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15 KAISER FOUNDATION HEALTH PLAN, INC.

16 SUPERIOR COURT OF THE STATE OF CALIFORNIA
17 COUNTY OF ALAMEDA - CENTRAL

18 TERESA TATE AND AUDREY LIGHTER, on)
19 behalf of themselves individually and all others)
similarly situated,)

20 Plaintiffs,)

21 v.)

22 KAISER PERMANENTE, KAISER)
23 FOUNDATION HEALTH PLAN, INC., and)
24 DOES 1 through 100, INCLUSIVE,)

25 Defendants.)

Case No. RG 07318416

) Assigned for all purposes to
Hon. Steven A. Brick

26 **PARTIES' AMENDED STIPULATION**
27 **OF SETTLEMENT AND RELEASE**
28 **BETWEEN PLAINTIFFS AND**
DEFENDANT

Dept.: 17

28 This Stipulation of Settlement and Release ("Stipulation of Settlement" or "Settlement Agreement") is made and entered into by and between Plaintiffs Teresa Tate and Audrey Lighter

1 (collectively, "Plaintiffs" or "Class Representatives") and Defendant Kaiser Foundation Health
2 Plan, Inc. ("Defendant"), and is subject to the terms and conditions hereof and the approval of
3 the Court. Plaintiffs and Defendant are referenced collectively herein as "the Parties."

4 BACKGROUND AND RECITALS

5 1. On or about April 2, 2007, Plaintiffs filed a class action complaint in the
6 California Superior Court, County of Alameda, Case No. RG 07318416, captioned *Tate v. Kaiser*
7 *Foundation Health Plan, Inc.* In its operative from, the *Tate* complaint alleged that Plaintiffs and
8 other former employees of Kaiser Foundation Health Plan, Inc. were unlawfully denied overtime
9 wages, were not provided meal and rest periods as required by law, and related claims for
10 penalties. The complaint sought recovery of overtime wages, payments for missed meal and rest
11 period, relief for the failure to comply with the itemized employee wage statement provisions of
12 Labor Code section 226(a), claims for derivative penalties under the California Labor Code
13 Private Attorneys General Act ("PAGA"), and claims for attorneys' fees and costs. As part of
14 the settlement reached, Plaintiffs agree to withdraw the PAGA claims.

15 2. For purposes of this Settlement Agreement, the "Settlement Class" consists of all
16 class members who fail to opt out of this Settlement Agreement. "Settlement Class Members"
17 are:

18 "All persons employed by Kaiser Foundation Health Plan, Inc. in
19 the job titles of Staffing Consultant, Senior Staffing Consultant,
20 Recruiter, Senior Recruiter, Geographic Recruiter, Recruiter Area
21 Recruitment Team, or Expert Recruitment Consultant from the
22 time period April 2, 2003 through November 1, 2007"

23 3. On July 16, 2009, the Parties participated in a mediation before mediator David
24 Rotman that resulted in a settlement of the Lawsuit, subject to court approval. The parties signed
25 a Memorandum of Understanding, and are now entering into a more detailed, formalized
26 settlement agreement to submit to the Court for approval.

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

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

3 b. There is an ascertainable class.

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

5 d. Plaintiffs' claims are typical of the claims of the members of the
6 Settlement Class.

7 e. Qualls & Workman, LLP should be deemed "Class Counsel" and will
8 fairly and adequately protect the interests of the Settlement Class.

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

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

16 5. Defendant denies any liability or wrongdoing of any kind associated with the
17 claims alleged in the complaint and further denies that, for any purpose other than settling the
18 Lawsuit, this action is appropriate for class treatment. Defendant contends, among other things,
19 that it has complied at all times with the California Labor Code, and all applicable California and
20 federal law.

21 6. Plaintiffs believe they have filed meritorious actions and that class certification is
22 appropriate. Plaintiffs contend that Defendant violated California's wage and hour laws and that
23 this case is appropriate for class certification as the requisites for class certification are satisfied
24 in this case.

25 7. It is the desire of the Parties to fully, finally, and forever settle, compromise, and
26 discharge all disputes and claims which exist between them arising from or related to the
27 Lawsuit. In order to achieve a full and complete release of Defendant (and the Releasees as
28 defined in Paragraph 8) of such disputes and claims, each Class Member (which includes any

1 legal heirs and/or successors-in-interest of each Class Member who receives Notice), through
2 execution of the Stipulation and Settlement by the Class Representative, acknowledges that this
3 Stipulation of Settlement is intended to include in its effect all claims arising from or related to
4 the Lawsuit, including all claims set forth in Paragraph 20 of this Stipulation of Settlement,
5 which each Class Member does not know or suspect to exist in his or her favor against
6 Defendant during the Settlement Period.

