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Superior Court of California
County of Stanislaus
Clerk of the Court
By: Narely Garcia, Deputy

7 **Attorneys for Plaintiff Raul Ruiz on behalf of all others similarly situated and as a proxy for the**
8 **LWDA**

9 **SUPERIOR COURT OF CALIFORNIA**

10 **COUNTY OF STANISLAUS**

11 **RAUL RUIZ, on behalf of all others similarly**
12 **situated and as a proxy for the LWDA,**

13 **Plaintiffs,**

14 **vs.**

15 **KELLY SERVICES GLOBAL, LLC., a**
16 **Michigan corporation; and DOES 1-100,**
17 **inclusive,**

18 **Defendants.**

Case No.: CV-23-003304

FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION COMPLAINT
FOR:

1. **VIOLATION OF THE PRIVATE**
ATTORNEYS GENERAL ACT OF 2004 [Lab.
Code § 2698 et seq.]
2. **VIOLATION OF BUSINESS AND**
PROFESSIONS CODE §§ 17200, et seq.

19 1. Plaintiff Raul Ruiz (“Ruiz” or “Plaintiff), on behalf of himself and all others
20 similarly situated, and as a proxy for the California Labor & Workforce Development Agency
21 (“LWDA”) brings this complaint seeking relief as authorized under California Business &
22 Professions Code section 17200, et seq. (including restitutionary and/or injunctive relief) and to
23 assess and collect civil penalties pursuant to the California Labor Code Private Attorneys General
24 Act of 2004 (Cal. Labor Code §§ 2698, et seq.) against Kelly Services Global, LLC, a Michigan
25 corporation (“Kelly”), and Does 1 through 100 (collectively, “Defendants”). As set forth with
26 greater particularity below, Ruiz, having exhausted administrative remedies as required by Labor
27 Code § 2699.3 seeks to recover restitutionary/injunctive relief under the UCL and civil penalties
28 for violations of the California Labor Code committed against him and other current and former
California employees of Defendants.

PARTIES

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

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

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

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

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

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

GENERAL ALLEGATIONS

8. Plaintiff was hired by Kelly in December 2022 and assigned to work a temporary assignment at E & J Gallo Winery (“Gallo”). Gallo and Kelly were both Plaintiff’s employer pursuant to Labor Code section 3351 and 558.1 at all times.

9. At all relevant times, Plaintiff was properly classified as a non-exempt employee and was entitled to minimum wage, overtime wages, reimbursement of business expenses and meal and rest breaks as required by California law.

10. When Plaintiff was onboarded by Kelly he was advised that Kelly uses a timekeeping system through Bullhorn and that he would receive an email communication with a link to upload the Bullhorn application to his personal telephone in order to clock in and clock out and otherwise track his hours worked throughout his direct employment with Kelly (and regardless of which client employer he was assigned to). Plaintiff was not advised of any alternative way to record his time worked other than through the Bullhorn application and is not aware of any timeclocks within Gallo that were available for his use (or for the use of any other non-direct Gallo employees). Further, using the Bullhorn application on his personal phone was considerably more convenient than any other option and thus its use was reasonably necessary in order for Plaintiff to perform his job duties.

Williams v. J.B. Hunt Transport, Inc. (C.D. Cal. 2022) 2022 WL 714391 * 13.

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

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

1 13. Plaintiff and Defendants’ other hourly, non-exempt California employees earned non-
2 discretionary bonuses and other types of remuneration throughout their respective periods of
3 employment. These bonuses included both flat-rate and non-flat-rate bonuses.

4 14. By way of specific example, Plaintiff earned and was paid a \$500 flat-rate bonus on
5 February 10, 2023. Ruiz is informed and believes that bonus was earned over the four (4) weeks
6 preceding February 10, 2023. Although the bonus was a flat-rate bonus that was not dependent on the
7 number of hours Plaintiff worked and/or on his performance of overtime work. Defendant failed to
8 properly calculate his “regular rate of pay” based on the bonus and thus failed to retroactively adjust the
9 rate at which he was compensated for overtime and/or doubletime. *Alvarado v. Dart Container Corp.*
10 (2018) 4 Cal.5th 542, 573.

