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Clerk of the Superior Court
By Carla Boston, Deputy Clerk

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Attorneys for Plaintiff, ANTHONY MENDOZA
on behalf of himself and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

ANTHONY MENDOZA, an individual, on
behalf of himself and all others similarly
situated,

Plaintiff,

vs.

GAF MATERIALS LLC D/B/A GAF, a
Delaware limited liability company; and
DOES 1 through 100, inclusive,

Defendants.

Case No. 37-2023-00028531-CU-OE-CTL

**FIRST AMENDED REPRESENTATIVE
ACTION COMPLAINT FOR:**

**(1) CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT [LAB. CODE, § 2699, *ET SEQ.*];
AND**

DEMAND FOR JURY TRIAL

1 ANTHONHY MENDOZA (“Plaintiff”), on behalf of himself and all others similarly
2 situated, brings this action against Defendant GAF MATERIALS LLC D/B/A GAF, a Delaware
3 limited liability company (“GAF” or “Defendant”), and DOES 1 through 100, inclusive, and alleges
4 on information and belief as follows:

5 INTRODUCTION

6 1. Defendant GAF is one of the largest roofing manufacturers in North America. GAF
7 employs individuals to its warehouses to carry out its roofing manufacturing operations
8 (“Warehouse Workers”).

9 2. However, GAF fails to afford its Warehouse Workers the protections to which they
10 are entitled under California law such as minimum wages for all hours worked, overtime pay, and
11 compliant meal and rest breaks. GAF’s failure to comply with the California Labor Code gives
12 GAF an undue advantage over law-abiding competitors who bear the necessary expenses associated
13 with Labor Code compliance.

14 3. This Representative Action seeks civil penalties under the California Private
15 Attorneys General Act (“PAGA”) for violations of California’s Labor Code on behalf of Plaintiff,
16 the State of California, and all similarly-aggrieved employees in California.

17 JURISDICTION & VENUE

18 4. This Court has subject matter jurisdiction to hear this case because the damages and
19 penalties sought herein resulting from Defendant’s conduct exceeds the jurisdictional minimum of
20 this Superior Court.

21 5. Venue is proper pursuant to Code of Civil Procedure, sections 395 and 395.5, among
22 other sections. Plaintiff Mendoza and other Class Members were employed as Warehouse Workers
23 by Defendant in this County. Furthermore, the obligation to comply with the Labor Code for the
24 group of workers relevant to this case and the resulting liability for denying Labor Code/Wage Order
25 benefits to those workers arose in this County, among others.

26 PARTIES

27 6. Mr. Mendoza is and at all relevant times was a resident of California. Mr. Mendoza
28 was employed by Defendant as a Warehouse Worker from July 2021 to March 2023.

7. GAF Materials LLC d/b/a/ GAF is a Delaware limited liability company with a principal business address at 1 Campus Dr., Parsippany, NJ 07054.

8. Plaintiff does not know the true names and/or capacities, whether individual, partners, or corporate, of Defendants sued herein as DOES 1 through 100, inclusive, and for that reason sues said Defendants under fictitious names. Plaintiff will seek leave to amend this Complaint when the true names and capacities of these Defendants have been ascertained. Plaintiff is informed and believes and thereon alleges that these Defendants are responsible in whole or in part for Plaintiff's alleged damages.

9. At all times mentioned, Defendants were the agents, alter egos, servants, joint venturers, joint employers, or employees for each other. Defendants acted with the consent of the other Co-Defendants and acted within the course, purpose, and scope of their agency, service, or employment. All conduct was ratified by Defendants, and each of them.

GENERAL ALLEGATIONS

A. Warehouse Workers Routinely Work Off the Clock

10. GAF is North America’s largest roofing and waterproofing manufacturer, boasting 34 manufacturing operations across 27 U.S. locations, over 3,700 employees, and over \$3 billion in annual revenue. <https://www.standardindustries.com/our-businesses/roofing-waterproof/gaf/>.

11. In order to carry out its manufacturing operations, GAF employs individuals to its warehouses. Despite GAF's self-proclaimed size and profitability, it fails to afford its Warehouse Workers with the most basic requirements under the California Labor Code, such as a minimum wage for each hour worked and overtime wages when applicable.

