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ENDORSED
FILED
ALAMEDA COUNTY

FEB 26 2021

Joshua T.N. Rose
Deputy

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF ALAMEDA

DAVID DIAZ, on behalf of the State of
California and Aggrieved Employees,

Plaintiffs,

v.

GEORGIA-PACIFIC CORRUGATED LLC

Defendant.

Case No.:

HG21092866

**COMPLAINT FOR PENALTIES
PURSUANT TO SECTIONS 2699(a) AND
(f) OF THE CALIFORNIA LABOR CODE
PRIVATE ATTORNEYS GENERAL ACT
AND DEMAND FOR JURY TRIAL**

1 Plaintiff David Diaz (“Plaintiff”), on behalf of the State of California and Aggrieved
2 Employees, complains and alleges as follows:

3 4 **INTRODUCTION**

5 1. Plaintiff brings this enforcement action against Defendant Georgia-Pacific Corrugated
6 LLC (“Defendant” or “Georgia-Pacific”) on behalf of individuals who have worked for Defendant as
7 non-exempt hourly employees and have been subject to Defendant’s policies and practices (the
8 “Aggrieved Employees”). Defendant maintains a longstanding policy and practice of failing to
9 properly compensate non-exempt hourly employees for missed rest periods. These policies deny
10 Plaintiff and Aggrieved Employees rest periods that comply with California law.

11 2. Defendant’s conduct violates California law by knowingly and willfully requiring
12 Plaintiff and Aggrieved Employees to perform work and/or remain on duty during rest periods.
13 Plaintiff and Aggrieved Employees bring these claims to challenge Defendant’s policies and practices
14 of: (1) failing to authorize and permit Plaintiff and Aggrieved Employees to take rest breaks which
15 they are entitled by law; (2) failing to provide Plaintiff and Aggrieved Employees accurate, itemized
16 wage statements; and (3) failing to timely pay Plaintiff and Aggrieved Employees full wages upon
17 termination or resignation.

18 3. Plaintiff files this action to recover all penalties, and other damages on behalf of himself
19 and Aggrieved Employees. Plaintiff seeks to remedy the sweeping practices Defendant has integrated
20 into its time tracking and payroll policies across their facilities throughout California that have
21 deprived Plaintiff and Aggrieved Employees of their lawfully earned wages.

22 23 **PARTIES**

24 4. Plaintiff David Diaz is an individual over the age of eighteen, and at all times relevant
25 to this Complaint was a resident of the State of California. Plaintiff was employed by Defendant as a
26 non-exempt hourly Wet End Operator at Defendant’s warehouse location in La Mirada, California
27 from September 2016 to September 2020.

28 5. Plaintiff is informed, believes, and thereon alleges that Georgia-Pacific is an LLC

1 headquartered in Atlanta, Georgia, and is registered to do business in California. Georgia-Pacific may
2 be served with process by serving its registered agent, C T Corporation System, 818 West Seventh
3 Street, Suite 930, Los Angeles, California 90017.

4 6. Plaintiff is informed, believes, and thereon alleges that Defendant owns, operates,
5 and/or manages facilities throughout the state of California. Plaintiff is informed, believes, and thereon
6 alleges that Defendant employs Aggrieved Employees, among other employees, throughout the state
7 of California.

8 7. Plaintiff is informed, believes, and thereon alleges that Defendant directly controls the
9 operations of its agents, managers, and employees throughout all its facilities in California.

10 8. At all material times, Defendant has done business under the laws of California, has
11 had places of business in California, including in this County, and has employed Aggrieved Employees
12 in this County and elsewhere in California. Defendant is “person[s]” as defined in Labor Code § 18,
13 and “employer[s]” as that term is used in the Labor Code and the IWC Wage Orders regulating wages,
14 hours, and working conditions.

15 16 **JURISDICTION AND VENUE**

17 9. This Court has jurisdiction over Plaintiff’s claims for penalties pursuant to the PAGA.
18 The Court also has jurisdiction over Defendant because Defendant does business in the State of
19 California, is authorized to do business in California, and is registered with the California Secretary
20 of State.

21 10. Venue is proper in this judicial district pursuant to Code of Civil Procedure §§ 393
22 and/or 395.5. Defendant conducts business, has jobsites, and employs Aggrieved Employees in this
23 County, as a result, the causes of action asserted arose in whole or in part in this County.

24 25 **FACTUAL ALLEGATIONS**

26 11. Defendant operates facilities throughout the United States and California. Defendant
27 employs thousands of hourly non-exempt workers across these facilities.

28 12. Plaintiff worked at the Georgia-Pacific warehouse in La Mirada, California as a non-

1 exempt Wet End Operator from September 2016 through September 2020. Plaintiff was paid at an
2 hourly rate of approximately \$23. On average, Plaintiff worked 40 hours per week.

