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SUPERIOR COURT OF CALIFORNIA

IN AND FOR THE COUNTY OF STANISLAUS

IVAN OROZCO, an individual,

Plaintiff,

vs.

**E. & J. GALLO WINERY, a corporation;
and DOES 1-100, inclusive,**

Defendants.

Case No.: CV-20-002637

CLASS ACTION COMPLAINT

**1. FAILURE TO FURNISH ACCURATE
AND COMPLETE ITEMIZED WAGE
STATEMENTS**

JURY TRIAL DEMANDED

Plaintiff Ivan Orozco brings this class action against E. & J. Gallo Winery, a corporation; and Does 1 through 100, for violations of the Labor Code.

PARTIES

1. Ivan Orozco ("Orozco" or "Plaintiff") is and at all times relevant herein was employed in Stanislaus County, California, and was an "employee" as defined by the Labor Code and the applicable California Industrial Wage Commission ("IWC") Order(s).

This case has been assigned to Judge Freeland, John D.
Dept. 23
Department _____, for all purposes including Trial.

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6/12/2020 3:33 PM
Superior Court of California
County of Stanislaus
Clerk of the Court
By: Carly Bonzi, Deputy
\$435 PAID

1 2. E. & J. Gallo Winery ("Gallo" or "Defendant") is a California corporation formed
2 under the laws of that state.

3 3. At all times relevant herein, Gallo has been an "employer" under the Labor Code and
4 the applicable California Industrial Wage Commission ("IWC") Order(s).

5 4. Gallo and Does 1-100 are collectively referred to as Defendants.

6 5. Plaintiff is not aware of the true names and capacities of the Defendants sued herein as
7 Does 1 through 100, whether individual, corporate, associate, or otherwise and therefore sues such
8 Defendants by these fictitious names. Plaintiff will amend this Complaint to allege their true names
9 and capacities when ascertained. Plaintiff is informed and believes, and on that basis alleges, that
10 each of the fictitiously named Defendants is responsible in some manner for the occurrences herein
11 alleged and that Plaintiff's injuries and damages herein alleged were legally caused by such
12 Defendants. Unless otherwise indicated, each Defendant was acting within the course and scope of
13 said agency and/or employment, with the knowledge and/or consent of said co-Defendant.

14 6. Plaintiff is informed and believes and thereupon alleges that at all times mentioned
15 herein, each of the Defendants, including each Doe Defendant, was acting as the agent, servant,
16 employee, partner and/or joint venturer of and was acting in concert with each of the remaining
17 Defendants, including each Doe Defendant, in doing the things herein alleged, while at all times acting
18 within the course and scope of such agency, service, employment partnership, joint venture and/or
19 concert of action. Each Defendant, in doing the acts alleged herein, was acting both individually and
20 within the course and scope of such agency and/or employment, with the knowledge and/or consent of
21 the remaining Defendants.

22 **VENUE AND JURY TRIAL DEMAND**

23 7. Venue is proper in this court because the unlawful acts alleged herein took place in
24 Stanislaus County, California and Plaintiff's place of employment with Defendants was within
25 Stanislaus County. Plaintiff hereby demands a jury trial.

26 ///

27 ///

GENERAL ALLEGATIONS

8. Orozco worked for Gallo from May 2007 until March 27, 2020 as a Machine Operator.

9. During his employment with Gallo, Orozco was given itemized wage statements that did not accurately show all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each rate.

10. Specifically, the wage statements showed incorrect overtime and double-time hourly rates and an incorrect number of regular hours worked. This is because, instead of simply showing the overtime and doubletime rates for that they in fact were (1.5 times and 2 times the regular rate of compensation, respectively), Gallo employed a highly confusing system of showing those rates as “premiums”—either (a) half the base rate, (b) slightly more than half the base rate, or (c) exactly the base rate. (See **Exhibit 1.**)

11. Adding to this confusion, all hours worked by Orozco were inaccurately shown as “regular” hours, even if they were in fact in excess of eight (or twelve) hours in a workday, in excess of forty hours in a workweek, or were worked on the seventh day of the workweek (in other words, *not* regular hours).

12. Thus, the wage statements issued by Gallo failed to accurately show all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each rate, in violation of Labor code section 226, subdivision (a)(9).

13. Gallo was, at all times relevant herein, aware of the requirements of Labor Code section 226.

14. Gallo has, at all times relevant herein, furnished wage statements to each of its California employees pursuant to an established set of policies, procedures and practices.

15. Orozco and Gallo’s other California employees, both current and former, have suffered injury as a result of TTL’s knowing and intentional failure to comply with Labor Code section 226, subdivision (a)(9).

