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10  
11 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
12 IN AND FOR THE COUNTY OF ALAMEDA  
13

14 JOSIE BEAUCHAMP and REGINALD  
15 BETHANCOURT, individually and on behalf  
of themselves, the general public, and all  
16 others similarly situated,

17 Plaintiffs,

18 vs.

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

21 Defendants.  
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Case No.: RG07307245

**DEFENDANT'S NOTICE OF MOTION  
AND 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 Memorandum of Points  
and Authorities in Support Thereof and Notice of  
Demurrer and Demurrer to Plaintiffs' First  
Amended Complaint; Defendant's Memorandum  
of Points and Authorities in Support Thereof]

**Reservation No.: R692694**

1 **TO PLAINTIFF AND TO THEIR ATTORNEYS OF RECORD:**

2 PLEASE TAKE NOTICE that on May 10, 2007, at 2:00 p.m., or as soon thereafter as  
3 counsel may be heard in Department 20 of the above entitled court, the Honorable Robert  
4 Freedman presiding, located at 1221 Oak Street, Oakland, California, defendant Kaiser  
5 Foundation Hospitals ("Defendant") will and hereby does move, pursuant to Code of Civil  
6 Procedure sections 435 and 436, for an Order striking portions of the First Amended Complaint  
7 ("FAC") of plaintiffs Josie Beauchamp and Reginald Bethancourt (collectively "Plaintiffs").

8 This Motion is made on the grounds that the specified portions of the FAC are comprised  
9 of allegations which are improper, irrelevant, and/or not in conformity with the law, including, but  
10 not limited to legal conclusions, improper requests for relief, and allegations which purport to  
11 exceed the applicable statutes of limitations. Specifically, and as described in the Motion to Strike  
12 and Memorandum of Points and Authorities, which is filed herewith, Defendant moves to strike  
13 the following:

14 **FAC CAUSES OF ACTION**

15 1. Plaintiffs' FIRST CAUSE OF ACTION in its entirety because Plaintiffs fail to  
16 plead facts sufficient to state a cause of action under Labor Code section 510 and/or Industrial  
17 Welfare Commission ("IWC") Wage Order 4-2001, Section 3;

18 2. Plaintiffs' SECOND CAUSE OF ACTION in its entirety because Plaintiffs fail to  
19 plead facts sufficient to state a cause of action under Labor Code Section 226.7 and/or IWC Wage  
20 Order 4-2001, Sections 11 and 12, and to the extent Plaintiffs seek to impose liability for time  
21 periods beyond the applicable statute of limitations.

22 3. Plaintiffs' THIRD CAUSE OF ACTION in its entirety because Plaintiffs fail to  
23 plead facts sufficient to state a cause of action under Labor Code Sections 201 or 202; and Labor  
24 Code Section 203 does not apply to a failure to provide meal or rest period penalties.

25 4. Plaintiffs' FOURTH CAUSE OF ACTION in its entirety because Plaintiffs fail to  
26 plead facts sufficient to state a cause of action under Labor Code Section 226(a), and to the extent  
27 Plaintiffs seek to impose liability for time periods beyond the applicable statute of limitations.

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1           5.       Plaintiffs' FIFTH CAUSE OF ACTION in its entirety because Plaintiffs fail to  
2 allege they sustained an injury in fact as required by Proposition 64, and to the extent Plaintiffs  
3 seek relief (penalties) which is not available to private litigants under Business and Professions  
4 Code Sections 17200, *et seq.*, the Unfair Competition Law ("UCL").

5                               **CLASS AND REPRESENTATIVE ALLEGATIONS IN THE FAC**

6           **The Entirety of Paragraph 13:**<sup>1</sup> These paragraphs are improper and irrelevant because  
7 they contain no factual allegations but rather only legal conclusions and/or opinions, and are  
8 unintelligible because they contain no allegations showing that there is an ascertainable class or a  
9 *prima facie* community of interest. (Code Civ. Proc. §§ 435, 436.)

