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Superior Court of California
County of Stanislaus
Clerk of the Court
By: Alecsondra McDonald, Deputy

\$435 PAID

Attorneys for Plaintiff Raul Ruiz as a proxy for the LWDA

SUPERIOR COURT OF CALIFORNIA

COUNTY OF STANISLAUS

10 RAUL RUIZ, as a proxy for the LWDA,

Case No.: CV-23-003304

11 Plaintiffs,

COMPLAINT TO ASSESS AND COLLECT
CIVIL PENALTIES FOR:

12 vs.

1. VIOLATION OF THE PRIVATE
ATTORNEYS GENERAL ACT OF 2004 [Lab.
Code § 2698 et seq.]

13 E & J GALLO WINERY, a California
14 corporation; KELLY SERVICES GLOBAL,
15 LLC., a Michigan corporation; and DOES 1-
16 100, inclusive,

17 Defendants.

18 1. Plaintiff Raul Ruiz ("Ruiz" or "Plaintiff), as a proxy for the California Labor &
19 Workforce Development Agency ("LWDA") brings this complaint seeking to assess and collect
20 civil penalties pursuant to the California Labor Code Private Attorneys General Act of 2004 (Cal.
21 Labor Code §§ 2698, et seq.) against E & J Gallo Winery, a California corporation ("Gallo"), Kelly
22 Services Global, LLC, a Michigan corporation ("Kelly"), and Does 1 through 100 (collectively,
23 "Defendants"). As set forth with greater particularity below, Ruiz, having exhausted
24 administrative remedies as required by Labor Code § 2699.3 seeks to recover civil penalties for
25 violations of the California Labor Code committed against him and other current and former
26 California employees of Defendants.

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This case has been assigned to Judge Sandhu, Sonny S.
Dept. 24
Department _____, for all purposes including Trial.

1
2 **PARTIES**

3 2. Ruiz is, and at all times relevant herein was, employed in Stanislaus County, California,
4 and was an “employee” as defined by the Fair Labor Standards Act (“FLSA”), the California Labor
5 Code (“Labor Code”), and the applicable California Industrial Wage Commission (“IWC”) Order(s).

6 3. Gallo is a corporation organized and existing under the laws of the state of California,
7 with its principal place of business located at 600 Yosemite Blvd., Modesto, Stanislaus County,
8 California. At all times relevant herein, Gall has been an “employer” as defined by the Fair Labor
9 Standards Act (“FLSA”), the California Labor Code (“Labor Code”), and the applicable California
10 Industrial Wage Commission (“IWC”) Order(s) and employed Plaintiff.

11 4. Kelly is a corporation organized and existing under the laws of the state of Michigan,
12 with its principal place of business located at 999 W Big Beaver Road, Suite 601A, Troy, Michigan.
13 At all times relevant herein, Kelly has been an “employer” as defined by the Fair Labor Standards Act
14 (“FLSA”), the California Labor Code (“Labor Code”), and the applicable California Industrial Wage
15 Commission (“IWC”) Order(s) and employed Plaintiff.

16 5. Gallo, Kelly, and Does 1-100 are collectively referred to as Defendants.

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

25 7. Plaintiff is informed and believes and thereupon alleges that at all times mentioned
26 herein, each of the Defendants, including each Doe Defendant, was acting as the agent, servant,
27 employee, partner and/or joint venturer of and was acting in concert with each of the remaining
28 Defendants, including each Doe Defendant, in doing the things herein alleged, while at all times acting

1 within the course and scope of such agency, service, employment partnership, joint venture and/or
2 concert of action. Each Defendant, in doing the acts alleged herein, was acting both individually and
3 within the course and scope of such agency and/or employment, with the knowledge and/or consent of
4 the remaining Defendants.

5 **JURISDICTION AND VENUE**

6 8. This Court is the proper Court, and this action is properly filed in the Superior Court of
7 California for the County of Stanislaus pursuant to Code of Civil Procedure section 395(a) because
8 Gallo resides in Stanislaus County, both Gallo and Kelly conduct business within Stanislaus County,
9 and Ruiz's place of employment was within Stanislaus County.

10 **GENERAL ALLEGATIONS**

11 9. Plaintiff was hired by Kelly in December 2022 and assigned to work a temporary
12 assignment at Gallo. Gallo and Kelly were Plaintiff's employer pursuant to Labor Code section 3351
13 and 558.1 at all times.

