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17
18 UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

19 PETER PASQUALE, an individual, SONIA) Case No. 08 CV 0785 JLS NLS
20 GERBERDING, an individual, on behalf of)
themselves, and on behalf of all persons) PARTIES' STIPULATION OF
21 similarly situated,) SETTLEMENT AND RELEASE
) BETWEEN PLAINTIFFS AND
22 Plaintiffs,) DEFENDANT

23 vs.)

24 KAISER FOUNDATION HOSPITALS, INC.,)
also dba KAISER PERMANENTE)
25 INFORMATION TECHNOLOGY, a California)
corporation, and Does 1 to 10,)
26 Defendants.)

1 This Stipulation of Settlement and Release (“Stipulation of Settlement” or “Settlement
2 Agreement”) is made and entered into by and between Plaintiffs Peter Pasquale and Sonjia
3 Gerberding (collectively, “Plaintiffs” or “Class Representatives”) and Defendant Kaiser
4 Foundation Hospitals (“KFH” or “Defendant”), and is subject to the terms and conditions hereof
5 and the approval of the Court. Plaintiffs and Defendant are referenced collectively herein as “the
6 Parties.”

7 **BACKGROUND AND RECITALS**

8 1. On or about April 29, 2008, Plaintiffs filed a class action complaint in the United
9 States District Court, Case No. C 08-0785, captioned *Peter Pasquale v. Kaiser Foundation*
10 *Health Plan*. The original complaint was amended three times, including the addition of Ms.
11 Gerberding as a plaintiff, and the substitution of the correct Defendant entity, KFH, among other
12 changes. The final Third Amended Complaint was filed December 3, 2008 (hereafter
13 “Complaint”). The Complaint alleged that Plaintiffs and other current and former employees of
14 KFH working in KP-IT were unlawfully denied overtime wages, meal periods and rest periods.
15 The Complaint sought recovery of overtime wages, meal period pay, rest period pay, relief for
16 the failure to comply with the itemized employee wage statement provisions of Labor Code
17 section 226(b), Labor Code section 203 waiting time penalties, damages for violations PAGA
18 penalties, and attorneys’ fees and costs from Defendant.

19 2. For purposes of this Settlement Agreement, the “Settlement Class” consists of all
20 class members who fail to opt out of this Settlement Agreement. “Settlement Class Members”
21 are:

22 All employees or former employees of Defendant who, between April 29,
23 2004 to June 26, 2009, worked for Kaiser Foundation Hospitals in KP-IT
24 in California with the functional job title of Application Coordinator,
25 Regional Application Coordinator or National Application Coordinator, all
26 of whom were classified as part of the Business Consulting or
27 Programmer Analyst job family.¹

28 ¹ The parties anticipate there to be approximately 170 present and former employees who are class members.

1 3. On June 26, 2009, the Parties participated in a mediation before mediator Jeff
2 Krivis that eventually, several weeks later, led to a settlement of the Lawsuit, subject to court
3 approval. The parties' are now entering into a more detailed, formalized settlement agreement to
4 submit to the Court for approval.

5 4. For purposes of settling the Lawsuit, the Parties conditionally stipulate and agree
6 that the requisites for establishing class certification with respect to the Settlement Class have
7 been met and are met, and therefore, stipulate to class certification. More specifically, the
8 Parties conditionally stipulate and agree that for the Settlement Class:

9 a. The number of Class Members is so numerous as to make it impracticable
10 to join all Class Members.

11 b. There is an ascertainable class.

12 c. There are common questions of law and fact.

13 d. Plaintiffs' claims are typical of the claims of the members of the
14 Settlement Class.

15 e. Marlin & Saltzman, LLP and The Cullen Law Firm should be deemed co-
16 "Class Counsel" and will fairly and adequately protect the interests of the Settlement Class.

17 f. The prosecution of separate actions by individual members of the
18 Settlement Class would create the risk of inconsistent or varying adjudications, which would
19 establish incompatible standards of conduct.

20 g. Questions of law and fact common to the members of the Settlement Class
21 predominate over questions affecting individual members in the Settlement Class and a class
22 action is superior to other available means for the fair and efficient adjudication of the
23 controversy.

