

2013 MAY -8 P 4: 07

CLERK - DISTRICT COURT
SAN DIEGO, CALIF. CA

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8 Attorneys for Plaintiff LAURA EGEE,
individually and on behalf of others similarly situated
9

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF SAN DIEGO

12 LAURA EGEE, individually and on behalf of)
herself and others similarly situated,)

14 Plaintiff,

15 vs.

16 SOUTHERN CALIFORNIA PERMANENTE)
17 MEDICAL GROUP, a General Partnership of)
18 Physicians, and DOES 1 through 10, inclusive,)

19 Defendants.
20
21
22

CASE NO. 37-2013-00040772-CU-OE-CTL
ASSIGNED FOR ALL PURPOSES TO:
The Honorable Joan M. Lewis
Department 65

CLASS ACTION

**FIRST AMENDED COMPLAINT FOR
FAILURE TO TIMELY PAY WAGES
DUE AT TERMINATION [Lab. Code §
203]; and VIOLATIONS OF THE
PRIVATE ATTORNEYS GENERAL ACT
OF 2004 (PAGA) [Labor Code § 2698, et
seq.]**

DEMAND FOR JURY TRIAL

**Complaint File: March 26, 2013
Trial Date: None Set**

1 Plaintiff LAURA EGEE (“Plaintiff”), individually and on behalf of herself and others
2 similarly situated, alleges as follows:

3 **INTRODUCTION**

4 1. Plaintiff brings this class action against Defendant SOUTHERN CALIFORNIA
5 PERMANENTE MEDICAL GROUP, and DOES 1 through 10 (“Defendants” or “KAISER”)
6 seeking penalties for failure to pay wages owed at termination and for violations of the Private
7 Attorneys General Act (PAGA). This case arises out of Defendants’ untimely payment of final
8 wages to employees that resign or have been discharged. The proposed Plaintiff Class consists of
9 all employees employed by Defendants during the class period, which is defined as three years
10 prior to filing the complaint through the present, who were not timely provided all wages owed
11 upon their separation from employment.

12 **JURISDICTION AND VENUE**

13 2. Venue as to each Defendant is proper in this judicial district, pursuant to Code of
14 Civil Procedure, section 395. Defendant KAISER is a General Partnership of Physicians.
15 Defendants employ employees in San Diego County, and each Defendant is within the jurisdiction
16 of this Court for service of process purposes. The unlawful acts alleged have a direct effect on
17 Plaintiff and those similarly situated within the State of California and within San Diego County.
18 Defendants employ numerous Class Members in San Diego County. There is no federal question
19 at issue, as the issues raised are based solely on California law, and the individual members of the
20 class have damages under the seventy-five thousand (\$75,000) Federal Court jurisdictional
21 threshold and the aggregate claim is under the five million dollar (\$5,000,000) threshold of the
22 Class Action Fairness Act of 2005.

23 **PARTIES**

24 3. Plaintiff LAURA EGEE is a resident of the State of California. Plaintiff was
25 employed as a Medical Assistant II in Defendants’ San Marcos, California medical office during
26 the statutory period, from October 30, 2012, until Defendants discharged her on or about February
27 22, 2013. Defendants failed to timely pay Plaintiff all wages owed to her when her employment
28 terminated.

1 4. Plaintiff is informed and believes that Defendant KAISER is General Partnership of
2 Physicians with its principal place of business in Pasadena, California, that operates within
3 California and employs numerous Class Members in San Diego County.

4 5. Plaintiff is unaware of the true names, capacities, relationships, and extent of
5 participation in the conduct alleged, of the Defendants sued as DOES 1 through 10, but is
6 informed and believes and alleges that DOE Defendants are legally responsible for the wrongful
7 conduct alleged and sues these Defendants by such fictitious names. Plaintiff will amend this
8 complaint when their true names and capabilities are ascertained.

9 6. Plaintiff is informed and believes and alleges that each Defendant, directly or
10 indirectly, or through agents or other persons, employed Plaintiff and other members of the class,
11 and exercised control over their wages, hours, and working conditions. Plaintiff is informed and
12 believes and thereon alleges that each Defendant acted in all respects pertinent to this action as the
13 agent of the other Defendants, carried out a joint scheme, business plan or policy, and the acts of
14 each Defendant is legally attributable to the other Defendants.

