

ENDORSED
FILED
ALAMEDA COUNTY

FEB 28 2020

CLERK OF THE SUPERIOR COURT
By DEBRA FURTADO
Deputy

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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF ALAMEDA**

10 **Jamari Cooper**, on behalf of himself and all
11 others similarly situated,

12 Plaintiffs,

13 vs.

14 **Kaiser Foundation Health Plan, Inc.**, a Califor-
15 nia corporation; **Kaiser Foundation Hospitals**, a
California corporation; and **Does 1-10** inclusive,

16 Defendants.
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CASE NO. **RG20056594**

[CLASS ACTION]

CLASS ACTION COMPLAINT FOR:

- 1) Failure to Provide and Maintain Accurate Records (Lab. Code §§ 226, 432, 1174, and 1198.5);
- 2) PAGA Penalties (Cal. Labor Code § 2699, *et seq.*); and
- 3) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unlawful Business Practices).

1 Plaintiff Jamari Cooper, on behalf of himself and all other similarly situated employees, by
2 and through his counsel of record, alleges as follows:

3 **INTRODUCTION**

4 1. The California legislature has determined that it is a matter of public policy to allow
5 employees access critical information relating to their employment.

6 2. California employees have a statutory right to review their personnel files, payroll rec-
7 ords, and documents signed in the course of employment. Reviewing paystubs allows employees to
8 determine whether they were paid incorrectly or deprived of earned wages; reviewing personnel rec-
9 ords allows employees and their agents, including attorneys, to evaluate whether an employment ac-
10 tion was discriminatory or retaliatory; and reviewing documents signed in the course of employment
11 allows employees to learn what terms bind them with respect to their employer, a particularly im-
12 portant protection in light of widespread use of forced arbitration agreements.

13 3. Defendants Kaiser Foundation Health Plan, Inc. and Kaiser Foundation Hospitals (col-
14 lectively “Kaiser” or “Defendants”) employ tens of thousands of employees in California. These em-
15 ployees are collectively and as a matter of common and uniform practice denied their right to inspect
16 their payroll records, personnel files, and documents signed in the course of their employment. Kaiser
17 illegally prohibits an employee’s agent (such as an attorney, union representative, or other representa-
18 tive) from obtaining employee records on an employee’s behalf. Kaiser also illegally requires employ-
19 ees to fill out a specific form, in person, to inspect their records.

20 4. Accordingly, Plaintiff brings this action as a Class and PAGA representative action
21 pursuant to Labor Code § 2699, *et seq.*, on behalf of all individuals employed by Defendant in Cali-
22 fornia who worked one or more shifts from February 26, 2019 through the present.

23 **PARTIES**

24 5. At all times relevant to this Complaint, Jamari Cooper was a resident of Solano
25 County, California. Mr. Cooper was employed by Defendants from April 12, 2016 until January 9,
26 2020.

27 6. Defendant Kaiser Foundation Health Plan, Inc. (“Kaiser Health”) is a California corpo-
28 ration licensed to do business in the State of California. Kaiser Health’s primary business location is

1 One Kaiser Plaza, Oakland, CA 94612 in the County of Alameda.

2 7. Defendant Kaiser Foundation Hospitals (“Kaiser Hospitals”) is a California corporation
3 licensed to do business in the State of California. Kaiser Hospitals’ primary business location is One
4 Kaiser Plaza, Oakland, CA 94612 in the County of Alameda.

5 8. The true names and capacities of the defendants named herein as Does 1 through 10,
6 inclusive (“Doe Defendants,” collectively with Kaiser Health and Kaiser Hospitals, the “Defendants”
7 or “Kaiser”), are unknown to Plaintiff at this time. Accordingly, Plaintiff brings this suit against them
8 by fictitious names pursuant to California Code of Civil Procedure § 474. Plaintiff believes that each
9 of the Doe Defendants is a California resident and/or does substantial business in the State of Califor-
10 nia. At all relevant times, Does 1 through 10 were acting within the course and scope of their employ-
11 ment and agency with each other. Plaintiff is informed and believes that each Doe Defendant is re-
12 sponsible for the injuries and damages alleged herein. Plaintiff will amend this complaint to reflect
13 Does 1 through 10’s true names and capacities when they have been determined.

