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18 SUPERIOR COURT OF CALIFORNIA
19 COUNTY OF ALAMEDA – COMPLEX DIVISION

20 EVELYN HOLLIMAN, SHERRY CALLAHAN,)
THANA BRUNGES AND SHANEE JONES, on)
21 behalf of themselves and other members of the)
general public similarly situated,)

22 Plaintiffs,)
23 v.)

24 KAISER FOUNDATION HEALTH PLAN,)
KAISER FOUNDATION HOSPITALS, THE)
25 PERMANENTE MEDICAL GROUP,)
SOUTHERN CALIFORNIA PERMANENTE)
26 MEDICAL GROUP; and DOES 1 through 10,)
inclusive,)
27 Defendants.)

Case No. RG 05247858

**JOINT STIPULATION OF
SETTLEMENT AND RELEASE
BETWEEN PLAINTIFFS AND
DEFENDANTS**

1 This Joint Stipulation of Settlement and Release (“Stipulation of Settlement”) is made
2 and entered into by and between Plaintiffs Evelyn Holliman, Sherry Callahan, Thana Brunges
3 and Shanee Jones (“Plaintiffs” or “Class Representatives”), and Defendants Kaiser Foundation
4 Health Plan, Inc., Kaiser Foundation Hospitals, The Permanente Medical Group and Southern
5 California Permanente Medical Group (“Defendants”), and is subject to the terms and conditions
6 herein and the approval of the Court. Plaintiffs and Defendants are referenced collectively
7 herein as “the Parties.”

8 1. On December 22, 2005, Plaintiff Holliman filed a proposed class action complaint
9 in the Alameda Superior Court, Case No. RG 05247858, captioned, *Evelyn Holliman,*
10 *individually and on behalf of other members of the general public similarly situated v. Kaiser*
11 *Foundation Hospitals., Southern California Permanente Medical Group and DOES 1 through*
12 *20, inclusive* (the “Lawsuit”). The complaint alleged that Holliman and other similarly-situated
13 employees had been underpaid overtime due pursuant to the overtime rules within the Fair Labor
14 Standards Act because of failure to include certain types of pay, such as “shift differentials,” in
15 employees’ “regular rate of pay.” The complaint alleged further violations of California law,
16 including, but not necessarily limited to, violations of Business & Professions Code § 17200 and
17 Labor Code §§ 201, 202, 203, and 226(a). Plaintiffs sought restitution of unpaid overtime, civil
18 penalties, prejudgment interest, and attorneys’ fees and costs. On February 7, 2006, Plaintiffs
19 filed an Amended Complaint, alleging the same causes of action, and adding Kaiser Foundation
20 Health Plan, Inc. and The Permanente Medical Group as defendants. Plaintiffs Callahan,
21 Brunges and Jones were added as additional putative class members shortly thereafter.

22 2. For purposes of this settlement agreement, a “Class Member” shall be defined as
23 follows:

24 “All current and former non-exempt hourly workers employed by
25 Defendants at their business locations within the state of California from
26 December 22, 2001 through the date of preliminary approval of the
27 settlement.”

28 The “Class Members” in the aggregate shall also be referred to herein as the “Settlement Class.”

- 1 e. Initiative Legal Group LLP and Schneider & Wallace should be deemed
2 “Class Counsel” and will fairly and adequately protect the interests of the
3 Settlement Class.
- 4 f. The prosecution of separate actions by individual members of the
5 Settlement Class would create the risk of inconsistent or varying
6 adjudications, which would establish incompatible standards of conduct.
- 7 g. Questions of law and fact common to the members of the Settlement Class
8 predominate over questions affecting individual members in the
9 Settlement Class and a class action is superior to other available means for
10 the fair and efficient adjudication of the controversy.

11 6. Defendants deny any liability or wrongdoing of any kind associated with the
12 claims alleged in the Lawsuit. Defendants contend, among other things, that they have complied
13 at all times with the California Labor Code, which provides an exemption from state law
14 overtime regulations for employees covered by valid collective bargaining agreements, and
15 Plaintiffs are therefore barred from recovery under the California Unfair Competition Law and
16 California Labor Code.

