

MAY 19 2009

CLERK OF THE SUPERIOR COURT

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22 SUPERIOR COURT OF THE STATE OF CALIFORNIA

23 FOR THE COUNTY OF ALAMEDA

24 TERESA TATE AND AUDREY LIGHTER, on)
25 behalf of themselves individually and all others)
26 similarly situated,)

27 Plaintiffs,)

28 vs.)

29 KAISER PERMANENTE, KAISER)
30 FOUNDATION HEALTH PLAN, INC., and)
31 DOES 1 through 100, INCLUSIVE)

32 Defendants.)

No. RG07318416

Unlimited Civil Case

The Amount Demanded Exceeds \$10,000

AMENDED CLASS ACTION COMPLAINT

BY FAX

1. This class action lawsuit arises from an ongoing wrongful conduct by Defendants Kaiser Permanente, Kaiser Foundation Health Plan, Inc., (hereinafter "Kaiser Permanente" and "Defendants"), to deny their employees the overtime benefits due under California's wage and hour laws.

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30 FOUNDATION HEALTH PLAN, INC., and)
31 DOES 1 through 100, INCLUSIVE)
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35 1. This class action lawsuit arises from an ongoing wrongful conduct by Defendants
36 Kaiser Permanente, Kaiser Foundation Health Plan, Inc., (hereinafter "Kaiser Permanente" and
37 "Defendants"), to deny their employees the overtime benefits due under California's wage and
38 hour laws.

1 2. Defendants Kaiser Permanente and Kaiser Foundation Health Plan, Inc., are
2 corporations doing business within the State of California with their principal places of business
3 and headquarters in California. Defendants are incorporated in the State of California and their
4 headquarters are physically located in Oakland, California.

5 3. This action seeks relief for unremedied violations of California law, including, inter
6 alia; damages, and/or restitution, as appropriate, to members of the Class, and to victims of the
7 practices at issue, who have not been paid the appropriate rate of pay for overtime worked, who
8 have not received overtime pay for overtime worked, who have not received compensation for
9 labor provided without rest or meal period breaks, and who have failed to receive accurate wage
10 statements.

11 4. The names and capacities of defendants sued herein under California Code of Civil
12 Procedure §474 as Does 1 through 100, inclusive, are presently not known to Plaintiff, who
13 therefore sues these defendants by such fictitious names. Plaintiffs will seek to amend this
14 Complaint and include these Doe defendants' names and capacities when they are ascertained.
15 Each of the fictitiously named defendants is responsible in some manner for the conduct alleged
16 herein and for the injuries suffered by plaintiffs, the members of the Class and the general public.

17 5. Plaintiffs Teresa Tate and Audrey Lighter, on behalf of themselves individually and
18 on behalf of all others similarly situated hereby allege that Defendants misclassify recruiters as
19 exempt, in violation of California's wage and hour laws, and thus routinely deny employees like
20 Plaintiffs and the Class their statutorily-mandated rights.

21 6. Ms. Tate, and Ms. Lighter ("Plaintiffs") sue on behalf of themselves and other
22 similarly situated "recruiters" who worked for the Defendants. This action claims that Defendants
23 have violated the wage and hour provisions of California wage and hour laws by depriving
24 Plaintiffs, as well as others similarly situated to the named Plaintiffs, of their lawful overtime
25 wages.

26 7. For at least four years prior to the filing of this complaint, Defendants have
27 willfully committed widespread violations of California labor laws.

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1 8. Plaintiffs and the California Class have suffered common financial harm as their
2 employer, Kaiser Permanente, has violated and continues to violate (i) multiple provisions of
3 California's wage and hour laws, including California Labor Code §§ 226, 510, and 1174; (ii) the
4 Unfair Competition Law codified in California Business and Professions Code §§ 17200, *et seq.*;
5 and (iii) Industrial Welfare Commission Wage Order 4-2001 incorporated into the California Code
6 of Regulation.

7 9. Plaintiff Teresa Tate was employed as a recruiter by Kaiser Permanente from
8 October 10, 2005 until her termination on February 28, 2006. Ms. Tate was required to work
9 overtime on a routine, daily and weekly basis.

10 10. Plaintiff Audrey Lighter is employed as a recruiter by Kaiser Permanente from
11 1997 to the present. Ms. Lighter was required to work overtime on a routine, daily and weekly
12 basis.

13 11. Recruiter duties and tasks performed by Tate and Lighter, respectively, and all
14 others similarly situated, were such that Plaintiffs Tate and Lighter and class members were non-
15 exempt employees and entitled to overtime compensation. As a result, Defendants paid Plaintiff
16 Tate and Plaintiff Lighter wages significantly less than required by law. In addition, Defendants
17 failed to provide Tate and Lighter, and all other similarly situated Kaiser Permanente California
18 employees, with off-duty rest and meal period breaks, and failed to provide Tate, Lighter, and all
19 other similarly situated California employees with accurate statements of wages.