14 10. Plaintiff had previously worked for Gallo as a seasonal employee between August and
15 December 2021 and was contacted by Gallo and asked to seek further employment with Gallo through
16 Kelly.

17 11. At all relevant times, Plaintiff was properly classified as a non-exempt employee and
18 was entitled to minimum wage, overtime wages, and meal and rest breaks as required by California
19 law.

20 12. When Plaintiff was onboarded by Kelly he was advised that Kelly uses a timekeeping
21 system through Bullhorn and that he would receive an email communication with a link to upload the
22 Bullhorn application to his personal telephone in order to clock in and clock out. Plaintiff was not
23 advised of any alternative way to record his time worked other than through the Bullhorn application
24 and is not aware of any timeclocks within Gallo that were available for his use (or for the use of any
25 other non-direct Gallo employees). Further, using the Bullhorn application on his personal phone was
26 considerably more convenient than any other option and thus its use was reasonably necessary in order
27 for Plaintiff to perform his job duties. *Williams v. J.B. Hunt Transport, Inc.* (C.D. Cal. 2022) 2022
28 WL 714391 * 13.

1 13. Although use of his personal cell phone was reasonably necessary to perform his job
2 duties, Kelly did not ever reimburse Plaintiff *at all* for costs associated with his personal cell phone.

3 14. Plaintiff is informed and believes that all of Kelly's California employees use the
4 Bullhorn application through his/her personal electronic device in order to record his/her time worked.
5 Plaintiff is further informed and believes that Kelly fails to provide any reimbursement for this
6 necessary use of personal devices to any of its California employees.

7 15. Plaintiff and Defendants' other hourly, non-exempt California employees were also not
8 consistently authorized or permitted to take meal breaks and/or rest breaks as required by California
9 law.

10 16. Ruiz worked breaking down and stacking boxes on a production line. Due to the
11 volume of work, he was frequently not authorized or permitted to take meal or rest breaks. On
12 occasions when they were provided, they were often untimely and/or short and interrupted by
13 supervisors who requested Ruiz assist with the line. Ruiz and other employees working on the
14 production line were expected to be working whenever the line was running and thus often were
15 unable to take timely and fully uninterrupted meal breaks of at least 30 minutes.

16 17. On occasions when Ruiz was afforded the opportunity to take a lunch, it was frequently
17 not until after completion of his 5th hour of work.

18 18. The fact Defendants improperly denied Ruiz the opportunity for meal periods is
19 reflected by its occasional payment of an additional hour of work at his base hourly rate. During his
20 joint employment with Kelly and Gallo, between December 2022 and March 2023, Ruiz was denied at
21 least seven (7) meal periods as evidenced by the meal period premiums Defendants provided to him
22 during that period. There is no lawful choice between providing the opportunity for a meal period and
23 providing a meal period premium under California law and the payment of an additional hour of pay
24 does not excuse the failure to provide meal periods. *Kirby v. Immoos Fire Protection, Inc.* (2012) 53
25 Cal.4th 1244, 1256.

26 19. There were also occasions when Ruiz was denied the opportunity for compliant meal
27 periods, but was not given a meal period premium.

28 ///

1 20. Ruiz is informed and believes that other California non-exempt employees were
2 similarly denied the opportunity for compliant meal periods.

3 21. Although there is no “lawful choice” between providing the opportunity for meal
4 periods and paying meal period premiums in California, Plaintiff is informed and believes this is
5 precisely what Defendants do with respect to all of their California employees—interfere with/deny
6 the opportunity for compliant meal periods (at high rates) and simply pay meal period premiums.

7 22. Due to the volume and demands of the job, Ruiz and other California employees were
8 also frequently denied rest periods. Defendants did not provide requisite premiums when rest periods
9 were denied.

10 23. Because of the failures to properly provide meal/rest periods and associated premiums,
11 Defendants failed to pay Ruiz and their other California employees timely as required by Labor Code
12 section 204.

13 24. In addition, because of the failures to pay all required meal/rest period premiums,
14 Defendants necessarily failed to pay separated employees all wages due and owing on separation in a
15 timely manner as required by Labor Code section 201-202.

16 25. Because of the violations set forth above, the wage statements furnished by Defendants
17 to their non-exempt California employees violated California Labor Code section 226(a) insofar as
18 they failed to accurately show:

- 19 a. The gross wages earned, in violation of section 226(a)(1);
20 b. The net wages earned, in violation of section 226(a)(5); and
21 c. All applicable hourly rates in effect during the pay period and the corresponding
 number of hours worked at each hourly rate in violation of section 226(a)(9).

