and

47. For such other and further relief that the court may deem just and proper.

As to the Ninth Cause of Action

48. That the Court declare, adjudge and decree that Defendants violated California Business & Professions Code section 17200, *et seq.* by failing to provide Plaintiff and the other class members all overtime compensation due to them, failing to provide all meal and rest periods to Plaintiff and the other class members, failing to pay at least minimum wages to Plaintiff and the other class members, failing to pay Plaintiff's and the other class members' wages timely as required by California Labor Code sections 201 and 202.

49. For restitution of unpaid wages to Plaintiff and other class members and all pre-judgment interest from the day such amounts were due and payable;

50. For the appointment of a receiver to receive, manage and distribute any and all funds disgorged from Defendants and determined to have been wrongfully acquired by Defendants as a result of violation of California Business & Professions Code section 17200, *et seq.*;

51. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Code of Civil Procedure section 1021.5;

52. For injunctive relief to ensure compliance with this section, pursuant to California Business & Professions Code section 17200, *et seq.*; and

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53. For such other and further relief as the court may deem just and proper.

Dated: October 10, 2023

JUSTICE LAW CORPORATION

By: Halina Szymanski
Douglas Han
Shunt Tatavos-Gharajeh
Halina E. Szymanski
Attorneys for Plaintiff

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**PROOF OF SERVICE
1013A(3) CCP**

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 751 N. Fair Oaks Avenue, Suite 101, Pasadena, CA 91103 and my electronic service address is mluna@justicelawcorp.com

On October 12, 2023, I served the foregoing document described as

FIRST AMENDED CLASS ACTION COMPLAINT FOR DAMAGES

for the following case: **Sofy v. A.J.M. Packaging Corporation**
LWDA/Court Case No.: **LWDA Case No.: CM-929286-23**
 Court Case No.: 37-2022-00050407-CU-OE-CTL
 San Diego County Superior Court

on interested parties in this action by electronically submitting as follows:

State of California
Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, California 95814

[X] BY ELECTRONIC SUBMISSION

Pursuant to California Senate Bill No. 836, I caused the documents described above to be electronically submitted by and through the procedure stated on the website of the State of California Labor and Workforce Development Agency.

[X] STATE

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

Executed on October 12, 2023, at Pasadena, California.



Madison Luna