

ELECTRONICALLY FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF TULARE

02/12/2021

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For All Purposes

Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF TULARE

FILEMON COLORES, as an individual and
on behalf of all others similarly situated,

Plaintiff,

vs.

RAY MOLES FARMS, INC., a California
corporation; and DOES 1 through 100,

Defendants.

Case No.: VCU285947

REPRESENTATIVE ACTION
COMPLAINT:

(1) CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE § 2698 *e seq.*).

UNLIMITED CIVIL CASE

Case Management Conference

06/11/2021 08:30 AM - Department 01

1 Plaintiff Filemon Colores ("Plaintiff"), on behalf of himself and all others similarly
2 situated, hereby brings this Representative Action Complaint against Ray Moles Farms, Inc., a
3 California corporation; and, DOES 1 to 100, inclusive (collectively "Defendants"), and on
4 information and belief alleges as follows:

5 **JURISDICTION**

6 1. Plaintiff, on behalf of himself and all others similarly situated, hereby brings this
7 Representative Action Complaint for recovery of unpaid wages and penalties under Labor Code
8 §§ 201-203, 226.2, 226.7, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198, 2698 *et seq.*;
9 and Industrial Welfare Commission Wage Order 14 ("Wage Order 14"), in addition to seeking
10 declaratory relief and restitution. This Complaint is brought pursuant to California Code of Civil
11 Procedure § 382. This Court has jurisdiction over Defendants' violations of the California Labor
12 Code because the amount in controversy exceeds this Court's jurisdictional minimum.

13 **VENUE**

14 2. Venue is proper in this judicial district pursuant to Cal. Code of Civ. Proc. §§
15 395(a) and 395.5, as at least some of the acts and omissions complained of herein occurred in the
16 County of Tulare. One or more of the Defendants, transact business, have agent(s) within the
17 County of Tulare, and/or otherwise are found within the County of Tulare, and Defendants are
18 within the jurisdiction of this Court for purposes of service of process.

19 **PARTIES**

20 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
21 Plaintiff was and currently is, a California resident. During the one years immediately preceding
22 the filing of the Complaint in this action and within the statute of limitations periods applicable
23 to each cause of action pled herein, Plaintiff was employed by Defendants as a non-exempt
24 employee. Plaintiff was, and is, a victim of Defendants' policies and/or practices complained of
25 herein, lost money and/or property, and has been deprived of the rights guaranteed by Labor Code
26 §§ 201-203, 226.2, 226.7, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197, and 1198; and Wage
27 Order 14, which sets employment standards for Agricultural Occupations.

28 4. Plaintiff is informed and believes, and based thereon alleges, that during the one

1 years preceding the filing of the Complaint and continuing to the present, Defendants did (and
2 continue to do) business by employing seasonal farm labor employees to harvest agricultural
3 commodities in the United States, and employed Plaintiff and other, similarly-situated non-
4 exempt employees within Tulare County and the state of California and, therefore, were (and are)
5 doing business in Tulare County and the State of California.

6 5. Plaintiff does not know the true names or capacities, whether individual, partner,
7 or corporate, of the defendants sued herein as DOES 1 to 100, inclusive, and for that reason, said
8 defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to
9 amend this Complaint when such true names and capacities are discovered. Plaintiff is informed,
10 and believes, and based thereon alleges, that each of said fictitious defendants, whether individual,
11 partners, or corporate, were responsible in some manner for the acts and omissions alleged herein,
12 and proximately caused Plaintiff and the other aggrieved employees to be subject to the unlawful
13 employment practices, wrongs, injuries and damages complained of herein.

14 6. Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned
15 herein, Defendants were and are the employers of Plaintiff and all other aggrieved employees.

16 7. At all times herein mentioned, each of said Defendants participated in the doing
17 of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
18 Defendants, and each of them, were the agents, servants, and employees of each and every one of
19 the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned
20 were acting within the course and scope of said agency and employment. Defendants, and each
21 of them, approved of, condoned, and/or otherwise ratified each and every one of the acts or
22 omissions complained of herein.