14 9. Except as otherwise noted herein, Defendants participated in the acts alleged herein
15 and/or were the agents, servants, employees, or representatives of the other Defendants. At all times
16 relevant to this Complaint, Defendants were acting within the course, scope, and authority of their
17 agency and employment such that the acts of one Defendant are legally attributable to the other De-
18 fendants. Defendants, in all respects, acted as employers and/or joint employers of Plaintiff in that
19 each of them exercised control over the wages, hours, and/or working conditions employed by De-
20 fendants.

21 **VENUE AND JURISDICTION**

22 10. This Court has subject matter jurisdiction over any and all causes of action asserted
23 herein pursuant to Article VI, § 4 of the California Constitution and California Code of Civil Proce-
24 dure §§ 88 and 410.10 by virtue of the fact that this is a civil action in which the matter in contro-
25 versy, not including attorneys’ fees, interests, and costs, exceeds \$25,000, and because each cause of
26 action asserted arises under the laws of the State of California or is subject to adjudication in the
27 courts of the State of California.

28 11. Venue as to each Defendant is proper in this Superior Court pursuant to California

1 Code of Civil Procedure § 395. Venue is proper in this Court because the conduct alleged herein took
2 place in Alameda County and Defendants' principal places of business are located in Alameda
3 County. No federal question is at issue; Plaintiff relies on California statutes and law, including the
4 California Labor Code, IWC Wage Orders, California Code of Civil Procedure, and California Busi-
5 ness & Professions Code.

6 **CLASS ACTION ALLEGATIONS**

7 12. As a matter of uniform and systemic policy, Defendants have refused their employees
8 the right to inspect their payroll records, personnel files, and documents signed in the course of their
9 employment in accordance with applicable law.

10 13. Accordingly, Plaintiff brings this action on behalf of himself and as a class action on
11 behalf of the following defined Class:

12 All persons who worked at least one shift for Defendants in California within
13 four years prior to the filing of this complaint until the date of trial ("Class").

14 14. Common methods of proof exist for determining these issues on a class-wide basis, in-
15 cluding but not limited to, Defendants' written policies, Defendants' internal records regarding requests
16 for employment files and employer-mandated forms, Defendants' payroll and payment records; and
17 testimony from Plaintiff, certain Class Members, and Defendants' corporate designees. There is a well-
18 defined community of interest among the Class, and Class Members are readily ascertainable. The pro-
19 posed Class satisfies numerosity, typicality, adequacy, and superiority requirements as set forth below:

20 15. **Numerosity**: The Class Members are so numerous that joinder of all members would be
21 unfeasible and impractical. The membership of the entire class is unknown to Plaintiff at this time;
22 however, the class is estimated to be greater than fifty thousand (50,000) individuals and the identity of
23 Class Members is readily ascertainable by inspecting of Defendants' employment records.

24 16. **Typicality**: Plaintiff's claims are typical of all Class Members. Plaintiff, like all other
25 Class Members, was subjected to the policies and practices set forth above.

26 17. **Commonality**: As to the class claims, substantially similar questions of law and fact
27 predominate over questions affecting individual Class Members. These common questions include, but
28 are not limited to, the following:

- a. Whether Defendants failed to provide Plaintiff and the Class with complete and accurate wage statements and payroll records as required by California Labor Code sections 226 and 1174;
- b. Whether Defendants failed to provide Plaintiff and the Class with all signed instruments relating to their employee as required by California Labor Code section 432;
- c. Whether Defendants failed to provide Plaintiff and the Class with a copy of their personnel records as required by California Labor Code section 1198.5;
- d. Whether Defendants have policies and practices designed to prevent Plaintiff and the Class from obtaining the aforementioned records in violation of the Labor Code sections 226, 432, 1174, and 1198.5;
- e. Whether Plaintiff and Class Members sustained damages as a result of any of the aforementioned violations, and, if so, the proper measure of those damages, including interest, penalties, costs, attorneys' fees, and equitable relief;
- f. Whether Defendants violated the Unfair Competition Law, Bus. & Prof. Code § 17200, *et seq.*, by violating the above provisions of law; and
- g. Whether Defendants violated the Unfair Competition Law, Bus. & Prof. Code § 17200, *et seq.*, by the aforementioned policies and practices.