17 7. Plaintiffs believe they have filed meritorious claims and that class certification is
18 appropriate. Plaintiffs contend that Defendants engaged in unfair competition and violated
19 California’s wage and hour laws and that this case is appropriate for class certification as the
20 requisites for class certification can be satisfied in this case and that the case is appropriate to
21 certify as a collective action under California law.

22 8. It is the desire of the Parties fully, finally, and forever to settle and discharge all
23 disputes and claims which exist between them arising from or related to the Lawsuit. In order to
24 achieve a full and complete release of Defendants (and the Releasees as defined in Paragraph 9)
25 of such disputes and claims, each Class Member (which includes any legal heirs and/or
26 successors-in-interest of each Class Member), through execution of the Stipulation and
27 Settlement by the Class Representatives, acknowledges that this Stipulation of Settlement is
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1 intended to include in its effect all claims alleged in the First Amended Complaint on behalf of
2 class members in positions within the class definition contained in this Settlement. The
3 Settlement Class, including Plaintiffs and each Class Member, waives all rights and benefits
4 afforded by Section 1542 of the Civil Code of the State of California with respect to such
5 disputes and claims, and does so understanding the significance of that waiver. Section 1542
6 provides:

7 “A general release does not extend to claims which the creditor
8 does not know or suspect to exist in his or her favor at the time of
9 executing the release, which if known by him or her must have
10 materially affected his or her settlement with the debtor.”

11 9. It is the intention of the Parties that this Stipulation of Settlement shall constitute a
12 full and complete settlement and release of all claims alleged in the lawsuit and any other claims
13 under state or federal law that could have been asserted based on the same underlying factual
14 allegations, including, without limitation, claims for restitution, unpaid compensation, penalties
15 and attorney’s fees, which release shall include in its effect Kaiser Foundation Hospitals, Kaiser
16 Foundation Health Plan, Inc., Southern California Permanente Medical Group, The Permanente
17 Medical Group and each of their present and former affiliates, parent companies, subsidiaries,
18 shareholders, officers, partners, directors, employees, agents, attorneys, insurers, predecessors,
19 successors and assigns and each and all of their respective officers, partners, directors, servants,
20 agents, shareholders, employees, representatives, accountants, insurers, and attorneys, past,
21 present, and future, and all persons acting under, by, through, or in concert with any of them
(collectively, the “Releasees”).

22 10. This settlement provides for a claims-made process requiring Defendants to make
23 a payment of NINE MILLION DOLLARS (\$9,000,000) that shall be referred to herein as the
24 Gross Fund Value (“GFV”), which shall represent all payments Defendants shall make toward
25 the settlement of this action (except that Defendants shall also be responsible for the employer
26 share of payroll taxes in addition to the GFV, and reimbursement to Plaintiffs’ counsel of certain
27 consulting fees, as described below) and this GFV shall be used to cover all payments of class
28 claims, administration costs, attorneys’ fees and costs, and enhancement awards. The payments

1 are not being made for any other purpose and shall not be construed as compensation for
2 purposes of determining eligibility for any health and welfare benefits or unemployment
3 compensation. Defendants shall pay, in addition to the GFV, any appropriate and lawfully
4 required employer payroll taxes owing on the portion of the GFV that is allocated to wages. The
5 parties agree to allocate 70% of any amounts paid to class members as wages, and the remainder
6 to non-wages reportable on a form 1099. In addition to making the payments described above,
7 Defendants agree separately to reimburse Plaintiff's counsel for up to SEVENTY FIVE
8 THOUSAND DOLLARS (\$75,000) for expert consultant fees reasonably necessary to conduct
9 the due diligence to confirm the conclusions of the FLSA payroll study performed by Grant
10 Thornton in connection with this litigation.

11 11. The Net Fund Value ("NFV") will constitute the portion of the GFV remaining
12 after Court-approved attorneys' fees and costs, administration costs, and enhancement awards
13 described herein are subtracted from the GFV.