11 15. Plaintiff and Defendants’ other hourly, non-exempt California employees were also not
12 consistently authorized or permitted to take meal breaks and/or rest breaks as required by California
13 law.

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

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

22 18. The fact Defendants improperly denied Ruiz the opportunity for meal periods is
23 reflected by its occasional payment of an additional hour of work at his base hourly rate. During his
24 joint employment with Kelly and Gallo, between December 2022 and March 2023, Ruiz was denied at
25 least seven (7) meal periods as evidenced by the meal period premiums Defendants provided to him
26 during that period. There is no lawful choice between providing the opportunity for a meal period and
27 providing a meal period premium under California law and the payment of an additional hour of pay

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1 does not excuse the failure to provide meal periods. *Kirby v. Immoos Fire Protection, Inc.* (2012) 53
2 Cal.4th 1244, 1256.

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

5 20. In addition, when meal period premiums were paid to Plaintiff and Defendants' other
6 California non-exempt employees, they were paid only at the base hourly rate, as opposed to the
7 required "regular rate of compensation" including non-discretionary bonuses and other remuneration.

8 21. Ruiz is informed and believes that other California non-exempt employees were
9 similarly denied the opportunity for compliant meal periods.

10 22. Although there is no "lawful choice" between providing the opportunity for meal
11 periods and paying meal period premiums in California, Plaintiff is informed and believes this is
12 precisely what Defendants do with respect to all of their California employees—interfere with/deny
13 the opportunity for compliant meal periods (at high rates) and simply pay meal period premiums.

14 23. Due to the volume and demands of the job, Ruiz and other California employees were
15 also frequently denied rest periods. Defendants did not provide requisite premiums when rest periods
16 were denied.

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

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

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

- 26 a. The gross wages earned, in violation of section 226(a)(1);
- 27 b. The net wages earned, in violation of section 226(a)(5); and
- 28 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).

1 27. Defendants were, at all times relevant herein, aware of the requirements of California
2 Labor Code section 226.

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

5 29. Plaintiff and Defendants' other non-exempt California employees, both current and
6 former, were unable to promptly and easily determine their gross wages earned, net wages earned, and
7 applicable hourly rates and the number of hours worked at each rate for each temporary services
8 assignment from the wage statements furnished by Defendants.

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

12 31. Plaintiff is informed and believes Kelly fails to identify the temporary services
13 assignment/joint employer on *any* of the wage statements it issues to its California employees.

14 32. As a result, Kelly's California employees are unable to promptly and easily determine
15 the identity(ies) of all of their employers because the temporary services assignment and joint
16 employer's information does not appear.

17 **PRIVATE ATTORNEYS GENERAL ACT ALLEGATIONS**

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

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

26 35. Ruiz was employed by Defendants and the alleged violations were committed
27 against her in relation to his employment with Defendants. Ruiz is therefore an aggrieved
28 employee as defined by Labor Code § 2699(c). Other employees, current and former, are also

1 aggrieved employees in that one or more of the alleged violations were also committed against
2 them in relation to their employment with Defendants.

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

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

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

27 38. On March 29, 2023, Plaintiff provided written notice by certified mail to
28 Defendants, and by online filing to the LWDA, of the specific provisions of the Labor Code

1 alleged to have been violated, including the facts and theories to support the alleged violations. A
2 true and correct copy of the Notice is attached hereto as **Exhibit 1**.

3 39. As of the date of this complaint, which is more than sixty-five (65) days after the March
4 29, 2023 letter, the LWDA has not responded to Plaintiff's notification or otherwise indicated an
5 intention to investigate his claims. Defendants have also not provided any notification or other
6 indication that either has cured any of the violations alleged in the March 29, 2023 letter. Plaintiff has
7 therefore satisfied the administrative prerequisites under Labor Code § 2699.3 to bring a civil action to
8 recover civil penalties against Defendants for violations of California Labor Code.