18. **Adequacy**: Plaintiff is qualified to, and will, fairly and adequately protect the interests of each Class Member with whom he has a well-defined community of interest and typicality of claims. There are no material conflicts between the claims of the representative Plaintiff and Class Members that would make class certification inappropriate. Plaintiff understands his obligation to inform the Court of any relationship, conflicts, or differences with any Class Member. Plaintiff will fairly and adequately represent and protect the interests of the Class and have retained as counsel trial lawyers

1 who are competent and skilled in complex and class action litigation. Plaintiff's attorneys, the proposed
2 class counsel, are versed in the rules governing class action discovery, certification, and settlement, and
3 will vigorously assert the claims of all Class Members. Plaintiff incurred and will continue to incur
4 costs and attorneys' fees that have been, are, and will be necessarily expended for the prosecution of
5 this action for the substantial benefit of each Class Member.

6 19. **Superiority**: Questions of law and fact common to the Class predominate over the ques-
7 tions affecting only individual members of the Class and a class action is superior to other available
8 means for the fair and efficient adjudication of this dispute. The damages suffered by individual Class
9 Members, while substantial, are small compared to the burden and expense of individual prosecution of
10 the complex and expensive litigation necessary to address Defendants' conduct. Even if Class Members
11 themselves could afford individual litigation, the court system would be overwhelmed by individual
12 lawsuits if all Class Members sought redress. Individualized litigation increases the delay and expense
13 to all parties and to the court system resulting from the complex legal and factual issues of this case.
14 Individualized litigation also presents a potential for inconsistency or contradictory judgments. By con-
15 trast, the class action device presents far fewer management difficulties; it allows the hearing of claims
16 which might otherwise go unaddressed because of the relative expense of bringing individual lawsuits,
17 and it provides the benefits of single adjudication, economies of scale, and comprehensive supervision
18 by a single court.

19 20. **Public Policy Considerations**: Employers in the State of California routinely violate
20 employment and labor laws. Current and former employees are often afraid to assert their rights due to
21 the power wielded by employers over their livelihoods. Class actions provide the Class Members who
22 are not named in the complaint with a type of anonymity that allows for the vindication of their rights
23 while simultaneously protecting their privacy and providing for a method of adjudication that allows
24 individuals to assert claims that could not be brought individually due to cost and other considerations.
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1 **CAUSES OF ACTION**

2 **FIRST CAUSE OF ACTION**

3 **Violation of California Labor Code §§ 226, 432, 1174, and 1198.5**

4 **Failure to Maintain Accurate Payroll Records**

5 **(Against Defendants)**

6 21. Plaintiff incorporates by reference every allegation set forth above.

7 22. Labor Code section 226(a) provides that every employer shall furnish each of his em-
8 ployees an accurate and complete itemized wage statement in writing, including, but not limited to,
9 the name and address of the legal entity that is the employer, the inclusive dates of the pay period, to-
10 tal hours worked, and all applicable rates of pay. Labor Code section 226(f) and (h) also establishes
11 that if an employer fails to permit a current or former employee to inspect or copy records required to
12 be kept under that section within 21 days of a request to inspect, that employer is liable to the em-
13 ployee for a penalty of \$750, and the employee is entitled to bring an action for injunctive relief to en-
14 force compliance and shall be entitled to an award of costs and reasonable attorney's fees for that ac-
15 tion. *Id.*

16 23. Labor Code section 1198.5 provides that every employee has a right to receive a copy
17 of their personnel records. It further mandates that the employer "shall make the contents of those per-
18 sonnel records available for inspection to the current or former employee, or his or her representative,
19 at reasonable intervals and at reasonable times, but not later than 30 calendar days from the date the
20 employer receives a written request." If an employer fails to permit a current or former employee to
21 inspect or receive records within 30 days of a request to inspect, that employer is liable to the em-
22 ployee for a penalty of \$750, and the employee is entitled to bring an action for injunctive relief to en-
23 force compliance and shall be entitled to an award of costs and reasonable attorney's fees in doing so.
24 *Id.*

25 24. Labor Code section 432 requires than an employer provide any instrument related to
26 the obtaining or holding of employment to an employee upon request. *Id.*

27 25. Labor Code section 1174 requires employers to maintain payroll records showing the
28 hours worked daily by all employees, for a time not less than three years. Industrial Wage Order No.