12. By policy and practice, GAF Warehouse Workers must begin their workday by reporting to the GAF locker room to put on their required apparel, including safety glasses, boots, a jacket, and a hard hat. After visiting the locker room to put on the required apparel, Warehouse Workers then traverse the warehouse to clock-in and commence the portion of their work shift for which they actually receive compensation. In sum, Warehouse Workers begin their shifts with 10-15 minutes or more of uncompensated work on a daily basis.

1 13. GAF deprives its Warehouse Workers of 10-15 minutes of compensable work at the
2 end of each shift, as well. At the end of their shift, Warehouse Workers must first clock out, upon
3 which their compensable work ends. Afterwards, Warehouse Workers trek back to the locker room
4 to remove their required apparel.

5 14. As such, GAF does not pay its Warehouse Workers for each hour worked.

6 15. Furthermore, where GAF's policy and practice causes Warehouse Workers to exceed
7 8 hours worked in a day and/or 40 hours in a week, GAF fails to provide its Warehouse Workers
8 with overtime pay at the applicable rate of one and one-half times their regular rate of pay.
9 Additionally, where overtime is paid, it is not inclusive of the entirety of Warehouse Workers'
10 regular rate of pay, which includes all shift differential and meal benefit pay.

11 **B. Warehouse Workers Do Not Receive Compliant Meal Periods**

12 16. GAF fails to provide its Warehouse Workers with full and uninterrupted meal
13 periods.

14 17. GAF rounds meal period time punches to the nearest half hour, which is prohibited
15 under the Labor Code and Wage Orders.

16 18. Further, GAF has a policy of requiring that its Warehouse Workers be back at their
17 stations within 30 minutes from when they are relieved for their lunch break. However, after being
18 relieved, Warehouse Workers must trek to the punch clock to punch out for lunch, then must punch
19 back in when returning from lunch. Ultimately, these employees do not receive a full and
20 uninterrupted meal break as they must perform work duties during their break, such as clocking-in
21 and out, resulting in a shorted meal period.

22 19. During meal periods, the employee must be relieved of all duties and free to do what
23 he/she pleases. By requiring the time-punch activities during the meal break, GAF violates
24 California law.

25 **C. GAF's Unlawful Deductions from Warehouse Workers' Wages**

26 20. By policy and practice, GAF makes unlawful deductions from the wages of its
27 Warehouse Workers for costs associated with apparel that is both mandatory and necessary to the
28 performance of their duties. This apparel includes, but is not limited to, uniforms and name tags.

1 **D. GAF's Failure to Comply with Other California Wage and Hour Laws**

2 21. As a result of its failure to provide Warehouse Workers with a minimum wage for all
3 hours worked and an overtime wage when applicable, GAF fails to provide Warehouse Workers
4 with compliant wage statements in violation of California law.

5 22. Furthermore, given its underpayment of wages as stated above, GAF fails to pay all
6 wages due upon termination for former employees under Labor Code Section 203.

7 **CAUSES OF ACTION**

8 **FIRST CAUSE OF ACTION**

9 **Civil Penalties Under PAGA—Lab. Code, § 2699, *et seq.***

10 23. Plaintiff incorporates by reference every allegation contained above.

11 24. Plaintiff is an aggrieved employee under PAGA. He has worked for Defendant over
12 the last year and Defendant failed to comply with the above-described Labor Code and Wage Order
13 requirements during the course of his employment.

14 25. PAGA permits aggrieved employees, like Plaintiff, to recover civil penalties for
15 violations of numerous Labor Code sections on behalf of the State of California. (See Lab. Code, §
16 2699.5.) Plaintiff seeks to recover penalties for Labor Code violations occurring to all other non-
17 exempt individuals who personally worked in a GAF manufacturing operations facility in California
18 within the relevant PAGA recovery period (i.e., within one year and 65 days from the filing of this
19 Complaint plus any relevant tolling periods).

