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and all others similarly situated
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11 SUPERIOR COURT OF CALIFORNIA
12 COUNTY OF SAN FRANCISCO
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14 RYAN NOLAN, on behalf of himself and all
15 others similarly situated,

16 Plaintiff,

17 vs.

18 KAYO OIL COMPANY, and Does 1 through
19 100, inclusive,

20 Defendants.
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No. CGC -10-497445

AMENDED CLASS ACTION COMPLAINT

25 Plaintiff, Ryan Nolan ("Nolan" or "Plaintiff"), by his attorneys, brings this action on behalf
26 of himself and all other similarly situated and the general public, and on information and belief,
27 except those allegations that pertain to the named Plaintiff and his attorneys (which are alleged on
28 personal knowledge), hereby alleges as follows:

ENDORSED
FILED
Superior Court of California
County of San Francisco

APR 12 2010

CLERK OF THE COURT
BY: MICHAEL RAYRAY
Deputy Clerk

1 1. This action alleges that Kayo Oil Company, and Does 1 through 100, inclusive,
2 (“Defendants”): (1) failed to pay employees overtime pay in violation of California Labor Code §
3 1194 and applicable Industrial Welfare Commission Orders; (2) failed to pay its employees
4 compensation for work without rest and meal periods in violation of California Labor Code § 226.7
5 and applicable Industrial Welfare Commission Orders; and (3) failed to provide accurate wage
6 statements to employees as required by law.

7 2. This action seeks relief for unremedied violations of California law, including, inter
8 alia; damages, and/or restitution, as appropriate, to members of the Class, and to victims of the
9 practices at issue, who have not been paid the appropriate rate of pay for overtime hours worked,
10 who have not received overtime pay for overtime worked, who have not received compensation for
11 labor provided without rest and meal periods, and who have failed to receive accurate wage
12 statements.

13 3. Nolan is an adequate and proper class representative. Nolan brings this action in his
14 individual capacity, on behalf of all others similarly situated, and pursuant to California Business &
15 Professions Code § 17204, on behalf of the general public. Plaintiff was employed by Defendants
16 as an hourly employee in California, within the four years of the filing of this complaint. While
17 employed as an hourly employee by Defendants, Plaintiff was required to work overtime on a
18 routine basis. Defendants failed to include all compensation when calculating the regular rate of
19 pay for overtime wages and therefore failed to pay Nolan overtime wages at the proper rate. As a
20 result of these practices, Defendants paid Plaintiff overtime wages significantly less than that
21 required by law. In addition to the foregoing, Defendants failed to provide Nolan and all others
22 similarly situated with rest and meal periods, failed to pay compensation for the lack of said meal
23 periods, and failed to provide Nolan and all others similarly situated with accurate statement of
24 wages.

25 4. Defendants are, and at all relevant times were, doing business in the State of
26 California and an employer under applicable Industrial Welfare Commission Orders.

27 5. The names and capacities of Defendants sued herein under California Code of Civil
28 Procedure § 474 as Does 1 through 100, inclusive, are presently not known to Plaintiff, who

1 therefore sues these Defendants by such fictitious names. Plaintiff will seek to amend this
2 Complaint and include these Doe Defendants' names and capacities when they are ascertained.
3 Each of the fictitiously named Defendants is responsible in some manner for the conduct alleged
4 herein and for the injuries suffered by Plaintiff, the members of the Class and the general public.

5 6. At all times mentioned in the causes of action alleged herein, each and every
6 Defendant was an agent and/or employee of each and every other Defendant. In doing the things
7 alleged in the causes of action stated herein, each and every Defendant was acting within the course
8 and scope of this agency or employment and was acting with the consent, permission and
9 authorization of each of the remaining Defendants. All actions of each Defendant as alleged in the
10 causes of action stated herein were ratified and approved by every other Defendant or their officers
11 or managing agents.

12 7. This action seeks relief on behalf of a class of Defendants' employees in the employ
13 of Defendants in California in the four years preceding the filing date of this lawsuit and the present
14 comprised of three subclasses of Defendants' employees (the Class):

- 15 a. persons paid on an hourly basis for whom Defendants' records depict a meal
16 period not taken who did not receive a compensation payment by Defendants
17 for the lack of said meal period;
- 18 b. persons paid on an hourly basis who worked alone during a work shift who
19 did not receive a compensation payment by Defendants for the lack of a meal
20 period; and,
- 21 c. persons who worked overtime hours and were paid an hourly wage and
22 additional compensation in the same work week.

23 8. The class is sufficiently numerous, since it is estimated to include approximately
24 1000 or more Defendants' employees geographically dispersed throughout California, the joinder of
25 whom in one action is impracticable, and the disposition of whose claims in a class action will
26 provide substantial benefits to both the parties and the Court.

27 9. There is a well-defined community of interest in the questions of law and fact
28 involved affecting the parties to be represented. The questions of law and fact common to the Class

1 predominate over questions that may affect individual Class Members, including but not limited to
2 the following:

- 3 a. Whether Defendants implemented and engaged in a systematic practice
4 whereby it unlawfully failed to pay overtime pay to employees at the proper
5 legal rate;
- 6 b. Whether Defendants implemented and engaged in a systematic practice
7 whereby it unlawfully failed to provide rest and meal periods to employees as
8 required by law and failed to pay employees compensation for the lack of rest
9 and meal periods;
- 10 c. Whether Defendants implemented and engaged in a systematic practice
11 whereby it failed to provide accurate wage statements to employees; and,
- 12 d. Whether the systematic acts and practices of Defendants as alleged herein
13 violated, inter alia, applicable provisions of the California Labor Code,
14 including but not limited to §§ 226.7, 512, 1194 and 2698, applicable
15 Industrial Welfare Commission Orders, and California Business &
16 Professions Code § 17200, et seq.