22 26. Defendants were, at all times relevant herein, aware of the requirements of California
23 Labor Code section 226.

24 27. Defendants have, at all times relevant herein, furnished wage statements to each of their
25 non-exempt California employees pursuant to an established set of policies, procedures and practices.

26 28. Plaintiff and Defendants’ other non-exempt California employees, both current and
27 former, were unable to promptly and easily determine their gross wages earned, net wages earned, and

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1 applicable hourly rates and the number of hours worked at each rate for each temporary services
2 assignment from the wage statements furnished by Defendants.

3 29. Separately, the wage statements violated California Labor Code section 226(a)(8) in
4 that they failed to identify Gallo as the temporary services assignment and joint employer on any of
5 the wage statements.

6 30. Plaintiff is informed and believes Kelly fails to identify the temporary services
7 assignment/joint employer on *any* of the wage statements it issues to California employees.

8 31. As a result, Kelly's California employees are unable to promptly and easily determine
9 the identities of all of their employers because the temporary services assignment and joint employer's
10 information does not appear.

11 **PRIVATE ATTORNEYS GENERAL ACT ALLEGATIONS**

12 32. The Labor Code Private Attorneys General Act of 2004 ("PAGA"), as set forth at
13 Labor Code § 2698 *et seq.*, is and at all times relevant herein was applicable to Ruiz's employment
14 with Defendants.

15 33. Pursuant to Labor Code § 2699(a), any provision of the Labor Code which provides
16 for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency
17 ("LWDA") for violations of the Labor Code may, as an alternative, be recovered through a civil
18 action brought by an aggrieved employee on behalf of himself or herself and other current or
19 former employees pursuant to the procedures outlined in Labor Code § 2699.3.

20 34. Ruiz was employed by Defendants and the alleged violations were committed
21 against her in relation to his employment with Defendants. Ruiz is therefore an aggrieved
22 employee as defined by Labor Code § 2699(c). Other employees, current and former, are also
23 aggrieved employees in that one or more of the alleged violations were also committed against
24 them in relation to their employment with Defendants.

25 35. Pursuant to Labor Code § 2699(g), an aggrieved employee may recover the civil
26 penalty on behalf of himself or herself and other current or former employees against whom one or
27 more of the alleged violations was committed. Furthermore, any employee who prevails in
28 any such action shall be entitled to an award of reasonable attorney's fees and costs.

1 36. Pursuant to Labor Code § 2699.3, an aggrieved employee may pursue a civil action
2 arising under the PAGA after the following requirements have been met:

- 3 a. The aggrieved employee shall give written notice by online filing to the LWDA and
4 by certified mail to the employer (hereinafter “Employee’s Notice”) of the specific
5 provisions of California Labor Code alleged to have been violated, including the
6 facts and theories to support the alleged violations;
- 7 b. The LWDA shall provide notice (hereinafter “LWDA’s Notice”) to the employer
8 and the aggrieved employee by certified mail that it does not intend to investigate
9 the alleged violation within 60 days of the postmark date of the Employee’s Notice.
10 Upon receipt of the LWDA’s Notice, or if the LWDA does not provide notice with
11 65 calendar days of the postmark date of the Employee’s Notice, the aggrieved
12 employee may commence a civil action pursuant to California Labor Code § 2699
13 to recover civil penalties in addition to any other penalties to which the employee
14 may be entitled.
- 15 c. For all alleged violations not enumerated in Labor Code § 2699.5, the employer is
16 given thirty-three (33) days to cure and notify the aggrieved employee by certified
17 mail that the violation has been cured. If the violation is not cured, the aggrieved
18 employee may commence a civil action pursuant to California Labor Code § 2699
19 to recover civil penalties in addition to any other penalties to which the employee
20 may be entitled.

21 37. On March 29, 2023, Plaintiff provided written notice by certified mail to
22 Defendants, and by online filing to the LWDA, of the specific provisions of the Labor Code
23 alleged to have been violated, including the facts and theories to support the alleged violations. A
24 true and correct copy of the Notice is attached hereto as **Exhibit 1**.

25 38. As of the date of this amended complaint, which is more than sixty-five (65) days after
26 the March 29, 2023 letter, the LWDA has not responded to Plaintiff’s notification or otherwise
27 indicated an intention to investigate his claims. Defendants have also not provided any notification or
28 other indication that either has cured any of the violations alleged in the March 29, 2023 letter.

