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**ENDORSED
 FILED
 ALAMEDA COUNTY**

AUG 27 2009

**CLERK OF THE SUPERIOR COURT
 By E. Opelski-Erickson, Deputy**

11 *Attorneys for Plaintiffs*

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 13 **FOR THE COUNTY OF ALAMEDA**

14 TERESA TATE AND AUDREY
 15 LIGHTER, on behalf of themselves
 individually and all others similarly
 16 situated,

17 Plaintiffs,

18 vs.

19 KAISER PERMANENTE, KAISER
 FOUNDATION HEALTH PLAN, INC.,
 20 and DOES 1 through 100, INCLUSIVE

21 Defendant(s)

) No. RG 07318416

) **PROPOSED ORDER:**

- a) **GRANTING PRELIMINARY APPROVAL OF CLASS SETTLEMENT;**
- b) **APPROVING THE FORM AND MANNER OF NOTICE TO PROVIDE TO THE PROPOSED SETTLEMENT CLASS AND DIRECTING THAT A NEUTRAL THIRD PARTY GIVE SUCH NOTICE TO THE PROPOSED SETTLEMENT CLASS;**
- c) **APPROVING RUST CONSULTING, INC., A NEUTRAL THIRD PARTY, AS CLAIMS ADMINISTRATOR;**
- d) **SETTING A HEARING DATE OF NOVEMBER 24, 2009, FOR FINAL APPROVAL OF THE PROPOSED SETTLEMENT AND AWARD OF FEES AND COSTS TO CLASS COUNSEL AND PROPOSED ENHANCEMENTS TO CLASS REPRESENTATIVES**

1 Before the Court is a joint motion by defendant Kaiser Foundation Health Plan ("Kaiser")
2 and a class of Kaiser's former employees represented by Audrey Lighter and Teresa Tate
3 (collectively referred to as "Plaintiffs") seeking: (1) preliminary certification for settlement
4 purposes; (2) preliminary approval of the settlement; (3) appointment of class counsel; (4) approval
5 of the class notice program; (5) appointment of Rust Consulting, Inc. as the Claims Administrator;
6 and, (6) setting November 24, 2009, as a date for a hearing date for final approval of the Settlement
7 and hearing on Plaintiffs' counsel's request for attorneys' fees and costs and enhancements to the
8 Class Representatives. This motion came before the Court for hearing on August 13, 2009, at 9:00
9 a.m. Robin G. Workman of QUALLS & WORKMAN, LLP, appearing on behalf of Plaintiffs, and
10 Thomas Kaufman of SEYFARTH SHAW LLP, appearing on behalf of Defendant Kaiser. After
11 review of the proposed Amended Stipulation of Settlement ("Settlement"), supplemental briefing,
12 and argument, and good cause appearing:

13 **IT IS HEREBY ORDERED:**

14 Pursuant to the agreement reached between the parties, and good cause appearing, the Court
15 grants preliminary approval of the terms of the Settlement and the agreed upon procedures as set
16 forth in the Amended Stipulation of Settlement executed August 19, 2009. The Court finds that the
17 proposed Settlement is within the range of that which could receive approval at a final approval
18 hearing.

19 The Court grants the request to provisionally certify the proposed settlement class as defined
20 by the Amended Stipulation of Settlement. The Court also approves Qualls & Workman, LLP as
21 Class Counsel, Plaintiffs Audrey Lighter and Teresa Tate as Class Representatives, and Rust
22 Consulting, Inc. as the Claims Administrator.

23 The Court finds that, for the purposes of this Settlement only, the proposed class meets the
24 requirements of Code of Civil Procedure section 382. The Court finds that the proposed Class is
25 ascertainable and numerous (approximately 155 persons) so that joinder of all Class Members is
26 impracticable, that common questions of law and fact exist in that Kaiser's alleged misclassification
27 of the Class Members as exempt is the basis for the claims of both the named Plaintiffs and the
28 proposed class, that Plaintiffs meet the typicality requirement in that the claims of all the named

1 Plaintiffs and the proposed Class Members arise from Kaiser's conduct, involve similar work
2 performed in connection with Kaiser's Recruitment Services and originate from the same legal
3 theories, and that Plaintiffs will provide adequate representation. The Court finds that the Plaintiffs
4 do not have conflicts of interest with the proposed Class and that competent counsel represent the
5 Plaintiffs. The Court also finds that proceeding as a class for purposes of settlement is superior to
6 other available methods for the fair and efficient adjudication of this controversy and that
7 proceeding as a class will reduce litigation costs and promote greater efficiency.

8 The Court also finds that the settlement reached is fair, reasonable and adequate. The Court
9 finds that the risks associated with the exemption defenses Kaiser asserted, when coupled with the
10 expense, complexity, and likely duration of further litigation associated with the assertion of these
11 defenses weigh in favor of preliminary approval of the settlement. The Court finds that the parties
12 engaged in sufficient formal discovery, spanning over two years and encompassing over 40
13 depositions and thousands of documents exchanged, to allow counsel to have sufficient information
14 upon which to make an informed decision about settlement. Given the length of the litigation,
15 Plaintiffs had sufficient time to examine the records provided. Plaintiffs also engaged various
16 experts to assist them in their evaluation. Plaintiffs engaged a preeminent survey expert to survey
17 the class on both hours worked and rest and meal period issues. Plaintiffs then engaged a class
18 action damage analysis expert to prepare damage analyses to present at trial based on the results of
19 the survey. Plaintiffs' extensive investigation, discovery, and research weighs in favor of
20 preliminary settlement approval.