1 5, Section 7 requires that an employer maintain “time records showing when the employee begins and
2 ends each work period” and made those records available to any employee upon reasonable request.

3 *Id.*

4 26. On or about January 13, 2020, Plaintiff requested copies of all employment records
5 kept in accordance with Labor Code sections 226, 432, 1174, and 1198.5 by certified letter to Defend-
6 ants. Defendants refused to provide any records in response to the request. Defendants have a policy
7 and practice whereby they (1) will not provide employee representatives with personnel records, (2)
8 require the use of an employer form to request any records, and (3) will not provide the employer
9 form to any individual other than the employee themselves, who must personally request the form.

10 27. Defendants’ formal policy and practice is uniformly applied to all current and former
11 employees and violates Labor Code sections 226, 432, 1174, and 1198.5 and the Wage Orders.

12 28. Plaintiff and Class Members are entitled to civil penalties in the amount of \$2,000 per
13 employee, in addition to injunctive relief and reasonable attorneys fees and costs of suit.

14 **SECOND CAUSE OF ACTION**

15 **Violation of California Labor Code §§ 2699, *et seq.***

16 **PAGA Penalties**

17 **(Against Defendants)**

18 29. Plaintiff incorporates by reference every allegation set forth above.

19 30. For purposes of this Complaint, “aggrieved employee” shall mean any individual who
20 worked for Defendants as a non-exempt, hourly employee from February 26, 2019 and continuing
21 into the present.

22 31. Plaintiff, by nature of his employment with Defendants, is an aggrieved employee for
23 purposes of this Complaint with standing to bring an action under PAGA.

24 32. Plaintiff has satisfied all prerequisites to serve a representative general public to en-
25 force California’s labor laws, including, without limitation, the penalty provisions identified in Labor
26 Code § 2699.3, including the filing of a PAGA complaint with the LWDA. *See* Compl. ¶ 37.

27 33. Plaintiff brings this representative action on behalf of himself and all aggrieved em-
28 ployees pursuant to Labor Code § 2699, *et seq.*, seeking civil penalties for Defendants’ violation of

1 Labor Code §§ 226, 226.3, 1174, and 1198.5 and the Industrial Wage Orders, as described herein.

2 Penalties Owed for the Foregoing Violations

3 34. Plaintiff and the Aggrieved Employees are entitled to civil penalties for the foregoing
4 violations in an amount to be shown at trial subject to the following formula:

5 a. In an amount set forth as a civil penalty in the statute; or

6 b. \$100 per initial violation per employee per pay period, and \$200 for each sub-
7 sequent violation per employee per pay period.

8 35. Unless otherwise specified, the penalties shall be allocated seventy-five percent to the
9 Labor and Workforce Development Agency and twenty-five percent to the affected employees. These
10 penalties may be stacked separately for each of Defendants' violations of the Labor Code. *See, e.g.,*
11 *Hernandez v. Towne Park, Ltd.*, No. CV 12-02972, 2012 WL 2373372, at *17, n.77 (C.D. Cal. June
12 22, 2012) ("[F]ederal courts applying California law have concluded that stacking is appropriate.");
13 *see also O'Connor v. Uber Techs., Inc.*, No. 13-CV-03826-EMC, 2016 WL 3548370, at *7 (N.D. Cal.
14 June 30, 2016) ("Finally, Plaintiffs ignore the potential for stacking of PAGA penalties related to
15 wage-and-hour claims other than the gratuities and expense reimbursement claim, i.e., meal and rest
16 breaks, minimum wage and overtime, and workers' compensation.").