20 12. Kaiser Permanente is, and at all relevant times was, an employer under applicable
21 California Industrial Welfare Commission Orders. The violations as alleged herein arose in
22 Alameda County and other California counties.

23 13. This action seeks relief on behalf of a class of persons employed in California by
24 Kaiser Permanente as a recruiter, for the four year period preceding the filing of this Complaint to
25 the present (the Class).

26 14. The class is sufficiently numerous, since it is estimated to include several hundred
27 or more Kaiser Permanente employees geographically dispersed, the joinder of whom in one
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1 action is impracticable, and the disposition of whose claims in a class action will provide
2 substantial benefits to both the parties and the Court.

3 15. There is a well-defined community of interest in the questions of law and fact
4 involved affecting the parties to be represented. The questions of law and fact common to the
5 Class predominate over questions that may affect individual class members, including but not
6 limited to the following:

7 (a) Whether Kaiser Permanente implemented and engaged in a systematic
8 practice whereby it unlawfully failed to pay overtime and failed to pay employees for
9 either meal breaks and/or rest breaks worked as required by law;

10 (b) Whether Kaiser Permanente implemented and engaged in a systematic
11 practice whereby it failed to provide accurate wage statements to California employees;

12 (c) Whether the systematic acts and practices of Kaiser Permanente as alleged
13 herein violated, inter alia, applicable provisions of the California Labor Code, including
14 but not limited to, sections 226, 226.7, 512, 1174, 1194 and 2698, and applicable Industrial
15 Welfare Commission Orders, and California Business & Professions Code § 17200, et seq.

16 16. Because Plaintiffs worked overtime on a daily and weekly basis, were routinely
17 required to work through both meal and rest breaks on a daily basis, for which Plaintiffs were not
18 properly compensated, and failed to receive timely and accurate wage statements, Plaintiffs are
19 asserting claims that are typical of the claims of the Class.

20 17. Plaintiffs will fairly and adequately represent and protect the interests of the Class
21 in that they have no disabling conflict of interest that would be antagonistic to those of the other
22 members of the Class. Plaintiffs have retained counsel who are competent and experienced in the
23 prosecution of class action wage and hour violations.

24 18. Because Plaintiffs and the members of the Class have all similarly suffered
25 irreparable harm and damages as a result of Kaiser Permanente's unlawful and wrongful conduct,
26 including but not limited to Kaiser Permanente's systematic failure to pay overtime wages,
27 systematic failure to provide for rest and meal period breaks, and systematic failure to pay for
28 meal and break periods worked class treatment is especially appropriate. Because the hours

1 worked by Kaiser Permanente employees and class members follow common patterns, all of
2 which are reflected in the records possessed by Kaiser Permanente, this action will provide
3 substantial benefits to both. Absent this action, Kaiser Permanente's unlawful conduct will
4 continue unremedied and uncorrected.

5 19. During all relevant periods, both the California Labor Code and the pertinent wage
6 orders required that all work performed by an employee in excess of eight hours in any workday,
7 on the seventh day of work in any workweek, or in excess of forty hours in any workweek be
8 compensated at one and one-half times the employee's regular rate of pay. Defendants failed to
9 compensate Plaintiffs and class members for overtime hours they worked in excess of eight hours
10 in any workday, or in excess of forty hours in any workweek, at one and one-half times a rate of
11 pay, based upon their regular rate of pay. As a result, Defendants failed to pay Plaintiffs and class
12 members earned overtime wages and failed to provide Plaintiff and Class members itemized
13 statements as required by California Labor Code Section 226. Plaintiffs and class members are
14 entitled to recover their unpaid overtime compensation.

15 20. During all relevant periods, both the California Labor Code and the pertinent wage
16 orders required that Plaintiffs and class members be compensated for the meal periods and break
17 periods for which Defendants required Plaintiffs and class members to work. Defendants failed to
18 compensate Plaintiffs and class members for meal periods and break periods worked as required
19 by law. Plaintiffs and class members are entitled to recover their unpaid compensation and
20 penalties arising therefrom.

21 **FIRST CAUSE OF ACTION**

22 **UNFAIR COMPETITION**
23 **(BUS. & PROF. CODE §§ 17200-17208)**

24 21. Plaintiffs repeat and re-allege each and every allegation contained in the foregoing
25 paragraphs as if fully set forth herein.

26 22. Defendants' failure to pay overtime and provide rest and meal periods, as alleged
27 above, constitutes unlawful and/or unfair and/or fraudulent activity prohibited by California
28 Business and Professions Code § 17200.