1 Plaintiff has therefore satisfied the administrative prerequisites under Labor Code § 2699.3 to bring a
2 civil action to recover civil penalties against Defendants for violations of California Labor Code

3 **FIRST CAUSE OF ACTION**
4 **VIOLATION OF LABOR CODE SECTION 2698 ET SEQ.**
5 **(Private Attorneys General Act)**
6 **Against Defendants**

7 39. Plaintiff hereby realleges and incorporates by reference each and every allegation set
8 forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
9 allegations of this cause of action.

10 40. Pursuant to Labor Code section 2699(a), any provision of the Labor Code which
11 provides for a civil penalty to be assessed and collected by the LWDA for violations of the Labor
12 Code may, as an alternative, be recovered through a civil action brought by an aggrieved employee on
13 behalf of himself or herself and other current or former employees pursuant to the procedures outlined
14 in Labor Code section 2699.3.

15 41. Plaintiff was employed by Defendants and the alleged violations were committed
16 against him during his time of employment. Plaintiff is therefore an aggrieved employee as defined by
17 Labor Code section 2699(c). Other current and former employees are also aggrieved employees in that
18 one or more of the alleged violations were also committed against them during their time of
19 employment with Defendant.

20 42. Pursuant to Labor Code section 2699(f), the civil penalty recoverable in a PAGA action
21 is that which is provided for by the Labor Code or, where no civil penalty is specifically provided, one
22 hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two
23 hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.

24 43. Pursuant to California Labor Code section 2699(g), an aggrieved employee may recover
25 the civil penalty on behalf of himself or herself and other current or former employees against whom
26 one or more of the alleged violations was committed. Furthermore, any employee who prevails in any
27 such action shall be entitled to an award of reasonable attorney's fees and costs.

28 44. As set forth above, Defendants violated the California Labor Code by, inter alia, failing
to reimburse employee expenses, failing to provide meal/rest periods and/or associated premiums,

1 failing to timely pay wages, failing to timely pay wages on separation, and failing to furnish accurate
2 itemized wage statements.

3 45. Wherefore, Plaintiff and the other aggrieved employees have been damaged as set forth
4 above and request relief as hereafter provided.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiff prays judgment against Defendants as follows:

- 7 1. For civil penalties, including those available under Labor Code sections 226.3, 256,
8 558 exclusive of the underpaid wage portion and consistent with the California
9 Supreme Court's holding in *Z.B., N.A. v. Superior Court* (2019) 8 Cal.5th 175; and
10 2699(f);
11 2. For statutory attorneys' fees and costs, including those available under Labor Code
12 section 2699(g);
13 3. For prejudgment and post-judgment interest according to any applicable provision
14 of law or as otherwise permitted by law; and
15 4. For such other and further relief as the court deems just and proper.

16 **DATED:** June 14, 2023

MAYALL HURLEY P.C.

17
18 By



JENNY D. BAYSINGER

Attorneys for Plaintiff as a proxy for the LWDA

EXHIBIT 1

SOUTHERN CALIFORNIA OFFICE
.....
450 N. BRAND BLVD., SUITE 600
GLENDALE, CALIFORNIA 91206
(818) 646-6440

LODI OFFICE
.....
118 W. OAK STREET
LODI, CA 95240

STOCKTON OFFICE
.....
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JENNY D. BAYSINGER
JOHN P. BRISCOE
VLADIMIR J. KOZINA

March 29, 2023

SUBMITTED VIA ONLINE CLAIM NOTICE

<https://dir.tfaforms.net/295>

VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED

Kelly Services Global, LLC
999 W. Big Beaver Road
Troy, MI 48084

E & J Gallo Winery
600 Yosemite Blvd.
Modesto, CA 95354

Re: Raul R. Ruiz, Jr.
ALTID/KSN: 24954759; EMPLID: 4002189650

To whom it may concern:

This office has been retained by Raul R. Ruiz, Jr. in connection with claims under the California Labor Code arising out of his former employment with Kelly Services Global, LLC and E & J Gallo Winery ("Employers"). Ruiz was hired directly by Kelly Services Global, LLC but was, at all relevant times, assigned to work at a warehouse for E & J Gallo Winery. At all times both Employers exercised control over Ruiz's work conditions and compensation. Ruiz was always properly classified as an hourly, non-exempt employee and was entitled to minimum wage, overtime, and meal/rest periods as required under California law. In accordance with California Labor Code section 2699.3, this letter shall serve as Ruiz's written notice to the Labor and Workforce Development Agency ("LWDA") and Employers regarding the numerous violations of the California Labor Code committed against Ruiz and Employers' other current and/or former California workers, and the facts and circumstances relating thereto.