7 8. It is the intention of the Parties that this Stipulation of Settlement shall constitute a
8 full and complete settlement and release of all claims arising from the factual allegations
9 contained in the Lawsuit, including, without limitation, any and all claims relating to said factual
10 allegations under the California Labor Code (including claims for meal and/or rest periods) or
11 Business & Professions Code (including Section 17200), claims for restitution and other
12 equitable relief, liquidated damages, punitive damages, waiting time penalties, penalties of any
13 nature whatsoever, attorneys' fees, and any other benefit claimed on account of the allegations
14 asserted in the Class Action complaint, which release shall include in its effect Defendant, and
15 each of its present and former affiliates, parent companies, subsidiaries, shareholders, officers,
16 partners, directors, employees, agents, attorneys, insurers, predecessors, representatives,
17 accountants, past, present, and future, successors and assigns, and each and all of their respective
18 officers, partners, directors, servants, agents, shareholders, employees, representatives,
19 accountants, insurers, and attorneys, past, present, and future, and all persons acting under, by,
20 through, or in concert with any of them (collectively, the "Releasees").

21 TERMS OF SETTLEMENT

22 9. Establishment of Gross Fund Value. This settlement shall be made on a non-
23 reversionary basis (except as to employer taxes as described below). As to the Settlement Class,
24 Defendant shall pay no more than a sum equal to FOUR MILLION DOLLARS (\$4,000,000)
25 (the "Gross Fund Value") to fund the settlement of this action. Payments by Defendant pursuant
26 to this Settlement Agreement shall settle all pending issues between the Parties, including, but
27 not limited to, all payments of class claims, administration costs, attorneys' fees and costs, and
28 enhancement awards. Payments of any appropriate and lawfully required employer payroll taxes

1 shall also be drawn from the Gross Fund Value from reversion funds, if any. The payments are
2 not being made for any other purpose and will not be construed as compensation for purposes of
3 determining eligibility for any health and welfare benefits or unemployment compensation.

4 10. Number of Workweeks. Defendants' records indicate that the number of
5 workweeks that have accrued for all Class Members from April 2, 2003 to November 1, 2007 as
6 approximately 15,500. For purposes of this calculation, a workweek shall be defined as 40
7 payroll work hours (as recorded in Kaiser's payroll system) and all fractional workweeks shall be
8 rounded to the nearest integer.

9 11. Calculation of Net Fund Value. After determination of the final Gross Fund
10 Value, the Net Fund Value ("NFV") for the Settlement Class will constitute the total sum from
11 which members of the respective Settlement Class will be paid after Court-approved attorneys'
12 fees and costs, administration costs, and enhancement awards described herein are subtracted
13 from the Gross Fund Value as described below.

14 12. Settlement Date: The settlement embodied in this Stipulation of Settlement shall
15 go into effect upon entry of a final Judgment by the Court approving this Stipulation of
16 Settlement.

17 13. Settlement Payments and Costs of Administration:

18 a. Attorneys' Fees and Costs: In consideration for settling this matter and in
19 exchange for the release of all claims by the Settlement Classes, and subject to final approval,
20 Defendant agrees that Class Counsel should be awarded a sum not to exceed one-third of the
21 Gross Fund Value to compensate and reimburse Class Counsel for all of the work already
22 performed by Class Counsel in this case and all of the work remaining to be performed by Class
23 Counsel in documenting the Settlement, securing Court approval of the Settlement, making sure
24 that the Settlement is fairly administered and implemented, and obtaining dismissal of the action.
25 Class counsel shall separately be allowed to obtain recover of their actual litigation costs from
26 the Settlement Fund. Should the Court approve a lesser percentage or amount of fees and/or
27 costs, the unapproved portion or portions shall revert to the NFV and will be distributed to
28 Settlement Class members who constitute Qualified Claimants (described below) on a

1 proportional basis relative to the size of their claims, in accordance with other administration and
2 distribution requirements hereunder.

