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9 KAISER FOUNDATION HOSPITALS

10
11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 IN AND FOR THE COUNTY OF ALAMEDA

13 JOSIE BEAUCHAMP and REGINALD
14 BETHANCOURT, individually and on behalf
15 of themselves, the general public, and all
16 others similarly situated, v. Kaiser Foundation
Hospitals, a California corporation, and
DOES 1 through 100, inclusive

17 Plaintiffs

18 vs.

19 KAISER FOUNDATION HOSPITALS, a
20 California corporation, and DOES 1 to 100,
inclusive,

21 Defendants.
22

Case No.: RG07307245

**DEFENDANT KAISER FOUNDATION
HOSPITALS' COMPLEX CASE
MANAGEMENT CONFERENCE
STATEMENT**

Date: May 31, 2007
Time: 2:00 p.m.
Judge: Honorable Robert Freedman
Dept.: 20

1 Pursuant to Rule 3.750 of the California Rules of Court and the Local Rules of this Court,
2 defendant Kaiser Foundation Hospitals (“Kaiser” or “Defendant”) submits the following Complex
3 Case Management Conference Statement.

4 **A. Statement of Issues Presented**

5 Summary of Causes of Action. This is a wage and hour putative class action brought
6 against Kaiser by two of its former employees, plaintiffs Josie Beauchamp (“Beauchamp”) and
7 Reginald Bethancourt (“Bethancourt”)(collectively, “Plaintiffs”), each of whom worked in
8 different positions within the Kaiser Permanente Information Technology (“KP-IT”) organization.
9 During the relevant time period, Beauchamp worked in the position of Consultant Specialist for
10 Kaiser’s Service Assurance Team (“SAT”).¹ Bethancourt worked in the positions of Systems
11 Programmer Analyst Senior, and later, Senior Programming Analyst.² According to the operative
12 First Amended Complaint (“FAC”), Plaintiffs seek to represent three classes of all current and
13 former Kaiser employees in California “who perform the job functions of systems analyst,
14 operations analyst, programmer analyst, production support, technical support and/or audit
15 coordinator no matter what their job title is, including but not limited to, consultant specialist,
16 systems analyst, senior programmer analyst, programmer analyst, production support, and
17 operations analyst.” FAC, ¶ 13.

18 The FAC purports to allege five causes of action against Kaiser for violations of
19 provisions of the California Labor Code, California Business & Professions (“B&P”) Code, and
20 Industrial Welfare Commission (“IWC”) Wage Order 4-2001, to wit: (1) denial of overtime pay
21 (Lab. Code § 510); (2) failure to provide meal and rest periods (Lab. Code § 226.7 & IWC Wage
22 Order 4-2001, §§ 11 & 12); (3) waiting penalties (Lab. Code §§ 201-203); (4) failure to provide
23 itemized employee wage statements (Lab. Code § 226(a); and (5) violation of the Unfair

24 ¹ Beauchamp resigned from Kaiser in July 2006, after she was disciplined for misappropriating a
25 co-worker’s personal property.

26 ² Kaiser employed Bethencourt from approximately 1999 until April 2004, when he was laid off
27 due to a reorganization. At that time, Bethancourt signed an agreement in which he received
28 severance pay in exchange for his waiver and release of all claims against Kaiser through that
date. In January 2006, Kaiser re-hired Bethancourt, and he resigned less than three months later,
on March 3, 2006.

1 Competition Law, B&P Code § 17200, *et seq.* (“UCL”). Essentially, Plaintiffs allege that Kaiser
2 misclassified them and the putative class members as overtime-exempt and failed to provide them
3 overtime pay, meal and rest breaks, full wages due upon termination, and accurate itemized wage
4 statements. Plaintiffs further allege these predicate actions violate the UCL. Plaintiffs seek relief
5 in the form of unspecified amounts of damages and/or restitution for overtime wages, Labor Code
6 § 226.7 wages for missed breaks, statutory penalties, prejudgment interest, attorneys’ fees and
7 costs.

8 Class Certification. Kaiser maintains that Plaintiffs’ class allegations are improper and that
9 their claims are not suitable for class treatment. First, the proposed classes are not “ascertainable”
10 in that: (1) they are defined according to vague and overbroad “job functions;” (2) they are
11 impermissibly “fail-safe,” *i.e.*, identifying membership in the class first depends on the resolution
12 of disputed liability issues; and (3) they are overbroad in temporal scope, and thus seek relief on
13 behalf of putative class members which is time-barred. Second, Plaintiffs cannot demonstrate a
14 sufficient community of interest among putative class members, *i.e.*, that common questions of
15 law or fact predominate over questions affecting individual members. The resolution of Plaintiffs’
16 wage and hour claims will require detailed, individualized, and fact-specific analyses of job duties
17 and hours worked by each putative class member. Numerous and substantial variations in the job
18 duties, time spent, and hours worked by individual employees precludes any finding of
19 commonality required for class treatment of Plaintiffs’ claims.