23 8. At all times mentioned herein, Defendants, and each of them, were members of
24 and engaged in a joint venture, partnership, and common enterprise, and acting within the course
25 and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,
26 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and all other
27 aggrieved employees.

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10. During the seasons where Plaintiff performed piece work for Defendants, Plaintiff was generally tasked with working Monday-Saturday from 6:30 a.m. until 4:30 p.m., and often as late as 5:00 p.m. On Sundays, Plaintiff would be made to work from 6:30 a.m. until 12:30 p.m. Throughout Plaintiff's employment, Defendants' foreperson failed to record the hours Plaintiff worked. Plaintiff was not paid an hourly minimum wage if his earned piece-rate compensation did not exceed his minimum wages earned in a pay period pursuant to Wage Order 14.

12. Despite the fact that Plaintiff and other non-exempt employees were regularly tasked with working seven days a week, Defendants as a matter of practice and policy failed to pay them the proper overtime rate on their seventh day worked. Upon information and belief, Defendants did not pay any overtime hours to Plaintiff and other non-exempt employees at any

1 time regardless of whether they were performing work on a piece rate or hourly basis.

2 13. Plaintiff and other non-exempt employees were not authorized to take all legally
3 required rest periods regardless of whether they were working on a piece-rate or hourly basis. On
4 those occasions where Plaintiff and other non-exempt employees performed piece work for
5 Defendants, Defendants routinely failed to pay the correct regular rate for rest and recovery
6 periods. Rather, Defendants would pay Plaintiff and other non-exempt employees at a rate of
7 \$2.17 per hour for rest and recovery periods, far below the legal minimum wage, when they
8 worked on a piece rate basis. For example, on Plaintiff's pay stub dated January 13, 2020, he was
9 paid for 26 hours at a rate \$2.17 per hour for rest breaks, which strays far from the obligations
10 imposed on Defendants to provide paid rest periods at the regular rate of pay. Furthermore, on a
11 number of pay periods where Plaintiff performed piece work, Defendants would not provide any
12 compensation whatsoever for rest and recovery time. For example, on Plaintiff's pay stub dated
13 January 7, 2020, Plaintiff was not provided any rest period compensation whatsoever despite
14 having clearly performed piece work exclusively during this time frame. Despite Defendants'
15 failure to authorize and permit Plaintiff and other non-exempt employees to take all lawful paid
16 rest periods, due to their uniform and unlawful practices, Defendants never provided Plaintiff and
17 other non-exempt employees with an hour of pay at their regular rate for each rest period violation
18 as required by Labor Code § 226.7. Upon information and belief, during at least a portion of the
19 PAGA period, Defendants maintained no payroll code or another mechanism for the payment of
20 rest period premiums in the event Plaintiff and other non-exempt employees were not authorized
21 to take lawful rest periods.

22 14. Defendants have failed to accurately record and compensate Plaintiff and other
23 non-exempt employees who are compensated on a piece-rate basis for non-productive time. *See*
24 *Gonzalez v. Downtown LA Motors, LP* (2013) 215 Cal.App.4th 36 (holding that a piece-rate
25 compensation structure that does not separately compensate employees for non-productive time
26 violates California minimum wage laws). Plaintiff and other non-exempt employees were
27 required to perform work duties and activities that were not directly compensated on a piece-rate
28 basis. Specifically, for example, Plaintiff and other non-exempt employees would be made to