1 23. As a result of its unlawful and/or unfair and/or fraudulent acts, Kaiser Permanente
2 has reaped and continues to reap unfair benefits and illegal profits at the expense of Plaintiffs and
3 California class members. Defendants should be enjoined from this activity and made to disgorge
4 these ill-gotten gains and restore to Plaintiffs and California class members the wrongfully
5 withheld overtime wages, to provide California class members restitution for the withholding, and
6 for delay in receiving the overtime wages and compensation due, pursuant to Business and
7 Professions Code § 17203.

8 24. Accordingly, Plaintiffs and the California Class respectfully request that the Court
9 award judgment and relief in their favor to provide restitution and other types of equitable relief.

10 **SECOND CAUSE OF ACTION**

11 **(Labor Code Private Attorneys General Act of 2004: Labor Code Sec. 2698)**

12 25. Plaintiffs repeat and re-allege each and every allegation contained in the foregoing
13 paragraphs as if fully set forth herein.

14 26. The policies, acts and practices heretofore described were and are an unlawful
15 business act or practice because Kaiser Permanente’s failure to pay overtime wages, failure to
16 provide rest and meal period breaks, failure to pay wages and compensation for work without rest
17 and meal period breaks, and failure to provide accurate wage statements to Plaintiffs and class
18 members violates applicable Labor Code sections and gives rise to statutory penalties as a result of
19 such conduct, including but not limited to penalties as provided by Labor Code §§ 226.3, 558, and
20 2699.5, and applicable Industrial Welfare Commission Wage Orders. Plaintiffs, as aggrieved
21 employees, hereby seeks recovery of civil penalties as prescribed by the Labor Code Private
22 Attorney General Act of 2004 on behalf of themselves and other current and former employees of
23 Kaiser Permanente against whom one or more of the violations of the Labor Code was committed.

24 27. On April 2, 2007, Plaintiffs gave written notice by certified mail to the California
25 Labor and Workforce Development Agency and Kaiser Permanente of labor code violations as
26 prescribed by California Labor Code section 2699.3. The LWDA thereafter informed Plaintiffs
27 and Kaiser Permanente of its intention not investigate the allegations set forth in Plaintiffs’ April
28 2, 2007, letter. Plaintiffs did not receive written notification by the LWDA of an intention to

1 investigate the allegations set forth in Plaintiffs' April 2, 2007, letter or written notice of cure by
2 Kaiser Permanente as prescribed by California Labor Code section 2699.3.

3 **PRAYER FOR RELIEF**

4 WHEREFORE Plaintiffs pray for judgment and relief as follows:

- 5 1. An order certifying that the action may be maintained as a class action;
- 6 2. Restitution of unpaid wages, pursuant to Business & Professions Code § 17203,
7 based on violations of Labor Code §§ 226.7, 512, and 1194 (a);
- 8 3. For recovery of penalties as provided by the Labor Code Private Attorneys General
9 Act of 2004;
- 10 4. An order enjoining Kaiser Permanente from pursuing the policies, acts, and
11 practices complained of herein;
- 12 5. Reasonable attorneys' fees pursuant to California Code of Civil Procedure §
13 1021.5, a Common Fund recovery;
- 14 6. Costs of this suit;
- 15 7. Pre- and post-judgment interest; and
- 16 8. Such other and further relief as the Court deems just and proper.

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19 DATE: May 13, 2009

QUALLS & WORKMAN, L.L.P.

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21 By: 

22 Daniel H. Qualls
23 Attorneys for Plaintiffs
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PROOF OF SERVICE

I, Tammy M. Mazzullo, hereby declare:

I am employed in the City and County of San Francisco, California in the office of a member of the bar of this court at whose direction the following service was made. I am over the age of eighteen years and not a party to the within action. My business address is Qualls & Workman, L.L.P., 244 California Street, Suite 410, San Francisco, California. On May 13, 2009, I served the **AMENDED CLASS ACTION COMPLAINT** on the interested parties in this action via mail by placing a true copy thereof, on the above date, enclosed in a sealed envelope following the ordinary business practice of Qualls & Workman, for collection and mailing in the United States mail addressed as set forth below:

Thomas R. Kaufman, Esq.
SEYFARTH SHAW, LLP
2029 Century Park East, Suite 3300
Los Angeles, CA 90067

I am personally and readily familiar with the business practice of Qualls & Workman for collection and processing of documents for mailing with the U.S. Postal Service, pursuant to which mail placed for collection at designated stations in the ordinary course of business is deposited the same day, proper postage prepaid, with the U.S. Postal Service.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on May 13, 2009, in San Francisco, California.



Tammy M. Mazzullo