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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
others similarly situated,

16 Plaintiffs,

17 vs.

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

20 Defendants.
21
22
23

Case No.: RG07307245

**DEFENDANT'S MEMORANDUM OF
POINTS AND AUTHORITIES IN SUPPORT
OF ITS MOTION TO STRIKE
PLAINTIFFS' FIRST AMENDED
COMPLAINT**

Date: May 10, 2007
Time: 2:00 p.m.
Dept.: 20
Judge: Hon. Robert Freedman

[Filed concurrently with Notice of Motion and
Motion to Strike Plaintiffs' First Amended
Complaint; Notice of Demurrer and Demurrer to
Plaintiffs' First Amended Complaint; and
Memorandum of Points and Authorities in
Support Thereof]

Reservation No.: R692694

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Each of the causes of action in the First Amended Complaint (“FAC”) of plaintiffs Josie
4 Beauchamp and Reginald Bethancourt (collectively hereinafter referred to as “Plaintiffs”) is
5 improperly pled, and therefore should be stricken under Code of Civil Procedure sections 435 and
6 436. The FAC is utterly devoid of any factual allegations supporting Plaintiffs’ claims. Instead,
7 the FAC is replete with allegations which are improper, irrelevant, and/or not in conformity with
8 the law, including, but not limited to legal conclusions, improper requests for relief, and
9 allegations which purport to exceed the applicable statutes of limitations.

10 For the foregoing reasons and the reasons set forth in defendant Kaiser Foundation
11 Hospitals’ (“Defendant”) Demurrer to the FAC, Defendant moves to strike each of Plaintiffs’ five
12 causes of action in its entirety, and moves further to strike specified paragraphs of Plaintiffs’ FAC,
13 as detailed above in the Grounds for Motion to Strike and explained further below.

14 **II. EACH OF PLAINTIFFS’ CAUSES OF ACTION IS IMPROPERLY PLED.**

15 Upon motion or at any time in the Court’s discretion, any irrelevant, false, or improper
16 matter inserted in any pleading, or any part of a pleading not drawn or filed in conformity with the
17 laws of this state, must be stricken. Code Civ. Proc. §§ 435, 436. “Irrelevant matters” for
18 purposes of Code of Civil Procedure Section 436 include: (1) allegations not essential to the claim;
19 (2) allegations neither pertinent to nor supported by an otherwise sufficient claim or defense; or
20 (3) requests for relief that are “not supported by the allegations of the complaint.” Code Civ.
21 Proc. §§ 431.10(b)(3), (c).

22 A motion to strike may be directed to “the whole [of a pleading] or any part thereof . . .”
23 Code Civ. Proc. § 435(b)(1). The grounds for the motion must appear on the face of the pleading,
24 but the motion also may be supported by any matter of which the court is required to take judicial
25 notice. Civ. Proc. Code § 437(a). For instance, a motion to strike is proper where a complaint
26 fails to state a cause of action. *Wilson v. Sharp* (1954) 42 Cal.2d 675, 677; *Barr Lumber Co. v.*
27 *Shaffer* (1951) 108 Cal.App.2d 14, 20. The motion must “quote in full the portions [of the
28 pleading] sought to be stricken except where the motion is to strike an entire paragraph, cause of

1 action, count or defense.” Cal. Rules of Ct. Rule 329. The determination of such a motion is, by
2 statute, entrusted to the trial court. Code Civ. Proc. § 436; *Colden v. Broadway State Bank* (1936)
3 11 Cal.App.2d 428, 429. Given that Plaintiffs’ allegations in the FAC are improper, irrelevant,
4 and not in conformity with the law, a motion to strike thus lies against each of Plaintiffs’ five
5 causes of action in the FAC and other specified paragraphs.

