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Superior Court of California
County of Fresno
By: I. Herrera, Deputy

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF FRESNO**

RUDY RAMOS on behalf of himself, and all
aggrieved employees,

Plaintiff,

v.

HMC FRESH FOODS, LLC; and DOES 1
through 10, inclusive,

Defendants.

Case No: [22CECG03351](#)

REPRESENTATIVE ACTION

REPRESENTATIVE ACTION

COMPLAINT FOR:

1. PENALTIES; and

2. ATTORNEYS' FEES.

DEMAND FOR JURY TRIAL

Plaintiff RUDY RAMOS, on behalf of himself and all aggrieved employees, complains against Defendants HMC FRESH FOODS, LLC, and Does 1 through 10 (all referred to collectively as “Defendants” or “HMC”) as follows:

I. JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction over Plaintiff’s claims, based on, among other statutes, Labor Code §§ 201-203, 204b, 226(a), 226.3, 226.7, 510, 512, 1194, 1194.2, 1197, 1197.1, 1198, and 1199. In particular, Plaintiff has complied with all Labor Code § 2699.3 requirements for commencing a civil action under the California Private Attorneys General Act of 2004, Labor Code §§ 2698, *et seq.* (“PAGA”).

2. This Court has personal jurisdiction over the parties because at all times relevant hereto Plaintiff was a California resident who worked in Fresno County, California for Defendants and Defendants have systematically and continuously conducted business in the State of California, including Fresno County.

3. Venue is proper in this Court under California Code of Civil Procedure § 395.5 because Defendants’ principal place of business listed on the Secretary of State’s webpage is located in Fresno County at 13138 S. Bethel, Kingsburg, California 93631.

II. PARTIES AND BACKGROUND

4. Plaintiff RUDY RAMOS is an adult who worked for Defendants as a non-exempt hourly employee at Defendants’ agriculture packing facility in Kingsburg, California. He worked for Defendants from approximately September 3, 2021 to March 22, 2022 as an hourly general laborer.

5. Defendant HMC is a California limited liability company doing business throughout California and is a “person” as defined by Labor Code § 18 and California Business and Professions Code § 17201. In addition, it is an “employer” as that term is used in the Labor Code and in the California Industrial Welfare Commission’s Orders regulating wages, hours, and working conditions.

6. Plaintiff is ignorant of the true names and capacities of Defendants sued as Does 1 through 10, inclusive, and therefore sue those Defendants by those fictitious names. Plaintiff will

1 amend this Complaint to allege their true names and capacities when ascertained. Plaintiff is
2 informed and believes and on that ground alleges that each of the fictitiously named Defendants is
3 responsible in some manner for the occurrences alleged and that Plaintiff's damages and other
4 losses as alleged are proximately caused by those occurrences.

5 7. On behalf of the State of California and all aggrieved employees who worked as
6 hourly non-exempt employees employed within the State of California by HMC at any time or
7 times during the applicable statute of limitations, Plaintiff seeks all applicable penalties, interest,
8 attorneys' fees, costs and other sums for each violation of: (a) Labor Code §§ 510, 1194, 1194.2,
9 1197, 1197.1 1198 and 1199 and IWC Wage Order No. 8 (failure to pay wages, including
10 minimum wages and overtime, for all hours worked), (b) Labor Code §§ 226.7, 512, 1198 and
11 1999 and the IWC Wage Order No. 8 (failure to provide meal periods); (c) Labor Code § 226.7,
12 1198 and 1199 and IWC Wage Order No. 8 (failure to authorize and permit rest breaks); (d)
13 Labor Code §§ 226 and 226.3 (failure to provide accurate itemized wage statements); (e) Labor
14 Code §§ 201-203 (failure to pay former aggrieved employees all wages due and owing at the time
15 of discharge or voluntary quit), and (f) Labor Code § 204b (failure to pay aggrieved employees in
16 a timely manner).

17 **III. FACTUAL ALLEGATIONS**

18 8. HMC operates an agriculture packing facility in Kingsburg, California.