9 40. Plaintiff also submitted an updated notification letter to the LWDA and Defendants on
10 September 26, 2023 and will seek to further amend the complaint to add allegations seeking to assess
11 and collect civil penalties relating to violations outlined in that notification letter as soon as they ripen.

12 **CLASS ACTION ALLEGATIONS**

13 41. Plaintiff seeks to maintain this action as a class action as to the Second Cause of Action.
14 Plaintiff brings this action, on behalf of himself and all others similarly situated, as a class action
15 pursuant to Code of Civil Procedure 382. The putative classes which Plaintiff seeks to represent consist
16 of the following:

- 17 a. All current and former non-exempt California employees of Kelly Services who
18 worked at least one overtime shift during a workweek when he/she also earned
19 non-discretionary bonuses, commissions, and/or other remuneration from
20 October 10, 2019 through the date of trial (the "Regular Rate Class");
- 21 b. All current and former non-exempt California employees of Kelly Services who
22 earned non-discretionary bonuses, commissions, and/or other remuneration
23 during a workweek when he/she earned meal break premium that was paid at
24 his/her base hourly rate on at least one occasion between October 10, 2019
25 through the date of trial (the "Meal Premium Regular Rate Class"); and
- 26 c. All current and former non-exempt California employees of Kelly Services who
27 utilized his/her personal device for work purposes from October 10, 2019
28 through the date of trial (the "Reimbursement Class").

1 The Regular Rate Class, Meal Premium Regular Rate Class, and the Reimbursement Class are
2 collectively referred to as the Class.

3 42. The class of persons is so numerous that joinder of all members is impracticable, and the
4 disposition of their claims in a class action is a benefit to the parties and to the Court. Plaintiff is
5 informed and believes, and based thereon alleges, that Defendants employ more than 1000 employees
6 who satisfy the class definition. Although the exact number and identity of class members is not
7 presently known, they can be identified in Defendants' records through coordinated discovery pursuant
8 to this class action.

9 43. This action may be maintained as a class because the questions of law and fact which are
10 common to class members clearly predominate over any questions affecting only individual members
11 and because a class action is superior to other available methods for adjudicating the controversy.

12 44. There are numerous common questions of law and fact arising out of Defendants'
13 conduct. This class action focuses on Defendants': (a) systematic failure to pay employees for all
14 overtime worked; (b) systemic failure to authorize and permit meal breaks or to pay the requisite
15 premiums in lieu of providing said breaks; and (c) systematic failure to comply with Labor Code
16 section 226(a).

17 45. Furthermore, common questions of fact and law predominate over any questions
18 affecting only individual members of the class. The predominating common or class-wide questions of
19 law and fact include the following:

- 20 a. Whether the bonuses provided to the Class are non-discretionary and/or flat-rate;
- 21 b. Whether Defendants were required to consider certain items of remuneration
- 22 when determining the regular rate of pay for overtime;
- 23 c. Whether Defendants properly calculated the regular rate for flat-rate bonuses;
- 24 d. Whether Defendants failed to properly pay their non-exempt California
- 25 employees for all overtime worked;
- 26 e. Whether Defendants failed to properly calculate and pay premiums to their non-
- 27 exempt California employees as a result of non-compliant meal breaks;
- 28

- 1 f. Whether use of the Bullhorn application system to record time worked
2 constitutes a necessary expenditure (*Williams v. J.B. Hunt Transport., Inc.* (C.D.
3 Cal. 2022) 2022 WL 714391);
- 4 g. Whether the alleged violations constitute unfair business practices;
- 5 h. Whether the Class is entitled to injunctive relief; and
- 6 i. Whether the Class is entitled to restitutionary relief, and the amount of the same.

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

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

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

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

1 50. 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 by
5 this Court and doing so will provide multiple benefits to the litigating parties including, but not limited
6 to, efficiency, economy, and uniform adjudication with consistent results.