24 5. Defendant denies any liability or wrongdoing of any kind associated with the
25 claims alleged in the complaint and further denies that, for any purpose other than settling the
26 Lawsuit, this action is appropriate for class treatment. Defendant contends, among other things,
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1 that it has complied at all times with the Fair Labor Standards Act (“FLSA”), the California
2 Labor Code, and all applicable California and federal law.

3 6. Plaintiffs believe they have filed a meritorious action and that class certification is
4 appropriate. Plaintiffs contend that Defendant violated both federal and state wage and hour
5 laws and that this case is appropriate for class certification as the requisites for class certification
6 are satisfied in this case.

7 7. It is the desire of the Parties to fully, finally, and forever settle, compromise, and
8 discharge all disputes and claims which exist between them arising from or related to the
9 Lawsuit. In order to achieve a full and complete release of Defendant (and the Releasees as
10 defined in Paragraph 8) of such disputes and claims, each Class Member (which includes any
11 legal heirs and/or successors-in-interest of each Class Member who receives Notice), through
12 execution of the Stipulation and Settlement by the Class Representative, acknowledges that this
13 Stipulation of Settlement is intended to include in its effect all claims arising from or related to
14 the Lawsuit, including all claims set forth in Paragraph 20 of this Stipulation of Settlement,
15 which each Class Member does not know or suspect to exist in his or her favor against
16 Defendant during the Settlement Period.

17 8. It is the intention of the Parties that this Stipulation of Settlement shall constitute a
18 full and complete settlement and release of all claims arising from the factual allegations
19 contained in the Lawsuit and arising any time up to final approval of the settlement, including,
20 without limitation, any and all claims relating to said factual allegations under the FLSA, the
21 California Labor Code or Business & Professions Code (including section 17200), claims for
22 restitution and other equitable relief, liquidated damages, punitive damages, waiting time
23 penalties, PAGA penalties, penalties of any nature whatsoever, attorneys’ fees, and any other
24 benefit claimed on account of the allegations asserted in the Class Action complaint, which
25 release shall include in its effect Defendant, and each of its present and former affiliates
26 (including Kaiser Foundation Hospitals, KP-IT, KP HealthConnect and Kaiser Foundation
27 Health Plan), parent companies, subsidiaries, shareholders, officers, partners, directors,
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1 employees, agents, attorneys, insurers, predecessors, representatives, accountants, past, present,
2 and future, successors and assigns, and each and all of their respective officers, partners,
3 directors, servants, agents, shareholders, employees, representatives, accountants, insurers, and
4 attorneys, past, present, and future, and all persons acting under, by, through, or in concert with
5 any of them (collectively, the “Releasees”).

6 **TERMS OF SETTLEMENT**

7 9. Establishment of Gross Fund Value. This settlement shall be made on a non-
8 reversionary basis (except as to employer taxes as described below). As to the Settlement Class,
9 Defendant shall pay no more than a sum equal to THREE MILLION SEVEN HUNDRED
10 THOUSAND DOLLARS (\$3,700,000) (the “Gross Fund Value”) (plus any employer side
11 payroll taxes and related payroll tax expenses to the extent those taxes/expenses are not covered
12 by the unclaimed portion of the Gross Fund Value) to fund the settlement of this action.
13 Payments by Defendant pursuant to this Settlement Agreement shall settle all pending issues
14 between the Parties, including, but not limited to, all payments of class claims, administration
15 costs, liens, attorneys’ fees and costs, and enhancement awards. The payments are not being
16 made for any other purpose and will not be construed as compensation for purposes of
17 determining eligibility for any health and welfare benefits or unemployment compensation.

18 10. Calculation of Net Fund Value. The Net Fund Value (“NFV”) for the Settlement
19 Class will constitute the total sum from which members of the respective Settlement Class will
20 be paid after Court-approved attorneys’ fees and costs, administration costs, and enhancement
21 awards described herein are subtracted from the Gross Fund Value as described below.

