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Attorneys for Plaintiff Shiva Pratap, individually,
and on behalf of all others similarly situated.

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF CONTRA COSTA**

SHIVA PRATAP, individually and on
behalf of all others similarly situated,

Plaintiffs,

v.

THE PAPE' GROUP, INC.; PAPE'
MATERIAL HANDLING, INC.; PAPE'
MACHINERY, INC.; and DOES 2 through
20, inclusive,

Defendant.

Case No. CIVMSC21-00262

*Assigned for all purposes to:
Judge E. Weil
Dept.: 39*

**FIRST AMENDED COMPLAINT FOR
VIOLATION OF THE CALIFORNIA
LABOR CODE PRIVATE ATTORNEYS
GENERAL ACT OF 2004 (CAL. LAB. CODE
§§ 2698, ET SEQ.)**

FILED
JUN 23 2021

K. BIEKER CLERK OF THE COURT
SUPERIOR COURT OF CALIFORNIA
COUNTY OF CONTRA COSTA

By B. Pool, Deputy Clerk

COPY

1 Plaintiff Shiva Pratap, individually and on behalf of other aggrieved employees, alleges
2 as follows:

3 **NATURE OF ACTION AND INTRODUCTORY STATEMENT**

4 1. Plaintiff Shiva Pratap (“Plaintiff”) brings this representative action pursuant to the
5 Private Attorneys General Act of 2004, Cal. Lab. Code. § 2698 *et seq.*, against defendants Pape’
6 Machinery, Inc., and DOES 2 through 20, inclusive (collectively, “Defendants”), on Plaintiff’s
7 own behalf and on behalf of California residents who are and were employed by Defendants as
8 non-exempt employees throughout California.

9 2. Defendants are in the industry of material and equipment dealing.

10 3. Plaintiff is informed and believe, and thereon alleges, that Defendants have
11 increased their profits by violating state wage and hour laws by, among other things:

- 12 (a) failing to pay all wages (including minimum wages and overtime wages);
- 13 (b) failing to provide lawful meal periods or compensation in lieu thereof;
- 14 (c) failing to authorize or permit lawful rest breaks or provide compensation
15 in lieu thereof;
- 16 (d) failing to reimburse necessary business-related costs;
- 17 (e) failing to provide accurate itemized wage statements; and
- 18 (f) failing to pay all wages due upon separation of employment.

19 4. Plaintiff seeks monetary relief against Defendants on behalf of himself and all
20 others aggrieved employees in California to recover, among other things, civil penalties pursuant
21 to Labor Code §§ 2698 *et seq.*, interest, attorneys’ fees, costs and expense.

22 **JURISDICTION AND VENUE**

23 5. This is a representative action pursuant to Private Attorneys General Act of 2004
24 (Cal. Lab. Code §§ 2698, *et seq.*)(“PAGA”). The civil penalties sought by Plaintiff exceeds the
25 minimal jurisdictional limits of the Superior Court and will be established according to proof at
26 trial.

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

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

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

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

11 **THE PARTIES**

12 9. Plaintiff is a resident of California and worked for Defendants during the relevant
13 time periods as alleged herein.

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

18 11. Plaintiff is unaware of the true names or capacities of the defendants sued herein
19 under the fictitious names DOES 2 through 20, but will seek leave of this Court to amend this
20 Complaint and serve such fictitiously named defendants once their names and capacities become
21 known.

22 12. Plaintiff is informed and believes, and thereon alleges, that DOES 2 through 20
23 are or were the partners, agents, owners, shareholders, managers, or employees of Defendants at
24 all relevant times.

25 13. Plaintiff is informed and believes, and thereon alleges, that each defendant acted
26 in all respects pertinent to this action as the agent of the other defendant, carried out a joint
27 scheme, business plan, or policy in all respects pertinent hereto, and the acts of each defendant
28

1 are legally attributable to the other defendant. Furthermore, defendants in all respects acted as the
2 employer and/or joint employer of Plaintiff and the aggrieved employees.

