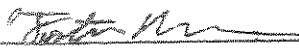


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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**FOR THE COUNTY OF SAN BERNARDINO**

JAMES AHLBORN, an individual, on behalf  
of the State of California, as a private attorney  
general,

PLAINTIFF,

v.

BUILDING MATERIALS  
MANUFACTURING CORPORATION, a  
Delaware Corporation; and DOES 1 to 50,  
inclusive,

DEFENDANTS.

CASE NO. **CIV SB 2124640**

**REPRESENTATIVE ACTION  
COMPLAINT FOR:**

1. Penalties Pursuant to Labor Code § 2699,  
*et seq.* for violations of Labor Code  
§§ 201, 202, 203, 204, 210, 221, 224, 403,  
226, 226.7, 226.3, 432.5, 450, 510, 512,  
558, 1194, 1197, 1198, and 2802 as well as  
IWC Wage Order No. 1-2001

1. Plaintiff JAMES AHLBORN, on behalf of the State of California and as an “aggrieved employee” acting as a private attorney general under the Labor Code Private Attorneys General Act of 2004, § 2698, *et seq.* (“PAGA”) complains of Defendant Building Materials Manufacturing Corporation aka and dba GAF Materials Corporation and Building Materials Mfg. Corp. (“Defendant” or “Building Materials”) and the Doe Defendants and each of them, as follows:

I.

## INTRODUCTION

2. This is a representative action brought pursuant to Labor Code § 2698, *et seq.*, on behalf of the State of California and several groups of aggrieved employees defined as follows:

- (1) all individuals who were employed by Building Materials Manufacturing Corporation<sup>1</sup> or its predecessor or merged entities in California as a non-exempt, hourly employee for one or more pay periods from February 2, 2020<sup>2</sup> and continuing into the present (“Non-Exempt Aggrieved Employees”);
- (2) all individuals who were employed by Building Materials Manufacturing Corporation or its predecessor or merged entities in California as a non-exempt, hourly employee or other similar position and who worked a shift of more than eight (8) hours in a day and/or forty (40) hours in a week during a pay period from February 2, 2020 and continuing into the present. (“Non-Exempt Overtime Aggrieved Employees”);
- (3) all individuals who were employed by Building Materials Manufacturing Corporation or its predecessor, merged or related entities for one or more pay periods in California as a non-exempt, hourly employee and who worked a shift of more than eight (8) hours in a day and/or forty (40) hours in a week during a period where they also received a shift differential from February 2, 2020 and continuing into the present; (“Shift Differential Overtime Aggrieved Employees”);
- (4) all individuals who were employed by Building Materials Manufacturing Corporation or its predecessor, merged or related entities for one or more pay periods in California

<sup>1</sup> All references to Building Materials Manufacturing Corporation shall also refer to Building Materials Manufacturing Corp. and GAF Materials Corporation.

2 Judicial Council Emergency Rule No. 9 tolled the statute of limitations applicable to this action for 5 months and 25 days or from April 6, 2020 to October 6, 2020. “Notwithstanding any other law, the statutes of limitations and repose for civil causes of action that exceed 180 days are tolled from April 6, 2020 until October 1, 2020.” PAGA’s statute of limitations is governed by the Code of Civ. Proc. § 340 such that it is subject to modification by the Judicial Council.

as a non-exempt, hourly employee and who worked a shift of more than eight (8) hours in a day and/or forty (40) hours in a week during a period where they also received a SOP Bonus, a payment under the paycode Meal Benefit PY, a meal-period benefit, incentive payment and/or non-discretionary bonus from February 2, 2020 and continuing into the present; (“Incentive Pay Overtime Aggrieved Employees”);

Collectively, aggrieved employee groups two (2), three (3), and four(4) may be referred to as the “Overtime Aggrieved Employees.”

(5) all individuals who were employed by Building Materials Manufacturing Corporation or its predecessor, merged or related entities in California who worked one or more shifts of more than six (6) hours as a non-exempt, hourly employee or other similar position from February 2, 2020 and continuing into the present. (“Meal Period Aggrieved Employees”);

(6) All individuals who were employed by Building Materials Manufacturing Corporation or its predecessor, merged or related entities in California who were paid a meal and/or rest period premium within the same week that they received either a shift differential, a payment under the paycode Meal Benefit PY, a meal-period benefit, and/or any form of non-discretionary incentive payment between February 2, 2020 and continuing into the present. (“Meal/Rest Period Premium Aggrieved Employees”);

(7) All individuals who were employed by Building Materials Manufacturing Corporation or its predecessor, merged or related entities in California who had wages deducted associated with and/or were required to pay Building Materials Manufacturing Corporation money associated with shirts, coveralls, lab coats, pants, uniforms, and name tags from February 2, 2020 and continuing into the present. (“Reimbursement Aggrieved Employees”);

(8) All individuals who were employed by Building Materials Manufacturing Corporation or its predecessor, merged or related entities in California who either signed and/or had an agreement in effect related to deductions for name tags, shirts, pants, coveralls or uniforms from February 2, 2020 and continuing into the present; (the “432.5 Aggrieved Employees);

(9) All individuals who were employed by Building Materials Manufacturing Corporation or its predecessor, merged or related entities as a non-exempt hourly employee in California and who worked one or more shift of more than 12 hours in length from February 2, 2020 and continuing into the present; (the “Double Time Aggrieved Employees”);

1 (10) all individuals who were employed by Building Materials Manufacturing Corporation  
2 or its predecessor, merged or related entities for one or more pay periods in California  
3 and whose employment concluded at any time between February 2, 2020 and  
continuing into the present; (“Late Payment Aggrieved Employee”).

4 3. The groups referenced in paragraph 2 may also all collectively be referred to  
5 herein as aggrieved employees, other aggrieved employees, and/or all aggrieved employees where  
6 appropriate.