19 9. At all relevant times, Plaintiff was employed by HMC as an hourly non-exempt
20 employee in the industries handling products after harvest as defined by § 2(H) of IWC Wage
21 Order 8-2001. During his employment with HMC, Plaintiff typically worked five days a week, 8-
22 to 12- hours a day or more.

23 10. Defendants have implemented a policy and practice of failing to pay Plaintiff and
24 other aggrieved employees statutorily-mandated overtime pay by failing to pay them their correct
25 hourly rate and/or premium wages and, at times, any wages at all, including the minimum wage,
26 for compensable time spent under HMC's direction and control in violation of Labor Code §§
27 510, 1194, 1194.2, 1197, 1197.1, 1198, and 1199 and IWC Wage Order 8-2001. HMC employed
28 a rounding policy that consistently underpaid Plaintiff and other aggrieved employees. For

1 example, Plaintiff's time clock records from April 17 through 22, 2022 show he worked seven
2 hours and 40 minutes of overtime, which equates to 7.667 hours of overtime. His corresponding
3 paystub shows that he was paid only 7.420 hours overtime, resulting in an underpayment of 0.247
4 overtime hours. His corresponding paystub shows that he was paid only 7.420 hours overtime,
5 resulting in an underpayment of 0.247 overtime hours. HMC Fresh Foods also did not pay
6 Plaintiff and other aggrieved employees at the correct overtime rate by failing to include non-
7 discretionary bonuses when calculated the regular rate. For example, Plaintiff received a bonus
8 during the pay period December 12 through 18, 2021, but it was not included when calculating
9 his regular rate to pay his overtime rate. He was paid at only 1.5 times his regular rate.

10 11. At all relevant times, Labor Code §§ 226.7 and 512 and the IWC Wage Order No.
11 8 required employers to provide employees with a first meal period of not less than 30 minutes
12 during which they are relieved of all duty (referred to as "duty-free") before working more than
13 five hours, and a second duty-free meal period of not less than 30 minutes before working more
14 than 10 hours in a day. As alleged herein, HMC employed a policy and practice of failing to
15 provide all meal periods to Plaintiff and other aggrieved employees. Plaintiff's time records show
16 numerous examples of him not receiving meal periods on shifts over five hours but less than six
17 hours. Plaintiff did not waive his right to these meal periods. In addition, approximately one to
18 two times per week Plaintiff had his meal periods interrupted by supervisors. Other aggrieved
19 employees also suffered meal period violations and did not receive premium pay for such
20 violations. Further, Plaintiff did not receive a second meal period on numerous days that he
21 worked over 10 hours. There is no evidence that Plaintiff signed a meal period waiver. Plaintiff
22 did not receive premium pay for these violations. Other aggrieved employees also did not receive
23 proper off-duty second meal periods on shifts over 10 hours and did not receive premium pay for
24 such violations.

25 12. At all relevant times, Labor Code § 226.7 and IWC Wage Order No. 8 required
26 employers to authorize and permit a paid rest break of at least 10 minutes for every four hours of
27 work performed or major fraction thereof. An employee working more than ten hours in a single
28 workday is entitled to three paid rest breaks, each lasting at least 10 minutes. As alleged herein,

1 HMC employed a policy and practice of failing to permit and authorize rest periods and/or paying
2 rest period premiums to aggrieved employees for such rest periods not provided, in violation of
3 the Labor Code and Wage Order 8-2001. HMC did not allow Plaintiff and other aggrieved
4 employees to leave the premises during rest breaks. An employer cannot require employees to
5 stay on-call during rest breaks. Such a rest break policy is unlawful pursuant to *Augustus v. ABM*
6 *Security Services, Inc.* (2016) 2 Cal.5th 257. Further Plaintiff and other aggrieved employees did
7 not receive third rest breaks on shifts over 10 hours and did not receive premium pay for such
8 violations.