20 Finally, Beauchamp and Bethancourt are not adequate class representatives, and their
21 claims are not typical of those of other employees in the proposed classes. During the relevant
22 claims period, the number of Kaiser employees who performed work similar to that done by
23 Beauchamp is exceedingly small (*i.e.*, a dozen or less). The SAT Team has employed *only twelve*
24 Consultant Specialists, including Beauchamp, since its formation in 2001. Of those employees,
25 *only three*, including Beauchamp, performed the job function of coordinating audits. Bethancourt
26 also is not a proper class representative because: (1) he signed a severance agreement waiving and
27 releasing all claims against Kaiser through his layoff in April 2004; (2) he was not employed by
28 Kaiser between April 2004 and January 2006, at which time he only worked for several more

1 months; and (3) he received a salary overpayment which likely would equal or exceed any award
2 to which he might be entitled if liability is established on the claims asserted.³

3 Liability and Merits. Kaiser denies the allegations in the FAC, and further denies liability
4 on the causes of action or that Plaintiffs are entitled to any of the relief requested. Kaiser
5 maintains that many, if not all, of the causes of action asserted by Plaintiffs may be resolved by
6 motion: either demurrer, motion to strike, or summary adjudication. Any surviving claims will
7 fail for lack of proof.

8 Kaiser properly classified Plaintiffs and the putative class members as overtime exempt
9 under one or more exemptions recognized under California law, *i.e.*, the administrative, learned
10 professional and/or computer professional exemptions, as applicable. Thus Plaintiffs and the
11 putative class members were not entitled to meal or rest breaks. Plaintiffs and the putative class
12 members received all wages due and owed to them upon their separation from Kaiser. To the
13 extent Plaintiffs claim they and the putative class members failed to receive overtime pay and
14 missed meal and rest break “wages” under Labor Code § 226.7, Kaiser maintained in good faith
15 that no such wages were due, thereby precluding any award of “waiting” penalties under Labor
16 Code § 203. Finally, Kaiser distributed to Plaintiffs and all putative class members accurate and
17 itemized wage statements reflecting all compensation due and owed to them for each pay period,
18 in compliance with Labor Code § 226(a).

19 Damages and Relief. Due to the vagueness of the FAC, Kaiser is currently unable to
20 ascertain the amounts of any damages or penalties claimed on the causes of action asserted.

21 **B. Number of Parties and Posture**

22 Beauchamp and Bethancourt are the only two named plaintiffs and class representatives in
23 the operative FAC. Kaiser Foundation Hospitals is the sole named defendant. Due to the vague
24 and overbroad fashion in which Plaintiffs have defined the proposed classes, the size of the
25

26 ³ Due to an administrative error, Kaiser continued to pay plaintiff Bethancourt his salary for
27 several months after he resigned from his employment in March 2006. Bethancourt ultimately
28 was paid and accepted more than \$16,500 in overpayments, most of which he has not returned to
Kaiser.

1 proposed classes, and identities of putative class members, are to a large extent unknown and not
2 currently ascertainable by reasonable means.

3 **C. Deadlines and Limits For Joinder Of Parties/Amendment Of Pleadings.**

4 As set forth in its Demurrer and Motion to Strike, Kaiser maintains the FAC is defective on
5 multiple grounds. Kaiser anticipates that at least one or more rounds of pleadings will be required
6 before the causes of action are settled and the putative classes are ascertainable. Kaiser anticipates
7 that a final operative complaint, if any, will not be filed before July 2007, at the earliest.

8 **D. Class Discovery and Class Certification**

9 Until the nature and size of the class is ascertained and the causes of action are settled,
10 class discovery is premature and an unnecessary expenditure of resources. Kaiser believes that
11 appropriate limitations on discovery are advisable until Plaintiffs clearly identify the composition
12 of the classes they purport to represent and have filed a final pleading that Kaiser can answer.

13 At that time, Kaiser anticipates that class discovery will involve written discovery requests
14 and depositions of Beauchamp and Bethancourt, as well as depositions of current and/or former
15 Kaiser employees in the job classifications at issue. Privacy rights of employees will be an issue
16 that requires a protective order applicable to class discovery.

17 **E. Proposed Schedule For Litigation**

18 Kaiser believes that resolution of pleading deficiencies through motions or stipulations will
19 continue through at least July 2007. Class discovery should be limited during that time frame until
20 viable causes of action, if any, are determined, and Plaintiffs clarify who they seek to represent.
21 These determinations will have a material impact on discovery. Because of the volume of
22 anticipated discovery, including discovery directed toward Beauchamp and Bethancourt by Kaiser,
23 and toward current and former employees throughout California by Plaintiffs, Kaiser believes it is
24 not possible to anticipate a hearing on a class certification motion before April 2008. It is
25 premature at this time to establish a precise discovery plan, or set dates for dispositive motions,
26 other pretrial motions, and trial. In any event, it is unlikely the parties will be ready for a trial until
27 October 2008.