7 4. Plaintiff, on behalf of the State of California as a private attorney general brings  
8 claims for alleged Labor Code violations committed against himself and all aggrieved employees  
9 presently or formerly employed by Defendants during the liability period pursuant to Labor Code  
10 § 2698, *et seq.* seeking penalties for Defendants violations of California Labor Code §§ 201, 202,  
11 203, 204, 210, 221, 224, 403, 226, 226.7, 226.3, 432.5, 450, 510, 512, 558, 1197, 1198, 2802 as  
12 well as IWC Wage Order No. 1-2001. Based upon the allegations herein, Plaintiff and all  
13 aggrieved employees are aggrieved employees within the meaning of Labor Code § 2698, *et seq.*

14 5. Plaintiff and all aggrieved employees worked for Defendant at one or more of its  
15 locations in California or in the field in California during the statutory period applicable to their  
16 claims. Plaintiff worked for Defendants within the past year.

## 17 II.

### 18 **FACTUAL BACKGROUND**

19 6. Plaintiff and the aggrieved employees were at all times relevant hereto were  
20 employed by Building Materials and the Doe Defendants. Plaintiff and the aggrieved employees  
21 were at all times pertinent hereto, non-exempt employees for the purposes of overtime, meal  
22 periods, and rest periods. Plaintiff and all aggrieved employees were employed by Defendants  
23 within the statutory PAGA period.

24 7. Upon information and belief, Plaintiff and the other aggrieved employees were  
25 covered by California Industrial Welfare Commission Occupational Wage Order No. 1-2001.

26 8. Labor Code § 1197 states the California requirement that employees must be paid  
27 at least the minimum wage fixed by the Commission or by any applicable state or local law, and  
28 any payment of less than the minimum wage is unlawful. Similarly, Labor Code § 1194 entitles

1 “any employee receiving less than the legal minimum wage...to recover in a civil action the  
2 unpaid balance of the full amount of this minimum wage.” IWC Wage Order No. 16-2001  
3 obligates employers to pay each employee minimum wages for all hours worked.

4 9. Labor Code § 510 requires an employer to compensate an employee who works  
5 more than eight (8) hours in one workday, forty (40) hours in a workweek, and for the first eight  
6 (8) hours worked on the seventh consecutive day no less than one and one-half times the regular  
7 rate of pay for an employee. Further, Labor Code § 510 obligates employers to compensate  
8 employees at no less than twice the regular rate of pay when an employee works more than  
9 twelve (12) hours in a day or more than eight (8) hours on the seventh consecutive day of work.  
10 In accordance with Labor Code § 1194, Plaintiff and the other aggrieved employees could not  
11 agree to work for a lesser wage.

12 10. In addition, Labor Code § 1198 provides that “the maximum hours of work and the  
13 standard conditions of labor fixed by the commission shall be the maximum hours of work and  
14 the standard conditions of labor for employees. The employment of any employee for longer  
15 hours than those fixed by the order or under conditions of labor prohibited by the order is  
16 unlawful.”

17 11. At times during the statutory period and within the past year, Defendants paid  
18 Plaintiff and the other aggrieved employees with shift differentials that it failed to include when  
19 calculating and paying overtime wages. For instance, for the pay period of May 23, 2021 to June  
20 4, 2021, Plaintiff earned \$18.00 in shift differentials and worked 20 hours of overtime. However,  
21 when calculating and paying Plaintiff for his overtime wages, Defendants failed to pay Plaintiff at  
22 one and one-half times his regular rate and instead paid him at one and one-half his hourly base  
23 rate without taking into account all compensation necessary—including the shift differentials,  
24 incentive pay, non-discretionary bonuses, pay under the pay code “Meal Benefit Pay” and other  
25 forms of compensation—when calculating and paying overtime wages. Defendants engaged in  
26 this same practice with respect to all of the Non-Exempt Aggrieved Employees, the Overtime  
27 Aggrieved Employees, Non-Exempt Overtime Aggrieved Employees, the Shift Differential  
28 Overtime Aggrieved Employees, and the Incentive Payment Overtime Aggrieved Employees:



1 employees that “I am paid for my daily meal periods, as a benefit of my employment with GAF”  
2 and that it was calculated by “my hourly rate of pay.”

3 14. Under [29 C.F.R.] “§ 778.224(a), a payment may not be excluded from the regular  
4 rate of pay pursuant to § 207(e)(2) if it is generally understood as compensation for work, even  
5 though the payment is not tied to specific hours worked by an employee.” *Id.* (emphasis added).  
6 The Ninth Circuit recently summarized in *Flores v. City of San Gabriel*, 824 F.3d 890, 895 (9th  
7 Cir. 2016) that “the question of whether a particular payment falls within the ‘other similar  
8 payments’ clause does not turn on whether the payment is tied to an hourly wage, but instead  
9 turns on whether the payment is a form of compensation for performing work.” *Id.* Nor as the  
10 Ninth Circuit explained need compensation paid be measured by the number of hours worked. *Id.*  
11 (explaining “that the key point is whether payment is ‘compensation for work’” and that “even if  
12 payments to employees are not measured by the number of hours spent at work, that fact does not  
13 qualify for them for exclusion under section 207(e)(2).” *Id.* (citing *Local 246 Utility Workers*  
14 *Union of America v. Southern California Edison, Co.*, 83 F.3d 295.

15 15. At times during the statutory period and within the past year, Defendants paid  
16 Plaintiff and the other aggrieved employees a non-discretionary bonus known as a meal-period  
17 benefit as part of their regular and expected compensation for each day that they worked for  
18 Defendants. The amount that Defendants paid to Plaintiff and the other aggrieved employees was  
19 not discretionary and instead was a non-discretionary bonus established by Defendants at their  
20 hourly base rate subject to a written agreement. Plaintiff and the other aggrieved employee’s  
21 performance did not alter their entitlement to this non-discretionary bonus.

22 16. Further, when Defendants paid Plaintiff and the other aggrieved employee’s the  
23 meal period benefit, it failed to include such amounts when calculating the regular rate of pay and  
24 paying overtime wages, including both overtime and doubletime wages. For instance, for the pay  
25 period of January 17, 2021 to January 23, 2021, Plaintiff received numerous non-discretionary  
26 bonus payments under the paycode of “Meal Benefit Py” and also shift differentials of \$49.74;  
27 however, Defendants did not include such compensation when calculating and paying his  
28 overtime wages. Instead, Defendants only paid him overtime wages at one and one-half times his



1 Defendants when calculating and paying overtime wages to Plaintiff and the other aggrieved  
2 employees.

3 18. Based upon the foregoing, Plaintiff contends Defendants violated Labor Code §  
4 510 with respect to Plaintiff and all aggrieved employees.