22 11. Settlement Date: The settlement embodied in this Stipulation of Settlement shall
23 go into effect upon entry of a final Judgment by the Court approving this Stipulation of
24 Settlement.

25 12. Settlement Payments and Costs of Administration:

26 a. Attorneys’ Fees and Costs: In consideration for settling this matter and in
27 exchange for the release of all claims by the Settlement Class, and subject to final approval,
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1 Defendant agrees that Class Counsel should be awarded a sum not to exceed one-third (1/3rd) of
2 the Gross Fund Value to compensate and reimburse Class Counsel for all of the work already
3 performed by Class Counsel in this case and all of the work remaining to be performed by Class
4 Counsel in documenting the Settlement, securing Court approval of the Settlement, making sure
5 that the Settlement is fairly administered and implemented, and obtaining dismissal of the action.
6 Class counsel will separately seek recovery of their actual litigation costs. Should the Court
7 approve a lesser percentage or amount of fees and/or costs, the unapproved portion or portions
8 shall revert to the NFV and will be distributed to Settlement Class members who constitute
9 Qualified Claimants (described below) on a proportional basis relative to the size of their claims,
10 in accordance with other administration and distribution requirements hereunder.

11 b. Enhancement Awards: Subject to approval by the Court, Defendant
12 further agrees to pay Plaintiffs an enhancement award not to exceed FORTY THOUSAND
13 DOLLARS (\$40,000), for distribution to Plaintiffs Peter Pasquale (\$20,000) and Sonia
14 Gerberding (\$20,000), the named class representatives, in consideration for serving as Class
15 Representatives. The enhancement award is in addition to the claim share to which Plaintiffs are
16 entitled along with other claiming Class Members. Should the Court approve an enhancement
17 award less than that set forth herein, the unapproved portion or portions shall revert to the
18 respective NFV and shall be distributed proportionally to those Settlement Class members who
19 constitute Qualified Claimants (described below) on a proportional basis relative to the size of
20 their claims, in accordance with other administration and distribution requirements hereunder.

21 c. Calculation of Class Members' Payments: In consideration for settlement
22 and a release of all claims of the Settlement Class against Defendant, Defendant agrees to pay to
23 each member of each Settlement Class who returns a valid and timely Claim Form ("Qualified
24 Claimant") a share of the respective NFV according to the formula that follows. Each Qualified
25 Claimant's allocation of the NFV will be determined by multiplying the Net Fund Value by a
26 fraction, the numerator of which is the result of multiplying a class member's number of work
27 weeks during the class period by the class member's average salary during that time, and the
28 denominator of which is the result of multiplying the total of all class members' work weeks

1 during the class period by the average of all class members' salary during the class period..
2 Workweeks shall be calculated from Defendant's records, with class members given credit for
3 each week they were employed as a full time employee by Defendant during the class period.
4 To the extent that Class Members do not submit a claim for their pro rata share of the NFV either
5 as a timely claim or as a late claim, that portion of the claims fund shall first be used to pay any
6 employer-side payroll taxes owed on claims, and any further excess shall be redistributed to class
7 claimants on a proportional basis.

8 d. Funding of Settlement: Within ten (10) business days after final approval
9 by the Court, Defendant will deposit the Gross Fund Value into an interest-bearing account
10 created by the administrator. Any interest accrued on this account will be distributed to class
11 claimants except that if final approval is reversed on appeal, then Defendant is entitled to prompt
12 return of the principal and all interest accrued. To the extent that Class Members do not submit a
13 timely or late claim for their pro rata share of the NFV that portion of the claims fund shall first
14 be used to pay any employer-side payroll taxes owed on claims, and any further excess shall be
15 redistributed to class claimants on a proportional basis. Defendant shall be responsible for any
16 additional employer taxes in excess of the unclaimed portion of the NFV.