20 26. Defendant conduct, as alleged above, violates numerous sections of the California
21 Labor Code, including, but not limited to, the following:

- 22 a. Labor Code sections 201, 202, 203, and 204, for failure to timely pay Plaintiff
23 and other similarly-aggrieved employees all earned wages;
- 24 b. Labor Code sections 1194 and 1197, for failure to pay Plaintiff and other
25 similarly-aggrieved employees all minimum and earned wages;
- 26 c. Labor Code sections 510 and 1198, for failure to compensate Plaintiff and
27 other similarly-aggrieved employees with all required overtime pay;
- 28

- d. Labor Code sections 226.7 and 512, for failure to provide all required meal and rest breaks to Plaintiff and other similarly-aggrieved employees;
- e. Labor Code sections 226, 226.3 for failure to provide accurate wage statements to Plaintiff and other similarly aggrieved employees;
- f. Labor Code sections 221-224 for making unlawful deductions from its Warehouse Workers' wages; and
- g. Labor Code sections 226, 226.2, 1174, 1174.5, and 1174, for failure to maintain accurate employment records related to Plaintiff and other similarly aggrieved employees' work.

27. Plaintiff has complied with all administrative requirements and pre-conditions contained within Labor Code section 2699.3. Plaintiff's counsel electronically submitted the Initial PAGA Notice on May 30, 2023 to the Labor and Workforce Development Agency ("LWDA"). A copy of the notice was also provided to Defendant. This letter is attached hereto as **Exhibit A** to this complaint and incorporated by reference.

28. The required 60-day period has passed without any notice from the LWDA stating an intention to investigate the claims provided in the notice.

29. Pursuant to PAGA, and, in particular, California Labor Code sections 2699, 2699.3, and 2699.5, Plaintiff is entitled to and hereby seek to recover civil penalties against Defendant, in addition to reasonable attorney fees and costs on behalf of the State and all other aggrieved current and former employees.

30. DOES 1-100 may be held personally liable for civil penalties under PAGA as owners, executives, and agents if they violated or caused to be violated any of the Labor Code sections identified above.

PRAYER FOR RELIEF

Plaintiff prays for judgment against Defendant, as follows:

1. For civil penalties according to proof;
2. For costs of suit;
3. For reasonable attorneys' fees and costs; and

1 4. For such other and further relief as this Court may deem just and proper.

2 **DEMAND FOR JURY TRIAL**

3 Plaintiff demands a trial by jury on all issues so triable.

4 Respectfully submitted:

5 Dated: September 20, 2023

NICHOLAS & TOMASEVIC, LLP

6
7 By:



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EXHIBIT A

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May 30, 2023

VIA ONLINE SUBMISSION

Attn. PAGA Administrator
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102

VIA CERTIFIED MAIL **RETURN RECEIPT REQUESTED**

GAF Materials LLC d/b/a GAF
c/o Becky DeGeorge
Lawyers Incorporating Service
2710 Gateway Oaks Drive
Sacramento, CA 95833

Re: *Anthony Mendoza v. GAF Materials LLC (dba GAF)*

To Whom It May Concern:

We represent Anthony Mendoza (“Plaintiff”) in his potential Private Attorney General Act (“PAGA”) action pursuant to Labor Code Section 2699, *et seq.* against GAF Materials LLC d/b/a GAF (“GAF” or “Defendant”). This letter constitutes Plaintiff’s written notice of Defendant’s Labor Code violations pursuant to Labor Code Section 2699.3, and notice of his intent to recover penalties under PAGA. A copy of this letter is also being sent to Defendant.

Defendant GAF is one of the largest roofing manufacturers in North America. GAF employs individuals to its warehouse to carry out its roofing manufacturing operations. However, GAF cheats these employees out of protections provided by California labor laws such as failing to adequately compensate these employees with all regular and overtime hours worked, failing to provide a full and uninterrupted meal period, making unlawful deductions from the wages of its employees, and failing to provide its employees with an accurate itemized wage statement.