1 travel between fields on an almost daily basis and were in no manner compensated for this time.
2 Furthermore, on those occasions where the weather conditions did not immediately permit
3 Plaintiff and other non-exempt employees to commence work, they would have to wait for the
4 conditions to improve before they were permitted to begin their shifts. At no point did Defendants
5 ever provide any sort of compensation for Plaintiff and other non-exempt employees for this time.
6 Furthermore, Defendants also failed to compensate Plaintiff and other non-exempt employees for
7 time spent sharpening their pruning shears, which would take Plaintiff around 45 minutes per day
8 on the days that he was made to do so. Additionally, employees were not compensated for
9 bathroom and water breaks, waiting in lines, and/or other mandatory duties that were not directly
10 compensated on a piece-rate basis. Plaintiff alleges that all this wait time constitutes unproductive
11 worktime which must be compensated under California law. Accordingly, Plaintiff estimates that
12 he and other non-exempt employees worked at least an additional 1.5 hours per shift of non-
13 productive time. However, as evidenced by Plaintiff's check numbered 18443, 18526, and 18865
14 (representing the time frame between December 25, 2019 and January 28, 2020), Defendants did
15 not provide any sort of compensation for non-productive time. Plaintiff alleges that Defendants
16 have not accurately tracked and compensated employees' non-productive time in compliance with
17 Labor Code § 226.2.

18 15. Defendants have also failed to record employees' total hours worked each
19 workday accurately. Specifically, Defendants' forepersons did not record the hours worked in any
20 fashion apparent to Plaintiff and the other non-exempt employees when they were performing
21 piece rate work. Plaintiff never formally clocked in or clocked out during his shifts and was never
22 provided any sort of timecard reflecting the hours he worked. Rather, Defendants tracked Plaintiff
23 and the non-exempt employees piece rate compensation exclusively while failing to record the
24 actual number of hours worked in any manner. As a result, Defendants failed to ensure that
25 Plaintiff and other non-exempt employees were being paid at least the minimum wage for all
26 hours actually worked, and failed to ensure that Plaintiff and other non-exempt employees
27 received proper overtime wages for all overtime hours worked, in compliance with Wage Order
28 14.

1 16. Defendants further failed to pay non-exempt employees all overtime wages,
2 because non-exempt employees frequently worked seven days in a row and were not at any point
3 provided any overtime compensation for their work performed on Sundays, entitling them to at
4 least 6.0 hour of overtime pay per week pursuant to Wage Order 14.

5 17. Defendants also did not provide Plaintiff and other non-exempt employees with a
6 legally complaint first meal period when they worked shifts in excess of 6.0 hours. Plaintiff and
7 other non-exempt employees would be instructed by the foreperson to finish their meals and
8 return to work no later than fifteen minutes after first being released for a meal period. There was
9 rarely, if ever, any formal meal period provided to Plaintiff and the other non-exempt employees
10 outside of an instruction to hurry up and eat so they could get back to work. Plaintiff and the
11 other non-exempt employees were not informed by Defendants of their legal right to take duty-
12 free uninterrupted meal periods before the conclusion of their fifth hour of work pursuant to Labor
13 Code Section 512. Plaintiff estimates that he never took more than fifteen minutes for a meal
14 period. Defendants were not only aware of, but actively encouraged this practice. Defendants
15 also failed to provide second meal periods when non-exempt employees worked shifts in excess
16 of 10.0 hours. Upon information and belief, Defendants' forepersons did not accurately record
17 meal periods in any manner. Despite Defendants' failure to provide Plaintiff and other non-
18 exempt employees with all lawful meal periods due to their uniform and unlawful practices,
19 Defendants never provided Plaintiff and other non-exempt employees with an hour of pay at their
20 regular rate for each meal period violation as required by Labor Code § 226.7.

21 18. As a result of Defendants' failure to accurately compensate Plaintiff and other
22 non-exempt employees for non-productive time, failure to pay all minimum and overtime wages,
23 and failure to provide all required meal periods and authorize all rest periods or pay premium pay
24 in lieu thereof, Defendants have maintained inaccurate payroll records, failed to timely pay all
25 wages owed to separating employees at the time of their separation, and issued inaccurate wage
26 statements.