6 **A. Plaintiffs’ First Cause Of Action Should Be Stricken Because Plaintiffs**
7 **Fail To Plead A Prima Facie Case Of Nonpayment Of Overtime**
8 **Compensation**

9 Plaintiffs’ first cause of action for failure to pay overtime in violation of Labor Code
10 section 510 and Industrial Welfare Commission (“IWC”) Wage Order No. 4-2001 should be
11 stricken in its entirety pursuant to Sections 435 and 436 of the Code of Civil Procedure because, as
12 set forth in further detail in Defendant’s Demurrer, Plaintiffs fail to state a *prima facie* case for
13 nonpayment of overtime wages under the Labor Code. Judicial Council of California Jury
14 Instructions (“CACT”) No. 2702; Labor Code § 1194(a); *Hernandez v. Mendoza* (1988) 199
15 Cal.App.3d 721, 726; *Oppenheimer v. Robinson* (1957) 150 Cal.App.2d 420, 422-423. Indeed,
16 there are no facts in the FAC showing the amount of overtime allegedly worked or the amount of
17 overtime wages allegedly due. As such, Defendant’s motion to strike the first cause of action in
18 the FAC should be sustained.

19 **B. Plaintiffs’ Second Cause Of Action Should Be Stricken Because**
20 **Plaintiffs Fail To Plead A Prima Facie Case Of Failure To Provide**
21 **Meal Periods Or Rest Periods Or Nonpayment Of Penalties And**
22 **Plaintiffs Seek To Impose Liability For A Period Which Exceeds The**
23 **Applicable Statutes Of Limitations**

24 As with Plaintiffs’ first cause of action, Plaintiffs’ second cause of action for failure to
25 provide rest and meal periods or compensation in lieu thereof in violation of Labor Code sections
26 226.7 and 512 and IWC Wage Order No. 4-2001 is improperly pled because there are no facts in
27 the FAC showing the number of work days that Plaintiffs allegedly were not provided rest breaks
28 and/or meal periods, their hourly rate of pay, and the total amount of wages or penalties allegedly
owed to them. *Oppenheimer v. Moebius* (1957) 151 Cal.App.2d 818, 819-820; *Oppenheimer v.*
Robinson (1957) 150 Cal.App.2d 420, 422-423. Plaintiffs’ second cause of action also should be
stricken on the grounds that Plaintiffs seek penalties beyond the one-year statute of limitations.

1 Civ. Proc. Code § 340; *Hartwig v. Orchard Commercial, Inc.*, California Labor Commissioner
2 Case No. 12-56901RB at 7).

3 C. **Plaintiffs' Third Cause Of Action Should Be Stricken Because Plaintiffs**
4 **Fail To Plead A Prima Facie Case Of Nonpayment Of Wages Due Upon**
5 **Their Termination Or Resignation From Employment And Labor**
6 **Code Section 203 Penalties Do Not Apply To An Alleged Failure To**
7 **Pay Penalties Under Labor Code Section 226.7.**

8 As set forth in further detail in Defendant's Demurrer, Plaintiffs' third cause of action for
9 failure to timely pay wages of terminated or resigned employees in violation of Labor Code
10 Sections 201, 202 and 203 is improperly pled pursuant to Civil Code Sections 435 and 436
11 because Plaintiffs fail to plead any facts showing that that Defendant owes the Plaintiffs wages
12 under the terms of employment; and the amount of those unpaid wages. Labor Code §§ 201, 202,
13 203; CACI 2700; *Oppenheimer v. Moebius* (1957) 151 Cal.App.2d 818, 819-820; *Oppenheimer v.*
14 *Robinson* (1957) 150 Cal.App.2d 420, 422-423). In addition, Plaintiffs' third cause of action
15 should be stricken on the grounds that Labor Code Section 203 penalties do not apply to an
16 alleged failure to pay penalties under Labor Code Section 226.7. Labor Code § 203; *Road*
17 *Sprinkler Fitters Local Union No. 669 v. G & G Fire Sprinklers, Inc.* (2002) 102 Cal.App.4th 765,
18 780; *Mamika v. Barca* (1998) 68 Cal.App.4th 487, 493). Accordingly, Defendant's motion to
19 strike this cause of action should be granted.

