

1 **AEGIS LAW FIRM, PC**

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11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

12 **FOR THE COUNTY OF LOS ANGELES**

13 DANIEL ROSALES, individually and on
14 behalf of the general public,

15 Plaintiffs,

16 vs.

17 KELLY PAPER COMPANY, a California
18 corporation; and DOES 1 through 20,
19 inclusive,

20 Defendants.

Case No.

BC 6 1 7 2 0 5

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

**CONFIRMED COPY
OF ORIGINAL FILED
Los Angeles Superior Court**

APR 14 2016

Sherri R. Carter, Executive Officer/Clerk
By: Moses Soto, Deputy

1 Plaintiff Daniel Rosales, individually and on behalf of others similarly situated, alleges as
2 follows:

3 **NATURE OF ACTION AND INTRODUCTORY STATEMENT**

4 1. Plaintiff Daniel Rosales ("Plaintiff") brings this representative action against
5 defendants Kelly Paper Company and DOES 1 through 20, inclusive (collectively "Defendants"),
6 on behalf of himself individually and all other aggrieved employees employed by Defendant
7 throughout California.

8 2. Kelly Paper Company operates a series of commercial printing stores throughout
9 Southern California.

10 3. Through this action, Plaintiff is alleging that Defendant engaged in a systematic
11 pattern of wage and hour violations under the California Labor Code ("Labor Code") and
12 Industrial Welfare Commission ("IWC") Wage Orders.

13 4. Plaintiff is informed and believes, and thereon alleges, that Defendant has
14 increased its profits by violating state wage and hour laws by, among other things:

- 15 (a) Failing to pay overtime wages;
- 16 (b) Failing to provide meal periods;
- 17 (c) Failing to provide rest breaks;
- 18 (d) Failing to provide accurate itemized wage statements; and
- 19 (e) Failing to pay all wages due within the required time and upon
20 separation of employment.

21 5. Plaintiff brings this representative action against Defendant on behalf of himself
22 and other aggrieved employees to recover, among other things, civil penalties, attorney's fees
23 and costs and expenses pursuant to the Private Attorneys General Act of 2004, Labor Code §§
24 2698, *et seq.* ("PAGA").

25 **JURISDICTION AND VENUE**

26 6. This is a representative action, pursuant to PAGA. The civil penalties sought by
27 Plaintiff exceeds the minimal jurisdictional limits of the Superior Court and will be established
28 according to proof at trial.

1 7. This Court has jurisdiction over this action pursuant to the California
2 Constitution, Article VI, § 10, which grants the Superior Court original jurisdiction in all
3 causes except those given by statutes to other courts. The statutes under which this action is
4 brought do not specify any other basis for jurisdiction.

5 8. This Court has jurisdiction over Defendant because, upon information and
6 belief, it is a citizen of California, has sufficient minimum contacts in California or otherwise
7 intentionally avails itself of the California market so as to render the exercise of jurisdiction
8 over them by the California courts consistent with traditional notions of fair play and
9 substantial justice.

10 9. Venue is proper in this Court because, upon information and belief, Defendant
11 resides, transacts business or has offices in this county and/or the acts and omissions alleged
12 herein took place in this county.

13 **THE PARTIES**

14 10. Plaintiff Daniel Rosales is a resident of California.

15 11. Plaintiff is informed and believes, and thereon alleges, that Kelly Paper
16 Company was and is a California corporation doing business in California and, at all times
17 hereinafter mentioned, was and is an employer as defined in and subject to the Labor Code and
18 IWC Wage Orders, whose employees are engaged throughout this county and the State of
19 California.

20 12. Plaintiff is unaware of the true names or capacities of the defendants sued herein
21 under the fictitious names Does 1 through 20, but will seek leave of this Court to amend this
22 Complaint and serve such fictitiously named defendants once their names and capacities
23 become known.

24 13. Plaintiff is informed and believes, and thereon alleges, that each and all of the
25 acts and omissions alleged herein were performed by, or are attributable to, Kelly Paper
26 Company and/or Does 1 through 20, acting as the agent or alter ego for the other, with legal
27 authority to act on the other's behalf. The acts of any and all defendants were in accordance
28 with, and represent, the official policy of the other defendants.

1 hours, and Defendant failed to provide compensation in lieu thereof. By failing to provide
2 timely meal periods on the days non-exempt employees were entitled to them and failing to
3 compensate said employees one hour's wages in lieu of meal periods, Defendant violated the
4 provisions of Labor Code sections 226.7 and 512 and the applicable IWC Wage Order.

5 21. Defendant did not permit or authorize Plaintiff and other aggrieved employees
6 to take net ten-minute rest periods for every four hours worked or major fraction thereof, and
7 Defendant failed to provide compensation in lieu thereof. By its failure to provide rest periods
8 for every four hours or major fraction thereof worked per day by non-exempt employees, and
9 failing to provide compensation for such unprovided rest periods, as alleged above, Defendant
10 violated the provisions of Labor Code section 226.7 and IWC Wage Orders.