17 e. Payment Procedure: So long as the effective date of final approval has
18 occurred, the Claims Administrator may pay all claims, and Court-approved attorney's fees,
19 costs, and enhancement payments immediately after Defendant is required to fund the settlement.
20 The effective date will be the date of final approval if no objections are filed to the settlement, or
21 if all objections are withdrawn. If objections are filed and overruled, and no appeal is taken of
22 the final approval order, then the effective date of final approval will be thirty-five (35) days
23 after the entry of final approval. If an appeal is taken from the Court's overruling of objections
24 to the settlement, then the effective date of final approval will be twenty (20) days after the
25 appeal is withdrawn or after an appellate decision affirming the final approval becomes final. No
26 money will be distributed unless and until the effective date of final approval occurs.

27 f. Costs of Claims Administrator: The parties have selected Epiq Systems,
28 Inc. as Claims Administrator in this action. Epiq Systems, Inc. has agreed to perform all

1 necessary class administration duties for a fee estimated to be _____. This
2 administration duty shall include without limitation, mailing notices, claim forms and exclusion
3 forms, mailing reminder post-cards to those members of the Class who have not returned a claim
4 form or request for exclusion 30 days prior to the expiration of the claims period, placing a
5 reminder telephone call to Class Members who have not returned a claim form or request for
6 exclusion 10 days prior to the expiration of the claims period, performing necessary skip traces
7 on Notices returned as undeliverable, the calculation, processing, mailing requests to cure
8 deficiencies in the Claim Form, and mailing of all Qualified Claimants' settlement checks. All
9 administration costs shall be deducted proportionally from the Gross Fund Value.

10 g. Tax Treatment of Claim Share Portion of Settlement Payments: Of the
11 amount to be paid to Class Members, fifty percent (50%) is allocated to wages. The remaining
12 50% of the amount paid to Class Members is allocated to interest and penalties (non-wages).
13 Except as provided in Sections 12(c) and 12(d) *supra*, Defendant shall be responsible for paying
14 the employer's share of payroll taxes, in addition to the NFV, on any portion of the settlement
15 where payroll taxes are required by law. Each Class Member will be responsible for correctly
16 characterizing this compensation for tax purposes and for payment of any taxes owing on said
17 amount. In the event of an audit of Defendant by any state or federal government agency, or if
18 any tax authority should dispute the characterization of this compensation, Defendant reserves all
19 rights to indemnification permitted by law.

20 h. Tax Treatment of Class Representative Enhancement Award: Plaintiffs
21 will each receive an IRS Form 1099 for their individual enhancement awards, and will be
22 responsible for correctly characterizing this additional compensation for tax purposes and for
23 payment of any taxes owing on said amount. In the event of an audit of Defendant by any state
24 or federal government agency, or if any tax authority should dispute the characterization of this
25 compensation, Defendant reserves all rights to indemnification permitted by law.

26 i. Resolution of Disputes Relating To Amounts Owed to a Claimant: A
27 "Qualified Claimant" will be defined as an individual in the Settlement Class who will have
28 timely submitted a Claim Form properly signed and including the last four numbers of their

1 social security number, and have not submitted a request for exclusion. If a Qualified Claimant
2 timely disputes Defendant's records (on a Claim Form) as to the proper size of his or her claim,
3 the Parties' Counsel will make a good faith effort to resolve the dispute informally. If counsel
4 for the parties cannot agree, the dispute shall be submitted to the Claims Administrator, who
5 shall examine the records provided by the Defendant and the Qualified Claimant. The Claims
6 Administrator shall resolve all such disputes, and its determination shall be final.

7 **NOTICE TO THE PLAINTIFF CLASS**

8 13. The Parties agree that within fourteen (14) business days after preliminary
9 approval of this Settlement Agreement, Defendant will provide to the Claims Administrator all
10 of the following information about each Class Member in a format requested by the Claims
11 Administrator ("Class Data List"): (1) name, (2) last known home address and telephone
12 number, (3) Social Security Number, (4) dates of employment during the class period in covered
13 positions for each class member, and (5) average hourly rate based on regular pay. The Claims
14 Administrator will perform address updates and verifications as necessary prior to the first
15 mailing.