16. Orozco and Gallo’s other California employees, both current and former, were unable to promptly and easily determine, from the wage statements furnished by Gallo, all applicable hourly

1 rates in effect during the pay period and the corresponding number of hours worked at each hourly
2 rate.

3 17. The foregoing list of misconduct is a partial list only and set forth by way of example.

4 **CLASS ACTION ALLEGATIONS**

5 18. Plaintiff brings the First Cause of Action as a class action, on his behalf and on behalf
6 of all those other persons similarly situated, pursuant to Code of Civil Procedure section 382. The
7 class ("the Class") that Plaintiff seeks to represent is defined as follows:

8 a. All current and former hourly California employees of Gallo who received one or
9 more wage statements from Gallo, in which they were paid some amount of
10 overtime and/or double-time wages, at any time from one year prior to the filing of
11 this complaint through the entry of final judgment in this action.

12 19. The class of persons is so numerous that joinder of all members is impracticable, and
13 the disposition of their claims in a class action is a benefit to the parties and to the Court. Plaintiff is
14 informed and believes, and based thereon alleges, that Defendants employ more than 500 employees
15 who satisfy the class definition. Although the exact number and identity of class members is not
16 presently known, they can be identified in Defendants' records through coordinated discovery
17 pursuant to this class action.

18 20. This action may be maintained as a class pursuant Code of Civil Procedure section 382
19 because the questions of law and fact which are common to Class members clearly predominate over
20 any questions affecting only individual members and because a class action is superior to other
21 available methods for adjudicating the controversy.

22 21. There are numerous common questions of law and fact arising out of Defendants'
23 conduct. This class action focuses on Defendants' repeated, systematic, and willful failure to issue
24 accurate itemized wage statements as required by the Labor Code.

25 22. Furthermore, common questions of fact and law predominate over any questions
26 affecting only individual members of the Class. The predominating common or class-wide questions
27 of law and fact include the following:

- a. Whether Defendants provided their California employees with itemized wage statements in compliance with Labor Code section 226(a);
- b. Whether the Class is entitled to injunctive relief; and
- c. Whether the Class is entitled to statutory penalties and the amount thereof.

23. Plaintiff's claims are typical of the claims of the members of the Class as a whole, all of whom have sustained and/or will sustain damage and injury as a proximate and/or legal result of the alleged violations of Defendants. Plaintiff's claims are typical of those of the Class because Defendants subjected Plaintiff and each member of the Class to the same violations alleged herein.

24. The defenses of Defendants, to the extent that such defenses apply, are applicable generally to the whole Class and are not distinguishable as to the proposed class members.

25. Plaintiff will fairly and adequately protect the interests of all members of the Class, and has retained attorneys with extensive experience in litigation, including class and representative actions. Plaintiff has no interests that conflict with those of the Class. Plaintiff is able to fairly and adequately protect the interests of all members of the class because it is in his best interest to prosecute the claims alleged herein in order to obtain the full compensation due herself and the other class members.

26. A class action is superior to any other method available for fairly and efficiently adjudicating the controversy because 1) joinder of individual class members is not practicable, 2) litigating the claims of individual class members would be unnecessarily costly and burdensome and would deter individual claims, 3) litigating the claims of individual class members would create a risk of inconsistent or varying adjudications that would establish incompatible standards of conduct for Defendants, 4) class members still working for Defendants may be fearful of retaliation if they were to bring individual claims, 5) class members would be discouraged from pursuing individual claims because the damages available to them are relatively small, and 6) public policy encourages the use of the class actions to enforce employment laws and protect individuals who, by virtue of their subordinate position, are particularly vulnerable.

1 27. Judicial economy will be served by maintenance of this lawsuit as a class action. To
2 process numerous virtually identical individual cases will significantly increase the expense on the
3 Court, the class members, and Defendants, all while unnecessarily delaying the resolution of this
4 matter. There are no obstacles to effective and efficient management of this lawsuit as a class action
5 by this Court and doing so will provide multiple benefits to the litigating parties including, but not
6 limited to, efficiency, economy, and uniform adjudication with consistent results.

7 28. Notice of a certified class action and any result or resolution of the litigation can be
8 provided to class members by mail, email, publication, or such other methods of notice as deemed
9 appropriate by the Court.

10 **FIRST CAUSE OF ACTION**
11 **FAILURE TO FURNISH ACCURATE ITEMIZED WAGE STATEMENTS**
12 **(Lab. Code, § 226, subd. (a))**
 Against Defendants

13 29. Plaintiff hereby realleges and incorporates by reference each and every allegation set
14 forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
15 allegations of this cause of action.