10           **The Entirety of Paragraph 15:** The entire paragraph is improper and irrelevant because it  
11 contains no factual allegations but rather only legal conclusions and/or opinions, and is  
12 unintelligible because it contains no allegations showing that there is an ascertainable class or a  
13 *prima facie* community of interest. (Code Civ. Proc. §§ 435, 436.)

14           **The Entirety of Paragraph 16:** The entire paragraph is improper and irrelevant because it  
15 contains no factual allegations but rather only legal conclusions and/or opinions, and is  
16 unintelligible because it contains no allegations showing that there is an ascertainable class or a  
17 *prima facie* community of interest. (Code Civ. Proc. §§ 435, 436.)

18           **The Entirety of Paragraph 17:** The entire paragraph is improper and irrelevant because it  
19 contains no factual allegations but rather only legal conclusions and/or opinions, and is  
20 unintelligible because it contains no allegations showing that there is an ascertainable class or a  
21 *prima facie* community of interest. (Code Civ. Proc. §§ 435, 436.)

22           **The Entirety of Paragraph 18:** The entire paragraph is improper and irrelevant because it  
23 contains no factual allegations but rather only legal conclusions and/or opinions, and is  
24 unintelligible because it contains no allegations showing that there is an ascertainable class or a  
25 *prima facie* community of interest. (Code Civ. Proc. §§ 435, 436.)

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28       <sup>1</sup> Pursuant to California Rules of Court, Rule 329, whenever Defendant moves to strike an entire  
paragraph, the paragraph is not quoted in full but is identified by its number in the Complaint.

1 **FIRST CAUSE OF ACTION**

2 **Portions of Paragraph 19:** To the extent Paragraph 19 seeks to incorporate stricken  
3 paragraphs into the FAC, those allegations should also be stricken from Paragraph 19 for the  
4 reasons stated above. (Code Civ. Proc. §§ 435,436.)

5 **The Entirety of Paragraph. 20:** The entire paragraph is improper and irrelevant because  
6 it contains no factual allegations but rather only legal conclusions and/or opinions. (Code Civ.  
7 Proc. §§ 435, 436.)

8 **The Entirety of Paragraph 21:** The entire paragraph is improper and irrelevant because it  
9 contains no factual allegations but rather only a restatement of the law. (Code Civ. Proc. §§ 435,  
10 436.)

11 **The Entirety of Paragraph 22:** The entire paragraph is improper and irrelevant because it  
12 contains no factual allegations but rather only a restatement of the law. (Code Civ. Proc. §§ 435,  
13 436.)

14 **The Entirety of Paragraph 23:** This paragraph is improper and irrelevant to Plaintiffs'  
15 cause of action because it contains no factual allegations but rather only legal conclusions and/or  
16 opinions, and is unintelligible because it contains no allegations showing that there is an  
17 ascertainable class or a *prima facie* community of interest. (Code Civ. Proc. §§ 435, 436.)

18 **The Entirety of Paragraph 24:** This paragraph is improper and irrelevant to Plaintiffs'  
19 cause of action because it contains no factual allegations but rather only legal conclusions and/or  
20 opinions, and is unintelligible because it contains no allegations showing that there is an  
21 ascertainable class or a *prima facie* community of interest. (Code Civ. Proc. §§ 435, 436.)

22 **Paragraph 25, lines 10-12:** "Industrial Welfare Commission, Wage Order No. 4, and  
23 California Labor Code, Section 515.5, each set forth the requirements which must be satisfied in  
24 order for an employee in the computer software field could [sic] be exempt." This portion is  
25 improper and irrelevant because it contains no factual allegations but rather only legal conclusions  
26 and/or opinions, or a restatement of the law. (Code Civ. Proc. §§ 435, 436.)

27 **Paragraph 25, lines 12-13:** "Though classified as exempt, Plaintiffs, and members of  
28 Plaintiffs' Class "A," are not exempt, in that said employees hourly rate of pay, or the annualized



1 full time salary equivalent of that after January 1, 2006, does not exceed the minimum applicable  
2 hourly rate as set forth in Wage Order No. 4 and California Labor Code, Section 515.5 for each  
3 hour worked, and/or prior to January 1,2006 s [sic] and members of Class "A" were not paid on  
4 an hourly basis." This portion of the paragraph is improper and irrelevant to Plaintiffs' cause of  
5 action because it contains only legal conclusions and/or opinions and it is unintelligible because it  
6 contains no allegations showing that there is an ascertainable class or a *prima facie* community of  
7 interest. (Code Civ. Proc. §§ 435, 436.)