3 14. Plaintiff is informed and believes, and thereon alleges, that each and all of the acts
4 and omissions alleged herein were performed by, or are attributable to, Defendants and/or DOES
5 2 through 20, acting as the agent or alter ego for the other, with legal authority to act on the
6 other's behalf. The acts of any and all Defendants were in accordance with, and represent, the
7 official policy of Defendants.

8 15. At all relevant times, Defendants, and each of them, acted within the scope of
9 such agency or employment, or ratified each and every act or omission complained of herein. At
10 all relevant times, Defendants, and each of them, aided and abetted the acts and omissions of
11 each and all the other Defendants in proximately causing the damages herein alleged.

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

15 **GENERAL ALLEGATIONS**

16 17. At all relevant times mentioned herein, Defendants employed Plaintiff and other
17 California residents as non-exempt employees or employees throughout California at
18 Defendants' California business location(s) during the relevant time period.

19 18. Defendants continue to employ non-exempt employees or employees within
20 California.

21 19. Plaintiff is informed and believes, and thereon alleges, that at all times herein
22 mentioned, Defendants were advised by skilled lawyers, employees, and other professionals who
23 were knowledgeable about California's wage and hour laws, employment and personnel
24 practices, and the requirements of California law.

25 20. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
26 should have known that Plaintiff and other aggrieved employees were entitled to receive wages
27 for all time worked (including minimum wages and overtime wages) and that they were not
28 receiving all wages earned for work that was required to be performed. In violation of the Labor

1 Code and IWC Wage Orders, Plaintiff and other aggrieved employees were not paid all wages
2 (including minimum wages and overtime wages) for all hours worked, including, but not limited
3 to requiring Plaintiff and other aggrieved employees to work off-the-clock and through meal
4 periods, and failing to compensate Plaintiff and other aggrieved employees for these hours.

5 21. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
6 should have known that Plaintiff and other aggrieved employees were entitled to receive all
7 required meal periods or payment of one (1) additional hour of pay at Plaintiff's and other
8 aggrieved employees' regular rate of pay when they did not receive a timely, uninterrupted meal
9 period. In violation of the Labor Code and IWC Wage Orders, Plaintiff and other aggrieved
10 employees did not receive all meal periods or payment of one (1) additional hour of pay at
11 Plaintiff's and other aggrieved employees' regular rate of pay when they did not receive a timely,
12 uninterrupted meal period.

13 22. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
14 should have known that Plaintiff and other aggrieved employees were entitled to receive all rest
15 breaks or payment of one (1) additional hour of pay at Plaintiff's and other aggrieved employees'
16 regular rate of pay when a rest break was late, missed, or interrupted. In violation of the Labor
17 Code and IWC Wage Orders, Plaintiff and other aggrieved employees did not receive all rest
18 breaks or payment of one (1) additional hour of pay at Plaintiff's and other aggrieved employees'
19 regular rate of pay when a rest break was missed, late, or interrupted.

20 23. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
21 should have known that Plaintiff and other aggrieved employees were entitled to reimbursement
22 and/or indemnification for all necessary business expenditures or losses as a direct consequence
23 of the discharge of their duties, or of their obedience to the directions of Defendants. In violation
24 of the Labor Code and IWC Wage Orders, Plaintiff and other aggrieved employees incurred
25 necessary business expenses or losses, such as buying required tools, but were not reimbursed
26 nor indemnified of such expenses or losses that were incurred as a direct consequence of the
27 discharge of their duties, or of their obedience to the directions of Defendants.