5 19. Labor Code § 558 imposes a penalty upon employers “who violates, or causes to  
6 be violated...any provision regulating hours and days of work in any order of the Industrial  
7 Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation,  
8 fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was  
9 underpaid in addition to an amount sufficient to recover underpaid wages; (2) For each  
10 subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay  
11 period for which the employee was underpaid in addition to an amount sufficient to recover  
12 underpaid wages; and (3) Wages recovered pursuant to this section shall be paid to the affected  
13 employee.” For purposes of Labor Code § 558, Plaintiff and the aggrieved employees seek only  
14 the penalties assessed as civil penalties pursuant to *ZB, N.A. v. Sup. Ct.* 8 Cal.5th 175 (2019) and  
15 not any underpaid wages.<sup>3</sup>

16 20. Labor Code § 1197.1 authorizes employees who are paid less than the minimum  
17 fixed by an applicable state or local law, or by an order of the commission a civil penalty,  
18 restitution of wages, and liquidate damages as follows: (1) for any initial violation that is  
19 intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay  
20 period for which the employee is underpaid....[and] (2) [f]or each subsequent violation for the  
21 same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay  
22 period for which the employee is underpaid regardless of whether the initial violation is  
23 intentionally committed. As set forth above, Defendants failed to compensate Plaintiff and all  
24 aggrieved employees for all overtime wages at the proper rates. Accordingly, through PAGA and  
25 to the extent permitted by law through PAGA only, Plaintiff and all aggrieved employees are  
26 entitled to recover and seek liquidated damages for violations of Labor Code § 1197.1.

27  
28 <sup>3</sup> Plaintiff specifically disavows and is not seeking to pursue any arbitrable claims.

1           21. Labor Code § 512 requires employers to provide employees with thirty (30)  
2 minute uninterrupted and duty free meal period within the first five (5) hours of work. Moreover,  
3 an employee who works more than ten (10) hours per day is entitled to receive a second thirty  
4 (30) minute uninterrupted and duty free meal period.

5           22. Labor Code § 226.7 provides “an employer shall not require an employee to work  
6 during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable  
7 regulation, standard, or order of the Industrial Welfare Commission (“IWC”). Similarly, IWC  
8 Wage Order 1-2001 prohibits an employer from “employ[ing] any person for a work period of  
9 more than five (5) hours without a meal period of not less than 30 minutes. IWC Wage Order 1-  
10 2001 further obligates employers to provide an employee to “pay the employee one (1) hour of  
11 pay at the employee’s regular rate of compensation for each workday that the meal period is not  
12 provided. Accordingly, for each day that Plaintiff and all aggrieved employees did not receive  
13 compliant meal or rest periods, they were entitled to receive meal period premiums pursuant to  
14 Labor Code § 226.7 and Wage Order No. 1-2001.

15           23. During the statutory period applicable to their claims and within the past year,  
16 Plaintiff and the aggrieved employees worked shifts in excess of eight (8), ten (10), and/or twelve  
17 (12) hours per day.

18           24. During their employment with Defendants, Defendants failed to either authorize  
19 and permit and/or provide a lawful meal period (including timely first meal periods) to Plaintiff  
20 and the other aggrieved employees. Regardless of whether or not such premiums were paid, the  
21 State of California remains entitled to collect penalties for Defendants’ violation of Labor Code  
22 section 512 and the IWC Wage Order’s meal/rest period requirements consistent with Labor Code  
23 section 226.7. *See e.g. Kim v. Reins International California, Inc.*, 9 Cal.5th 73, 84 (2020)  
24 (“employers can pay an additional hour of wages as a remedy for failing to provide meal and rest  
25 breaks. (§ 226.7, subd. (c).) But we have held that payment of this statutory remedy ‘does not  
26 excuse a section 226.7 violation.’”) (*quoting Kirby v. Immoos Fire Protection, Inc.*, 53 Cal.4th  
27 1244, 1256 (2012)).  
28

1           25.     During the statutory period applicable to their claims and within the past year  
2 Plaintiff and the Meal/Rest Period Premium Aggrieved Employees were also not compensated  
3 with one (1) hours' worth of pay at their regular rate of compensation when they were not  
4 provided with a compliant meal or rest period. This includes instances when Plaintiff and the  
5 other Meal/Rest Period Premium Aggrieved Employees were not provided with lawful timely  
6 first meal periods.

7           26.     Instead, Defendants had a common policy and practice of failing to include  
8 compensation associated with shift differentials, incentive pay, non-discretionary bonuses, so  
9 called meal-period benefit, compensation under the paycode Meal Benefit PY, SOP Bonuses,  
10 incentive payment and/or non-discretionary bonuses in the meal/rest period premiums paid to  
11 Plaintiff and all aggrieved employees. Instead of paying meal/rest period premiums at employees'  
12 regular rates, on the rare occasions that Defendants and the other Meal/Rest Period Premium  
13 Aggrieved Employees received a meal period premium, Defendants improperly paid the premium  
14 at the employee's hourly base rate instead of at their regular rate. Defendants often referred to  
15 such premiums by pay codes, including, but not limited to, "Meal Prem Pay" on the itemized  
16 wage statements that it issued to Plaintiff and the other aggrieved employees. Plaintiff contends  
17 that Defendants' policies and practices as alleged above violated Labor Code § 226.7 and seeks  
18 penalties pursuant to PAGA related thereto consistent with the California Supreme Court's  
19 decision in *Ferra v. Loews Hollywood Hotel, LLC*, No. S259172) \_\_\_Cal.5th\_\_\_ 2021 Cal.  
20 LEXIS 4877 (July 15, 2021) ("we hold that the term 'regular rate of compensation' in section  
21 226.7(c) has the same meaning of regular rate of pay' in section 510(a) and encompasses not only  
22 hourly wages, but all nondiscretionary payments for work performed by the employee.").