3 b. Enhancement Awards: Subject to approval by the Court, Defendant
4 further agrees to pay Plaintiffs an enhancement award not to exceed FIFTY THOUSAND
5 DOLLARS (\$50,000), for distribution to Plaintiff Teresa Tate (\$25,000) and Audrey Lighter
6 (\$25,000), the named class representatives, in consideration for serving as Class Representatives.
7 The enhancement award is in addition to the claim share to which Plaintiffs are entitled along
8 with other claiming Class Members. Should the Court approve an enhancement award less than
9 that set forth herein, the unapproved portion or portions shall revert to the respective NFV and
10 shall be distributed proportionally to those Settlement Class members who constitute Qualified
11 Claimants (described below) on a proportional basis relative to the size of their claims, in
12 accordance with other administration and distribution requirements hereunder.

13 c. Calculation of Class Members' Payments: In consideration for settlement
14 and a release of all claims of the Settlement Class against Defendant, Defendant agrees to pay to
15 each member of each Settlement Class who returns a valid and timely Claim Form ("Qualified
16 Claimant") a share of the respective NFV according to the formula that follows.

17 1) The Net Fund Value will be distributed proportionally on a
18 point basis.

19 2) All Settlement Class Members shall receive 8 points for each
20 workweek they worked between the beginning of the class period and
21 January 1, 2005.

22 3) All Settlement Class Members shall receive 4 points for each
23 workweek they worked as a Recruiter, Recruiter Area Recruitment Team,
24 or Geographic Recruiter between January 1, 2005 and November 1, 2007.

25 4) All Settlement Class Members shall receive 1 point for each
26 workweek they worked as a Senior Recruiter or Expert Recruitment
27 Consultant between January 1, 2005 and November 1, 2007.

28 5) All Settlement Class Members shall receive 0 points for any work
performed after November 1, 2007.

 6) Each class member's provisional share of the settlement shall be
calculated by dividing the class member's individual point total by the

1 aggregate point total of all class members, and multiplying that figure by
2 the Net Fund Value.

3 d. Funding of Settlement: Within ten (10) business days after final approval
4 by the Court, Defendant will deposit an amount equal to the Gross Fund Value into an account,
5 through the Claims Administrator. Any interest accrued on this account will be distributed to
6 class claimants except that if final approval is reversed on appeal, then Defendant is entitled to
7 prompt return of the principal and all interest accrued. To the extent that Class Members do not
8 submit a claim for their pro rata share of the NFV that portion of the claims fund shall first be
9 used to pay any employer-side payroll taxes owed on claims, and any further excess shall be
10 redistributed to class claimants on a proportional basis. Defendant shall be responsible for any
11 additional employer taxes in excess of the unclaimed portion of the NFV. The amount of any
12 uncashed checks shall be distributed to an entity approved by the Court.

13 e. Payment Procedure: So long as the effective date of final approval has
14 occurred, the Claims Administrator may pay all claims, and Court-approved attorney's fees,
15 costs, and enhancement payments immediately after Defendant is required to fund the settlement.
16 The effective date will be the date of final approval if no objections are filed to the settlement. If
17 objections are filed and overruled, and no appeal is taken of the final approval order, then the
18 effective date of final approval will be sixty-five (65) days after the entry of final approval. If an
19 appeal is taken from the Court's overruling of objections to the settlement, then the effective date
20 of final approval will be twenty (20) days after the appeal is withdrawn or after an appellate
21 decision affirming the final approval becomes final. No money will be distributed unless and
22 until the effective date of final approval occurs.

23 f. Costs of Claims Administrator: The parties have selected Rust Consulting
24 as Claims Administrator in this action. Rust Consulting has agreed to perform all necessary class
25 administration duties for a fee estimated to be TWENTY-FIVE THOUSAND DOLLARS
26 (\$25,000). This administration duty shall include without limitation, mailing notices, claim
27 forms and exclusion forms, mailing reminder post-cards to those members of the Class who have
28 not returned a claim form or request for exclusion 15 days prior to the expiration of the claims

1 period, placing a reminder telephone call to Class Members who have not returned a claim form
2 or request for exclusion 10 days prior to the expiration of the claims period, performing
3 necessary skip traces on Notices returned as undeliverable, the calculation, processing, mailing
4 requests to cure deficiencies in the Claim Form, and mailing of all Qualified Claimants'
5 settlement checks. All administration costs shall be deducted proportionally from the Gross
6 Fund Value.