20 D. **Plaintiffs' Fourth Cause Of Action Should Be Stricken Because**
21 **Plaintiffs Fail To Plead A Prima Facie Case For Failure To Provide**
22 **Accurate Itemized Wage Statements In Violation Of Labor Code**
23 **Section 226 And Plaintiffs Seek To Impose Liability For A Period**
24 **Which Exceeds The Applicable Statutes Of Limitations**

25 Plaintiffs' fourth cause of action for knowing and intentional failure to comply with
26 itemized employee wage statements in violation of Labor Code Section 226 should be stricken as
27 improper on the grounds that there are no facts in the FAC showing that Plaintiffs did not receive
28 accurate itemized employee wage statements in compliance with the Labor Code. Plaintiffs
simply allege in conclusory fashion that Defendant did not furnish "an accurate itemized statement
in writing showing the total hours worked by each employee" and "all applicable hourly rates in
effect during the pay period." (FAC ¶ 47.) Plaintiffs fail to provide any specifics such as when
this occurred, how often it occurred, etc. In addition, Plaintiffs' fourth cause of action should be

1 stricken because Plaintiffs seek penalties beyond the applicable statute of limitations period. Civ.
2 Proc. Code § 340. Thus, for all of these reasons, Defendant’s motion to strike the fourth cause of
3 action should be granted.

4 **E. Plaintiffs’ Fifth Cause Of Action Should Be Stricken Because Plaintiffs**
5 **Fail To Plead Facts Sufficient To Establish They Have Suffered Injury**
6 **In Fact And Plaintiffs Seek Relief To Which They Are Not Entitled.**

7 Plaintiffs’ fifth cause of action for alleged violations of Business & Professions Code
8 Section 17200 *et seq.* (commonly referred to as the Unfair Competition Law (“UCL”)) should be
9 stricken because (1) Plaintiffs fail to allege they sustained an injury in fact as required by
10 Proposition 64; and (2) it improperly seeks remedies which are not available under the UCL, *i.e.*,
11 penalties under LC 226 & 226.7. The UCL prohibits unfair competition, including “any unlawful,
12 unfair or fraudulent business act or practice.” Bus. & Prof. Code § 17200. It is well-settled that
13 “[w]hile the scope of conduct covered by the [UCL] is broad, its remedies are limited.” *Korea*
14 *Supply Co. v. Lockheed Martin Corp.* (2003) 29 Cal. 4th 1134, 1144. An action under the UCL
15 “is equitable in nature; damages cannot be recovered.” (*Id.*) Therefore, under the UCL,
16 “[p]revailing plaintiffs are generally limited to injunctive relief and restitution.” (*Id.*) Under
17 *Korea Supply*, the UCL cannot be used to seek *penalties*, because an action for penalties is not
18 *equitable* in nature. (*Id.*; see also, *Cortez v. Purolator Air Filtration Products Co., Inc.* (2000) 23
19 Cal.4th 163, 172 – (“[T]he trial court may not make an order for disgorgement of all benefits
20 defendant may have received from failing to pay overtime wages. It may only order restitution to
21 persons from whom money ... has been unfairly or unlawfully obtained”); *Cel-Tech*
22 *Communications, Inc. v. Los Angeles Cellular Telephone Co.* (1999) 20 Cal, 4th 163, 179-180-(a
23 plaintiff cannot obtain damages, “much less *treble* damages,” under the UCL).

24 First, as explained in detail in Defendant’s demurrer, Plaintiffs have failed to plead any
25 facts which would show that they suffered an “injury in fact” sufficient for standing to bring a
26 claim under the UCL. Bus. & Prof. Code §§ 17203 and 17204. Second, is undisputed that the
27 UCL cannot be used by a private litigant to enforce civil penalties. Here, Plaintiffs seek to recover
28 under the UCL for alleged meal and rest period violations and failure to provide itemized wage
statements. However, the remedy for these alleged violations is a penalty, not a wage. *See*

1 *Caliber Bodyworks, Inc. v. Superior Court* (2005) 137 Cal.App.4th 365. Since Bus. & Prof Code
2 § 17206 makes it clear that penalties for a violation of the UCL can *only* be recovered by public
3 law enforcement officials, Plaintiffs, who are private litigants, cannot maintain this cause of action
4 under the UCL as a matter of law. Thus, as a matter of law, for both of the reasons, the fifth cause
5 of action should be stricken in its entirety.