11 22. Plaintiff is informed and believes, and thereon alleges, that Defendant knew or
12 should have known that Plaintiff and other aggrieved employees were entitled to receive
13 itemized wage statements that accurately showed, among other things, their gross and net
14 wages earned, total hours worked and all applicable hourly rates in effect and the number of
15 hours worked at each hourly rate in accordance with California law. In violation of Labor Code
16 § 226, Defendant did not provide Plaintiff and other aggrieved employees with accurate
17 itemized wage statements.

18 23. Plaintiff is informed and believes, and thereon alleges, that Defendant knew or
19 should have known that Plaintiff and other aggrieved former employees were entitled to timely
20 payment of wages due upon separation of employment. In violation of Labor Code §§ 201, 202
21 and 203, Plaintiff and other aggrieved former employees did not receive payment of all wages
22 including, but not limited to, unpaid minimum and overtime compensation, either at the time of
23 discharge or within seventy-two (72) hours of their leaving Defendant's employ.

24 24. Plaintiff is informed and believes, and thereon alleges, that Defendant knew or
25 should have known they had a duty to compensate Plaintiff and other aggrieved employees, and
26 Defendant had the financial ability to pay such compensation but willfully, knowingly and
27 intentionally failed to do so all in order to increase Defendant's profits.

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1 **FIRST CAUSE OF ACTION**

2 **VIOLATION OF THE LABOR CODE PRIVATE ATTORNEYS GENERAL ACT**

3 (California Labor Code §§ 2698, *et seq.*)

4 25. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
5 though fully set forth herein.

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

12 27. For all provisions of the Labor Code except those for which a civil penalty is
13 specifically provided, Labor Code § 2699(f) imposes upon Defendant a penalty of one hundred
14 dollars (\$100.00) for each aggrieved employee per pay period for the initial violation and two
15 hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent pay
16 period in which Defendant violated these provisions of the Labor Code.

17 28. Defendant's conduct violates numerous Labor Code sections including, but not
18 limited to, the following:

- 19 (a) Violation of Labor Code §§ 510, 1194 and 1198 for Defendant's failure
20 to compensate Plaintiff and other aggrieved employees with all required
21 overtime pay as herein alleged;
- 22 (b) Violation of Labor Code §§ 226.7 and 512 for Defendant's failure to
23 provide lawful meal periods or compensation in lieu thereof;
- 24 (c) Violation of Labor Code §§ 226.7 for Defendant's failure to provide
25 lawful rest periods or compensation in lieu thereof;
- 26 (d) Violation of Labor Code §§ 226 and 226.3 for failure to provide accurate
27 itemized wage statements to Plaintiff and other aggrieved employees as
28 herein alleged; and

1 (e) Violation of Labor Code §§ 201, 202, 203, 204, and 210 for failure to
2 timely pay all earned wages owed to Plaintiff and other aggrieved
3 employees during employment and upon separation of employment as
4 herein alleged.

5 29. Further, Labor Code § 558(a) provides “any employer or other person acting on
6 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
7 provisions regulating hours and days of work in any order of the IWC shall be subject to a civil
8 penalty as follows: (1) For any violation, fifty dollars (\$50) for each underpaid employee for
9 each pay period for which the employee was underpaid in addition to an amount sufficient to
10 recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for
11 each underpaid employee for each pay period for which the employee was underpaid in
12 addition to an amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to
13 this section shall be paid to the affected employee.” Labor Code § 558(c) provides “the civil
14 penalties provided for in this section are in addition to any other civil or criminal penalty
15 provided by law.” Plaintiff seeks to recover these penalties (including the unpaid wages)
16 pursuant to PAGA.

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

20 31. Plaintiff has exhausted the procedural requirements under Labor Code § 2699.3
21 and is therefore able to pursue a claim for penalties on behalf of himself and all other aggrieved
22 employees under PAGA.

23 32. Pursuant to Labor Code §§ 2699(a) and (f), 2699.3 and 2699.5, Plaintiff and all
24 other aggrieved employees are entitled to recover civil penalties against Defendant for
25 violations of the above-cited sections of the Labor Code.

26 33. The California Supreme Court has held that a representative action does not
27 need to meet the class certification requirements because it is strictly a state enforcement
28 action. *Arias v. Superior Court*, 46 Cal.4th 969, 970-75 (2009).

34. Defendant's conduct, as alleged herein, has been and continues to be unfair, unlawful and harmful to Plaintiff and the general public. Plaintiff therefore seeks to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure § 1021.5.

PRAYER FOR RELIEF

Plaintiff, on his own behalf, and on behalf of all other aggrieved employees,
prays for relief and judgment against Defendant as follows:

1. For civil penalties against Defendant on behalf of all aggrieved employees pursuant to Labor Code §§ 2698, *et seq.*;

2. For reasonable attorney's fees and costs of suit to the extent permitted by law, including pursuant to Code of Civil Procedure § 1021.5 and Labor Code §§ 2698, *et seq.*; and

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

Dated: April 14, 2016

AEGIS LAW FIRM, PC

By:

J2 am
Jessica L. Campbell

Jessica L. Campbell

Attorneys for Plaintiff Daniel Rosales