16 30. Pursuant to Labor Code section 226, subdivision (a), “every employer shall,
17 semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a
18 detachable part of the check, draft, or voucher paying the employee’s wages, or separately when the
19 wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross
20 wages earned, (2) total hours worked by the employee . . . , (3) the number of piece-rate units earned
21 and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, (5) net
22 wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the
23 employee and only the last four digits of his or her social security number or an employee
24 identification number, (8) the name and address of the legal entity that is the employer . . . , (9) all
25 applicable hourly rates in effect during the pay period and corresponding number of hours worked at
26 each hourly rate by the employee and, if the employer is a temporary services employer . . . , the rate of
27 pay and the total hours worked for each temporary services assignment.”

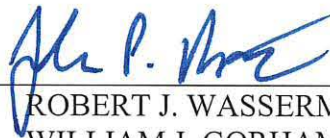
- 1 4. That this Court award statutory penalties including, but not limited to, those available
2 under Labor Code section 226;
- 3 5. That this Court award statutory attorneys' fees and costs, including those available
4 under Labor Code section 226, subdivisions (e)(1) and (h), as well as those available
5 under Code of Civil Procedure section 1021.5;
- 6 6. That this Court award prejudgment and post-judgment interest according to any
7 applicable provision of law or as otherwise permitted by law; and
- 8 7. That this Court award such other and further relief as the court deems just and proper.

9 ///

10 **DATED:** June 12, 2020

MAYALL HURLEY P.C.

11
12 By _____



ROBERT J. WASSERMAN
WILLIAM J. GORHAM
NICHOLAS F. SCARDIGLI
JOHN P. BRISCOE
RACHEL ALLGAIER
Attorneys for Plaintiff

EXHIBIT 1

CO. FILE DEPT. CLOCK VCHR. NO.
EJJ 253653 130252 15906 0000380705 1

161-0084

E. & J. GALLO WINERY
600 YOSEMITE BLVD
MODESTO, CA 95354
(209) 341-3357

Taxable Marital Status: Single
Exemptions/Allowances:
Federal: 0,\$25 Additional Tax
CA: 0

Earnings Statement



Period Beginning: 09/02/2019
Period Ending: 09/15/2019
Pay Date: 09/20/2019

IVAN R OROZCO



Earnings	Rate	Hours/Units	This Period	Year To Date
Regular	29.9100	80.96	2,421.52	34,628.46
Dbltime CBAx	29.9100	.02	0.60	13.87
Govt Hol Wrkd	14.9550	.53	7.93	23.48
Holiday	30.3100	8.00	242.48	2,136.32
Overtime CBAx	14.9550	16.26	243.17	1,122.68
Overtime STAT	15.1549	16.23	245.96	1,112.24
Shift Dif	0.4000	80.95	32.38	466.28
Shift Dif Prm X	0.2000	16.79	3.37	15.86
Shift Dif Prm X	0.4000	.02	0.01	
Jury Duty				244.48
Meal Prem				28.76
OTAdj Wk Lkbk				0.02
Premium Offset			-245.96	-1,111.28
Sick				1,189.80
Vacation				3,545.21
Gross Pay			\$2,951.46	43,416.18

Deductions	Statutory	
Federal Income Tax	-425.09	3,092.64
Social Security Tax	-174.02	2,530.34
Medicare Tax	-40.70	591.77
CA State Income Tax	-141.56	1,622.33
CA SUI/SDI Tax	-28.07	408.12
Other		
Delta Dental Pr	-11.18*	201.24
Medical Pretax	-133.50*	2,403.00
401K Loan 5	-262.75	4,992.25

Other	this period	year to date
401K Vanguard	-118.07*	1,736.64
Union Dues 186		405.00
Net Pay	\$1,616.52	
Checking	-1,616.52	
Net Check	\$0.00	

* Excluded from federal taxable wages

Your federal taxable wages this period are
\$2,688.71

Other Benefits and Information	this period	total to date
Current Hrs Wrk	80.96	
1500 Hrs Goal	88.96	1,372.62
Deduction Total	1,334.94	
Employee ID		0000253653

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E. & J. GALLO WINERY
600 YOSEMITE BLVD
MODESTO, CA 95354
(209) 341-3357

Advice number: 00000380705
Pay date: 09/20/2019

Deposited to the account of	account number	transit ABA	amount
IVAN R OROZCO		XXXX XXXX	\$1,616.52

THIS IS NOT A CHECK

NON-NEGOTIABLE