7 51. 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 **VIOLATION OF LABOR CODE SECTION 2698 ET SEQ.**
12 **(Private Attorneys General Act)**
 Against Defendants

13 52. 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 53. Pursuant to Labor Code section 2699(a), any provision of the Labor Code which
17 provides for a civil penalty to be assessed and collected by the LWDA for violations of the Labor
18 Code may, as an alternative, be recovered through a civil action brought by an aggrieved employee on
19 behalf of himself or herself and other current or former employees pursuant to the procedures outlined
20 in Labor Code section 2699.3.

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

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

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

7 57. As set forth above, Defendants violated the California Labor Code by, inter alia, failing
8 to reimburse employee expenses, failing to provide meal/rest periods and/or associated premiums,
9 failing to timely pay wages, failing to timely pay wages on separation, and failing to furnish accurate
10 itemized wage statements.

11 58. Wherefore, Plaintiff and the other aggrieved employees have been damaged as set forth
12 above and request relief as hereafter provided.

13 **SECOND CAUSE OF ACTION**
14 **VIOLATION OF CALIFORNIA BUSINESS AND PROFESSIONS CODE §§ 17200 *ET SEQ.***
15 **(Unfair Business Practices)**
Against Defendants on behalf of the Class

16 59. Plaintiff hereby realleges and incorporates by reference each and every allegation set
17 forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
18 allegations of this cause of action.

19 60. The statutory violations, as alleged above, are unfair business practices within the
20 meaning of the Unfair Competition Law (Business and Professions Code sections 17200 *et seq.*), and
21 include, but are not limited to failing to properly pay overtime, failing to pay non-exempt California
22 employees meal period premiums at the appropriate rates, and failing to properly reimburse employees
23 for all necessary business expenditures.

24 61. These violations resulted in actual injury to Plaintiff and the other members of the
25 Regular Rate Class and the Meal Premium Regular Rate Class and the Reimbursement Class in the
26 form of wages and/or other benefits that were improperly withheld and retained by Defendants.

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62. Wherefore, Plaintiff and the other members of the Regular Rate Class and the Meal Premium Regular Rate Class and the Reimbursement Class have been injured as set forth above and request relief as hereafter provided.

63. Plaintiff requests that the court order restitution by Defendants to Plaintiff and the other members of the Regular Rate Class and the Meal Premium Regular Rate Class and the Reimbursement Class with interest thereon.

64. Plaintiff is informed and believes that Defendants are continuing to treat members of the Regular Rate Class and the Meal Premium Regular Rate Class and the Reimbursement Class unlawfully and will continue to do so unless enjoined by this Court.

65. Wherefore, Plaintiff and the other members of the Regular Rate Class and the Meal Premium Regular Rate Class and the Reimbursement Class have been damaged as set forth above and request relief as hereafter provided.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays judgment against Defendants as follows:

As to the First Cause of Action

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

As to the Second Causes of Action:

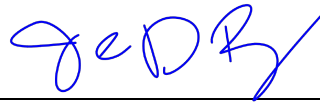
1. That this Court certify the Classes outlined herein;
2. That this Court appoint Plaintiff as the representative of the Class;
3. That this Court appoint Mayall Hurley, P.C. as Class Counsel;

4. That this Court award restitutionary and/or injunctive relief to Plaintiff and the members of the Class;
5. That this Court award injunctive relief, including that available under Business and Professions Code Section 17203;
6. That this Court award statutory attorneys' fees and costs, including those available under Labor Code sections 218.5 and 2802(c), as well as Code of Civil Procedure section 1021.5;
7. That this Court award prejudgment and post-judgment interest according to any applicable provision of law or as otherwise permitted by law; and
8. That this Court award such other and further relief as the court deems just and proper.

DATED: October 10, 2023

MAYALL HURLEY P.C.

By



JENNY D. BAYSINGER

Attorneys for Plaintiff on behalf of all others
similarly situated and as a proxy for the LWDA

EXHIBIT 1

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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