14 12. After deduction from the GFV of the projected costs of administration, class
15 representative enhancements, potential attorneys' fees and attorneys' costs if all class members
16 filed claims, the NFV will be available for distribution to the Settlement Class. Those persons
17 who timely submit a valid Claim Form are "Participating Class Members." Each Participating
18 Class Member will be allocated a share of the NFV based on the formula set forth below in
19 paragraph 13-d.

20 TERMS OF SETTLEMENT

21 13. NOW, THEREFORE, in consideration of the mutual covenants, promises, and
22 warranties set forth herein, the Parties agree, subject to the Court's approval, as follows:

- 23 a. It is agreed by and among the Plaintiffs and Defendants that the claims
24 asserted in the Lawsuit, and any other claims, damages, or causes of
25 action arising out of the dispute which is the subject of said Lawsuit,
26 be settled and compromised as between the Settlement Class and
27 Defendants, subject to the terms and conditions set forth in this

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Stipulation of Settlement and the approval of the Superior Court of Alameda County.

b. Settlement Date: The settlement embodied in this Stipulation of Settlement shall go into effect upon entry of a final order by the Court certifying the class and dismissing this action with prejudice in accordance with the terms herein, and approving this Stipulation of Settlement.

c. Initial Reductions from GFV

1) Attorneys' Fees: In consideration for settling this matter and in exchange for the release of all claims by the Settlement Class, and subject to final approval, Defendants agree that Class Counsel may petition the Court for an award that would yield them up to one-third of all amounts paid out of the GFV to compensate and reimburse Class Counsel for all of the work already performed by Class Counsel in this case, all of the work remaining to be performed by Class Counsel in documenting the Settlement, securing Court approval of the Settlement, making sure that the Settlement is fairly administered and implemented, and obtaining dismissal of the action, and all costs they incurred. Class Counsel will seek \$3,000,000.00, which amounts to 33.3% of the GFV, as attorney's fees and costs. Should the Court approve a lesser percentage or amount of fees and/or costs then the amount that Plaintiffs ultimately seek, then the unapproved portion or portions shall revert to the NFV and thereby be distributed on a proportional basis among the Class Members who submit qualified claims in the same proportion as the NFV was originally distributed to the class members

2) Administration Costs:

The parties have selected RG2 as Claims Administrator in this action. RG2 has agreed to perform all necessary class administration duties for a fee not to exceed Three Hundred Twenty Five Thousand Dollars (\$325,000). This

1 administration duty shall include, without limitation, mailing notices, claim forms
2 and exclusion forms, performing address updates and verifications as necessary
3 prior to the first mailing, mailing reminder postcards, deficiency letters,
4 performing a single skip trace on any returned mail, and the calculation,
5 processing, and mailing of all class member settlement checks and tax forms
6 (including W-2s and 1099s) to the Class Members and tax authorities.

7 3) Class Representative Enhancements:

8 Defendants further agree not to object to a request by Plaintiff's counsel
9 for an enhancement award to Plaintiffs, in an aggregate amount not to exceed
10 Forty Thousand Dollars (\$40,000), in consideration for serving as Class
11 Representatives. Subject to Court approval, the enhancement award shall be
12 divided among the Class Representatives according to relevant legal factors,
13 including work performed and risk incurred for the benefit of the class. The
14 enhancement award is in addition to the claim shares to which Plaintiffs are
15 entitled along with other claiming Class Members. Should the Court approve an
16 enhancement award to Plaintiffs in an amount less than that set forth herein, the
17 unapproved portion shall revert to the NFV and thereby be distributed on a pro
18 rata basis among the Class Members who submit qualified claims.

19 d. Calculation of Class Members' Share of the NFV

20 1) Payments to Subclasses: For purposes of determining Class
21 Members' shares of the NFV, the Settlement Class shall be divided
22 into three subclasses: (1) those members of the Settlement Class
23 for whom the most recently-held job for any of the Defendants was
24 a part-time position shall be referred to herein as the "Part Time
25 Subclass;" (2) those members of the Settlement Class for whom
26 the most recently-held job for any of the Defendants was covered
27 by a collective bargaining agreement that provided for the
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1 inclusion in the regular rate of pay, for overtime purposes, of all
2 premium pay rates, as required under the FLSA, shall be referred
3 to herein as the "Included Premiums Subclass;" and (3) all
4 remaining members of the Settlement Class who do not fall within
5 either the Part Time Subclass or the Included Premiums Subclass
6 shall be referred to herein as the "Primary Subclass."