9 13. Labor Code § 226 provides that every employer is required, “semimonthly or at
10 the time of each payment of wages,” to provide each employee with an itemized wage statement
11 setting forth, *inter alia*, the total hours worked by the employee (except for salaried employees)
12 and “all applicable hourly rates in effect during the pay period and the corresponding number of
13 hours worked at each hourly rate by the employee.” Cal. Lab. Code § 226(a). Defendants
14 implemented a policy and practice of violating Labor Code § 226 by failing to provide complete
15 and accurate itemized wage statements to Plaintiff and other aggrieved employees in that the
16 wage statements provided do not, among other things, display “all applicable hourly rates in
17 effect during the pay period and the corresponding number of hours worked at each hourly rate,”
18 the correct “total hours worked,” and the “gross wages earned.” In addition, the wage statements
19 do not include premium pay for missed meal and rest periods. Through its violation of Labor
20 Code § 226(a), Defendants also violated Labor Code § 226.3.

21 14. HMC employed a policy and practice of failing to pay Plaintiff and other
22 aggrieved employees all wages due and owing in a timely manner as required by Labor Code §
23 204b.

24 15. Defendants had a policy and practice of violating Labor Code §§ 201-203 by
25 failing to pay Plaintiff and other aggrieved employees, including all exempt and non-exempt
26 employees, all wages due and owing at the time of discharge or voluntary quit. Plaintiff and other
27 aggrieved employees who no longer are employed by Defendants still are owed minimum wages
28 and overtime, as well as premium pay for missed meal periods and rest breaks.

IV. REPRESENTATIVE ACTION ALLEGATIONS

16. Plaintiff seeks to represent all aggrieved employees within the meaning of Labor Code §§ 2698, *et seq.*, who are employed by Defendant's as hourly non-exempt employees and who performed work for HMC within the State of California and were not paid their proper wages, including minimum wages and overtime, for certain hours worked due to an unlawful rounding policy; as well as all aggrieved employees that were not paid overtime at the proper rate due to Defendants failing to include non-discretionary bonuses in the regular rate when calculating the overtime rate.

17. Plaintiff seeks to represent all aggrieved employees with the meaning of Labor Code §§ 2698, *et seq.*, who are or were employed by Defendants as hourly non-exempt employees who performed work for HMC within the State of California and were not provided their required meal periods.

18. Plaintiff seeks to represent all aggrieved employees with the meaning of Labor Code §§ 2698, *et seq.*, who are or were employed by Defendants as hourly non-exempt employees who performed work for HMC within the State of California and were not authorized or permitted to take all of their required rest periods.

19. Plaintiff seeks to represent all aggrieved employees with the meaning of Labor Code §§ 2698, *et seq.*, who are or were employed by Defendants as hourly non-exempt employees who performed work for HMC within the State of California and did not receive the complete and accurate itemized wage statements required by Labor Code §§ 226(a) and 226.3.

20. Plaintiff seeks to represent all aggrieved employees with the meaning of Labor Code §§ 2698, *et seq.*, who are or were employed by Defendants as hourly non-exempt employees who performed work for HMC within the State of California and were not paid all wages due at the time of discharge or voluntary quit as required by Labor Code §§ 201-203.

21. Plaintiff seeks to represent all aggrieved employees with the meaning of Labor Code §§ 2698, *et seq.*, who are or were employed by Defendants as hourly non-exempt employees who performed work for HMC within the State of California and were not paid all wages in a timely manner as required by Labor Code § 204b.

22. There is a well-defined community of interest in the questions of law and fact affecting the aggrieved employees whom Plaintiff seeks to represent. The aggrieved employees' claims against Defendants involve questions of common or general interest including but not limited to the following: (1) whether Defendants had a policy and practice of failing to pay aggrieved employees proper wages, including minimum wage and overtime, through an unlawful rounding policy, as well as by failing to include non-discretionary bonuses when calculating the regular rate, resulting in an incorrect overtime rate; (2) whether Defendants had a policy and practice of failing to provide aggrieved employees with all of their required meal periods; (3) whether Defendants had a policy and practice of failing to authorize and permit aggrieved employees to take their required rest periods; (4) whether Defendants had a policy and practice of violating Labor Code §§ 226 by failing to provide required information on wage statements, such as total hours worked and gross wages earned, and whether those statements were accurate; (5) whether Defendants had a policy and practice of violating Labor Code §§ 201-203 by failing to pay departing aggrieved employees all wages due at the time of discharge or voluntary quit; and (6) whether Defendants had a policy and practice of violating Labor Code § 204b by failing to pay aggrieved employees in a timely manner.