6 **III. The Court Should Strike Plaintiffs' Claims For Penalties**

7 Plaintiffs' prayer for relief for its second and fourth causes of action should be stricken to
8 the extent they purport to seek relief for "damages, but not as a civil penalty" (FAC ¶¶ 39, 48,
9 Prayer for Relief ¶¶ 2, 4) exceeding the one-year statute of limitations in Code of Civil Procedure
10 § 340(a). Plaintiffs' FAC incorporates the Classes "B" and "C" definitions found in Paragraph 13
11 which defines the proposed class asserting this cause of action by reference to those employed
12 "within four years of the filing of the original complaint." (FAC ¶ 13, 29, 45.) However, Labor
13 Code sections 226 and 226.7 are unquestionably penalty statutes, which cannot serve as predicate
14 UCL violations and which are subject to the one-year limitations period. Therefore, to the extent
15 these causes of action seek relief beyond the one-year statute of limitations under Code of Civil
16 Procedure section 340(a), they should be stricken.

17 In addition, Plaintiffs' prayer for relief for their third cause of action should be stricken to
18 the extent it is based on allegations that Plaintiffs were owed "compensation for failure to provide
19 lunch breaks and rest periods upon their separation from employment." (FAC ¶ 42, Prayer for
20 Relief ¶ 3.) Thus, Plaintiffs seek "waiting penalties" under Labor Code section 203 for Kaiser's
21 alleged failure to pay the additional hour of pay under Labor Code section 226.7 which itself
22 provides for a penalty. Section 203, however, only applies to the failure to pay "wages upon
23 termination" and does not apply to an alleged failure to pay penalties for missed meal and rest
24 periods. Therefore, Plaintiffs request for relief for their third cause of action should be stricken to
25 this extent.

26 **IV. All Legal Conclusions In The FAC Should Be Stricken As Irrelevant And Improper.**

27 Plaintiffs' allegations which consist of legal conclusions and/or opinions should be stricken
28 from the FAC as improper and irrelevant under Civil Code Sections 435 and 436. *Baldwin v.*

1 *Daniels* (1957) 154 Cal.App.2d 153, 154-155. In *Baldwin*, the court concluded that the trial court
2 had properly sustained the defendants' demurrers without leave to amend and granted their
3 motions to strike because "the second amended complaint wholly failed to state a cause of action."

4 The court further concluded:

5 "[The second amended complaint] dealt in legal conclusions and
6 failed to state facts constituting grounds for relief. For example, it
7 alleged that the judgments were obtained through 'extrinsic fraud'
8 but averred no facts constituted such fraud."

9 *Id.*

10 Here, like the complaint in *Baldwin*, the FAC "aver[s] no facts" supporting Plaintiffs'
11 causes of action, but instead "deal[s] in legal conclusions." For instance, Paragraph 21 recites
12 California Labor Code section 510(a), stating:

13 Eight hours of labor constitutes a day's work. Any work in excess of
14 eight hours in one workday and any work in excess of 40 hours in
15 any one workweek and the first eight hours worked on the seventh
16 day of work in any one workweek shall be compensated at the rate of
17 no less than one and one-half times the regular rate of pay for an
18 employee. Any work in excess of 12 hours in one day shall be
19 compensated at the rate of no less than twice the regular rate of pay
20 for an employee. In addition, any work in excess of eight hours on
21 any seventh day of a workweek shall be compensated at the rate of
22 no less than twice the regular rate of pay of an employee.

23 Plaintiffs continue this pattern by restating, often in full, various Labor or Business & Professions
24 Code Sections and/or the California Wage Orders throughout the FAC, including Paragraphs 22,
25 27, 30, 33, 38, 46 and 50.