For example, at the start of each workday before clocking in, GAF warehouse employees must go to the locker room to put on the required apparel, including safety glasses, boots, a jacket, and a hard hat. Following, employees must then traverse the entire warehouse to clock in and begin the portion of their work shift for which they are actually compensated. As a result of this

arrangement, GAF employees spend ten to fifteen minutes each morning in the service of their employer for which they receive no compensation. This arrangement plays out the same at the end of each workday, but in reverse. At the end of their shift, GAF warehouse employees first clock out, then traverse the warehouse to go to the locker room and remove their required apparel. As such, GAF warehouse employees are not paid for each hour worked at their regular rate of pay. Furthermore, where this arrangement causes employees to exceed 8 hours worked in a day and/or 40 hours in a week, GAF fails to provide its employees with overtime pay at the applicable rate of one and one-half times their regular rate of pay. In addition, where overtime pay is paid, it is not inclusive of the entirety of the employee's regular rate of pay which includes all shift differential and meal benefit pay.

Further, GAF fails to provide its warehouse employees with full and uninterrupted meal periods. GAF facially maintains incomplete or inaccurate time records for meal periods, as it rounds meal periods to the nearest half hour, which creates a rebuttable presumption of meal period violations. *Donohue v. AMN Servs., LLC*, 11 Cal. 5th 58, 77 (2021). Additionally, GAF expects its warehouse employees to be back at their stations within 30 minutes from when they are relieved for their lunch break. However, after being relieved, employees must trek to the punch clock to punch out for lunch, then must punch back in when returning from lunch. Ultimately, these employees do not receive a full and uninterrupted meal break as they must perform work duties during their break, such as clocking-in and out, resulting in a shorted meal period.

Next, by policy and practice, GAF unlawfully deducts from the wages of its employees for the costs associated with uniforms, name tags, and other required apparel.

Lastly, GAF fails to provide its warehouse employees with an accurate itemized wage statement showing gross wages earned, total hours worked, all deductions, net wages earned, and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate.

Pursuant to Labor Code Sections 1194, 1197, and 1197.1 as well as applicable Wage Orders, Defendant must compensate Plaintiff and similarly situated employees for all hours worked. Labor Code section 510 and related IWC Wage Orders require overtime pay for hours worked beyond 8 in a day and/or 40 in a week. Defendant's owners, officers, managers, superintendents, agents, employees, and other persons who have caused the GAF warehouse employees to be paid less than minimum wages also violate Labor Code Section 1199.

Meal and rest break obligations along with payment in lieu options are presented in Labor Code Sections 226.7 and 512, as well as applicable Wage Orders.

The obligation to reimburse employees for reasonable and necessary business expenses is set forth in Labor Code Section 2802 and applicable Wage Orders. Deductions for mistakes or other non-malicious conduct by employees is prohibited by Labor Code Sections 221, 223, 224, and 225.5, as well as Wage Orders and prevailing decisional authority. See, e.g., *Kerr's Catering Service v. Department of Industrial Relations*, 57 Cal.2d 319 (1962). Defendant's deductions and

failure to reimburse violates these laws, and the Agreement between GAF and its warehouse employees setting forth these policies violates Labor Code Section 432.5.

Labor Code Sections 226, 226.2, and 226.3 set forth the applicable wage statement requirements.

The obligation to pay all wages when due is presented in Labor Code Sections 201, 202, 203, 210, and applicable Wage Orders. The above-mentioned failures to pay wages means Defendant does not provide all wages when due to Plaintiff and similarly situated employees. Defendant's owners, officers, managers, superintendents, agents, and other persons who have willfully refused to pay these wages or falsely denied the amount or validity of the wages owed to warehouse employees also violated Labor Code Section 216.

Defendant's above-mentioned violations, among others, implicate Labor Code Sections, including, but not limited to, the following: Labor Code Sections 201, 202, 203, 210, 216, 221, 223, 225.5, 226, 226.2, 226.3, 226.7, 226.8, 432.5, 450, 510, 512, 558, 1174, 1194, 1194.2, 1194.5, 1197, 1197.1, 1198, 1199, 2802, 2698 and 2699.

Accordingly, on behalf of himself as a representative of Defendants current and former warehouse employees, Plaintiff respectfully requests that the Labor and Workforce Development Agency ("LWDA") initiate an investigation with respect to the aforementioned violations. If the LWDA declines to pursue enforcement, Plaintiff will pursue these claims on behalf of himself and all other current and former similarly aggrieved employees.

Thank you for your consideration of this matter. If you have any questions or comments, please do not hesitate to contact us at any time.

Sincerely,



Shaun Markley