8 **The entirety of Paragraph 26:** This portion of the paragraph is improper and irrelevant  
9 to Plaintiffs' cause of action because it contains no factual allegations but rather only legal  
10 conclusions and/or opinions and it is unintelligible because it contains no allegations showing that  
11 there is an ascertainable class or a *prima facie* community of interest. (Code Civ. Proc. §§ 435,  
12 436.)

13 **Paragraph 27, line 21:** "...and members of Class "A"... ." This portion of the paragraph  
14 is improper and irrelevant to Plaintiffs' cause of action because it contains no allegations showing  
15 that there is an ascertainable class or a *prima facie* community of interest. (Code Civ. Proc. Code  
16 §§ 435, 436.)

17 **Paragraph 27, lines 21-25:** "Labor Code, Section 1194(a) states: 'Notwithstanding any  
18 agreement to work for a lesser wage, and employee receiving less than the legal minimum wage or  
19 the legal overtime compensation applicable to the employee is entitled to recover in a civil action  
20 the unpaid balance of the full amount of this minimum wage or overtime compensation, including  
21 interest thereon, reasonable attorney's fees and costs of suit.'" This portion is improper and  
22 irrelevant because it contains no factual allegations but rather only legal conclusions and/or  
23 opinions, or a restatement of the law. (Code Civ. Proc. §§ 435, 436.)

24 **Paragraph 28:** This paragraph is unintelligible because it contains no allegations showing  
25 that there is an ascertainable class or a *prima facie* community of interest. (Code Civ. Proc. §§  
26 435, 436.)

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1 **SECOND CAUSE OF ACTION**

2 **Portions of Paragraph 29:** To the extent Paragraph 29 seeks to incorporate stricken  
3 paragraphs into the FAC, those allegations should also be stricken from Paragraph 29 for the  
4 reasons stated above. (Code Civ. Proc. §§ 435,436.)

5 **The entirety of Paragraph 30:** This paragraph is improper and irrelevant because it  
6 contains no factual allegations but rather only a restatement of the law. (Code Civ. Proc. §§ 435,  
7 436.)

8 **The entirety of Paragraph 31:** This paragraph is improper and irrelevant to Plaintiffs'  
9 cause of action because it contains no factual allegations but rather only legal conclusions and/or  
10 opinions and is unintelligible because it contains no allegations showing that there is an  
11 ascertainable class or a *prima facie* community of interest. (Code Civ. Proc. §§ 435, 436.)

12 **The entirety of Paragraph 32:** This paragraph is improper and irrelevant to Plaintiffs'  
13 cause of action because it contains no factual allegations but rather only legal conclusions and/or  
14 opinions and is unintelligible because it contains no allegations showing that there is an  
15 ascertainable class or a *prima facie* community of interest. (Code Civ. Proc. §§ 435, 436.)

16 **Paragraph 33, lines 2-3:** "Industrial Welfare Commission, Wage Order No. 4, and  
17 California Labor Code, Section 515.5, each set forth the requirements which must be satisfied in  
18 order for an employee in the computer software field to be exempt." This portion is improper and  
19 irrelevant because it contains no factual allegations but rather only legal conclusions and/or  
20 opinions, or a restatement of the law. (Code Civ. Proc. §§ 435, 436.)

21 **Paragraph 33, lines 4 and 8:** Though classified as exempt, Plaintiffs, and members of  
22 Class "B", were not exempt, in that said employees hourly rate of pay or full time equivalent of  
23 that after January 1, 2006, does not exceed the minimum applicable hourly rate as set forth in  
24 Wage Order No. 4 and California Labor Code, Section 515.5 for each hour worked, and/or prior to  
25 January 1,2006, Plaintiffs and members of Class "B" were not paid on an hourly basis. This  
26 portion of the paragraph is improper and irrelevant to Plaintiffs' cause of action because it  
27 contains only legal conclusions and/or opinions and it is unintelligible because it contains no  
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1 allegations showing that there is an ascertainable class or a *prima facie* community of interest.  
2 (Code Civ. Proc. §§ 435, 436.)