16 14. Within fourteen (14) business days of its receipt of the Class Data List, the Claims
17 Administrator will send Class Members, by first-class mail, at their last known address, the
18 court-approved Notice of Pendency of Class Action ("Notice") in the form attached hereto as
19 Exhibit "A", a green Claim Form in the form attached hereto as Exhibit "B", and a Request for
20 Exclusion Form, in the form attached hereto as Exhibit "C." A Notice, Claim Form and Request
21 for Exclusion Form shall be referred to collectively as a "Notice Packet." The Notice Packet
22 also will include a calculation of the Class Member's estimated payment (assuming all requests
23 for attorney's fees, administration costs, and enhancement are awarded in full).

24 **CLAIM PROCESS**

25 15. Class Members will have forty-five (45) days from the date the Notice Packets are
26 mailed by the Claims Administrator to postmark their Objections, and/or Requests For
27 Exclusion, and sixty days to postmark their Green Claim Form. In the event a Class Member
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1 timely returns a valid Claim Form and a Request for Exclusion, the claim will be deemed invalid,
2 and the Claims Administrator will contact the Class Member for clarification of the Class
3 Member's intent. If the class member fails to provide clarification within the time limits of the
4 settlement, he or she will be deemed to have elected to be excluded from the settlement. The
5 Claims Administrator will mail a follow up notice ("reminder post-card") to those Class
6 Members who have not responded with the return of a Claim Form or a Request for Exclusion
7 thirty (30) days before the expiration of the claim period encouraging Class Members to respond
8 before the deadline. The Claims Administrator shall place one completed reminder telephone
9 call to those Class Members who have not responded with the return of a Claim Form or a
10 Request for Exclusion ten (10) days before the expiration of the claim period encouraging Class
11 Members to respond before the deadline. The Claims Administrator will perform one skip-trace
12 on returned mail and re-mail Claim Forms to an updated address (if any) within ten (10) days of
13 receiving notice that a Notice Packet was undeliverable. It is the intent of the parties that
14 reasonable means be used to locate Class Members.

15 16. Within five (5) business days of receipt by the Claims Administrator of each
16 timely-submitted Claim Form, the Claims Administrator will send a deficiency notice to the
17 Class Members for any irregularities in the completed Claim Form. The deficiency notice will
18 provide the Class Members no more than fifteen (15) days from the mailing of the deficiency
19 notice to postmark a written response to cure all deficiencies. The failure of a Class Member to
20 timely submit a Claim Form, or timely submit a response to any deficiency notice, shall
21 invalidate a claim and will not be considered deficiencies subject to cure, unless counsel for both
22 parties stipulate to allow cure. The failure of a Class Member to sign a Claim Form will be
23 considered a deficiency subject to cure.

24 17. All original Claim Forms shall be mailed directly to the Claims Administrator at
25 the address indicated on the Claim Form. Defendant, with the Class Data List, will provide the
26 Claims Administrator an Excel spreadsheet that the administrator will use to calculate each Class
27 Member's proportional share of the NFV. The Claims Administrator will certify jointly to Class
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1 Counsel and Defendant's counsel which claims were timely filed. The Claims Administrator
2 shall be responsible for calculating the payments (including recalculation of each claimant's
3 share based on reallocation of unclaimed amounts) issuing the payments and calculating and
4 withholding all required state and federal taxes, if any, and for communicating this information
5 to Defendant. Upon completion of its calculation of payments, the Claims Administrator shall
6 provide Plaintiffs and Defendant with a report listing the amount of all payments to be made to
7 each Qualified Claimant, in which the names of the Claimants will be coded. Proof of payment
8 will be filed with the Court and provided to the Parties' counsel.

9 18. The portion of the NFV attributable to Class Members who fail to make a timely
10 claim and who do not elect to opt out of the settlement shall be held by the Claims Administrator
11 as a Late Claim Fund. The Claims Administrator shall use those funds to attempt to contact
12 Class Members who failed to make timely claims and to encourage them to file Late Claims.
13 The Claims Administrator shall accept Late Claims for a period of sixty (60) days after the initial
14 claims period provided that the Class Member's proffered reason for the late submission
15 involves something that the parties agree was reasonably beyond the control of the Class
16 Member; by way of illustration including but not limited to, substantial illness or failure to
17 receive prior notices. (If the parties cannot agree then the matter can be submitted to the Court
18 for resolution). At that time, the Claims Administrator shall distribute the Late Claim Fund
19 proportionally to all Class Members who submit a Late Claim, provided that no such Class
20 Member shall receive payment that is greater than the amount that would have been received had
21 a timely claim been presented. The remaining balance of the Late Claim Fund shall first be used
22 to reimburse Defendant for any employer-side payroll taxes paid on claims, and any further
23 excess shall be redistributed to class claimants on a proportional basis.