23           27.     Labor Code § 558 imposes a penalty upon employers "who violates, or causes to  
24 be violated...any provision regulating hours and days of work in any order of the Industrial  
25 Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation,  
26 fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was  
27 underpaid in addition to an amount sufficient to recover underpaid wages; (2) For each  
28 subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay

1 period for which the employee was underpaid in addition to an amount sufficient to recover  
2 underpaid wages; and (3) Wages recovered pursuant to this section shall be paid to the affected  
3 employee.” For purposes of Labor Code § 558, Plaintiff seeks only the penalties assessed as civil  
4 penalties pursuant to *ZB, N.A. v. Sup. Ct.* 8 Cal.5th 175 (2019) and not any underpaid wages.

5 28. Labor Code § 2802 provides that “[a]n employer shall indemnify his or her  
6 employee for all necessary expenditures or losses incurred by the employee in direct consequence  
7 of the discharge of his or her duties, or of his or her obedience to the directions of the employer,  
8 even though unlawful, unless the employee, at the time of obeying the directions, believed them  
9 to be unlawful.”

10 29. Labor Code § 221 expressly prohibits an employer from collecting or receiving  
11 from an employee any part of wages paid by the employer to the employee. Labor Code § 224  
12 provides a limited exception to Labor Code § 221 by permitting an employer to withhold or divert  
13 an employee’s wages when the employer is required or empowered to do so by state or federal  
14 law or “when a deduction is authorized in writing by the employee to cover insurance premiums,  
15 hospital or medical dues, or other deductions not amounting to a rebate or deduction from the  
16 standard wage arrived at by...statute.”

17 30. Labor Code § 403 also requires that cash received as a bond be “deposited in a  
18 savings account in a bank authorized to do business in this State, and may be withdrawn only  
19 upon the joint signatures of the employer and the employee or applicant.” Additionally, Labor  
20 Code § 403 requires that the bond be accompanied by “an agreement in writing made by the  
21 employer and employee or applicant, setting forth the conditions under which the bond is given.”  
22 Similarly, Labor Code § 406 clarifies that “[a]ny property put up by an employee directly, or  
23 indirectly, shall be deemed to be put up as a bond and is subject to the provision of this article  
24 whether the property is put up on a note or as a loan or an investment and regardless of the  
25 wording of the agreement under which it is put up. When Defendants deducted uniform expenses  
26 and/or deposits, it does not place such expenses and deposits in a separate bank for which the  
27 amount can only be withdrawn upon the joint signature of both the employer and the employee as  
28 required by Labor Code §§ 403 and 406.

1           31.     Moreover, Labor Code § 450 prohibits an employer from compelling or coercing  
2 any employee or applicant for employment from patronizing his employer or any other person in  
3 the purchase of anything of value.

4           32.     Further, Section 9(A) of IWC Wage Order No. 1-2001 provides that “[w]hen  
5 uniforms are required by the employer to be worn by the employee as a condition of employment,  
6 such uniforms shall be provided and maintained by the employer.”

7           33.     Although IWC Wage Order No. 1-2001 required Defendants to both provide and  
8 maintain the work uniforms, during the statutory period applicable to their claims and within the  
9 past year, Defendants did not provide either the uniforms or any compensation to Plaintiff and the  
10 other aggrieved employees to reimburse them for the expenses associated with maintaining the  
11 uniforms. This includes for the time associated with the maintenance of the uniforms. Instead,  
12 Defendants charged Plaintiff and the other aggrieved employees for the work uniforms that they  
13 were required to provide. On many such occasions, Defendants’ deducted the costs of the uniform  
14 expenses and name tags from Plaintiff and the other Reimbursement Aggrieved Employees  
15 earned wages. By deducting and collecting part of Plaintiff and the other Reimbursement  
16 Aggrieved Employees’ wages for uniform expenses and/or deposits, Defendants are violating  
17 Labor Code §§ 221, 224, 403, 406, 450, 1994, and 2802 as well as IWC Wage Order 1-2001.

18           34.     Instead, during the statutory period applicable to their claims and within the past  
19 year, Defendants required aggrieved employees to pay for shirts, pants, coveralls, lab coats, and  
20 name tags in accordance with the following and/or similar schedule and/or sign a document  
21 indicating that it was requiring them to make such payments in violation of Labor Code section  
22 432.5—see next page:

23     ///

24     ///

25     ///

26     ///

27     ///

28     ///



Cotton shirts and pants will be \$5.71 per week (5 shirts & 5 pants per week)

Cotton coveralls will be \$5.71 per week (5 coveralls per week)

Lab coats will be \$5.71 per week (5 lab coats per week)

The first week's delivery will be \$1.14 more (1 time only extra charge)

|                      |                   |
|----------------------|-------------------|
| First week's rental: | \$5.71            |
|                      | <del>\$1.14</del> |
| TOTAL                | \$6.85            |

Every week after the first week will be \$5.71 per week

This is based on a total inventory of 11 shirts and 11 pants or 11 coveralls or 11 lab coats with a billing quantity of 5 per week.

The only additional charge will be for name tags for your uniforms. Name tags are \$2.50 each. This is also a 1 time only charge, unless the employee has a size change or upgrade.

Loss or Replacement Charges for AmeriPride owned uniforms are as shown below:

|           |             |              |
|-----------|-------------|--------------|
| Shirts    | Loss Charge | \$21.10 each |
| Pants     | Loss Charge | \$27.99 each |
| Coveralls | Loss Charge | \$58.24 each |

Name: *James Albin*

35. Regardless of whether or not such amounts were deducted, Defendants violated Labor Code section 432.5 by requiring Plaintiff and the other aggrieved employees to sign documents authorizing such charges. Labor Code section 432.5 provides that "No employer, or agent, manager, superintendent, or officer thereof, shall require any employee or applicant for employment to agree, in writing, to any term or condition which is known by such employer, or agent, manager, superintendent, or officer thereof to be prohibited by law." Defendants were previously sued for violating Labor Code section 2802 such that it knew that it could not require Plaintiff and the other aggrieved employees to pay for its business expenses and/or require employees to sign instruments requiring employees to authorize such deductions.