3 **Paragraph 34, line 9:** "...and each member of Class "B"... ." This portion of the  
4 paragraph is improper and irrelevant to Plaintiffs' cause of action and it contains no factual  
5 allegations but rather only legal conclusions and/or opinions and it consists of entirely extraneous  
6 matter and is unintelligible because it contains no allegations showing that there is an ascertainable  
7 class or a *prima facie* community of interest. (Code Civ. Proc. §§ 435, 436.)

8 **Paragraph 35, lines 12-13:** "...and members of Class "B"... ." This portion of the  
9 paragraph is improper and irrelevant because it contains no allegations showing that there is an  
10 ascertainable class or a *prima facie* community of interest. (Code Civ. Proc. §§ 435, 436.)

11 **The entirety of Paragraph 36:** This paragraph is improper and irrelevant to Plaintiffs'  
12 cause of action because it contains no factual allegations but rather only legal conclusions and/or  
13 opinions and is unintelligible because it contains no allegations showing that there is an  
14 ascertainable class or a *prima facie* community of interest. (Code Civ. Proc. §§ 435, 436.)

15 **Paragraph 37, lines 19 and 21:** "...and members of Class "B"... ." This portion of the  
16 paragraph is improper and irrelevant to Plaintiffs' cause of action because it contains no  
17 allegations showing that there is an ascertainable class or a *prima facie* community of interest.  
18 (Code Civ. Proc. §§ 435, 436.)

19 **The entirety of Paragraph 38:** This paragraph is improper and irrelevant to Plaintiffs'  
20 cause of action because it contains no factual allegations but rather only legal conclusions and/or  
21 opinions and is unintelligible because it contains no allegations showing that there is an  
22 ascertainable class or a *prima facie* community of interest. (Code Civ. Proc. §§ 435, 436.)

23 **Portions of Paragraph 39:** To the extent Plaintiffs mischaracterize the one additional  
24 hour of pay in Labor Code section 226.7(b) as "damages, but not as a civil penalty," this paragraph  
25 is improper and irrelevant, because, as a matter of law, the payment for missed meal or rest  
26 periods mandated by Labor Code Section 226.7 is considered a "penalty." (Code Civ. Proc. §§  
27 435, 436.) Therefore, this paragraph is improper and irrelevant to Plaintiffs' cause of action to the  
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1 extent it purports to seek relief for damages exceeding the one-year statute of limitations in Code  
2 of Civil Procedure § 340(a). (Code Civ. Proc. §§ 435, 436.)

### 3 THIRD CAUSE OF ACTION

4 **Portions of Paragraph 40:** To the extent Paragraph 40 seeks to incorporate stricken  
5 paragraphs into the FAC, those allegations should also be stricken from Paragraph 40 for the  
6 reasons stated above. (Code Civ. Proc. §§ 435,436.)

7 **The entirety of Paragraph 41:** This paragraph is improper and irrelevant to Plaintiffs'  
8 cause of action and it contains no factual allegations but rather only legal conclusions and/or  
9 opinions and it consists of entirely extraneous matter and is unintelligible because it contains no  
10 allegations showing that there is an ascertainable class or a *prima facie* community of interest.  
11 (Code Civ. Proc. §§ 435, 436.)

12 **The entirety of Paragraph 42:** This paragraph is improper and irrelevant to Plaintiffs'  
13 cause of action and it contains no factual allegations but rather only legal conclusions and/or  
14 opinions and it consists of entirely extraneous matter and is unintelligible because it contains no  
15 allegations showing that there is an ascertainable class or a *prima facie* community of interest.  
16 (Code Civ. Proc. §§ 435, 436.)