15 7. By this Complaint, Plaintiff brings this case as a representative action seeking
16 penalties for the State of California in a representative capacity, as provided by the Private
17 Attorneys General Act (PAGA) to the extent permitted by law, as an aggrieved employee who
18 held the position identified and did not receive all wages due at the termination of employment.
19 A true and correct copy of the Notice correspondence showing compliance with Labor Code
20 §2699.3 is attached as Exhibit "A" and demonstrates that Plaintiff is an aggrieved employee and
21 has standing to bring a representative action on behalf of the State of California Labor and
22 Workforce Development Agency (LWDA) and as a private attorney general. No notice of cure by
23 Defendant was provided in the statutorily proscribed 33-day period since the mailing of the notice
24 of the action, and the LWDA has indicated that it does not intend to investigate the allegations.
25 (See Exhibit "B" attached hereto.) Accordingly, Plaintiff files this action as a "Representative
26 Action" as provided by the California Code of Civil Procedure and as specifically permitted and
27 authorized by Labor Code §2699.3(a)(2)(C).

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1 thousands of Class members.

2 16. Commonality. Common questions of law and fact exist as to all Class members
3 and predominate over any questions that affect only individual members of the Class. These
4 common questions include, but are not limited to, whether Defendants violated Labor Code
5 sections 201-203 by failing to pay employees all wages due upon separation from employment;

6 17. Typicality. Plaintiff's claims are typical of the claims of the other members of the
7 Class. Plaintiff and other members of the Class were subject to Defendants' same policy and
8 practice of failing to timely pay wages due at separation from employment.

9 18. Adequacy. Plaintiff will adequately and fairly protect the interests of the members
10 of the Class. Plaintiff has no interest adverse to the interests of absent Class members. Plaintiff is
11 represented by attorneys who have substantial class action experience in wage-and-hour and class
12 action law.

13 19. Superiority. A class action is superior to other available means for fair and
14 efficient adjudication of the claims of the Class and will benefit the parties and the Court. Class
15 action treatment will allow a large number of similarly situated persons to prosecute their common
16 claims in a single forum, simultaneously, efficiently, and without the unnecessary duplication of
17 effort and expense that numerous individual actions would require. The damages suffered by each
18 Class member are relatively small in the sense pertinent to class action analysis, and the expense
19 and burden of individual litigation would make it extremely difficult or impossible for individual
20 Class members to seek and obtain relief. A class action serves an important public interest by
21 permitting individuals to effectively pursue recovery of sums owed to them and prevents the
22 potential for inconsistent or contradictory judgments raised by individual litigation.

23 **FIRST CAUSE OF ACTION**
24 **FAILURE TO PAY WAGES TO TERMINATED OR RESIGNED EMPLOYEES**
25 **(Labor Code § 203)**
(Plaintiff and Class against each Defendant)

26 20. Plaintiff re-alleges each paragraph of this Complaint.

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28 ///

1 provides that Section 2699.3(a) applies to any alleged violation of the following provisions:
2 Sections 201, 202, 203, 204, 226, 226.7, 510, 558, 1174, 1194, 1197, 1197.1, 1199.

3 27. Plaintiff is informed and believes that Defendants have violated and continue to
4 violate provisions of the California Labor Code and applicable Wage Orders related to the
5 payment of all wages due at termination. Despite mailing Exhibit "A" at least 33-days before
6 filing this Complaint, no state agency has advised it intends to pursue this matter. By operation of
7 law, Plaintiff is entitled to commence this cause of action in the California Superior Court as a
8 representative action under PAGA.

9 28. Plaintiff, as a personal representative of the general public, will and does seek to
10 recover any and all penalties for each and every violation shown to exist or to have occurred
11 during the one year period before Plaintiff filed Notice with the LWDA of her intent to bring this
12 action, in an amount according to proof, as to those penalties that are otherwise only available to
13 public agency enforcement actions. Funds recovered will be distributed in accordance with
14 PAGA, with at least 75% of the penalties recovered being reimbursed to the State of California
15 and the Labor and Workforce Development Agency (LWDA).