24 **RIGHT TO RECISSION IN THE EVENT OF EXCESS OPT-OUTS**

25 19. Notwithstanding any other provision of this Stipulation of Settlement, Defendant
26 shall retain the right, in the exercise of its sole discretion, to nullify the settlement within thirty
27 (30) days of expiration of the opt-out deadline, if ten percent (10%) or more of Class Members
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1 opt out of the settlement. If Defendant wishes to exercise this right, it must do so by written
2 communication to Class Counsel, received by Class Counsel within the thirty (30) day period.
3 All signatories and their counsel must not encourage opt-outs. Class Counsel specifically agree
4 not to solicit opt-outs, directly or indirectly, through any means. Objective statements to Class
5 members who call Plaintiffs' counsel with inquiries regarding the settlement, shall not be
6 deemed a violation of the prohibitions contained herein. In the event of such a rescission, no
7 party may use the fact that the parties agreed to settle this case as evidence of Defendant's
8 liability in this lawsuit or the lack thereof.

9 **RELEASE BY THE CLASS**

10 20. Upon final approval by the Court, the Settlement Class, and each Class Member
11 who has not submitted a timely and valid Request for Exclusion form, will release Kaiser
12 Foundation Health Plan, Inc., and any parent, subsidiary, affiliate, predecessor or successor, and
13 all agents, employees, officers, directors and attorneys thereof, from any and all claims, debts,
14 liabilities, demands, obligations, guarantees, costs, expenses, attorneys' fees, damages, action or
15 causes of action contingent or accrued, which relate to the factual allegations and claims asserted
16 in the Lawsuit, including without limitation to, claims under the FLSA, the California Labor
17 Code or Business & Professions Code (including section 17200), claims for restitution and other
18 equitable relief, liquidated damages, punitive damages, waiting time penalties, PAGA penalties,
19 penalties of any nature whatsoever, or any other benefit claimed on account of the allegations
20 asserted in the Lawsuit. This Stipulation of Settlement will release all claims within the scope of
21 the Lawsuit arising on or before the date of preliminary approval.

22 **DUTIES OF THE PARTIES PRIOR TO COURT APPROVAL**

23 21. The Parties shall promptly submit this Stipulation of Settlement to the Court in
24 support of a request for preliminary approval and determination by the Court as to its fairness,
25 adequacy, and reasonableness. Promptly upon execution of this Stipulation of Settlement, the
26 Parties shall apply to the Court for the entry of a preliminary order which would accomplish the
27 following:
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- 1 a. Schedule a final fairness hearing on the question of whether the proposed
2 settlement, including payment of attorneys' fees and costs, and the Class Representatives'
3 enhancement award, should be finally approved as fair, reasonable, and adequate as to the Class
4 Members;
- 5 b. Certifying a settlement class for all claims;
- 6 c. Certifying this action under California Code of Civil Procedure section
7 382 and California Rules of Court, Rules 3.769 et seq. as a collective action for purposes of
8 settlement;
- 9 d. Approving as to form and content the proposed Notice;
- 10 e. Approving as to form and content the proposed green Claim Form;
- 11 f. Approving as to form and content the proposed Request for Exclusion
12 Form;
- 13 g. Directing the mailing of the Notice, Claim Form, Request for Exclusion
14 Form, by first class mail to the Class Members;
- 15 h. Preliminarily approving the settlement subject only to the objections of
16 Class Members and final review by the Court;
- 17 i. Preliminarily approving costs of _____ in an amount expected not
18 to exceed _____;
- 19 j. Preliminarily approving Class Counsel's request for attorneys' fees and
20 litigation expenses subject to final review of the Court; and
- 21 k. Preliminarily approving Class Counsel's request that Plaintiffs receive
22 enhancement awards in the amount of \$20,000 each.