36. During the statutory period applicable to their claims and within the past year, Defendants deducted the costs associated with uniforms and name tags from aggrieved employees' wages in violation of Labor Code §§ 221 and 224. Defendants unlawfully use such funds for its own purposes, including to reduce expenses and as an internal security measure that it draws upon and uses when an employee fails to return a uniform and/or damages it. However, an employer may not unilaterally draw upon a uniform deposit and/or security interest without first obtaining a judgment from a court that it is entitled to the security interest held as a deposit.

1 *See Barnhill v. Saunders*, 125 Cal. App. 3d 1 (1981); *CSEA v. State of California*, 198 Cal. App.  
2 3d 374 (1988).

3 37. Based upon the foregoing, Plaintiff alleges that Defendants violated Labor Code  
4 §§ 221, 224, 403, 432.5, 450, 1194 and 2802 and IWC Wage Order No. 1-2001 with respect to  
5 Plaintiff and the aggrieved employees.

6 38. Labor Code § 226 obligates employers, semi-monthly or at the time of each  
7 payment to furnish an itemized wage statement in writing showing:

- 8 (1) gross wages earned;
- 9 (2) total hours worked by the employee;
- 10 (3) the number of piece-rate units earned and any applicable piece rate if the  
11 employee is paid on a piece rate;
- 12 (4) all deductions, provided that all deductions made on written orders of the employee  
13 may be aggregated and shown as one item;
- 14 (5) net wages earned;
- 15 (6) the inclusive dates of the period for which the employee is paid;
- 16 (7) the name of the employee and only the last four digits of his or her social security  
17 number or an employee identification number other than a social security number;
- 18 (8) the name and address of the legal entity that is the employer...;
- 19 (9) all applicable hourly rates in effect during the pay period and the corresponding  
20 number of hours worked at each hourly rate by the employee...

21 39. Labor Code § 226(a)(1), (2), (5), and (9) require employers semimonthly or at the  
22 time or each payment of wages, furnish each of his or her employees, an accurate itemized  
23 statement in writing showing the gross wages earned, the total hours worked by the employee, all  
24 deductions, the net wages earned, as well as all applicable hourly rates in effect during the pay  
25 period and the corresponding number of hours worked at each hourly rate by the employee.

26 40. Due to Defendants' failure to pay Plaintiff and all aggrieved employees all  
27 overtime wages and meal/rest period premiums (including at the proper rate) the wage statements  
28 issued by Defendants to the aggrieved employees do not indicate the correct amount of gross  
wages earned, the total hours worked, the net wages earned, all applicable hourly rates in effect  
during the pay period and the corresponding number of hours worked at each hourly rate. Thus,  
Plaintiff is an aggrieved employee within the meaning of PAGA and Defendants have violated  
Labor Code §226(a)(1), (2), (5), and (9) with respect to Plaintiff and all aggrieved employees.

41. Separate and independent of the foregoing, during the statutory period applicable  
to their claims and within the past year, when Plaintiff and the other aggrieved employees earned

shift differentials, Defendants failed to include information about the rate of shift differentials such that Plaintiff and the other aggrieved employees could not determine from their wage statements alone all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee in violation of Labor Code section 226(a)(9):

| Earnings         |  | rate                | hours | this period                            | year to date | Other Benefits and Information             |             |               |
|------------------|--|---------------------|-------|----------------------------------------|--------------|--------------------------------------------|-------------|---------------|
| Regular          |  | 21.8600             | 29.00 | 633.94                                 | 2,830.87     | Base Earnings                              | this period | total to date |
| Overtime         |  | 32.7900             | 30.98 | 1,015.83                               | 3,786.59     | Ret Total                                  | 2,049.27    | 7,245.27      |
| Double Time      |  | 21.8600             | 8.00  | 349.76                                 | 360.69       | 401K Elig Earns                            | 161.13      | 307.37        |
| Floating Holiday |  | 21.8600             | 8.00  | 174.88                                 | 174.88       | 401K Er Basic                              | 2,289.73    | 7,660.61      |
| Meal Benfit Py   |  | 21.8600             | 3.00  | 65.58                                  | 240.46       |                                            | 68.69       | 229.82        |
| Shift Diff       |  |                     |       | 49.74                                  | 92.24        | Totl Hrs Worked 67.98                      |             |               |
| Holiday          |  |                     |       |                                        | 174.88       |                                            |             |               |
| Gross Pay        |  |                     |       | \$2,289.73                             | 7,660.61     | Important Notes                            |             |               |
|                  |  |                     |       |                                        |              | YOUR COMPANY PHONE NUMBER IS (973)872-4300 |             |               |
| Deductions       |  | Statutory           |       | Additional Tax Withholding Information |              |                                            |             |               |
|                  |  | Federal Income Tax  |       | -185.24                                | 395.73       | Taxable Marital Status:                    |             |               |
|                  |  | Social Security Tax |       | -141.97                                | 474.96       | CA: Married                                |             |               |
|                  |  | Medicare Tax        |       | -33.20                                 | 111.08       | Exemptions/Allowances:                     |             |               |
|                  |  | CA State Income Tax |       | -83.59                                 | 272.24       | CA: 5                                      |             |               |
|                  |  | CA SUI/SDI Tax      |       | -27.48                                 | 91.93        |                                            |             |               |
| Net Pay          |  |                     |       | \$1,818.25                             |              |                                            |             |               |
| Checking 2       |  |                     |       | -1,818.25                              | 6,314.67     |                                            |             |               |
| Net Check        |  |                     |       | \$0.00                                 |              |                                            |             |               |

1           43. Further, separate and independent of the foregoing, Defendants maintain  
2 documents showing that it underpaid Plaintiff and the other aggrieved employees, but never  
3 provided them with wage statements showing the actual amounts and hourly rates in effect to the  
4 aggrieved employees.