1 24. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
2 should have known that Plaintiff and other aggrieved employees were entitled to receive
3 itemized wage statements that accurately showed the following information pursuant to the
4 Labor Code: (1) gross wages earned; (2) total hours worked by the employee; (3) the number of
5 piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis;
6 (4) all deductions, provided that all deductions made on written orders of the employee may be
7 aggregated and shown as one item; (5) net wages earned; (6) the inclusive dates of the period for
8 which the employee is paid; (7) the name of the employee and only the last four digits of his or
9 his social security number or an employee identification number other than a social security
10 number; (8) the name and address of the legal entity that is the employer; and (9) all applicable
11 hourly rates in effect during the pay period and the corresponding number of hours worked at
12 each hourly rate by the employee. In violation of the Labor Code, Plaintiff and other aggrieved
13 employees were not provided with accurate itemized wage statements.

14 25. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
15 should have known that the aggrieved employees were entitled to timely payment of wages due
16 upon separation of employment. In violation of the Labor Code, the aggrieved employees did not
17 receive payment of all wages within the permissible time periods.

18 26. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
19 should have known they had a duty to compensate Plaintiff and employees, and Defendants had
20 the financial ability to pay such compensation but willfully, knowingly, and intentionally failed
21 to do so in order to increase Defendants' profits.

22 27. Therefore, Plaintiff brings this lawsuit seeking monetary and injunctive relief
23 against Defendants on Plaintiff's own behalf and on behalf of all other aggrieved employees to
24 recover, among other things, unpaid wages (including minimum wages and overtime wages),
25 unpaid meal period premium payments, unpaid rest period premium payments, unreimbursed
26 business expenditures, interest, attorneys' fees, penalties, costs, and expenses.

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1 **FIRST CAUSE OF ACTION**

2 **ENFORCEMENT OF LABOR CODE §§ 2698 ET SEQ. ("PAGA")**

3 28. Plaintiff re-alleges and incorporates by reference the previous paragraphs as
4 though fully set forth herein.

5 29. Pursuant to Labor Code § 2699(a), any provision of the Labor Code that provides
6 for a civil penalty to be assessed and collected by the Labor and Workforce Development
7 Agency ("LWDA") or any of its departments, divisions, commissions, boards, agencies, or
8 employees for violation of the Labor Code may, as an alternative, be recovered through a civil
9 action brought by an aggrieved employee on behalf of himself or herself and other current or
10 former employees pursuant to the procedures specified in Labor Code § 2699.3.

11 30. For all provisions of the Labor Code except those for which a civil penalty is
12 specifically provided, Labor Code § 2699(f) imposes upon Defendants a civil penalty of one
13 hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and
14 two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent pay
15 period in which Defendants violated these provisions of the Labor Code.

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

18 (a) violation of Labor Code §§ 201-203, 204, 510, 511, 558, 1194, and 1198 for
19 failure to timely pay all earned wages (including overtime wages) owed to Plaintiff
20 and other aggrieved employees during employment and upon separation of
21 employment as herein alleged;

22 (b) violation of Labor Code §§ 226.7 and 512 for failure to provide meal periods to
23 Plaintiff and other aggrieved employees and failure to pay premium wages for missed
24 meal periods as herein alleged;

25 (c) violation of Labor Code § 226.7 for failure to permit rest breaks to Plaintiff and
26 other aggrieved employees and failure to pay premium wages for missed rest periods
27 as herein alleged;

1 (d) violation of Labor Code § 226 for failure to provide accurate itemized wage
2 statements to Plaintiff and other aggrieved employees as herein alleged; and
3 (e) violation of Labor Code §§ 1174 and 1174.5 for failure to maintain accurate and
4 complete records showing, among other things, the hours worked daily and the wages
5 paid to aggrieved employees.

6 32. Plaintiff is an “aggrieved employee” because he was employed by the alleged
7 violator and had one or more of the violations committed against him, and therefore is properly
8 suited to represent the interests of all other aggrieved employees.

9 33. Plaintiff has exhausted the procedural requirements under Labor Code § 2699.3 as
10 to Defendants and is therefore able to pursue a claim for penalties on behalf of himself and all
11 other aggrieved employees under PAGA.