23 **DUTIES OF THE PARTIES FOLLOWING FINAL APPROVAL**

24 22. Following final approval of the settlement provided for in this Stipulation of
25 Settlement, Class Counsel will submit a proposed final order and Judgment:

- 26 a. Approving the settlement, adjudging the terms thereof to be fair,
27 reasonable, and adequate, and directing consummation of its terms and provisions;

1 **NO ADMISSION**

2 26. Nothing contained herein, nor the consummation of this Stipulation of Settlement,
3 is to be construed or deemed an admission of liability, culpability, negligence, or wrongdoing on
4 the part of Defendant. Defendant specifically denies any liability. Each of the Parties hereto has
5 entered into this Stipulation of Settlement with the intention to avoid further disputes and
6 litigation with the attendant inconvenience and expenses.

7 **CONSTRUCTION**

8 27. The Parties hereto agree that the terms and conditions of this Stipulation of
9 Settlement are the result of lengthy, intensive arms-length negotiations between the Parties, and
10 that this Stipulation of Settlement shall not be construed in favor of or against any party by
11 reason of the extent to which any party or his, her, or its counsel participated in the drafting of
12 this Stipulation of Settlement.

13 **CAPTIONS AND INTERPRETATIONS**

14 28. Paragraph titles or captions contained herein are inserted as a matter of
15 convenience and for reference, and in no way define, limit, extend, or describe the scope of this
16 Stipulation of Settlement or any provision hereof. Each term of this Stipulation of Settlement is
17 contractual and not merely a recital.

18 **MODIFICATION**

19 29. This Stipulation of Settlement may not be changed, altered, or modified, except in
20 writing and signed by the Parties hereto, and approved by the Court. This Stipulation of
21 Settlement may not be discharged except by performance in accordance with its terms or by a
22 writing signed by the Parties hereto.

23 **INTEGRATION CLAUSE**

24 30. This Stipulation of Settlement contains the entire agreement between the Parties
25 relating to the settlement and transaction contemplated hereby, and all prior or contemporaneous
26 agreements, understandings, representations, and statements, whether oral or written and whether
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1 by a party or such party's legal counsel, are merged herein. No rights hereunder may be waived
2 except in writing.

3 **BINDING ON ASSIGNS**

4 31. This Stipulation of Settlement shall be binding upon and inure to the benefit of the
5 Parties hereto and their respective heirs, trustees, executors, administrators, successors and
6 assigns.

7 **CLASS COUNSEL SIGNATORIES**

8 32. It is agreed that because of the large number of Class Members, it is impossible or
9 impractical to have each Class Member execute this Stipulation of Settlement. The Notice,
10 Exhibit "A," will advise all Class Members of the binding nature of the release and such shall
11 have the same force and effect as if this Stipulation of Settlement were executed by each member
12 of the Class.

13 **COUNTERPARTS**

14 33. This Stipulation of Settlement may be executed in counterparts, and when each
15 party has signed and delivered at least one such counterpart, each counterpart shall be deemed an
16 original, and, when taken together with other signed counterparts, shall constitute one Stipulation
17 of Settlement, which shall be binding upon and effective as to all Parties.

18
19 DATED: _____, 2009

20 By _____
21 Peter Pasquale
22 Plaintiff and Class Representative

23 DATED: _____, 2009

24 By _____
25 Sonia Gerberding
26 Plaintiff and Class Representative

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DATED: _____, 2009

MARLIN & SALTZMAN, LLP

By _____
Louis M. Marlin
Attorneys for Plaintiffs
PETER PASQUALE and SONIA GERBERDING

DATED: _____, 2009

THE CULLEN LAW FIRM

By _____
Paul T. Cullen
Attorneys for Plaintiffs
PETER PASQUALE and SONIA GERBERDING

DATED: _____, 2009

SEYFARTH SHAW LLP

By _____
Christian J. Rowley
Attorneys for or Defendant
KAISER FOUNDATION HOSPITALS

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