23. Plaintiff's experiences are typical of the experiences of the aggrieved employees whom Plaintiff seeks to represent on a PAGA representative basis and his interests are consistent with, and not antagonistic to, those of the State of California and the other aggrieved employees. Plaintiff will fairly and adequately represent the interests of the State of California and the aggrieved employees whom he seeks to represent because Plaintiff also is an aggrieved employee and his claims are typical of those of the aggrieved employees. Plaintiff has retained attorneys who are experienced in the prosecution of class and representative actions, and Plaintiff intends to prosecute this action vigorously.

24. Common questions of law and fact exist as to all aggrieved employees that predominate over any other questions affecting only individual aggrieved employees.

25. Plaintiff requests permission to amend the Complaint to include additional representatives if Plaintiff is deemed not to be an adequate representative of the aggrieved

employees.

V. FIRST CAUSE OF ACTION

**(UNPAID WAGES, OVERTIME PAY AND MINIMUM WAGES –
LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004)**

26. Labor Code § 2699(f) permits “aggrieved employees” to recover certain penalties on their own behalf and on behalf of other current and former employees.

27. Plaintiff is an “aggrieved employee” as that term is defined in the Labor Code Private Attorneys General Act of 2004 because he is a person who was employed by the alleged violator and against whom one or more of the alleged violations was committed.

28. Plaintiff has met all of the Labor Code § 2699.3 requirements to commence a civil action against Defendants for violations of Labor Code §§ 510, 512, 1194, 1197, 1197.1, 1198 and 1199.

29. By the actions alleged herein, Defendants failed to pay Plaintiff and other aggrieved employees their proper wages, including minimum wages and overtime pay in violation of Labor Code §§ 510, 512, 1194, 1197, 1197.1, 1198 and 1199.

30. Therefore, Plaintiff and all current and former aggrieved employees demand the penalties provided by Labor Code § 2699(f) for violations of Labor Code §§ 510, 512, 1194, 1197, 1197.1, 1198 and 1199.

31. Plaintiff further seeks reasonable attorneys’ fees and costs under Labor Code §§ 1194 and 2699(g)(1).

Wherefore, Plaintiff prays for relief as set forth below.

VI. SECOND CAUSE OF ACTION

**(FAILURE TO PROVIDE MEAL PERIODS –
LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004)**

32. Plaintiff repeats and realleges each and every paragraph above as though fully set forth herein.

33. Labor Code § 2699(f) permits “aggrieved employees” to recover certain penalties on their own behalf and on behalf of other current and former employees.

1 34. Plaintiff is an “aggrieved employee” as that term is defined in the Labor Code
2 Private Attorneys General Act of 2004 because he is a person who was employed by the alleged
3 violators and against whom one or more of the alleged violations was committed.

4 35. Plaintiff has met all of the Labor Code § 2699.3 requirements to commence a civil
5 action against Defendants for violations of Labor Code §§ 226.7, 512, 1198 and 1199 and IWC
6 Wage Order No. 8.

7 36. By the actions alleged herein, Defendants failed to provide Plaintiff and other
8 aggrieved employees to take their required meal periods in violation of Labor Code §§ 226.7,
9 512, 1198 and 1199 and IWC Wage Order No. 8.

10 37. Therefore, Plaintiff and all current and former aggrieved employees demand the
11 penalties provided by Labor Code § 2699(f) for violations of Labor Code §§ 226.7, 512, 1198 and
12 1199 and IWC Wage Order No. 8.

13 38. Plaintiff further seeks reasonable attorneys’ fees and costs under Labor Code §
14 2699(g)(1).

15 Wherefore, Plaintiff prays for relief as set forth below.

16 **VII. THIRD CAUSE OF ACTION**

17 **(FAILURE TO AUTHORIZE AND PERMIT REST PERIODS –**

18 **LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004)**

19 39. Plaintiff repeats and realleges each and every paragraph above as though fully set
20 forth herein.