7 g. Tax Treatment of Claim Share Portion of Settlement Payments: Of the
8 amount to be paid to Class Members, fifty percent (50%) is allocated to wages. The remaining
9 50% of the amount paid to Class Members is allocated to interest and penalties. Defendant shall
10 be responsible for paying the employer's share of payroll taxes, in addition to the NFV, on any
11 portion of the settlement where payroll taxes are required by law. Each Class Member will be
12 responsible for correctly characterizing this compensation for tax purposes and for payment of
13 any taxes owing on said amount. In the event of an audit of Defendant by any state or federal
14 government agency, or if any tax authority should dispute the characterization of this
15 compensation, Defendant reserves all rights to indemnification permitted by law.

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

22 i. Individual General Releases from Class Representatives: Plaintiffs Teresa
23 Tate and Audrey Lighter will each execute a general release separate and above the release
24 provided for in Paragraph 8.

25 j. Resolution of Disputes Relating To Amounts Owed to a Claimant: A
26 "Qualified Claimant" will be defined as an individual in the Settlement Class who will have
27 timely submitted a Claim Form properly signed and including the last four numbers of their
28 social security number, and have not submitted a request for exclusion. If a Qualified Claimant

1 timely disputes Defendant's records (on a Claim Form) as to the proper size of his or her claim,
2 the Parties' Counsel will make a good faith effort to resolve the dispute informally. If counsel
3 for the parties cannot agree, the dispute shall be submitted to the Claims Administrator, who
4 shall examine the records in an attempt to resolve the dispute. The Claims Administrator will
5 make every effort to resolve any such disputes prior to final approval of this Settlement. In the
6 event the Claims Administrator is unable to resolve a dispute, the dispute shall be thereafter be
7 submitted to the Court for final resolution.

8 **NOTICE TO THE PLAINTIFF CLASS**

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

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

CLAIM PROCESS

1
2 16. Class Members will have forty-five (45) days from the date the Notice Packets are
3 mailed by the Claims Administrator to postmark their signed Claim Forms, Objections, and/or
4 Requests For Exclusion. In the event a Class Member timely returns a valid Claim Form and a
5 Request for Exclusion, the claim will be deemed invalid, and the Claims Administrator will
6 contact the Class Member for clarification of the Class Member's intent. If the class member
7 fails to provide clarification within the time limits of the settlement, his or her claim will be
8 deemed invalid as if no claim was made at all. The Claims Administrator will mail a follow up
9 notice ("reminder post-card") to those Class Members who have not responded with the return of
10 a Claim Form or a Request for Exclusion fifteen (15) days before the expiration of the claim
11 period encouraging Class Members to respond before the deadline. The Claims Administrator
12 will perform one skip-trace on returned mail and re-mail Claim Forms to an updated address (if
13 any) within ten (10) days of receiving notice that a Notice Packet was undeliverable. The
14 administrator will also make up to three reminder phone calls to class members who have
15 returned neither an opt-out form or a request for exclusion, reminding them to do so. It is the
16 intent of the parties that reasonable means be used to locate Class Members.

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

26 18. All original Claim Forms shall be mailed directly to the Claims Administrator at
27 the address indicated on the Claim Form. Defendant, with the Class Data List, will provide the
28 Claims Administrator an Excel spreadsheet that the administrator will use to calculate each Class

1 Member's proportional share of the NFV. The Claims Administrator will certify jointly to Class
2 Counsel and Defendant's counsel which claims were timely filed. The Claims Administrator
3 shall be responsible for calculating the payments (including recalculation of each claimant's
4 share based on reallocation of unclaimed amounts) issuing the payments and calculating and
5 withholding all required state and federal taxes, if any, and for communicating this information
6 to Defendant. Upon completion of its calculation of payments, the Claims Administrator shall
7 provide Plaintiffs and Defendant with a report listing the amount of all payments to be made to
8 each Qualified Claimant, in which the names of the Claimants will be coded. Proof of payment
9 will be filed with the Court and provided to the Parties' counsel.