7 2) Payments to Class Members: In consideration for settlement and a
8 release of all claims of the Settlement Class against Defendants,
9 Defendants agree to pay to each Participating Class Member as
10 follows:

11 (A) Part-Time and Included Premiums Subclasses: The
12 sum of Three Million Three Hundred Thousand Dollars
13 (\$3,300,000) (the "Part Time/ Included Premiums Fund")
14 shall be distributed among the Participating Class Members
15 who fall within the combined Part-Time and Included
16 Premiums Subclasses. If an individual Participating Class
17 Member is part of both the Part Time Subclass and the
18 Included Premiums Subclass, that Participating Class
19 Member shall nevertheless only be entitled to a single, pro-
20 rata share. Each such individual's share of the Part Time/
21 Included Premiums Fund shall be determined by (1)
22 dividing the Part Time/ Included Premiums Fund by the
23 total number of workweeks worked by all members of the
24 Part-Time and Included Premiums Subclasses to determine
25 the payment-per-workweek; and then (2) multiplying the
26 payment-per-workweek by the number of workweeks
27 worked by the particular member of the Part-Time and
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Included Premiums Subclasses at issue during the class period. Defendants will provide the necessary data to the claims administrator to make such calculations as soon as practicable after the court grants preliminary approval of the settlement. To the extent a class member fails to submit a valid claim for his or her share of the Part Time/ Included Premiums Fund, his or her share shall be redistributed on a proportional basis to the Part-Time and Included Premiums Subclass members who made valid claims. Under no circumstances will the failure of a class member to make a claim trigger a reversion of that class members' portion of the settlement fund to Defendants.

(B) Primary Subclass: The remainder of the NFV, after deducting the payments to the Participating Class Members from the combined Part-Time and Included-Premiums Subclasses (the "Primary Fund"), shall be distributed to the Participating Class Members of the Primary Subclass. Each such individual's share of the Primary Fund shall be determined by (1) dividing the Primary Fund by the total number of workweeks worked by all members of the Primary Subclass to determine the payment-per-workweek; and then (2) multiplying the payment-per-workweek by the number of workweeks worked by the particular member of the Primary Subclass at issue during the class period. Defendants will provide the necessary data to the claims administrator to make such calculations within ten (10) business days of the court granting preliminary approval of

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the settlement. To the extent a class member fails to submit a valid claim for his or her share of the Primary Fund, his or her share shall be redistributed on a proportional basis to the Primary Subclass members who made valid claims. Under no circumstances will the failure of a class member to make a claim trigger a reversion of that class members' portion of the settlement fund to Defendants.

3) The distribution formula included herein reflects Class Counsel's opinions regarding the fair and equitable distribution of the settlement, and are not intended to reflect the actual overtime pay to which Class Members might be entitled. The formula takes into consideration and reflects Class Counsel's opinions on the risk of loss on legal and factual issues.

14. Funding and Payout of Settlement

a. Settlement Funding Deadline: Within twenty (20) business days of preliminary approval by the Court, Defendants will deposit money in an amount equal to the Gross Fund Value into an interest-bearing account, through the Claims Administrator. The interest accrued will become part of the NFV to be distributed pursuant to the formula provided in Paragraph 13. The effective date shall be the date of final approval if no objections are filed to the settlement. If objections are filed and overruled, and no appeal is taken of the final approval order, then the effective date of final approval shall be sixty-five (65) days after the trial court enters final approval. If an appeal is taken from the Court's overruling of objections to the settlement, then the effective date of final approval shall be twenty (20) days after the appeal is withdrawn or after an appellate decision affirming the final approval decision becomes final. If the