12 34. Pursuant to Labor Code §§ 2699(a), 2699.3 and 2699.5, Plaintiff is entitled to
13 recover civil penalties in addition to other remedies, for violation of the Labor Code sections
14 cited above.

15 35. For bringing this action, Plaintiff is entitled to attorneys’ fees and costs incurred
16 herein.

17 **PRAYER FOR RELIEF**

18 On Plaintiff’s own behalf and on behalf of all others similarly situated, Plaintiff prays
19 for relief and judgment against Defendants, jointly and severally, as follows:

20 1. For civil penalties against Defendants on behalf of all aggrieved employees and
21 the LWDA pursuant to Labor Code § 2698, *et seq.*;

22 2. For reasonable attorneys’ fees, costs of suit, and interest to the extent permitted
23 by law, including, but not limited to, Code of Civil Procedure § 1021.5 and Labor Code §
24 2698 *et seq.*; and

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

Dated: May 20, 2021

AEGIS LAW FIRM, PC

By: 
Jordan Wysocki
Attorneys for Plaintiff Shiva Pratap

1 **CERTIFICATE OF SERVICE**

2 I, the undersigned, am employed in the County of Orange, State of California. I am over the age
3 of 18 and not a party to the within action; am employed with Aegis Law Firm PC and my business
address is 9811 Irvine Center Drive, Suite 100, Irvine, California 92618.

4 On June 23, 2021, I served the foregoing document entitled:

- 5 • **FIRST AMENDED COMPLAINT FOR VIOLATION OF THE CALIFORNIA LABOR
CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004 (CAL. LAB. CODE §§ 2698, ET
SEQ.)**

6 on all the appearing and/or interested parties in this action by delivering ☐ the original ☒ a true copy
7 thereof on the party(ies) addressed below as follows:

8 JoAnna L. Brooks, Bar No. 182986
LITTLER MENDELSON P.C.
Treat Towers 1255 Treat Boulevard Suite 600
9 Walnut Creek, California 94597
Telephone: 925.932.2468
10 Fax No.: 925.946.9809
jbrooks@littler.com

11 *Agent of Process of Service for Defendants:*

12 *THE PAPE' GROUP, INC. AND PAPE' MATERIAL HANDLING, INC.*

13 ☒ **(BY MAIL)** I am readily familiar with the firm's practice of collection and processing
14 correspondence for mailing. Under that practice it would be deposited with the U.S. Postal
Service on that same day with postage thereon fully prepaid at Irvine, California in the ordinary
15 course of business. I am aware that on motion of the party served, service is presumed invalid if
postage cancellation date or postage meter date is more than one day after date of deposit for
16 mailing this affidavit. (*Cal Code Civ. Proc. § 1013(a); Fed. R. Civ. Proc. 5(a); Fed. R. Civ. Proc. 5(c).*)

17 ☐ **(BY OVERNIGHT MAIL)** I am personally and readily familiar with the business practice of
18 Aegis Law Firm PC for collection and processing correspondence for overnight delivery, and I
caused such document(s) described herein to be deposited for delivery to a facility regularly
19 maintained Federal Express for overnight delivery. (*Cal Code Civ. Proc. § 1013(c); Fed. R. Civ. Proc. 5(c).*)

20 ☐ **(BY ELECTRONIC TRANSMISSION)** I caused said document(s) to be served via electronic
21 transmission via Case Anywhere to the above listed email addresses on the date below. (*Cal. Code Civ. Proc. § 1010.6(6); Fed. R. Civ. Proc. 5(b)(2)(E); Fed. R. Civ. Proc. 5(b)(3).*)

22 ☐ **(BY PERSONAL SERVICE)** I delivered the foregoing document by hand delivery to the
23 addressed named above. (*Cal Code Civ. Proc. § 1011; Fed. R. Civ. Proc. 5(b)(2)(A).*)

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

25 Executed on June 23, 2021, at Irvine, California.

26 
27 Andrea Drocco
28