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14 behalf of all others similarly situated, and the general public

**ENDORSED
FILED
ALAMEDA COUNTY**

SEP 07 2015

CLERK OF THE SUPERIOR COURT
By Xian-Xii Bowie

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **IN AND FOR THE COUNTY OF ALAMEDA**

13 PATRICK MALONE, as an individual, on
14 behalf of himself, all others similarly
15 situated, and the general public,

16 Plaintiff,

17 v.

18 KAG WEST LLC., a corporation, and
19 DOES 1-100,

20 Defendants.

Case No. **RG 15784137**

**CLASS ACTION COMPLAINT FOR
DAMAGES AND INJUNCTIVE RELIEF**

1. **FAILURE TO PAY MEAL AND REST PERIOD COMPENSATION (CAL. LABOR CODE §§ 226.7, 512)**
2. **FAILURE TO PAY COMPENSATION FOR ALL HOURS WORKED AND MINIMUM WAGE VIOLATIONS (CAL. LABOR CODE §§ 216, 1194, 1194.2, 1197)**
3. **FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS (CAL. LABOR CODE § 226)**
4. **WAITING TIME PENALTIES (CAL. LABOR CODE § 203)**
5. **FAILURE TO PAY ALL WAGES BY THE APPROPRIATE PAY PERIOD (CAL. LABOR CODE § 204)**
6. **FAILURE TO REIMBURSE**

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BUSINESS EXPENSES (CAL. LABOR CODE § 2802)

7. PRIVATE ATTORNEY GENERAL ACT (CAL. LABOR CODE §§ 2698, ET SEQ.)

8. UNFAIR BUSINESS PRACTICES (CALIFORNIA BUSINESS & PROFESSIONS CODE § 17200, ET SEQ.)

DEMAND FOR JURY TRIAL

Plaintiff PATRICK MALONE ("PLAINTIFF"), as an individual and on behalf of himself, all others similarly situated, and the general public, complains and alleges on information and belief the following against KAG WEST LLC., a limited liability corporation, and DOES 1-100 (collectively "DEFENDANTS"):

INTRODUCTION

1. This case arises out of DEFENDANTS' systematic, company-wide, unlawful treatment of PLAINTIFF and hundreds of similarly situated employees in violation of numerous provisions of the California Labor Code and California's Unfair Compensation Law (Business and Professions Code Section 17200 et seq. ["UCL"]).

2. DEFENDANTS operate a tanker truck transportation and logistics company which delivers fuel products to customers. PLAINTIFF and all other similarly situated employees were/are employed by DEFENDANTS as truck drivers in California and deliver fuel products for DEFENDANTS in California.

3. PLAINTIFF alleges in this lawsuit that he and other drivers were not provided with lawful meal and rest periods as required by California state law. PLAINTIFF further alleges that he and other similarly situated drivers were required to work off-the-clock, which violates state minimum wage laws, and that they were not reimbursed for all business related expenses associated with the use of their personal cell phones for work, among other claims.

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4. This action further alleges that DEFENDANTS have violated California Business and Professions Code Section 17200, et seq., based on their violations of California's Labor laws and the Fair Labor Standards Act ("FLSA"). Concerning PLAINTIFF's UCL claims predicated on the FLSA, PLAINTIFF alleges that he and other similarly situated truck drivers were deprived of overtime pay. PLAINTIFF and all other similarly situated drivers are intrastate drivers with no reasonable expectation of being required to drive out of the state. In addition, PLAINTIFF and all other similarly situated employees are not indiscriminately chosen for the infrequent, out-of-state deliveries that DEFENDANTS make. Instead, the same limited pool of drivers is used for the out-of-state driving. Thus, the Motor Carrier Exemption does not apply to PLAINTIFF or other similarly situated drivers.

5. The violations described in this lawsuit entitle PLAINTIFF and the PLAINTIFF CLASS to unpaid wages, including minimum wage and overtime pay, all applicable statutory and civil penalties, including civil penalties recoverable pursuant to the Private Attorney General Act ("PAGA"), attorneys' fees, costs, and interest. PLAINTIFF, on behalf of the PLAINTIFF CLASS (defined below), also seeks to certify his non-PAGA claims under California Code of Civil Procedure Section 382. With respect to his PAGA claim, PLAINTIFF intends to pursue a representative action on behalf of all aggrieved employees like PLAINTIFF.

JURISDICTION AND VENUE

6. The Court has personal jurisdiction over DEFENDANTS because they are residents of and/or doing business in the state of California. DEFENDANT KAG WEST, LLC, is subject to personal jurisdiction as a resident of California and as a limited liability corporation conducting substantial and continuous commercial activities in California. This case arises from DEFENDANTS' wrongful conduct in California, where DEFENDANTS employed PLAINTIFF and members of the proposed PLAINTIFF CLASS (defined below).

7. Venue is proper in this Court in accordance with Section 395(a) of the California Code of Civil Procedure because DEFENDANTS employed some members of the PLAINTIFF CLASS in Alameda County and some of the harms occurred in Alameda County.

