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CLOSED

9 Attorneys for Plaintiffs and all others similarly situated. (*Additional Plaintiffs’
 counsel listed on next page*)

10 UNITED STATES DISTRICT COURT
 11 CENTRAL DISTRICT OF CALIFORNIA
 12 (WESTERN DIVISION – LOS ANGELES)

13 FLORDELIZA ESCANO, MARILA P.)
 14 MAXIMO, JOEL T. CATUBLAS, and)
 15 PENNY BURNEY, on behalf of)
 themselves and on behalf of all others)
 similarly situated,)

Case No.: CV 09-04778 DDP (RZx)

Honorable Dean D. Pregerson

CLASS ACTION

16 Plaintiffs,

17 v.

**ORDER GRANTING PLAINTIFFS’
 MOTION FOR FINAL APPROVAL
 OF CLASS ACTION
 SETTLEMENT AND MOTION FOR
 ATTORNEYS’ FEES AND COSTS,
 AND CLASS REPRESENTATIVE
 ENHANCEMENTS**

18 KINDRED HEALTHCARE)
 OPERATING, INC., a Delaware)
 19 Corporation, KINDRED)
 HEALTHCARE, INC., a Delaware)
 20 Corporation, SPECIALTY)
 HOSPITALS OF SOUTHERN)
 21 CALIFORNIA, a business form)
 unknown, and DOES 1 through 100,)

Date: March 9, 2015
 Time: 10:00 a.m.
 Courtroom: 3- 2nd Fl.

22 Defendants

Action Filed: June 1, 2009

23 **RELATED TO:**

[CAPTION CONTINUED]

24 DEBBIE FITZPATRICK-SECKLER)
 25 and RICHARD SILVA, individually)
 and on behalf of all others similarly)
 26 situated,)

Plaintiffs,

27 v.

28 (*Defendants continued on next page*)

**[PROPOSED] ORDER GRANTING PLAINTIFFS’ MOTION FOR FINAL
 APPROVAL OF CLASS ACTION SETTLEMENT AND MOTION FOR
 CLASS REPRESENTATIVE ENHANCEMENTS, ATTORNEYS’ FEES
 AND COSTS**

1 KINDRED HEALTHCARE INC.,)
2 KINDRED HEALTHCARE)
3 OPERATING GROUP, INC.,)
4 KINDRED HOSPITALS WEST,)
5 L.L.C., KINDRED NURSING)
6 CENTERS WEST, L.L.C., THC-)
7 ORANGE COUNTY, INC. d/b/a)
8 KINDRED HOSPITAL)
9 WESTMINSTER, and DOES 1 through)
10 100, INCLUSIVE,)

Defendants.

11 *Additional counsel for Plaintiffs Flordeliza Escano, Marila P. Maximo,*
12 *and Penny Burney:*

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**[PROPOSED] ORDER GRANTING PLAINTIFFS' MOTION FOR FINAL
APPROVAL OF CLASS ACTION SETTLEMENT AND MOTION FOR
CLASS REPRESENTATIVE ENHANCEMENTS, ATTORNEYS' FEES
AND COSTS**