21 40. Labor Code § 2699(f) permits “aggrieved employees” to recover certain penalties
22 on their own behalf and on behalf of other current and former employees.

23 41. Plaintiff is an “aggrieved employee” as that term is defined in the Labor Code
24 Private Attorneys General Act of 2004 because he is a person who was employed by the alleged
25 violator and against whom one or more of the alleged violations was committed.

26 42. Plaintiff has met all of the Labor Code § 2699.3 requirements to commence a civil
27 action against Defendants for violations of Labor Code §§ 226.7, 1198 and 1199 and IWC Wage
28 Order No. 8.

43. By the actions alleged herein, Defendants failed to authorize and permit aggrieved employees to take their required rest periods in violation of Labor Code §§ 226.7, 1198 and 1199 and IWC Wage Order No. 8.

44. Therefore, Plaintiff and all current and former aggrieved employees demand the penalties provided by Labor Code § 2699(f) for violations of Labor Code §§ 226.7, 1198 and 1199 and IWC Wage Order No. 8.

45. Plaintiff further seeks reasonable attorneys' fees and costs under Labor Code § 2699(g)(1).

Wherefore, Plaintiff prays for relief as set forth below.

VIII. FOURTH CAUSE OF ACTION

(FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS – LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004)

46. Plaintiff repeats and realleges each and every paragraph above as though fully set forth herein.

47. Labor Code § 2699(f) permits "aggrieved employees" to recover certain penalties on their own behalf and on behalf of other current and former employees.

48. Plaintiff is an "aggrieved employee" as that term is defined in the Labor Code Private Attorneys General Act of 2004 because he is a person who was employed by the alleged violator and against whom one or more of the alleged violations was committed.

49. Plaintiff has met all of the Labor Code § 2699.3 requirements to commence a civil action against Defendants for violations of Labor Code § 226(a).

50. By the actions alleged herein, Defendants have failed to comply with Labor Code § 226(a) as it relates to Plaintiff and the other aggrieved employees. As alleged above, HMC employs a policy and practice of failing to provide complete and accurate itemized wage statements to Plaintiff and other aggrieved employees as required by Labor Code § 226(a) in that the wage statements provided do not, among other things, display "all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate," the correct "total hours worked," and the "gross wages earned." In addition, the wage statements

do not include premium pay for missed meal and rest periods.

51. Therefore, Plaintiff, for himself and all current and former aggrieved employees, demands the Labor Code § 226.3 penalties provided for violations of Labor Code § 226(a). (Should Labor Code § 226.3 be found not to apply to Defendants' violations of Labor Code § 226(a), Plaintiff will alternatively seek Labor Code § 2699(f) penalties.)

52. Plaintiff further seeks reasonable attorneys' fees and costs under Labor Code § 2699(g)(1).

Wherefore, Plaintiff prays for relief as set forth below.

XVI. FIFTH CAUSE OF ACTION

(LABOR CODE §§ 201-203 –

LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004)

53. Plaintiff repeats and realleges each and every paragraph above as though fully set forth herein.

54. Labor Code § 2699(f) permits "aggrieved employees" to recover certain penalties on their own behalf and on behalf of other current and former employees.

55. Plaintiff is an "aggrieved employee" as that term is defined in the Labor Code Private Attorneys General Act of 2004 because he is a person who was employed by the alleged violator and against whom one or more of the alleged violations was committed.

56. Plaintiff has met all of the Labor Code § 2699.3 requirements to commence a civil action against Defendants for violations of Labor Code §§ 201-203.

57. By their actions as alleged herein, Defendants have failed to comply with Labor Code §§ 201-203 as they relate to Plaintiff and the other aggrieved employees.

58. Therefore, Plaintiff, for himself and all current and former aggrieved employees, demands the penalties provided by Labor Code § 2699(f) for violations of Labor Code §§ 201-203.

59. Plaintiff further seeks reasonable attorneys' fees and costs under Labor Code § 2699(g)(1).

Wherefore, Plaintiff prays for relief as set forth below.

