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AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF

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12 UNITED STATES DISTRICT COURT
13 WESTERN DISTRICT OF WASHINGTON

14 BRIAN OLSON, and GEORGE RUIZ,
15 individually and as class representatives,
16 Plaintiffs,

CV6 1311P

COMPLAINT FOR WAGE AND
HOUR LAW VIOLATIONS

17 v.

CLASS ACTION

18 TESORO REFINING AND MARKETING
19 COMPANY,



20 Defendant.

06-CV-01311-CMP

21 I. JURISDICTION

22 This Court has jurisdiction pursuant to 28 U.S.C. § 1332(d) because this case is being
23 filed as a Fed.R.Civ.P. 23 class action in which the matter in controversy exceeds
24 \$5,000,000, exclusive of interest and costs, there are substantially more than 400 class
25 members, and there are many class members whose state of citizenship is different than
26 defendant's citizenship.

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II. PARTIES

2.1 Plaintiffs Brian Olson and George Ruiz are adults who were employed within the past three years by defendant Tesoro Refining and Marketing Company at its Anacortes, Washington, refinery. Plaintiffs reside in Skagit County, Washington.

2.2 Plaintiffs file this action on behalf of themselves and a class defined as follows:

All maintenance and operations workers employed by Tesoro Refining and Marketing Company at the Tesoro refinery in Anacortes, Washington, who were paid for work any time between September 12, 2003, to the date the class is certified, excluding managerial employees.

2.3 Defendant Tesoro Refining and Marketing Company ("Tesoro") is a Delaware corporation that is registered to do business in Washington State. It owns the Tesoro refinery in Anacortes, Washington, where Tesoro processes crude oil into products such as gasoline, diesel, jet fuel, marine fuel, propane, and asphalt.

III. FACTS

3.1 Plaintiffs have been employed by defendant to perform operations and maintenance work at the Tesoro Anacortes refinery.

3.2 Plaintiffs performed unpaid work at the beginning and end of each shift, including, but not limited to, activities such as donning and doffing protective gear, obtaining and storing tools, traveling to and from their work sites, prepping and cleaning equipment, and, for operations work, briefing and being briefed at shift changes.

3.3 Plaintiffs clocked in at the beginning of the workday and clocked out at the end of their workday, but were paid based on the official start and stop times without regard

1 to the clocked times, which payment method excluded work performed before and after
2 official hours.

3 3.4 Much of plaintiffs' off-the-clock work was performed in workweeks in which
4 plaintiffs worked in excess of 40 hours.

5 **IV. CLASS FACTS**

6 4.1 Class members have been employed by defendant to perform operations and
7 maintenance work at the Tesoro Anacortes refinery.

8 4.2 Class members have performed and continue to perform unpaid work at the
9 beginning and end of each shift, including but not limited to activities such as donning and
10 doffing protective gear, obtaining and storing tools, traveling to and from their work sites,
11 prepping and cleaning equipment, and, for operations workers, briefing and being briefed at
12 shift changes.

13 4.3 Class members clock in at or near the beginning of the workday and clock out
14 at or near the end of their workday, but are paid based on the official start and stop times
15 without regard to the clocked times, which payment method excludes work performed before
16 and after official hours.

17 4.4 Much of the class members' off-the-clock work is performed in workweeks in
18 which class members work in excess of 40 hours.

19 4.5 The events describe hereinabove continue at the time of the complaint.

20 4.6 Defendant has been and continues to willfully violate state wage and hour
21 statutes and regulations with the intent to deprive the class members of a part of their wages.

22 4.7 The proposed class numbers approximately 450 individuals. Defendant
23 regularly employs approximately 300 class members at any one time.
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1 4.8 There are questions of law and fact common to the class.

2 4.9 Virtually all legal issues in this case are common class issues, including issues
3 of the what constitutes work, when the workday commences, deference to be given to
4 Department of Labor & Industries regulations, policies and practices, affirmative defenses
5 advanced by defendant, plaintiffs' right to conduct videotaping and expert evaluations inside
6 the facility, and other legal issues which will arise during this litigation.
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8 4.10 Class members share numerous common issues of fact, involving matters such
9 as amounts of time it takes to do various activities, the time work begins and ends in relation
10 to paid starting and stopping times, liability and damages issues which will be tried applying
11 Minimum Wage Act ("MWA") principles of representative evidence, and the willfulness of
12 defendants' violations for purposes of RCW 49.52.050 & .070 exemplary damages.
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14 4.11 For example, class member claims will depend on production of common
15 documents such as electronic payroll records, job classifications, electronic timecard data,
16 and common company policies relative to pre-production and post-production activities.

17 4.12 The named plaintiffs will fairly and adequately protect the interests of the
18 class and have made arrangements with experienced counsel to represent the class members
19 with vigor and zeal within the bounds of the law.
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21 4.13 The questions of law and fact common to the members predominate over any
22 questions affecting only individual members, particularly in light of the rules of
23 representative evidence and the relaxed burdens of proof in MWA cases.

24 4.14 A class action is superior to other available methods for the fair and efficient
25 adjudication of the controversy.
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1 4.15 Individual class members have little interest in individually controlling the
2 prosecution of their claims given the relatively small amounts of each claim, their relative
3 lack of sophistication, and the difficulties involved in bringing individual litigation against
4 one's current employer.

5 4.16 Plaintiffs are unaware of any other litigation concerning this controversy
6 commenced by or for other class members.

7 4.17 This litigation should be concentrated in this forum because all class members
8 were employed to work in the Tesoro refinery that is located within this forum.

9 4.18 The court has the resources, abilities and procedures to effectively manage
10 this class action, particularly with application of the substantive wage and hour law of
11 representative evidence and relaxed burdens of proof.

12 4.19 Defendant willfully violated state wage and hour statutes and regulations with
13 the intent and effect of depriving class members of a part of their wages.

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16 **V. CLAIM – STATE WAGE AND HOUR LAW VIOLATIONS**

17 5.1 Plaintiffs repeat and re-allege the prior allegations of the complaint as if
18 repeated hereat completely.

19 5.2 Defendant violated RCW 49.46.020 by permitting unpaid work to be
20 performed prior to the start of the paid workday and after the end of the paid workday.

21 5.3 Defendant violated RCW 49.46.130 by permitting plaintiff and class members
22 to perform off-the-clock overtime work, i.e., unpaid work performed by an employee who
23 has worked in excess of forty hours during the workweek.
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1 5.4 The above-described state law wage and hour violations were committed
2 willfully and with intent to deprive class members of wages and thus violate RCW 49.52.050
3 and RCW 49.52.070.

4 5.5 Plaintiffs and the class members are pleading and pursuing independent state
5 law claims that devolve upon them as individuals.

6 5.6 Plaintiffs, individually and on behalf of the class, eschews all federal claims,
7 such as any claim arising under 29 U.S.C. § 185 for breach of a labor agreement and any
8 claim for breach of the Fair Labor Standards Act, 29 U.S.C. §§ 201-216.

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10 **VI. PRAYER FOR RELIEF**

11 Wherefore, plaintiffs, individually and on behalf of the class, pray for relief against
12 defendant as follows:

13 Plaintiffs pray for CR 23 class certification, damages, exemplary damages,
14 prejudgment interest, costs, expenses including *inter alia* expenses of class notices and
15 distribution of damages, employer payroll taxes for back pay, and attorney fees pursuant to
16 RCW 4.84.010(6), RCW 4.84.080, RCW 49.46.090, RCW 49.48.030, and RCW 49.52.070
17 and for such other and further relief that this Court deems just and proper.

18 DATED this 12th day of September, 2006.

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20
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