Employers have, within the last year and beyond, as to Ruiz and other current and former employees within California, failed to do the following:

1. Provide Meal Periods – An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes. Similarly, an employer may not employ an employee for more than 10 hours per day without providing the employee with a second meal period. Due to his responsibilities and the volume of work he was expected to perform, Ruiz was regularly denied the opportunity to take a lunch period. More specifically, Ruiz worked in a warehouse breaking down and stacking boxes that came off the line. Ruiz

and other employees working on the production line were expected to be working whenever the line was running and thus often were unable to take timely and fully uninterrupted meal breaks of at least 30 minutes. On occasions when Ruiz was afforded the opportunity to take a lunch, it was frequently not until after completion of his 5th hour of work. The fact Employers improperly denied Ruiz the opportunity for meal periods is reflected by its occasional payment of an additional hour of work at his base hourly rate. There is no lawful choice between providing the opportunity for a meal period and providing a meal period premium under California law and the payment of an additional hour of pay *does not excuse the failure to provide meal periods*. *Kirby v. Immoos Fire Protection, Inc.* (2012) 53 Cal.4th 1244, 1256. There were also occasions when Ruiz was denied the opportunity for compliant meal periods, but was not given a meal period premium. Ruiz is informed and believes that other California non-exempt employees were similarly denied the opportunity for compliant meal periods.

2. Provide Rest Periods – For the same reasons set forth above with respect to meal periods, Ruiz and Employers' other employees were often unable to take their rest breaks. Employers failed to provide the requisite additional compensation required by Labor Code section 226.7 to Ruiz and their other employees when these rest breaks were denied.

3. Furnish Accurate Itemized Wage Statements – Because of the violations set forth above, the wage statements furnished by Employers violated Labor Code section 226(a) insofar as they failed to accurately show:

- a. The gross wages earned as required by section 226(a)(1);
Since Employers did not compensate Ruiz for all denied meal and rest period premiums, the wage statements issued necessarily failed to accurately identify gross wages earned
- b. The net wages earned in violation of section 226(a)(5); and
Because of the failure to provide meal and rest period premiums and/or compensate them at the correct regular rate, the wage statements furnished to Ruiz and other employees necessarily failed to accurately identify net wages earned.
- c. The name and address of the legal entity that is Ruiz's employer as required by Labor Code section 226(a)(8);
Although Ruiz was jointly employed by Kelly Services Global, LLC and E & J Gallo Winery at all times, his wage statements fail to identify E & J Gallo or its address in violation of section 226(a)(8).
- d. All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate for each identified temporary services assignment in violation of section 226(a)(9).

4. Timely Pay Wages – Because Employers failed to properly pay meal/rest period premiums when they became due, they necessarily violated the provisions of Labor Code section 204.
5. Pay All Wages on Separation – Because Employers failed, and continue to fail, to compensate for meal/rest periods denied there are necessarily wages that remained outstanding at the time Ruiz and other California employees separate from employment with Employers that are not timely paid at the end of their employment.
6. Reimburse Employee Expenses – California Labor Code sections 2802 mandates that an employer indemnify and hold harmless its employees for “all necessary expenditures or losses” incurred by the employee in the performance of his/her duties and/or at the express direction of the employer. By way of one specific example, in performing his duties throughout his employment Ruiz was required to utilize a digital application to record his time worked. As such, Ruiz was required to have either 1) a mobile phone with application capability and internet service or 2) a computer with application capability and internet service. Despite this requirement, Employers did not provide Ruiz any reimbursement for the necessary costs incurred in order to be able to utilize the mandatory application.

If the LWDA believes that it needs additional information to determine whether to investigate these claims, please contact me immediately to request the additional information, which I will provide to the extent it is available to me or my client. If the LWDA does not intend to investigate these violations, Ruiz intends to file a civil complaint against Employers pursuant to the Labor Code Private Attorney General Act of 2004 (Labor Code §§ 2698 – 2699.5), on behalf of himself and as a proxy for the LWDA, to impose civil penalties arising out of violations of the Labor Code as to Ruiz and Employers’ other current and former California employees. Thank you for your attention to this matter.

Regards,

MAYALL HURLEY P.C.

By 
JENNY D. BAYSINGER

Enclosure