5           44. Labor Code § 226.3 provides that “[a]ny employer who violates subdivision (a) of  
6 Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250)  
7 per employee per violation in an initial violation and one thousand dollars (\$1,000) per employee  
8 for each violation in a subsequent citation, for which the employer fails to provide the employee a  
9 wage deduction statement or fails to keep the required in subdivision (a) of Section 226.” As  
10 explained in detail above, Defendants failed to provide Plaintiff and the other aggrieved  
11 employees with accurate itemized wage statements. Accordingly, Plaintiff and the other  
12 aggrieved employees may also recover Labor Code § 226.3 penalties for Defendants’ violations  
13 of Labor Code § 226(a).

14           45. Labor Code § 204 expressly requires that “[a]ll wages...earned by any person in  
15 any employment are due and payable twice during each calendar month, on days designated in  
16 advance by the employer as the regular paydays.”

17           46. Under Labor Code § 204(d), an employer who pays employees on a weekly basis  
18 must pay all wages owed “not more than seven calendar days following the close of the payroll  
19 period.”

20           47. During the statutory period applicable to their claims and within the past year,  
21 Defendants paid Plaintiff and the aggrieved employees on a weekly basis.

22           48. Due to Defendants’ failure to pay Plaintiff and all aggrieved employees all  
23 overtime wages and meal/rest period premiums (including at the proper amounts), Defendants  
24 failed to timely pay Plaintiff and all aggrieved employees all wages owed within seven (7) days  
25 of the close of the payroll period in accordance with Labor Code § 204(d) on a regular and  
26 consistent basis.

27           49. Separate and independent of the foregoing, Defendants also failed to pay Plaintiff  
28 and the aggrieved employees all amounts owed in a timely matter including withholding at least

1 \$0.50 per hour and maintains detailed documents showing its untimely underpayments. Plaintiff  
2 alleges that Defendants engaged in such conduct with respect to Plaintiff and some of the  
3 aggrieved employees.

4 50. Plaintiff further alleges that when Defendant failed to pay compensation that it  
5 owed that it withheld such wages for multiple pay periods resulting in continuing violations of  
6 Labor Code section 204 for subsequent pay periods even where another violation did not occur  
7 that pay period.

8 51. Labor Code § 210 provides that “in addition to, an entirely independent and apart  
9 from, any other penalty provided in this article, every person who fails to pay the wages of each  
10 employee as provided in Sections...204...shall be subject to a civil penalty as follows: (1) For  
11 any initial violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For  
12 each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for  
13 each failure to pay each employee, plus 25% of the amount unlawfully withheld.”

14 52. Under Labor Code §§ 201-202, an employer must provide an employee wages at  
15 the time of discharge or within up to seventy-two (72) hours of their resignation. Labor Code §  
16 203 provides “if an employer willfully fails to pay . . . any wages of an employee who is  
17 discharged or who quits, the wages of the employee shall continue as a penalty. . .” for up to 30  
18 days. Lab. Code § 203.

19 53. As described in detail above, Defendants failed to pay Plaintiff and other  
20 aggrieved employees whose employment concluded all wages owed, including but not limited to  
21 overtime wages within the time constraints proscribed in Labor Code §§ 201-202 at the time of  
22 their termination/separation. Separate and independent from the foregoing, Defendants also failed  
23 to pay Plaintiff and the other aggrieved employees any of their wages within the time constraints  
24 provided by Labor Code section 201 and 202. For instance, Defendants terminated Plaintiff on  
25 June 7, 2021, but did not pay him all wages owed until June 11, 2021 in violation of Labor Code  
26 sections 201-203. Plaintiff alleges that Defendants engaged in such conduct and applied similar  
27 unlawful policies and practices to the other aggrieved employees:  
28

☒ Discharge effective **06/07/2021**

Date

☐ Refusal to accept available work effective \_\_\_\_\_

Date

☐ Change in status from employee to independent contractor, effective \_\_\_\_\_

Date

Comments:

Reason for discharge: Safety Violation

Your life insurance benefits end immediately upon termination. Your health insurance benefits end effective the last day of the month in which your employment with the Company ends. Included with this notice please find the pamphlet "For Your Benefit" (form 2320 from the EDD). For information regarding your 401k, contact Vanguard at 1-800-523-1188

  
Human Resources Manager's Signature

6/7/2021  
Date

GAF Materials Corporation  
6200 Zerk Road  
Shafter, CA 93263  
(661) 391-3905

CO. FILE DEPT. CLOCK CHK. NO.  
GKN 052091 010109 03148 0067634114

Building Materials Mfg. Corp  
1 Campus Drive  
Parsippany, NJ 07054

### Earnings Statement

Period Beginning: 05/31/2021  
Period Ending: 06/05/2021  
Pay Date: 06/11/2021

Filing Status: Head of Household

**JAMES AHLBORN**

ORIGIN ID: BFLA (661) 391-3903  
DOLORES  
GAF  
6200 ZERKER RD  
SHAFTER, CA 93263  
UNITED STATES US

SHIP DATE: 11JUN21  
ACTWGT: 2.00 LB  
CAD: 113991398/INET4340

BILL SENDER

TO **JAMES AHLBORN**

54. Thus, as result of Defendants' faulty policies described above, Plaintiff and all aggrieved employees left their employment with Defendants without being compensated for each and every hour worked at the appropriate rate in violation of Labor Code §§ 201, 202, and 203.

55. Plaintiff fully and completely exhausted his administrative remedies under PAGA prior to proceeding with this action. Plaintiff filed his PAGA Notice online with the Labor Workforce Development Agency ("LWDA") and sent a letter by certified mail to Defendants setting forth the facts and theories of the violations alleged against Defendants, as prescribed by

1 Labor Code § 2698 *et seq.* As required by PAGA, Plaintiff submitted the \$75.00 filing fee to the  
2 LWDA. Pursuant to Labor Code § 2699.3(a)(2)(A), no notice was received and/or will have been  
3 received by Plaintiff from the LWDA evidencing its intention to investigate within sixty-five (65)  
4 calendar days of the postmark date of the PAGA notice. Plaintiff is therefore, entitled to  
5 commence and proceed with a civil action pursuant to Labor Code § 2699.