3 13. As a matter of course Defendant requires Plaintiff and Aggrieved Employees to remain
4 on duty throughout their scheduled shifts, including during rest breaks. Plaintiff's duties as a Wet End
5 Operator, which were set forth by Defendant included, but were not limited to, manually loading
6 materials on the corrugator and ensuring the corrugator is functioning properly. Plaintiff's duties
7 required his constant attention throughout the day. The realities of the work assigned to Plaintiff and
8 others meant that, as a result of Georgia Pacific's working environment, he and others were not able
9 to take bona fide rest breaks free from duty.

10 14. Additionally, and beyond Defendant's failure to authorize or permit rest breaks,
11 Defendant tampers with Plaintiff and Aggrieved Employee's time records in order to avoid paying
12 rest break premiums. Specifically, Plaintiff would report missed rest breaks in the timekeeping system
13 and then Defendant would alter the records to reflect that a rest break had been taken in order to avoid
14 paying rest period premiums.

15 15. Despite these recurring violations, Defendant does not provide Plaintiff and Aggrieved
16 Employees premium pay for missed rest periods.

17 16. Plaintiff is informed, believes, and thereon alleges that the same rest break policies are
18 used across all Defendant's facilities throughout California.

19 17. Defendant also does not provide Aggrieved Employees, including Plaintiff, with full
20 payment of all wages owed at the end of employment. As these workers are owed premium pay when
21 their employment ends, and these amounts remain unpaid under Defendant's policies and practices.
22 Defendant fails to pay all wages due upon termination. As a consequence, Defendant is subject to
23 waiting time penalties.

24 18. Aggrieved Employees report to a facility owned, operated, or managed by Defendant
25 to perform their jobs.

26 19. Aggrieved Employees perform their jobs under Defendant's supervision and using
27 materials and technology approved and supplied by Defendant.
28

1 20. Defendant pays Aggrieved Employees on an hourly rate basis.

2 21. Defendant's method of paying Plaintiff and Aggrieved Employees was willful and was
3 not based on a good faith and reasonable belief that their conduct complied with California law.

4 22. Defendant's conduct is willful, is carried out in bad faith, and causes significant
5 damages to non-exempt hourly employees in an amount to be determined at trial.

6
7 **FIRST CAUSE OF ACTION**
8 **Penalties Pursuant to Labor Code § 2699(a)**

9 23. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth
herein.

10 24. Labor Code § 2699(a) provides:

11 Notwithstanding any other provision of law, any provision of this code
12 that provides for a civil penalty to be assessed and collected by the Labor
13 and Workforce Development Agency or any of its departments, divisions,
14 commissions, boards, agencies or employees, for a violation of this code,
may, as an alternative, be recovered through a civil action brought by an
aggrieved employee on behalf of himself or herself and other current or
former employees.

15 25. Labor Code § 226(a) provides:

16 Every employer shall, semimonthly or at the time of each payment of
17 wages, furnish each of his or her employees, either as a detachable part of
18 the check, draft, or voucher paying the employee's wages, or separately
19 when wages are paid by personal check or cash, an accurate itemized
statement in writing showing (1) gross wages earned, (2) total hours worked
20 by the employee, except for any employee whose compensation is solely
based on a salary and who is exempt from payment of overtime under
21 subdivision (a) of Section 515 or any applicable order of the Industrial
Welfare Commission, (3) the number of piece-rate units earned and any
22 applicable piece rate if the employee is paid on a piece-rate basis, (4) all
deductions, provided that all deductions made on written orders of the
23 employee may be aggregated and shown as one item, (5) net wages earned,
24 (6) the inclusive dates of the period for which the employee is paid, (7) the
name of the employee and his or her social security number, (8) the name
25 and address of the legal entity that is the employer, and (9) all applicable
hourly rates in effect during the pay period and the corresponding number
of hours worked at each hourly rate by the employee.

26 26. Labor Code § 200(a) defines wages as "all amounts for labor performed by employees
27 of every description, whether the amount is fixed or ascertained by the standard of time, task, piece,
28 commission basis, or other method of calculation."

1 27. Labor Code § 203(a) provides as follows:

2 If an employer willfully fails to pay, without abatement or reduction, in
3 accordance with Sections 201, 201.3, 201.5, 201.6, 201.8, 201.9, 202, and
4 205.5, any wages of an employee who is discharged or who quits, the wages
5 of the employee shall continue as a penalty from the due date thereof at the
6 same rate until paid or until an action therefor is commenced; but the wages
7 shall not continue for more than 30 days. An employee who secretes or
8 absents themselves to avoid payment to them, or who refuses to receive the
9 payment when fully tendered to them, including any penalty then accrued
10 under this section, is not entitled to any benefit under this section for the
11 time during which the employee so avoids payment.

12 28. Labor Code § 204 provides in part that “all wages, ..., earned by any person in any
13 employment are due and payable twice during each calendar month, on days designated in advance by
14 the employer as the regular paydays.”

15 29. Defendant fails to authorize or permit rest breaks for Plaintiff and Aggrieved
16 Employees. In other words, Defendant fails to pay Plaintiff and Aggrieved Employees premium wages
17 for their missed rest breaks.