XVII. SIXTH CAUSE OF ACTION

(LABOR CODE § 204b –

LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004)

60. Plaintiff repeats and realleges each and every paragraph above as though fully set forth herein.

61. Labor Code § 2699(f) permits “aggrieved employees” to recover certain penalties on their own behalf and on behalf of other current and former employees.

62. Plaintiff is an “aggrieved employee” as that term is defined in the Labor Code Private Attorneys General Act of 2004 because he is a person who was employed by the alleged violator and against whom one or more of the alleged violations was committed.

63. Plaintiff has met all of the Labor Code § 2699.3 requirements to commence a civil action against Defendants for violations of Labor Code § 204b.

64. By their actions as alleged herein, Defendants have failed to comply with Labor Code § 204 as they relate to Plaintiff and the other aggrieved employees.

65. Therefore, Plaintiff, for himself and all current and former aggrieved employees, demands the penalties provided by Labor Code § 2699(f) for violations of Labor Code § 204.

66. Plaintiff further seeks reasonable attorneys’ fees and costs under Labor Code § 2699(g)(1).

Wherefore, Plaintiff prays for relief as set forth below.

PRAYER FOR RELIEF

Plaintiff prays for relief as follows:

- i. For civil penalties as specified by Labor Code § 2699(f) for Plaintiff and each current and former aggrieved employee for each violation of Labor Code §§ 226.7, 510, 1194, 1194.2, 1197, 1197.1, 1198 and 1199 (failure to properly pay wages, including minimum wages and overtime) during the applicable limitations period preceding the filing of the Complaint and up to and including the present and until the date of compliance with the law;

- ii. For civil penalties as specified by Labor Code § 2699(f) for Plaintiff and each current or former aggrieved employee for each violation of Labor Code §§ 226.7, 512(a), 1198 and 1199 (missed meal periods) during the applicable limitations period preceding the filing of the Complaint and up to and including the present and until the date of compliance with the law;
- iii. For civil penalties as specified by Labor Code § 2699(f) for Plaintiff and each current or former aggrieved employee for each violation of Labor Code §§ 226.7, 1198 and 1199 (missed rest periods) during the applicable limitations period preceding the filing of the Complaint and up to and including the present and until the date of compliance with the law;
- iv. For civil penalties as specified by Labor Code § 226.3 for Plaintiff and each current or former aggrieved employee and on behalf of the State of California for each violation of Labor Code § 226(a) (failure to provide itemized wage statements) during the applicable limitations period preceding the original filing of the Complaint. (Should Labor Code § 226.3 be found not to apply to Defendants' violations of Labor Code § 226(a), Plaintiff alternatively seeks the civil penalties specified by Labor Code § 2699(f) for Plaintiff and each current or former aggrieved employee and on behalf of the State of California for each violation of Labor Code § 226(a) (failure to provide itemized wage statements) during the applicable limitations period preceding the original filing of the Complaint.)
- v. For civil penalties as specified by Labor Code § 2699(f) for Plaintiff and each current or former aggrieved employee for each violation of Labor Code § 204b (failure to pay wages in a timely manner) during the applicable limitations period preceding the filing of the Complaint and up to and including the present and until the date of compliance with the law;
- vi. For civil penalties as specified by Labor Code § 2699(f) for Plaintiff and each former aggrieved employee for each violation of Labor Code §§ 201-203 (failure to pay departing employees all wages due and owing) during the applicable limitations period

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preceding the filing of the Complaint and up to and including the present and until the date of compliance with the law;

vii. For reasonable attorneys’ fees and costs as allowed by law, including Labor Code § 2699(g)(1) and Code of Civil Procedure § 1021.5

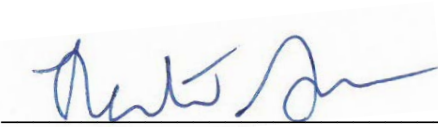
viii. For all interest as required by Labor Code § 218.6 or any other applicable law;

ix. For such other and further relief as the Court should deem proper.

Dated: October 21, 2022

Respectfully submitted,

KELLER GROVER LLP

By: 
ERIC A. GROVER
ROBERT SPENCER
Attorneys for Plaintiff