16 **PRAYER**

17 WHEREFORE, Plaintiff, on behalf of herself and all others similarly situated, prays for
18 relief and judgment against Defendants, jointly and severally, as follows:

- 19 A. For certification of this action as a class action;
- 20 B. For appointment of Plaintiff as the representative of the Class;
- 21 C. For appointment of counsel for Plaintiff as Class Counsel;
- 22 D. For penalties for failure to timely pay wages to terminated or resigned employees
23 under Labor Code section 203;
- 24 E. For penalties for each violation of the Private Attorneys General Act (PAGA);
- 25 F. For reasonable attorneys' fees, interest, and costs of suit;

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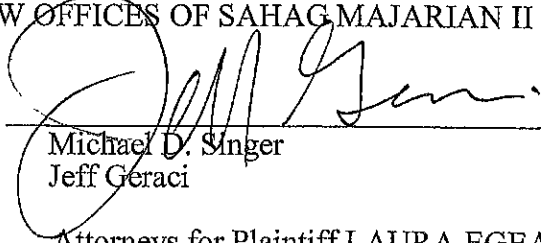
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G. For such other relief the Court deems just and proper.

Dated: May 8, 2013

COHELAN KHOURY & SINGER
LAW OFFICES OF SAHAG MAJARIAN II

By:



Michael D. Singer
Jeff Geraci

Attorneys for Plaintiff LAURA EGEE,
individually and on behalf of others similarly
situated

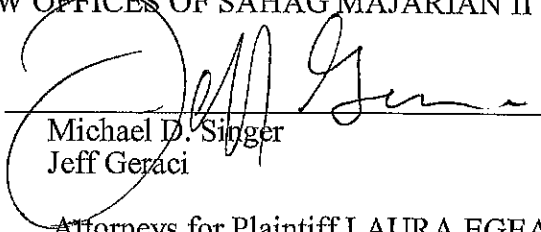
DEMAND FOR JURY TRIAL

Plaintiff demands jury trial for all claims so triable.

Dated: May 8, 2013

COHELAN KHOURY & SINGER
LAW OFFICES OF SAHAG MAJARIAN II

By:



Michael D. Singer
Jeff Geraci

Attorneys for Plaintiff LAURA EGEE,
individually and on behalf of others similarly
situated

EXHIBIT A

COHELAN KHOURY & SINGER

A PARTNERSHIP OF PROFESSIONAL LAW CORPORATIONS

TIMOTHY D. COHELAN, * APLC
ISAM C. KHOURY, APC
DIANA M. KHOURY, APC
MICHAEL D. SINGER, •APLC

(*Also admitted in the District of Columbia)
(•Also admitted in Colorado)

ATTORNEYS AT LAW

605 "C" STREET, SUITE 200
SAN DIEGO, CALIFORNIA 92101-5305

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Facsimile: (619) 595-3000

www.ckslaw.com

March 25, 2013

JEFF GERACI Δ
J. JASON HILL †
KIMBERLY D. NEILSON

(† Also admitted in Illinois)
(Δ Of Counsel)

NOTICE OF VIOLATIONS OF LABOR CODE SECTION 2699.3

To: California Labor and Workforce Development Agency and
Southern California Permanente Medical Group

From: Laura Egea, on behalf of herself and all similarly situated employees of Southern California Permanente Medical Group

Factual Statement

Laura Egea was employed as a Medical Assistant II by Southern California Permanente Medical Group ("KAISER" or "SCPMG") at its Rancho Bernardo, California location from February, 2011 through May 2012, and its San Marcos, California location from October 8, 2012 to February 22, 2013. Ms. Egea gives notice of her intent to bring a cause of action for violation of the Private Attorneys General Act of 2004 ("PAGA") for KAISER's failure to comply with California's wage and hour laws.

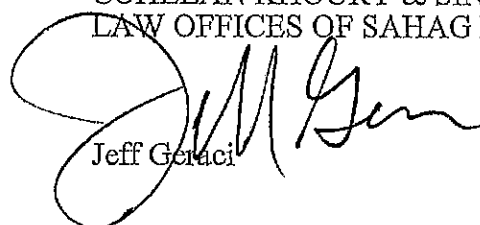
KAISER failed to timely pay Ms. Egea all wages due at termination. Ms. Egea's employment was involuntarily terminated on February 22, 2013, but she did not receive her final wages on that date. She was later mailed a check for \$1,084.20, postmarked March 5, 2013. Ms. Egea is informed and believes such violations are ongoing, systemic and continuous.