17 36. Labor Code sections 226(f), 1198.5(k), and 1174.5 also imposes liability on Defend-
18 ants for their policy of refusing to provide required records in the amount of \$750, \$750, and \$500,
19 respectively, per aggrieved employee.

20 EXHAUSTION OF ADMINISTRATIVE REMEDIES

21 37. On February 25, 2020, Plaintiff filed a notice of claims with the LWDA and sent a
22 copy to Defendant by certified mail. **Exhibit A.** As of the date of filing this complaint, Plaintiff has
23 not received a response from the LWDA. As of 65 days from February 24, 2020, all requirements for
24 administrative exhaustion will be met. Labor Code § 2699.3(a)(2); *Magadia v. Wal-Mart Associates,*
25 *Inc.*, 319 F.Supp.3d 1180 (N.D. Cal. 2018); *Bradescu v. Hillstone Rest. Grp., Inc.*, No. SACV 13-
26 1289-GW RZX, 2014 WL 5312546, at *10 (C.D. Cal. Sept. 18, 2014), *order confirmed*, No. SACV
27 13-1289-GW RZX, 2014 WL 5312574 (C.D. Cal. Oct. 10, 2014).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays for judgment as follows:

- A. For actual and liquidated damages according to proof at trial;
- B. For statutory and civil penalties and special damages, according to proof at trial;
- C. For punitive and exemplary damages according to proof;
- D. For pre- and post-judgment interest on monetary damages;
- E. Preliminary and permanent injunctive relief;
- F. For reasonable attorney's fees and costs and expert fees and costs; and
- G. For such other relief as this Court deems just and proper.

Dated: February 28, 2020

Respectfully submitted,

KING & SIEGEL LLP

By: Elliot Siegel

Elliot J. Siegel
Attorneys for Plaintiff

Exhibit A



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February 25, 2020

Filed Via LWDA's PAGA Claim Notice Online Form

Copy Sent Via Certified Mail

Kaiser Foundation Health Plan Inc.
c/o CSC – Lawyers Incorporating Service
2710 Gateway Oaks Drive, Ste. 150N
Sacramento, CA 95833

Kaiser Foundation Hospitals
c/o CSC – Lawyers Incorporating Service
2710 Gatewa Oaks Drive, Ste. 150N
Sacramento, CA 95833

Re: *Jamari Cooper, et al. v. Kaiser Foundation Health Plan Inc., Kaiser Foundation Hospitals, et al.; California Labor Code § 2699.3 Notice*

To Whom It May Concern,

My firm represents Jamari Cooper (“Plaintiff”) and all similarly situated employees in a lawsuit to be filed against Kaiser Foundation Health Plan Inc. and Kaiser Foundation Hospitals (“Defendant”) entitled *Jamari Cooper, et al. v. Kaiser Foundation Health Plan Inc., et al.*, in Alameda County Superior Court. A copy of the Complaint to be filed is enclosed as **Exhibit A**.

As set forth in the Complaint, Plaintiff alleges that Defendants violated their obligations under California law to provide and maintain required employment records in violation of Labor Code sections 226, 432, 1174, and 1198.5 as to all non-exempt and exempt employees employed within one year prior to the date of this letter continuing through the present (the “Aggrieved Employees”).¹

Together with this correspondence, the enclosed complaint serves as notice pursuant to Labor Code § 2699.3, *et seq.* that we intend to prosecute representative claims for civil penalties under the Private Attorney’s General Act (“PAGA”) on behalf the Aggrieved Employees. *See* Cal. Lab. Code §§ 2699, *et seq.*

We intend to fully and vigorously prosecute the representative claims alleged in this Notice, including by obtaining civil penalties under PAGA, upon expiration of the applicable notice requirements under PAGA.

¹ The attached Complaint further details (1) the alleged violations, (2) the facts and theories supporting these violations, (3) the people and entities, dates, classifications, violations, events, and actions at issue.

King & Siegel ||| LLP

Please do not hesitate to contact me at the information provided above.

Very truly yours,

Elliot Siegel

Elliot J. Siegel
KING & SIEGEL LLP