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FIRST CAUSE OF ACTION
PRIVATE ATTORNEYS GENERAL ACT
(AGAINST ALL DEFENDANTS)

19. Plaintiff re-alleges and incorporates by reference all prior paragraphs as though fully set forth herein.

20. Defendants have committed several Labor Code violations against Plaintiff and other aggrieved employees. Plaintiff, an “aggrieved employee” within the meaning of Labor Code § 2698 et seq., acting on behalf of himself and other aggrieved employees, brings this representative action against Defendants to recover the civil penalties due to Plaintiff, other aggrieved employees, and the State of California according to proof pursuant to Labor Code § 558 and § 2699 (a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200 for each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for each initial violation and \$200 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided, based on the following Labor Code violations:

- a. Failing to pay minimum wages for all hours worked to Plaintiff and other aggrieved employees in violation of Labor Code §§ 558, 1182.12, 1194, 1194.2, 1197, and 1198;
- b. Failing to pay Plaintiff and other aggrieved employees all earned overtime compensation in violation of Labor Code §§ 204, 510, 558, 1194, and 1198;
- c. Failing to provide all legally required meal periods, and failure to pay meal period premium wages, to Plaintiff and other aggrieved employees at the

regular rate of compensation in violation of Labor Code §§ 226.7, 512, 558, and 1198;

- d. Failing to authorize and permit all legally required rest periods, and failure to pay rest period premium wages, to Plaintiff and other aggrieved employees at the regular rate of compensation in violation of Labor Code §§ 226.7, 516, 558, and 1198;
- e. Failing to furnish Plaintiff and other aggrieved employees with complete, accurate, itemized wage statements in violation of Labor Code § 226;
- f. Failing to timely pay all final wages and compensation earned by Plaintiff and other aggrieved employees at the time of separation in violation of Labor Code §§ 201, 202, and 203;
- g. Failing to pay non-exempt employees all earned wages at least twice during each calendar month in violation of Labor Code § 204;
- h. Failing to compensate Plaintiff and other aggrieved employees at least once every week on a business day designated in advance and including all wages earned up to and including the fourth day before such payday in violation of Labor Code § 205; and
- i. Failing to maintain accurate records on behalf of Plaintiff and other aggrieved employees in violation of Labor Code § 1174.

21. On November 20, 2020, Plaintiff notified Defendants via certified mail, and notified the California Labor and Workforce Development Agency (“LWDA”) via its website, of Defendants’ violations of the California Labor Code and Plaintiff’s intent to bring a claim for civil penalties under California Labor Code § 2698 et seq. with respect to violations of the California Labor Code identified in Paragraph 58 (a)-(i). Now that sixty-five days have passed from Plaintiff’s notifying Defendants and the LWDA of these violations, and the LWDA has not provided notice that it intends to investigate the violations, Plaintiff has exhausted his administrative requirements for bringing a claim under the Private Attorneys General Act with respect to these violations.

22. Plaintiff was compelled to retain the services of counsel to file this court action to

1 protect his interests and the interests of other similarly aggrieved employees, and to assess and
2 collect the civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys' fees and
3 costs, which he is entitled to receive under California Labor Code § 2699(g).

4 **PRAYER**

5 WHEREFORE, Plaintiff prays for judgment for himself and for all others on whose behalf
6 this suit is brought against Defendants, as follows:

7 1. Upon the First Cause of Action, (1) \$100.00 for each initial violation for each
8 failure to pay each employee and \$200 for each subsequent violation or willful or intentional
9 violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the
10 amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent
11 violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial
12 violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per
13 employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent
14 violation pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for
15 each initial violation and \$200 for each subsequent violation per employee per pay period for the
16 violations of the Labor Code Sections cited in Labor Code § 2699.5;

17 2. Prejudgment interest on all due and unpaid wages pursuant to California Labor
18 Code § 218.6 and Civil Code §§ 3287 and 3289;

19 3. On all causes of action, for attorneys' fees and costs as provided by Code of Civil
20 Procedure § 1021.5 and all other applicable statutes; and

21 4. For such other and further relief the Court may deem just and proper.

22
23 Dated: February 12, 2021

Respectfully submitted,
STANBURY BROWN LAW

24
25 By:


Daniel J. Brown
Ethan C. Surls
Attorney for Plaintiff