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

11 19. Notwithstanding any other provision of this Stipulation of Settlement, Defendant
12 shall retain the right, in the exercise of its sole discretion, to nullify the settlement within thirty
13 (30) days of expiration of the opt-out deadline, if twenty (20) or more Settlement Class Members
14 opt out of the settlement. If Defendant wishes to exercise this right, it must do so by written
15 communication to class counsel, received by Class Counsel within the thirty (30) day period. All
16 signatories and their counsel must not encourage opt-outs. Class Counsel specifically agree not
17 to solicit opt-outs, directly or indirectly, through any means. Objective statements to Class
18 members who call Plaintiffs' counsel with inquiries regarding the settlement, shall not be
19 deemed a violation of the prohibitions contained herein. In the event of such a rescission, no
20 party may use the fact that the parties agreed to settle this case as evidence of Defendant's
21 liability in this lawsuit or the lack thereof.

22 **RELEASE BY THE CLASS**

23 20. Upon final approval by the Court, each Class Member who has not submitted a
24 timely and valid Request for Exclusion form, will release Kaiser Foundation Health Plan, Inc.,
25 and any parent, subsidiary, affiliate, predecessor or successor, and all agents, employees,
26 officers, directors and attorneys thereof, from any and all claims, debts, liabilities, demands,
27 obligations, guarantees, costs, expenses, attorneys' fees, damages, action or causes of action,
28 contingent or accrued, that are based upon the factual allegations asserted in the Lawsuit. This

1 release includes claims for failure to pay overtime compensation, failure to provide meal and res
2 periods, derivative claims for the failure to provide accurate wage statements, waiting time
3 penalties, claims under the Labor Code Private Attorney General Act ("PAGA"), and claims of
4 any nature that are based on an allegation that Kaiser misclassified a recruiter as exempt. This
5 Stipulation of Settlement will release all claims within its scope that arise on or before the date o
6 final approval.

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

8 21. The Parties shall promptly submit this Stipulation of Settlement to the Court in
9 support of a request for preliminary approval and determination by the Court as to its fairness,
10 adequacy, and reasonableness. Promptly upon execution of this Stipulation of Settlement, the
11 Parties shall apply to the Court for the entry of a preliminary order which would accomplish the
12 following:

13 a. Schedule a final fairness hearing on the question of whether the proposed
14 settlement, including payment of attorneys' fees and costs, and the Class Representatives'
15 enhancement award, should be finally approved as fair, reasonable, and adequate as to the Class
16 Members;

17 b. Certifying a settlement class for all claims;

18 c. Certifying this action under California Code of Civil Procedure section
19 382 and California Rules of Court, Rules 3.769 et seq. as a collective action for purposes of
20 settlement;

21 d. Approving as to form and content the proposed Notice;

22 e. Approving as to form and content the proposed Claim Form;

23 f. Approving as to form and content the proposed Request for Exclusion
24 Form;

25 g. Directing the mailing of the Notice, Claim Form, Request for Exclusion
26 Form, by first class mail to the Class Members;

27 h. Preliminarily approving the settlement subject only to the objections of
28 Class Members and final review by the Court;

1 i. Preliminarily approving costs of Rust Consulting in an amount expected
2 not to exceed TWENTY FIVE THOUSAND DOLLARS (\$25,000);

3 j. Preliminarily approving Class Counsel's request for attorneys' fees and
4 litigation expenses subject to final review of the Court; and

5 k. Preliminarily approving Class Counsel's request that Plaintiffs receive
6 enhancement awards.

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

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

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

12 b. Approving Class Counsel's application for an award of attorneys' fees and
13 reimbursement of costs;

14 c. Approving the enhancement award(s);

15 d. Barring all members of the Settlement Class from prosecuting against
16 Releasees, any individual or class claims that were asserted in this action, including without
17 limitation any claims arising out of the acts, facts, transactions, occurrences, representations, or
18 omissions set forth in this action, through the date of the final approval of this settlement upon
19 satisfaction of all payments and obligations hereunder.

20 **PARTIES' AUTHORITY**

21 23. The signatories hereto hereby represent that they are fully authorized to enter into
22 this Stipulation of Settlement and bind the Parties hereto to the terms and conditions hereof.

23 **MUTUAL FULL COOPERATION**

24 24. The Parties agree to fully cooperate with each other to accomplish the terms of
25 this Stipulation of Settlement, including but not limited to, execution of such documents and to
26 take such other action as may reasonably be necessary to implement the terms of this Stipulation
27 of Settlement. The Parties to this Stipulation of Settlement shall use their best efforts, including
28 all efforts contemplated by this Stipulation of Settlement and any other efforts that may become