17 10. Because Plaintiff worked overtime on a regular basis, and was routinely required to
18 work without rest or meal periods, for which Plaintiff was not properly compensated, was not
19 properly compensated for overtime wages earned based upon the correct overtime rate as required
20 by law, failed to receive timely and accurate wage statements, Plaintiff is asserting claims that are
21 typical of the claims of the Class.

22 11. Plaintiff will fairly and adequately represent and protect the interests of the Class in
23 that he has no disabling conflict of interest that would be antagonistic to those of the other members
24 of the Class. Plaintiff has retained counsel who are competent and experienced in the prosecution
25 of class action wage and hour violations.

26 12. Plaintiff and the members of the Class have all similarly suffered irreparable harm
27 and damages as a result of Defendants' unlawful and wrongful conduct, including but not limited to
28 Defendants' systematic failure to pay overtime wages based upon the lawful overtime rate,

1 systematic failure to provide rest and meal period breaks makes class treatment especially
2 appropriate. Because the hours worked by Defendants' employees and Class Members follow
3 common patterns, all of which are reflected in the records possessed by Defendants, this action will
4 provide substantial benefits to both. Absent this action, Defendants' unlawful conduct will continue
5 unremedied and uncorrected.

6 13. On March 3, 2010, Plaintiff gave written notice on behalf of himself and similarly
7 aggrieved employees by certified mail to the California Labor and Workforce Development Agency
8 and Kayo Oil Company of Labor Code violations as prescribed by California Labor Code section
9 2699.3. Plaintiff has received written notification by the LWDA of an intention not to investigate
10 the allegations set forth in Plaintiff's March 3, 2010, letter.

11 **FIRST CAUSE OF ACTION**

12 **(Failure To Pay Overtime Wages Pursuant to Labor Code Section 1194)**

13 14. Plaintiff incorporates by reference the allegations contained in paragraphs 1-17 of
14 this Complaint as if fully set forth herein.

15 15. During all relevant periods, Defendants periodically required Plaintiff and Class
16 Members to work in excess of 8 hours per day and 40 hours per week.

17 16. During all relevant periods, both the Labor Code and the pertinent wage orders
18 required that all work performed by an employee in excess of 8 hours per day and 40 hours per
19 week, be compensated at one and one half the employee's regular rate of pay. Defendants failed to
20 include all compensation when calculating the rate of the regular rate of pay for overtime wages and
21 therefore failed to compensate Plaintiff and Class Members for overtime hours they worked at their
22 regular rate of pay. As a result, Defendants failed to pay Plaintiff and Class Members earned
23 overtime wages, and failed to provide Plaintiff and Class Members wage statements as required by
24 California Labor Code § 226. Plaintiff and Class Members are entitled to recover their unpaid
25 overtime compensation and penalties arising therefrom.

26 17. Plaintiff and Class Members are therefore entitled to the relief requested below.

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1 **SECOND CAUSE OF ACTION**

2 **(Unlawful, Unfair And Fraudulent Business Practices Pursuant**
3 **To Business & Professions Code**
4 **Sections 17200, et seq.)**

5 18. Plaintiff and Class Members incorporate by reference the allegations contained in
6 paragraphs 1-21 of this Complaint as if fully set forth herein.

7 19. Business & Professions Code §§ 17200, et seq. prohibits acts of unfair competition,
8 which shall mean and include any “unlawful business act or practice.”

9 20. The policies, acts and practices heretofore described were and are unlawful business
10 acts or practices because Defendants’ failure to provide rest and meal periods, failure to pay
11 compensation for work without rest or meal periods, failing to pay overtime wages at the lawful
12 rate, and failure to provide accurate and timely wage statements violate applicable Labor Code
13 sections, including but not limited to Labor Code §§ 226, 226.7, 512, and 1194, applicable
14 Industrial Welfare Commission Wage Orders, the Labor Code Private Attorney General Act of
15 2004, Labor Code §§ 2698 et seq., and other provisions of California common and/or statutory law.
16 Plaintiff reserves the right to allege additional statutory and common law violations by Defendants.
17 Such conduct is ongoing to this date.

18 21. Business & Professions Code §§ 17200, et seq. also prohibit acts of unfair
19 competition, which shall mean and include any “unfair business act or practice.”

20 22. The policies, acts or practices described herein were and are an unfair business act or
21 practice because any justifications for Defendants’ illegal and wrongful conduct were and are vastly
22 outweighed by the harm such conduct caused Plaintiff, the Class Members, and the members of the
23 general public. Such conduct is ongoing to this date.

24 23. Plaintiff and Class Members are therefore entitled to the relief requested below.

25 **PRAYER FOR RELIEF**

26 WHEREFORE Plaintiff prays for judgment and relief as follows:

- 27 1. An order certifying that the action may be maintained as a class action;
- 28 2. Compensatory and statutory damages, penalties and restitution, as appropriate and
available under each cause of action;

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- 3. For recovery of penalties as provided by the Labor Code Private Attorneys General Act of 2004;
- 4. An order enjoining Defendants from pursuing the policies, acts, and practices complained of herein;
- 5. Reasonable attorneys' fees pursuant to Labor Code § 1194(a);
- 6. Costs of this suit;
- 7. Pre- and post-judgment interest; and
- 8. Such other and further relief as the Court deems just and proper.

Date: April 12, 2010

QUALLS & WORKMAN, L.L.P.



Daniel H. Qualls
Attorneys for Plaintiff Ryan Nolan
and all others similarly situated