1 **F. Identification Of Evidentiary Issues**

2 Kaiser anticipates discussion of the following evidentiary matters, and reserves the right to
3 raise additional issues as the case proceeds:

- 4 • Protective order to limit the use and disclosure of Kaiser's confidential and proprietary
5 information,
- 6 • Protective order to limit the use and disclosure of confidential information and records
7 of Kaiser's current and former employees
- 8 • Discovery and use of the names, addresses and telephone numbers of current and
9 former employees as potential members of the putative classes.

10 **G. Procedural Posture of the Case**

11 1. Unserved Parties And Reasons For Failure to Serve

12 None. Defendant Kaiser has been served.

13 2. Unserved and/or Unfiled Cross Complaints

14 None.

15 3. Related Actions, Coordination and Consolidation

16 Kaiser is presently aware of one action pending that is related to this lawsuit: *Unite A.*
17 *Cervantes v. Kaiser Foundation Hospitals*, Alameda County Superior Court, Case No.
18 RG06254835. This is a putative class action filed by the plaintiff on behalf of all former
19 employees of Kaiser Foundation Hospitals who were discharged or resigned within the four years
20 prior to the date of filing of the original complaint, February 10, 2006. The plaintiff alleges causes
21 of action for failure to pay timely final wages in violation of Labor Code §§ 201 through 203, and
22 unfair business practices in violation of the UCL. The parties are scheduled to participate in a
23 mediation of this action on June 8, 2007. The deadline for filing a class certification motion is
24 September 10, 2007, and the motion will be heard on November 8, 2007.

25 4. Jurisdictional or Venue Issues

26 None currently anticipated.

27 ///

28 ///

1 **5. Status of Discovery**

2 The parties have not yet initiated formal discovery because of the pending Demurrer and
3 Motion to Strike Portions of Plaintiffs' Complaint. Kaiser proposes a two-phase approach to
4 discovery: (1) discovery regarding whether this action is appropriate for class certification, and
5 (2) if a class is certified, discovery on the underlying merits of the claims. Such discovery will
6 include, but will not be limited to, interrogatories, requests for documents, requests for admissions
7 and depositions. Expert discovery also will be required.

8 **6. Law and Motion Matters**

9 On May 31, 2007, the Court is scheduled to hear Kaiser's Demurrer and Motion to Strike.
10 Kaiser anticipates it may file a motion for summary judgment or summary adjudication as to one
11 or more of the causes of action.

12 **7. ADR Proceedings**

13 Kaiser is willing to participate in mediation after an appropriate measure of discovery has
14 been completed in order to make ADR meaningful.

15 **8. Severance of Issues For Trial**

16 Severance decisions are premature. Until the issues to be litigated are settled, Kaiser is
17 unable to determine whether severance of any issues is desirable.

18 **9. Calendar Conflicts**

19 Kaiser's counsel, Seth Neulight, has a trial in federal district court commencing November
20 19, 2007, which is expected to last approximately five days.

21 **H. Suggestions For Streamlining The Litigation.**

22 The parties' counsel met and conferred on May 22, 2007. Kaiser's counsel suggested that
23 class discovery will be made more efficient if the proposed class is defined with more specificity.
24 Kaiser's counsel is amenable to utilizing e-filing for this matter, if it is available.

25 Dated: May 25, 2007

THELEN REID BROWN RAYSMAN & STEINER LLP

26 By. 

27 Seth L. Neulight
Attorneys for Defendant
KAISER FOUNDATION HOSPITALS
28

PROOF OF SERVICE

Case No. RG07307245

I am employed in the County of San Francisco, California. I am over the age of 18 years and not a party to the within action. My business address is 101 Second Street, Suite 1800, San Francisco, CA 94105. On May 25, 2007, I caused the within to be served:

**DEFENDANT KAISER FOUNDATION HOSPITALS' COMPLEX CASE
MANAGEMENT CONFERENCE STATEMENT**

on the parties in this action, *via* the method specified below addressed as follows:

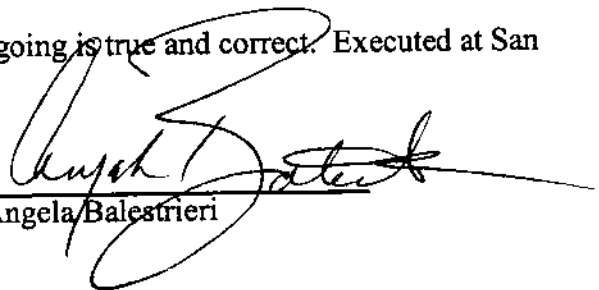
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- xx (BY MAIL) I caused each such envelope, with postage thereon fully prepaid, to be placed in the United States mail at San Francisco, California.
- (BY MESSENGER) I caused to be delivered by hand the attached documents to the person(s) named above.
- (BY FACSIMILE) I caused the attached documents to be transmitted via facsimile to the person(s) named above.

I declare under penalty of perjury that the foregoing is true and correct. Executed at San Francisco, California, on May 25, 2007.


Angela Balestrieri