21 The Court also finds that Plaintiffs' counsel have extensive experience in wage and hour
22 class action matters. Counsels' belief that the settlement is fair and adequate also weighs in favor
23 of preliminary approval.

24 The Court finds that the Settlement is the result of extensive arms-length negotiations
25 conducted after Plaintiffs' counsel adequately investigated the claims and became familiar with the
26 strengths and weaknesses of those claims. The assistance of an experienced mediator, David
27 Rotman, in the settlement process supports the Court's conclusion that the Settlement is non-

1 collusive. The Court finds that the Settlement is presumptively valid, subject only to any objections
2 that Class Members may raise at the final fairness and approval hearing.

3 The Court reserves the approval of the requested attorneys' fees and costs and will rule on
4 these requests, as well as any request for Class Representative enhancements, at the Final Fairness
5 and Approval Hearing. The Court will require the Rust Consulting, Inc., to keep ten percent (10%)
6 of any fee award in its trust fund until the completion of the distribution process and Court approval
7 of a final accounting.

8 The Court finds the manner and form of notice as set forth in the Amended Stipulation of
9 Settlement is reasonably calculated to give actual notice to class members of the fact of Settlement
10 and the right to receive settlement benefits, to be excluded from the Settlement, and raise objections
11 to the Settlement. The Court also finds that the notice fairly, plainly, accurately, and reasonably
12 informs Class Members of: (1) appropriate information about the nature of this case, the definition
13 of the Class, the identity of Class Counsel, and the essential terms of the Settlement; (2) appropriate
14 information about Class Counsel's request for attorneys' fees and costs; (3) appropriate information
15 regarding how to submit a timely claim under the Settlement, how to opt out of the Settlement, and
16 how to object to the Settlement; and, (4) appropriate instructions as to how to obtain additional
17 information regarding the Settlement. The court further finds that the Notice and proposed
18 distribution of such Notice by first class mail to each identified Class Member at his or her last
19 known address (with the appropriate steps taken by the Claims Administrator as set forth in the
20 Amended Stipulation of Settlement) comports with all constitutional requirements, including those
21 of due process and is the best notice practicable under the circumstances. The Court also finds that
22 the Notice adequately apprises the Class Members on how to use the Court's website to locate
23 documents pertaining to the case and this Settlement.

24 The Court finds that the Claim Form adequately informs Class Members about how much
25 each Class Member should expect to receive under the terms of the Settlement based on a 100%
26 claims rate. The Court finds that the Request for Exclusion is also adequate. The Court also finds
27 that the envelope in which Rust Consulting will send the Notice, Claim Form and Request for
28 Exclusion adequately informs the Class Members of its contents.

1 The Court therefore approves the form of Notice of Class Action Settlement (Mailed
2 Notice—Exhibit A to the Amended Stipulation of Settlement); Claim Form (Exhibit B to the
3 Amended Stipulation of Settlement), Request for Exclusion (Exhibit C to the Amended Stipulation
4 of Settlement), and envelope (Ex C to the Declaration of Robin G. Workman in Support of
5 Plaintiffs' Supplemental Application for Preliminary Approval filed on August 24, 2009).

6 To ensure adequate notice and an opportunity for Class Members to inform themselves
7 about the terms and conditions of the settlement, the Court orders Class Counsel to post on their
8 website all documents pertaining to the proposed settlement.

9 The Court orders the parties to carry out and proceed with the terms of the Amended
10 Stipulation of Settlement and approves the following settlement administration deadlines:

- 11 1. Within ten (10) business days after preliminary approval of this Settlement, Kaiser
12 shall provide Rust Consulting, Inc. all of the following information about each
13 Class Member in a format requested by Rust Consulting ("Class Data List"): (1)
14 name, (2) last known home address and telephone number, (3) Social Security
15 Number, and (4) dates of employment during the class period in covered positions
16 for each class member;
- 17 2. Rust Consulting shall mail a copy of the Notice of Class Action Settlement, Claim
18 Form, and Request For Exclusion to the Class Members, by first class mail, on or
19 before September 21, 2009. The Court directs Rust Consulting to take all other
20 actions in furtherance of claims administration as specified in the Settlement;
- 21 3. The Court approves the procedure for submittal of Proof of Claims as set forth in
22 the Settlement Agreement. Class Members shall mail Proof of Claims and
23 Requests for Exclusions to the Claims Administrator no later than November 5,
24 2009. The documents must bear a postmarked date of no later than November 5,
25 2009;
- 26 4. Class Members must file objections to the Settlement with the Court and serve any
27 objections on Class Counsel and Defendant's counsel no later than November 5,
28 2009.

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The Court shall hold a Final Approval and Fairness Hearing on November 24, 2009, at 3:00 p.m. to determine: (1) whether the proposed Settlement is fair, reasonable, and adequate and if the Court should finally approve the Settlement, including consideration of any timely filed objections; and, (2) the amount of attorneys' fees and costs to award to Class Counsel and the amount of enhancement to award to Class Representatives. Plaintiffs and Defendant shall file and serve any briefs and supporting papers relating to the approval of the settlement, Class Counsel's fees and costs and Class Representatives' incentive payments at least five (5) court days prior to the fairness hearing. At least five (5) court days prior to the fairness hearing, Rust Consulting, Inc. shall file and serve a declaration verifying that it mailed the Notice and Claims Forms to each class member. Following final approval, the parties and Rust Consulting are directed to talk all other actions as provided in the Settlement. The Court will hold a Final Accounting hearing on January 25, 2010.

IT IS SO ORDERED

DATED: AUG 27 2009

STEVEN A. BRICK *SAB/BJ*

The Honorable Steven Brick