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2 8. PLAINTIFF does not seek more than seventy-five thousand dollars (\$75,000) and
3 waives seeking more than seventy-five thousand dollars (\$75,000), including attorney's fees but
4 excluding costs and interest, as to his share or portion of penalties or any other recovery with
5 respect to the violations alleged herein against DEFENDANTS. This case also raises no federal
6 questions.

7 **PARTIES**

8 9. PLAINTIFF is a resident of American Canyon, California. PLAINTIFF was
9 formerly employed by DEFENDANTS as a driver at the Martinez Terminal from May, 2013 until
10 January 14, 2015. PLAINTIFF only made, and was expected to make intrastate deliveries.

11 10. PLAINTIFF is informed, believes, and alleges that DEFENDANTS have been
12 doing business in California at all relevant times. Defendant KAG WEST, LLC, is a California
13 limited liability corporation which has been doing business in California at all relevant times.

14 11. Section 2(G) of Industrial Wage Commission ("IWC") Order Number 9-2004
15 defines an "employer" as any "person as defined in Section 18 of the [California] Labor Code,
16 who directly or indirectly, or through an agent or any other person, employs or exercises control
17 over the wages, hours, or working conditions of any person." PLAINTIFF is informed, believes,
18 and alleges that DEFENDANTS directly, indirectly, or acting through the agency of each other,
19 employ or exercise control over the wages, hours, or working conditions of PLAINTIFF and the
20 rest of the class. Furthermore, on information and belief, a centralized payroll and accounting
21 system is used to pay the wages of PLAINTIFF and all members of the class at all
22 DEFENDANTS' locations in California. Specifically, DEFENDANTS pay the wages and other
23 benefits of all PLAINTIFF CLASS members and direct and control, with the assistance of or
24 through the other named DEFENDANTS, the terms and conditions of all class members'
25 employment. Accordingly, DEFENDANTS are deemed joint employers of PLAINTIFF and the
26 rest of the PLAINTIFF CLASS.

27 12. The true names and capacities of Defendants named as DOES 1-100, inclusive,
28 whether individual, corporate, associate, or otherwise, are unknown to PLAINTIFF, who

1 therefore sues such Defendants by such fictitious names. PLAINTIFF will amend this Complaint
2 to show true names and capacities when they have been determined.

3 13. At all times mentioned, DEFENDANTS, and each of them, were the agents,
4 representatives, employees, successors, assigns, parents, subsidiaries, and / or affiliates, each of
5 the other and, at all pertinent times, were acting within the course and scope of their authority as
6 such agents, representatives, employees, successors, assigns, parents, subsidiaries, and / or
7 affiliates. PLAINTIFF also alleges that DEFENDANTS were, at all relevant times, the alter egos
8 of each other. All references made to DEFENDANTS herein is intended to include all of the
9 named Defendants as well as the DOE Defendants. Each of the fictitiously named DOE
10 Defendants is responsible in manner for the occurrences alleged and proximately caused
11 PLAINTIFF's damages as well as damages of members of the class.

12 **CLASS ACTION ALLEGATIONS**

13 14. PLAINTIFF brings this action on behalf of herself and all others similarly situated
14 as a class action pursuant to California Code of Civil Procedure Section 382, on behalf of the
15 following class (referred to as the "PLAINTIFF CLASS"). The PLAINTIFF CLASS is
16 composed of and defined as follows:

17 **All California citizens who worked as truck drivers at any of DEFENDANTS'**
18 **locations in California at any time within four (4) years prior to the filing of this Complaint**
19 **until the final judgment (hereinafter "the Class Period").**

20 15. The members of the PLAINTIFF CLASS are so numerous that joinder of all
21 members would be unfeasible and impracticable. The membership of the entire class is greater
22 than 100 individuals, but the identity of such membership is readily ascertainable via inspection
23 of the personnel records and other documents maintained by DEFENDANTS.

24 16. There are common questions of law and fact as to members of the class which
25 predominate over questions affecting only individual members, including, without limitation:

26 A. Whether DEFENDANTS denied PLAINTIFF and the PLAINTIFF CLASS
27 all of the wages to which they are entitled pursuant to the California Labor Code, the California
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1 Industrial Welfare Commission's ("IWC") Wage Orders, and all other applicable Employment
2 Laws and Regulations.

3 B. Whether DEFENDANTS failed to make meal and rest periods available to
4 PLAINTIFF and members of the PLAINTIFF CLASS as required by law and/or paid
5 compensation in lieu thereof;

6 C. Whether DEFENDANTS failed to pay the required state minimum wage to
7 PLAINTIFF and members of the PLAINTIFF CLASS for every hour where work was performed;

8 D. Whether DEFENDANTS violated California Labor Code Section 204 by
9 failing to pay all wages earned in a timely manner;

10 E. Whether DEFENDANTS failed to provide PLAINTIFF and members of
11 the PLAINTIFF CLASS with accurate itemized statements;

12 F. Whether DEFENDANTS owe PLAINTIFF and member of the
13 PLAINTIFF CLASS waiting time penalties pursuant to California Labor Code Section 203;

14 G. Whether DEFENDANTS failed to reimburse all business related expenses
15 incurred by PLAINTIFF and the PLAINTIFF CLASS;

16 H. Whether DEFENDANTS engaged in unfair business practices under
17 Section 17200, *et seq.*, of the California Business and Professions Code;

18 I. Whether DEFENDANTS violated California Business and Professions
19 Code Section 17200, *et seq.*, by failing to pay members of the PLAINTIFF CLASS overtime
20 wages as required under the Fair Labor Standards Act.