Theories of Labor Code Violations and Remedies

KAISER was obligated to timely pay all final wages due at termination to Claimant Laura Egea and all other employees in California pursuant to Labor Code sections 201-203.

A copy of the lawsuit being filed without PAGA claims is attached in draft to this letter. The suit is being filed as of the date of this letter. If after 33 days the LWDA does not take action, or declines to intervene, Claimant will amend the Complaint to add a cause of action for violations of PAGA and proceed as a representative action, as permitted by law.

Respectfully submitted,
COHELAN KHOURY & SINGER
LAW OFFICES OF SAHAG MAJARIAN II



Jeff Geraci

CA Labor & Workforce Development Agency

Page 2

March 25, 2013

VIA CERTIFIED U.S. MAIL WITH RETURN RECEIPT

Marty Morgenstern, Secretary
California Labor and Workforce Development Agency
800 Capitol Mall, Suite 5000 MIC-55
Sacramento, CA 95814

Southern California Permanente Medical Group
393 E. Walnut Street
Pasadena, CA 91188

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"> ■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits. 	<p>A. Signature <i>[Signature]</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>X B. Received by <i>[Signature]</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>C. Date of Delivery <i>MAR 27 2004</i></p>
<p>1. Article Addressed to:</p> <p>Marty Morgenstern, Secretary California Labor and Workforce Development Agency 800 Capitol Mall, Suite 5000 MC-55 Sacramento, CA 95814</p>	<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input type="checkbox"/> No If YES, enter delivery address below:</p> <p>3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p> <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>
<p>2. Article Number: (Transfer from service label)</p>	<p>7012 1640 0002 3439 0253</p>
<p>PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-154</p>	

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"> ■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits. 	<p>A. Signature <i>[Signature]</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>X B. Received by (Printed Name) <i>[Signature]</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>C. Date of Delivery <i>MAR 28 2004</i></p>
<p>1. Article Addressed to:</p> <p>Southern California Permanente Medical Group 393 E. Walnut Street Pasadena, CA 91188</p>	<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input type="checkbox"/> No If YES, enter delivery address below:</p> <p>3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p> <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>
<p>2. Article Number: (Transfer from service label)</p>	<p>7012 1640 0002 3439 0260</p>
<p>PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-154</p>	

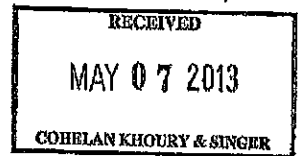
EXHIBIT B



STATE OF CALIFORNIA
Labor & Workforce Development Agency

GOVERNOR Edmund G. Brown Jr. • SECRETARY Marty Morganstern

Agricultural Labor Relations Board • California Unemployment Insurance Appeals Board
California Workforce Investment Board • Department of Industrial Relations
Economic Strategy Panel • Employment Development Department • Employment Training Panel



April 30, 2013

CERTIFIED MAIL

J. Jason Hill, Esq.
Cohelan Khoury & Singer, Attorneys at Law
605 C Street, Suite 200
San Diego, CA 921015305

RE: Employer: Southern CA Permanente Medical Group, Inc.
RE: Employee(s): Laura Egea
RE: LWDA No: 12705

This is to inform you that the Labor and Workforce Development Agency (LWDA) received your notice of alleged Labor Code violations pursuant to Labor Code Section 2699, postmarked March 25, 2013, and after review, does not intend to investigate the allegations.

As a reminder to you, the provisions of Labor Code Section 2699(i) provides that "...civil penalties recovered by aggrieved employees shall be distributed as follows: 75 percent to the LWDA for enforcement of labor laws and education of employers and employees about their rights and responsibilities under this code." Labor Code Section 2699(i) specifies "[T]he superior court shall review and approve any penalties sought as part of a proposed settlement agreement pursuant to this part."

Consequently, you must advise us of the results of the litigation, and forward a copy of the court judgment or the court-approved settlement agreement. Please be certain to reference the above LWDA assigned Case Number in any future correspondence.

Sincerely,

Mark Woo-Sam
General Counsel

Cc: Southern CA Permanente Medical Group, Inc.
393 E. Walnut
Pasadena, CA 91188