18 30. In violation of California law, Defendant knowingly and willfully refuses to perform
19 its obligations to provide compliant rest break periods to Plaintiff and Aggrieved Employees.

20 31. Plaintiff seeks civil penalties pursuant to Labor Code § 2699(a) for each failure by
21 Defendant, as alleged above, to timely pay all wages owed to Plaintiff and Aggrieved Employees in
22 compliance with Labor Code §§ 201-202 in the amounts established by Labor Code § 203. Plaintiff
23 seeks such penalties as an alternative to the penalties available under Labor Code § 203, as prayed
24 for herein.

25 32. Plaintiff also seeks civil penalties pursuant to Labor Code § 2699(a) for each failure
26 by Defendant, alleged above, to provide Plaintiff and Aggrieved Employees an accurate, itemized
27 wage statement in compliance with Labor Code § 226(a) in the amounts established by Labor Code
28 § 226(e). Plaintiff seeks such penalties as an alternative to the penalties available under Labor Code
29 § 226(e), as prayed for herein.

30 33. Plaintiff also seeks civil penalties pursuant to Sections 225.5, 226.3, and 256 of the
31 California Labor Code.

1 34. Pursuant to Labor Code § 2699.3(a)(1) and (2), Plaintiff provided the Labor and
2 Workforce Development Agency (“LWDA”) with notice of his intention to file this claim on
3 December 3, 2020. Sixty-five calendar days have passed without notice from the LWDA. Plaintiff
4 satisfied the administrative prerequisites to commence this civil action in compliance with §
5 2699.3(a).

6 35. Plaintiff seeks the aforementioned penalties on behalf of the State, other Aggrieved
7 Employees, and herself as set forth in Labor Code § 2699(g)(i).

8 36. Defendant is liable to Plaintiff, Aggrieved Employees, and the State of California for
9 the civil penalties set forth in this Complaint. Plaintiff is also entitled to an award of attorneys’ fees
10 and costs as set forth below.

11 37. Wherefore, Plaintiff requests relief as hereinafter provided.

12
13 **SECOND CAUSE OF ACTION**
 Penalties Pursuant to Labor Code § 2699(f)

14 38. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth
15 herein.

16 39. Labor Code § 2699(f) provides:

17 For all provisions of this code except those for which a civil penalty is
18 specifically provided, there is established a civil penalty for a violation of
19 these provisions, as follows: . . . (2) If, at the time of the alleged violation,
20 the person employs one or more employees, the civil penalty is one hundred
21 dollars (\$100) for each aggrieved employee per pay period for the initial
22 violation and two hundred dollars (\$200) for each aggrieved employee per
23 pay period for each subsequent violation.

24 40. To the extent than any violation alleged herein does not carry penalties under Labor
25 Code § 2699(a), Plaintiff seeks civil penalties pursuant to Labor Code § 2699(f) for Plaintiff and
26 Aggrieved Employees for each pay period in which he or she was aggrieved, in the amounts
27 established by Labor Code § 2699(f).

28 41. Pursuant to Labor Code § 2699.3(a)(1) and (2), Plaintiff provided the LWDA with
notice of her intention to file this claim on December 3, 2020. Sixty-five calendar days have passed
without notice from the LWDA. Plaintiff satisfied the administrative prerequisites to commence this

1 civil action in compliance with § 2699.3(a).

2 42. Plaintiff seeks the aforementioned penalties on behalf of the State, other Aggrieved
3 Employees, and themselves as set forth in Labor Code § 2699(g)(i).

4 43. Defendant is liable to Plaintiff, Aggrieved Employees, and the State of California for
5 the civil penalties set forth in this Complaint. Plaintiff is also entitled to an award of attorneys' fees
6 and costs as set forth below.

7 44. Wherefore, Plaintiff requests relief as hereinafter provided.

8
9 **PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiff, on behalf of the State of California and Aggrieved Employees,
11 requests the following relief:

- 12 1. For an order awarding civil penalties to the full extent provided for by the PAGA;
13 2. For an award of reasonable attorneys' fees as provided by the California Labor Code,
14 including Labor Code § 2699(g)(1); California Code of Civil Procedure §1021.5;
15 and/or any other applicable law;
16 3. For all costs of suit; and
17 4. For such other and further relief as this Court deems just and proper.

18
19 Respectfully submitted,

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21 Date: February 26, 2021

22 
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24 Kyle G. Bates
25 SCHNEIDER WALLACE
26 COTTRELL KONECKY LLP
27 *Attorneys for Plaintiff, on behalf of the State of*
28 *California and Aggrieved Employees*

1 **DEMAND FOR JURY TRIAL**

2 Plaintiff hereby demands a jury trial on all claims and issues for which Plaintiff is entitled to
3 a jury.

4 Respectfully submitted,

5 Date: February 26, 2021

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7 _____
8 Kyle G. Bates
9 SCHNEIDER WALLACE
10 COTTRELL KONECKY LLP
11 *Attorneys for Plaintiff, on behalf of the State of*
12 *California and Aggrieved Employees*
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