21 J. The effect upon and the extent of damages suffered by member of the
22 PLAINTIFF CLASS and the appropriate amount of compensation.

23 17. The claims PLAINTIFF pleads as class action claims are typical of the claims of
24 all members of the PLAINTIFF CLASS as they arise out of the same course of conduct and are
25 predicated on the same violation(s) of the law. PLAINTIFF, as a representative party, will fairly
26 and adequately protect the interests of the class by vigorously pursuing this suit through his
27 attorneys who are skilled and experienced in handling matters of this type.
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2 18. The nature of this action and the nature of the laws available to the PLAINTIFF
3 CLASS make use of the class action format, a particularly efficient and appropriate procedure to
4 afford relief to members of the PLAINTIFF CLASS. Further, this case involves a corporate
5 employer and a large number of individual employees possessing claims with common issues of
6 law and fact. If each employee were required to file an individual lawsuit, the corporate
7 Defendants would necessarily gain an unconscionable advantage since they would be able to
8 exploit and overwhelm the limited resources of each individual Plaintiff with their vastly superior
9 financial and legal resources. Requiring each class member to pursue an individual remedy
10 would also discourage the assertion of lawful claims by employees who would be disinclined to
11 pursue an action against their present and/or former employer for an appreciable and justifiable
12 fear of retaliation and permanent damage to their careers at present and/or subsequent
13 employment. Proof of a common business practice or factual pattern, of which the named
14 PLAINTIFF experienced, is representative of the PLAINTIFF CLASS and will establish the right
15 of each of the members of the PLAINTIFF CLASS to recovery on these alleged claims.

16 19. The prosecution of separate actions by the individual members of the PLAINTIFF
17 CLASS, even if possible, would create: (a) a substantial risk of inconvenient or varying verdicts
18 or adjudications with respect to the individual members of the PLAINTIFF CLASS against the
19 DEFENDANTS; and/or (b) legal determinations with respect to the individual members of the
20 PLAINTIFF CLASS which would, as a practical matter, be dispositive of the other class
21 members' claims who are not parties to the adjudications and / or would substantially impair or
22 impede the ability of class members to protect their interests. Further, the claims of the individual
23 members of the PLAINTIFF CLASS are not sufficiently large to warrant vigorous individual
24 prosecution considering all of the associated concomitant costs and expenses. PLAINTIFF is
25 unaware of any difficulties that are likely to be encountered in the management of this action that
26 would preclude its maintenance as a class action.

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FACTS COMMON TO ALL CAUSES OF ACTION

20. PLAINTIFF PATRICK MALONE was hired by DEFENDANTS in May of 2013 as a delivery truck driver working out of DEFENDANTS' Martinez Facility. PLAINTIFF's main job duties were to deliver fuel and other oil based products to locations within the state of California.

21. Throughout PLAINTIFF's and PLAINTIFF CLASS members' employment with DEFENDANTS, DEFENDANTS routinely failed to provide PLAINTIFF and members of the PLAINTIFF CLASS with meal or rest periods or compensation in lieu thereof as required by California law. Specifically, DEFENDANTS fail to provide a meal period where Drivers are relieved of their duty for a thirty (30) minute period within the first five (5) hours of their shift or pay the premium compensation for the missed meal period. This is because DEFENDANTS only observe federal Hours of Service ("HOS") requirements and instruct drivers to take a meal period before the conclusion of the eighth hour instead of the fifth. In addition, Drivers never receive a second meal period for shifts in excess of ten (10) hours and also do not receive the premium compensation for the missed second meal period. There is no evidence that PLAINTIFF or PLAINTIFF CLASS members have agreed to waive their right to a second meal period with respect to shifts lasting more than ten (10) hours but less than twelve (12) hours.

22. Moreover, DEFENDANTS fail to provide rest periods or compensate PLAINTIFF and members of the PLAINTIFF CLASS for missed rest periods despite their knowledge that such periods are not made available to them. Specifically, pursuant to established policies and procedures applicable to PLAINTIFF and all members of the PLAINTIFF CLASS, DEFENDANTS fail to provide Drivers with a ten (10) minute, work-free rest period for shifts lasting between two (2) and six (6) hours. They are also not provided a second rest period for shifts lasting six (6) to ten (10) hours or a third rest period for shifts in excess of ten (10) hours. DEFENDANTS did not pay PLAINTIFF or members of the PLAINTIFF CLASS the premium compensation for these missed rest periods despite knowing that such rest periods have not been made available to PLAINTIFF and members of the PLAINTIFF CLASS.