1 This matter came on for hearing on March 18, 2015 at 10:00 a.m., in
2 Courtroom 3-2nd Fl. of the above-captioned Court on Plaintiffs' Motion for Final
3 Approval of Class Action Settlement, the Stipulation and Settlement of Class
4 Action Claims ("Settlement Agreement") and this Court's Order Granting
5 Preliminary Approval of Class Action Settlement filed September 29, 2014.
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8 In accordance with the Preliminary Approval Order, Class Members were
9 given notice of the terms of the Settlement and particularly of the fact that each
10 Class Member could claim their proportionate share of the settlement proceeds, by
11 submitting a valid Identification Verification Form ("IVF"). Class Members were
12 given the opportunity to submit a claim form, request exclusion, comment upon or
13 object to the settlement or any of its terms. Having received and considered the
14 proposed Settlement, the supporting papers filed by the Parties, and the evidence
15 and argument received by the Court in conjunction with the Motion for
16 Preliminary Approval of Class Action Settlement heard on September 15, 2014,
17 the Court grants final approval of the Settlement and HEREBY ORDERS AND
18 MAKES THE FOLLOWING DETERMINATIONS:
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23 1. Pursuant to the Order Granting Plaintiff's Motion for Conditional
24 Certification of New Class Members and Preliminary Approval of Class Action
25 Settlement filed September 29, 2014, a Notice describing the settlement was
26 mailed to each of the 8,412 class members via first-class U.S. Mail. The Notice
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1 informed the Class of the terms of the Settlement, their right to receive their
2 proportional share of the Settlement by submitting a timely and valid IVF, of their
3 right to request exclusion, of their right to comment upon or object to the
4 Settlement, and of their right to appear in person or by counsel at the final approval
5 hearing and to be heard regarding approval of the Settlement.
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8 Thereafter on December 19, 2014 the parties submitted a Stipulation to
9 Permit a Corrective Notice to be mailed to all class members. The corrective
10 notice addressed the fact that the initial notice received was erroneous in regards to
11 certain class members' individual settlement share and the Corrective Notice
12 contained the correct individual settlement share. This Corrective Notice was
13 mailed on or about January 9, 2015 pursuant to the Court order entered on
14 December 29, 2014. Adequate periods of time were provided for each of these
15 procedures. As a part of this notice process, zero (0) Class Members have
16 requested exclusion and no objections or notices of intention to appear at the final
17 approval hearing were filed and/or served on Counsel for the Parties.
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22 2. The Court finds and determines that this notice procedure afforded
23 adequate protections to Class Members and provides the basis for the Court to
24 make an informed decision regarding approval of the Settlement based on the
25 response of the Class. The Court finds and determines that the notice to the class as
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1 was provided in this case was the best notice practicable, which satisfied the
2 requirements of law and due process.

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4 3. The Court further finds and determines that the terms of the
5 Settlement are fair, reasonable and adequate to the Class and that the Settlement is
6 ordered finally approved, and that all terms and provisions of the Settlement should
7 be and hereby are ordered to be consummated.
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10 4. The Court finds and determines that Settlement payments to be paid to
11 all members of the Class who submitted a timely and valid IVF as provided for by
12 the Settlement are fair and reasonable. The Court hereby grants final approval to
13 and orders the payment of those amounts to the participating Class Members in
14 accordance with the terms of the Settlement Agreement.
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17 5. The Court finds and determines that the payment to be paid to the
18 California Labor and Workforce Development Agency to satisfy alleged Labor
19 Code violations pursuant to the California Labor Code's Private Attorneys General
20 Act of 2004 ("PAGA") in the sum of \$225,000.00 is fair and reasonable. The Court
21 hereby grants final approval to and orders the payment to Labor and Workforce
22 Development Agency in accordance with the terms of the Settlement Agreement.
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25 6. The Court determines that the service award payments to Plaintiffs
26 Flordeliza Escano and Marila P. Maximo in the sum of \$25,000 each and to Penny
27 Burney, Debbie Fitzpatrick-Seckler, and Richard Silva in the sum of \$20,000.00
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1 each. This service payments are determined to be reasonable and fair under the
2 circumstances of this case and for the work performed by the class representatives.
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4 Furthermore each class representative received compensation in exchange for a full
5 release including waiver of all Civil Code § 1542 claims that the Class
6 Representatives are providing.
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8 7. Plaintiff's Motion for an Award of Reasonable Attorneys' Fees, Costs,
9 and Expenses is hereby GRANTED. Plaintiff's efforts have resulted in the creation
10 of a common fund in the amount of \$16,500,000.00, and therefore awarding
11 attorneys' fees on a percentage basis is appropriate. Plaintiff seeks 33-1/3% of the
12 common fund, which is considered the benchmark in the Ninth Circuit. This case
13 presents no special circumstances that would warrant a departure from the
14 benchmark. Moreover, the result obtained by Plaintiffs is favorable. The average
15 settlement award prior to any increase as a result of the distribution of unclaimed
16 settlement amounts is \$1,258.78.00. In view of the monetary benefit conferred on
17 the settlement class, the Court finds the requested fee of 33-1/3%, or \$5,500,000,
18 to be fair and reasonable.
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23 The Court finds that Class Counsel, having conferred a benefit on absent
24 Class Members and having expended efforts to secure a benefit to the Class, is
25 entitled to a fee and accordingly, the Court approves the application of Class
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1 Counsel for \$5,500,000 for their attorneys' fees, and up to \$600,000.00 for their
2 litigation expenses.