6 **III.**

7 **JURISDICTION AND VENUE**

8 56. This Court has subject matter jurisdiction over any and all causes of action  
9 asserted herein pursuant to Article VI, § 10 of the California Constitution and California Code of  
10 Civil Procedure § 410.10 by virtue of the fact that this is a civil action in which the matter in  
11 controversy, exclusive of interest, exceeds \$25,000, and because each cause of action asserted  
12 arises under the laws of the State of California or is subject to adjudication in the courts of the  
13 State of California.

14 57. This Court has personal jurisdiction over Defendants because Defendants have  
15 caused injuries in the County of San Bernardino through their acts, and by their violation of the  
16 California Labor Code and California state common law. *Crestwood Behavioral Health, Inc. v.*  
17 *Sup. Ct.*, 60 Cal.App.5th 1069 (2021) (affirming that the Plaintiff's choice of venue in a PAGA  
18 case was proper in Alameda County even though the employee only worked for the defendant in  
19 Solano County and the defendant's principal office was in Sacramento County). Defendant does  
20 business in San Bernardino County including, based upon information and belief, at 11800  
21 Industry Ave, Fontana, CA 92337.

22 58. Venue as to each Defendants is proper in this judicial district, pursuant to Code of  
23 Civil Procedure § 395. Defendants operates within California and does business within San  
24 Bernardino County, California. The unlawful acts alleged herein have a direct effect employees  
25 within the State of California and San Bernardino County.

26 ///

27 ///

28 ///

1 IV.

2 **PARTIES**

3 **A. PLAINTIFF**

4 59. Plaintiff JAMES AHLBORN is a resident of California worked for Defendants in  
5 California within the past year.

6 60. Plaintiff and all aggrieved employees are, and at all times pertinent hereto, have  
7 been classified as employees by Defendants. Defendants hires employees to work in California.

8 61. Upon information and belief, Plaintiff and all aggrieved employees are covered by  
9 California Industrial Welfare Commission Occupational Wage Orders No. 1-2001.

10 62. Plaintiff represents the state of California in prosecuting claims against Defendants  
11 on behalf of several groups of employees defined as:

- 12 (1) all individuals who were employed by Building Materials Manufacturing  
13 Corporation<sup>4</sup> or its predecessor or merged entities in California as a non-exempt,  
14 hourly employee for one or more pay periods from February 2, 2020<sup>5</sup> and continuing  
15 into the present (“Non-Exempt Aggrieved Employees”);
- 16 (2) all individuals who were employed by Building Materials Manufacturing Corporation  
17 or its predecessor or merged entities in California as a non-exempt, hourly employee  
18 or other similar position and who worked a shift of more than eight (8) hours in a day  
19 and/or forty (40) hours in a week during a pay period from February 2, 2020 and  
20 continuing into the present. (“Non-Exempt Overtime Aggrieved Employees”);
- 21 (3) all individuals who were employed by Building Materials Manufacturing Corporation  
22 or its predecessor, merged or related entities for one or more pay periods in California  
23 as a non-exempt, hourly employee and who worked a shift of more than eight (8)  
24 hours in a day and/or forty (40) hours in a week during a period where they also  
25 received a shift differential from February 2, 2020 and continuing into the present;  
26 (“Shift Differential Overtime Aggrieved Employees”);

25 <sup>4</sup> All references to Building Materials Manufacturing Corporation shall also refer to Building Materials  
Manufacturing Corp. and GAF Materials Corporation.

26 <sup>5</sup> Judicial Council Emergency Rule No. 9 tolled the statute of limitations applicable to this action for 5 months and  
27 25 days or from April 6, 2020 to October 6, 2020. “Notwithstanding any other law, the statutes of limitations and  
28 repose for civil causes of action that exceed 180 days are tolled from April 6, 2020 until October 1, 2020.” PAGA’s  
statute of limitations is governed by the Code of Civ. Proc. § 340 such that it is subject to modification by the Judicial  
Council.

- 1 (4) all individuals who were employed by Building Materials Manufacturing Corporation  
2 or its predecessor, merged or related entities for one or more pay periods in California  
3 as a non-exempt, hourly employee and who worked a shift of more than eight (8)  
4 hours in a day and/or forty (40) hours in a week during a period where they also  
5 received a SOP Bonus, a payment under the paycode Meal Benefit PY, a meal-period  
benefit, incentive payment and/or non-discretionary bonus from February 2, 2020 and  
continuing into the present; (“Incentive Pay Overtime Aggrieved Employees”);

6 Collectively, aggrieved employee groups two (2), three (3), and four(4) may be referred to  
7 as the “Overtime Aggrieved Employees.”

- 8 (5) all individuals who were employed by Building Materials Manufacturing Corporation  
9 or its predecessor, merged or related entities in California who worked one or more  
10 shifts of more than six (6) hours as a non-exempt, hourly employee or other similar  
11 position from February 2, 2020 and continuing into the present. (“Meal Period  
Aggrieved Employees”);

- 12 (6) All individuals who were employed by Building Materials Manufacturing  
13 Corporation or its predecessor, merged or related entities in California who were paid  
14 a meal and/or rest period premium within the same week that they received either a  
15 shift differential, a payment under the paycode Meal Benefit PY, a meal-period  
16 benefit, and/or any form of non-discretionary incentive payment between February 2,  
2020 and continuing into the present. (“Meal/Rest Period Premium Aggrieved  
Employees”);

- 17 (7) All individuals who were employed by Building Materials Manufacturing  
18 Corporation or its predecessor, merged or related entities in California who had  
19 wages deducted associated with and/or were required to pay Building Materials  
20 Manufacturing Corporation money associated with shirts, coveralls, lab coats, pants,  
21 uniforms, and name tags from February 2, 2020 and continuing into the present.  
 (“Reimbursement Aggrieved Employees”);

- 22 (8) All individuals who were employed by Building Materials Manufacturing  
23 Corporation or its predecessor, merged or related entities in California who either  
24 signed and/or had an agreement in effect related to deductions for name tags, shirts,  
25 pants, coveralls or uniforms from February 2, 2020 and continuing into the present;  
(the “432.5 Aggrieved Employees);

- 26 (9) All individuals who were employed by Building Materials Manufacturing  
27 Corporation or its predecessor, merged or related entities as a non-exempt hourly  
28 employee in California and who worked one or more shift of more than 12 hours in  
length from February 2, 2020 and continuing into the present; (the “Double Time

Aggrieved Employees”);

(10) all individuals who were employed by Building Materials Manufacturing Corporation or its predecessor, merged or related entities for one or more pay periods in California and whose employment concluded at any time between February 2, 2020 and continuing into the present; (“Late Payment Aggrieved Employee”).