17 **The entirety of Paragraph 43:** This paragraph is improper and irrelevant to Plaintiffs'  
18 cause of action and it contains no factual allegations but rather only legal conclusions and/or  
19 opinions and it consists of entirely extraneous matter and is unintelligible because it contains no  
20 allegations showing that there is an ascertainable class or a *prima facie* community of interest.  
21 Furthermore, as a matter of law Labor Code Section 203 does not apply to a failure to provide  
22 meal or rest period penalties. (Code Civ. Proc. §§ 435, 436.)

23 **The Entirety of Paragraph 44:** This paragraph is improper and irrelevant to Plaintiffs'  
24 cause of action and it contains no factual allegations but rather only legal conclusions and/or  
25 opinions and it consists of entirely extraneous matter and is unintelligible because it contains no  
26 allegations showing that there is an ascertainable class or a *prima facie* community of interest.  
27 Furthermore, as a matter of law, this paragraph is improper and irrelevant to Plaintiffs' cause of  
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1 action because Labor Code Section 203 does not apply to a failure to provide meal or rest period  
2 penalties. (Code Civ. Proc. §§ 435, 436.)

3 **FOURTH CAUSE OF ACTION**

4 **Portions of Paragraph 45:** To the extent Paragraph 45 seeks to incorporate stricken  
5 paragraphs into the FAC, those allegations should also be stricken from Paragraph 45 for the  
6 reasons stated above. (Code Civ. Proc. §§ 435,436.)

7 **The Entirety of Paragraph 46:** The entire paragraph is improper and irrelevant because it  
8 contains only a restatement of the law. (Code Civ. Proc. §§ 435, 436.)

9 **The Entirety of Paragraph 47:** This paragraph is improper and irrelevant to Plaintiffs'  
10 cause of action and it contains only legal conclusions and/or opinions and is unintelligible because  
11 it contains no allegations showing that there is an ascertainable class or a *prima facie* community  
12 of interest. (Code Civ. Proc. §§ 435, 436.)

13 **The Entirety of Paragraph 48:** This entire paragraph is improper and irrelevant because,  
14 as a matter of law, Plaintiff cannot seek “damages, but not as a civil penalty” for alleged violations  
15 of Labor Code section 226(e) On the contrary, as a matter of law, Labor Code section 226(e) is a  
16 “penalty” provision. (Code Civ. Proc. §§ 435, 436.) Therefore, this paragraph is improper and  
17 irrelevant to the extent Plaintiffs’ cause of action to the extent it purports to seek relief for  
18 damages exceeding the one-year statute of limitations in Code of Civil Procedure § 340(a). (Code  
19 Civ. Proc. §§ 435, 436.)

20 **FIFTH CAUSE OF ACTION**

21 **Portions of Paragraph 49:** To the extent Paragraph 49 seeks to incorporate stricken  
22 paragraphs into the FAC, those allegations should also be stricken from Paragraph 49 for the  
23 reasons stated above. (Code Civ. Proc. §§ 435,436.)

24 **The Entirety of Paragraph 50:** The entire paragraph is improper and irrelevant because it  
25 contains only a restatement of the law. (Code Civ. Proc. §§ 435, 436.)

26 **The Entirety of Paragraph 51:** The entire paragraph is improper and irrelevant because it  
27 contains no factual allegations but rather only legal conclusions and/or opinions, or a restatement  
28 of the law. (Code Civ. Proc. §§ 435, 436.)




1           **Portions of Paragraph 5:** Subparagraph (a) of this paragraph is irrelevant and improper  
2 because they seek the recovery of penalties which are not available to private litigants pursuant to  
3 the UCL. (Code Civ. Proc. §§ 435, 436.)

4           This Motion to Strike is based on this Notice of Motion and Motion, the concurrently filed  
5 Memorandum of Points and Authorities in Support Thereof, Defendant's Notice of Demurrer and  
6 Demurrer and Supporting Memorandum of Points and Authorities filed concurrently herewith, the  
7 papers and pleadings on file herein, the oral arguments of counsel, and such other evidence as may  
8 be presented at the hearing on this matter.

9  
10 Dated: April 5, 2007

THELEN REID BROWN RAYSMAN & STEINER LLP

11  
12 By

  
\_\_\_\_\_  
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