26 Furthermore, the FAC also is replete with paragraphs in which Plaintiffs allege in
27 conclusory fashion that they were not paid overtime, did not receive meal or rest breaks, or did not
28 receive itemized wage statements. (FAC, ¶¶ 15, 20, 23-26, 27 (lines 20-21), 31-32, 33 (lines 4-8)
34-37, 38 (lines 26-1), 41-43.) These and other paragraphs in the FAC which contain only
conclusory allegations or simply restate the law are improper because they are devoid of specific
factual allegations demonstrating a cause of action against Defendant. Accordingly, Defendant's
motion to strike these paragraphs should be granted.

1 **V. Plaintiffs' Definition Of And References To The Putative Classes And The Other**
2 **Class Members Are Immaterial And Irrelevant**

3 As set forth in further detail in Defendant's Demurrer, Plaintiffs' class action allegations
4 are patently insufficient and should be dismissed in their entirety. For purposes of this motion to
5 strike, Plaintiffs must plead facts showing an ascertainable class with a well-defined community of
6 interest among class members. *See Daar v. Yellow Cab Co.*, 67 Cal.2d 695, 706 (1967).

7 Plaintiffs' allegations fail to establish either and therefore are entirely irrelevant and improper.

8 The proposed classes consist of current or former defendant Kaiser employees in
9 California "who perform the job functions of systems analyst, operations analyst, programmer
10 analyst, production support, technical support and/or audit coordinator no matter what their job
11 title is, including but not limited to, consultant specialist, systems analyst, senior programmer
12 analyst, programmer analyst, production support, and operations analyst." (FAC ¶ 13.) Plaintiffs
13 allege in conclusory fashion that the three proposed classes consist of employees performing the
14 above-described "job functions," who were subjected to alleged statutory wage and hour
15 violations, *e.g.*, they were denied overtime (Class "A"), meal and rest periods (Class "B"), and
16 accurate itemized wage statements (Class "C"). (FAC ¶ 13.)

17 Defendant maintains literally hundreds of different job classifications in numerous
18 different organizations and departments located throughout the State of California. It would be
19 extremely difficult, if not impossible, for Defendant to ascertain the identity of each and every job
20 classification which may include among its range of job duties performance of tasks which may
21 (or may not) fall within one or more of these broad "job functions." It would be equally if not
22 more difficult to identify by name every current and former employee – regardless of his or her
23 job title – who may perform one or more of these functions.

24 Moreover, Plaintiffs have not and cannot plead predominant common questions for a
25 *prima facie* community of interest. Plaintiffs allege in a conclusory fashion as described above
26 that the classes were denied overtime, rest breaks and/or meal periods, timely payment of wages
27 and/or did not receive itemized wage statement. (FAC ¶¶ 13-18.) However, in order to ascertain
28 which employees are in the class of persons who were not compensated for overtime, the Court

1 will have to conduct a mini-trial to determine whether the employee performed the job duties in
2 question, whether the employee was exempt and the hours of work worked by each employee
3 daily during the relevant time period. In other words, the court will have to determine Defendant's
4 liability with regard to each employee in order to determine who is in the class. The same type of
5 individualized inquiries would also be required to determine which employees did not receive
6 meal or rest periods and/or itemized wage statements. Accordingly, Defendant's motion to strike
7 the class action allegations, including references to class members (FAC ¶¶ 13-18, 20, 23-28, 31-
8 38, 41-44, 47, 52-55, and page 13, lines 10-11), should be granted.

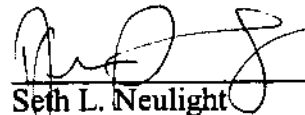
9 **VI. CONCLUSION**

10 For the foregoing reasons, Defendant respectfully request that the Court grant its motion to
11 strike.

12
13 Dated: April 5, 2007

THELEN REID BROWN RAYSMAN & STEINER LLP

14
15 By



16 Seth L. Neulight
17 Deborah R. Schwartz
18 Attorneys for Defendant
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