63. The groups referenced in paragraph 62 may also all collectively be referred to herein as aggrieved employees, other aggrieved employees, and/or all aggrieved employees where appropriate.

#### **B. DEFENDANTS**

64. Defendant Building Materials Manufacturing Corporation is believed to be a Delaware Corporation operating within the State of California including within San Bernardino County. Defendant’s principal place of business is believed to be 1 Campus Drive Parsippany, NJ 07054. Defendant Building Materials Manufacturing Corporation is also known as and does business as GAF Materials Corporation and Building Materials Mfg. Corp (“Building Materials”).

65. Based upon information and belief, Defendant Building Materials and the Doe Defendants operate as joint employers and/or as a single enterprise or alter egos of each other. Throughout his employment, Plaintiff and the aggrieved employees were regularly and consistently subject to the common policies and practices utilized by Defendants.

66. The true names and capacities, whether individual, corporate, associate, or otherwise, of Defendants sued herein as DOES 1 to 50, inclusive, are currently unknown to Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants designated herein as a DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants designated hereinafter as DOES when such identities become known. Plaintiff further alleges that the Doe Defendants include California residents including individuals who could be brought into the action under Labor Code § 558.1.

67. Plaintiff is informed and believes, and based thereon alleges, that each Defendants acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally attributable to the other Defendants. Furthermore, Defendants in all respects acted as the employer and/or joint employer of Plaintiff and the other aggrieved employees.

**V.**

### FIRST CAUSE OF ACTION

**PLAINTIFF AND ALL AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS  
FOR PENALTIES PURSUANT TO LABOR CODE § 2698, ET SEQ. FOR VIOLATIONS  
OF LABOR CODE §§ 201, 202, 203, 204, 210, 221, 224, 403, 226, 226.7, 226.3, 432.5, 450,  
510, 512, 558, 1194, 1197, 1198, and 2802 as well as IWC Wage Order No. 1-2001**

68. Plaintiff, on behalf of the State of California, realleges and incorporates by reference all previous paragraphs.

69. As a result of the acts alleged above, Plaintiff seeks penalties under Labor Code § 2698, *et seq.* because of Defendants' violations of Labor Code §§ 201, 202, 203, 204, 210, 221, 224, 403, 226, 226.7, 226.3, 432.5, 450, 510, 512, 558, 1194, 1197, 1198, 2802 as well as IWC Wage Order No. 1-2001.

70. Under Labor Code §§ 2699(f)(2) and 2699.5, for each such violation, Plaintiff and all other aggrieved employees are entitled to penalties in an amount to be shown at the time of trial subject to the following formula unless a civil penalty is already proscribed under the Labor Code:

\$100 for the initial violation per employee per pay period; and

\$200 for each subsequent violation per employee per pay period.

71. These penalties will be allocated 75% to the Labor Workforce Development Agency and 25% to the affected employees.

72. In addition, Plaintiff and the aggrieved employees seek the default penalty provided by Labor Code § 226.3. Labor Code § 226.3 provides that “[a]ny employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to

1 provide the employee a wage deduction statement or fails to keep the required in subdivision (a)  
2 of Section 226.”

3 73. Labor Code § 210 provides that “in addition to, an entirely independent and apart  
4 from, any other penalty provided in this article, every person who fails to pay the wages of each  
5 employee as provided in Sections...204...shall be subject to a civil penalty as follows: (1) For  
6 any initial violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For  
7 each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for  
8 each failure to pay each employee, plus 25% of the amount unlawfully withheld.” Pursuant to  
9 Labor Code § 210, “[t]welve and one-half percent of the penalty recovered shall be paid into a  
10 fund within the Labor and Workforce Development Agency dedicated to educating employers  
11 about state labor laws, and the remainder shall be paid into the State Treasury to the credit of the  
12 General Fund.” As a result of the faulty compensation policies and practices described in detail  
13 above, the State of California is entitled to recover penalties under Labor Code § 210 through  
14 PAGA.

15 74. Further, Labor Code § 558 imposes a penalty upon employers “who violates, or  
16 causes to be violated...any provision regulating hours and days of work in any order of the  
17 Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial  
18 violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the  
19 employee was underpaid in addition to an amount sufficient to recover underpaid wages; (2) For  
20 each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay  
21 period for which the employee was underpaid...” Based upon the above factual allegations  
22 related to overtime, meal period, and rest period violations, Plaintiff and the aggrieved employees  
23 are entitled to recover civil penalties under Labor Code § 558 and not any underpaid wages. *ZB,*  
24 *N.A. v. Sup. Ct. 8 Cal.5th 175 (2019).*

### 25 **RELIEF REQUESTED**

26 **WHEREFORE**, Plaintiff prays for the following relief:

27 1. For penalties under Labor Code § 2698, *et seq.* for Plaintiff and all aggrieved  
28 employees because of Defendants’ violation of Labor Code §§ 201, 202, 203, 204, 210, 221, 224,

1 403, 226, 226.7, 226.3, 432.5, 450, 510, 512, 558, 1194, 1197, 1198, and 2802 as well as IWC  
2 Wage Order No. 1-2001.

- 3 2. An award providing for payment of costs of suit;  
4 3. An award of attorneys' fees; and  
5 4. Such other and further relief as this Court may deem proper and just.

6  
7 Dated: August 25, 2021

WINSTON LAW GROUP, P.C.

8  
9 By: David Winston

10 DAVID S. WINSTON  
11 CHRISTIAN H. NA  
12 Attorney for Plaintiff James Ahlborn and the  
13 aggrieved employees  
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