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4 8. Cross-checking the \$5,500,000.00 amount against Class Counsel's
5 lodestar confirms the reasonableness of the fee award. Class Counsel's collective
6 lodestar is not less than \$3,355,935.70, at the time of filing the final approval
7 papers seeking approval of class representative enhancements, attorneys' fees and
8 costs filed on January 31, 2015. The hourly rates used to arrive at this figure are
9 consistent with market rates and reasonable in light of the Class Counsel's skill,
10 experience, and expertise. The Court is further satisfied that the number of hours
11 expended on the litigation is reasonable. Dividing the requested fee by Class
12 Counsel's current lodestar yields a 1.6 multiplier. Such a multiplier falls within the
13 range of multipliers approved by courts within the Ninth Circuit.
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18 9. Accordingly, Plaintiff shall recover, from the common fund
19 established by the Stipulation and Settlement of Class Action Claims, \$5,500,000
20 in and for attorneys' fees and up to \$600,000 in costs and expenses. Those amounts
21 shall be paid by the Claims Administrator to Class Counsel, divided as they shall
22 direct.
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25 10. The Court further approves payment of the fees and costs of the
26 appointed claims administrator Rust Consulting, Inc., of \$107,135.00 for services
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1 rendered and to be rendered in connection with the completion of its duties
2 pursuant to the terms of the Settlement.
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4 11. Defendant shall deliver the Maximum Settlement Amount of
5 \$16,500,000, within ten (10) business days of entry of this Final Approval Order,
6 as awarded by the Court (pursuant to the Settlement Agreement), for Individual
7 Settlement Payments, the Class Representative service award, attorneys' fees and
8 litigation costs, the claims administration costs, and the PAGA Payment to the
9 Labor and Workforce Development Agency are due to be paid.
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12 12. The Court further directs the Claims Administrator, to within fifteen
13 (15) calendar days after Defendant delivers the \$16,500,000.00, to disburse to
14 those persons and entities referenced below, in the manner set forth, the following
15 sums:
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18 a. Individual Settlement Payment checks in accordance with the
19 Settlement Agreement to those members of the Class who
20 submitted a timely and valid IVF by U.S. First Class Mail, as
21 calculated and approved by Rust Consulting, Inc.;
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23 b. Class Representative Service Awards to Plaintiffs Flordeliza
24 Escano and Marila P. Maximo for \$25,000.00 each and to
25 Penny Burney, Debbie Fitzpatrick-Seckler, and Richard Silva
26 for \$20,000.00 each, by check mailed to Class Counsel;
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- 1 c. Attorneys' fees to Class Counsel, \$5,500,000 by wire transfer,
2 as directed by Class Counsel;
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4 d. Litigation expenses to Class Counsel, up to \$600,000.00 by
5 wire transfer, as directed by Class Counsel;
6
7 e. PAGA Payment to the State of California Labor Workforce &
8 Development Agency ("LWDA"), \$225,000.00, by check to
9 Counsel for Defendant for transmittal to the LWDA;
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11 f. Claims Administration services to Rust Consulting, Inc., the
12 sum of \$107,135.00 for services rendered in connection with its
13 duties and responsibilities to process claims and to disburse
14 payments, respond to continuing inquiries from the class and
15 the Parties in order to conclude its duties and responsibilities
16 pursuant to the settlement.
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19 13. The Court retains jurisdiction over the administration and effectuation
20 of the Settlement including, but not limited to, the ultimate disbursement to the
21 participating Class Members, payment of attorneys' fees and costs, the
22 enhancement award to the Class Representative, and the claims administration
23 expenses and other issues related to this Settlement.
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1 14. Without affecting the finality of this order in any way, the Court
2 retains jurisdiction of all matters relating to the interpretation, administration,
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4 implementation, effectuation and enforcement of this Order and the Settlement.

5 15. Nothing in this order shall preclude any action to enforce the Parties'
6 obligations under the Settlement or under this Order, including the requirement
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8 that Defendant make payments to participating Class Members in accordance with
9
10 the Settlement.

11 16. The Court hereby enters final judgment in this case accordance with
12 the terms of the Settlement Agreement, Order Granting Preliminary Approval of
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14 Class Action Settlement, and this Order Granting Final Approval of the class
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16 action Settlement.

17 17. The Parties are hereby ordered to comply with the terms of the
18 Settlement.
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23 Dated: April 02, 2015



Hon. Dean D. Pregerson,
UNITED STATES DISTRICT JUDGE