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14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
15 **FOR THE COUNTY OF ORANGE**

16  
17 GRACE FONTANA,  
18  
19 PLAINIFF,  
20  
21 V.  
22 ST. JOSEPH HEALTH SYSTEMS, A  
CORPORATION, ST. JOSEPH HOSPITAL OF  
23 ORANGE (DBA ST. JOSEPH HOSPITAL), A  
CORPORATION, AND DOES 1-75,  
24 INCLUSIVE,  
25  
26 DEFENDANTS.

CASE No. 03CC02559  
**STIPULATION OF CLASS ACTION  
SETTLEMENT**  
DATE: FEBRUARY 14, 2008  
TIME: 1:30 P.M.  
DEPT: CX 101  
CASE FILED: FEBRUARY 5, 2003  
JUDGE: HON. DAVID C. VELASQUEZ

27 IT IS HEREBY STIPULATED AND AGREED, by and among Defendant St.  
28 Joseph Hospital of Orange ("Defendant"), on the one hand, and Plaintiff Grace Fontana,

1 individually, the Class (as defined below), and Class Counsel (as defined below), on the  
2 other hand, subject to the approval of the Court pursuant to California Code of Civil  
3 Procedure Section 382, that the settlement of this action, shall be effectuated upon and  
4 subject to the following terms and conditions:

5 **A. DEFINITIONS**

6 As used in this Stipulation of Class Action Settlement ("Stipulation"), the  
7 following terms shall have the meanings specified below. To the extent terms or phrases  
8 used in this Stipulation are not specifically defined below, but are defined elsewhere in  
9 the Stipulation, they are incorporated by reference into this definition section.

10 "Action" shall mean this action, entitled *Grace Fontana v. St. Joseph Health*  
11 *Systems [sic] et al.*, filed in the California Superior Court for Orange County, Case No.  
12 03CC02559.

13 "Administrative Expenses" shall include Class Counsels' attorneys' fees and costs  
14 and payment of all costs and expenses to or associated with the Settlement Administrator.

15 "Agreement," "Stipulation," "Stipulation of Settlement," "Settlement Agreement,"  
16 or "Stipulation and Agreement" shall mean this Stipulation of Class Action Settlement,  
17 including any attached Exhibits.

18 "Class Counsel" shall mean, collectively:  
19 Schonbrun DeSimone Seplow Harris & Hoffman LLP  
20 V. James DeSimone, Esq.  
21 Michael Morrison, Esq.  
22 723 Ocean Front Walk  
23 Venice, CA 90291

24 -and-

25 Helmer Friedman, LLP  
26 Andrew H. Friedman, Esq.  
27 Gregory D. Helmer, Esq.  
28 723 Ocean Front Walk  
Venice, CA 90291

"Class Counsel Attorneys' Fees" is the amount to be paid to Class Counsel for  
fees and costs, pursuant to the terms of this Stipulation and subject to approval by the  
Court.

1 "Class Member" or "Settlement Class Member" shall mean any person who is a  
2 member of the Settlement Class or, if such person is incompetent or deceased, the  
3 person's legal guardian, executor, heir or successor in interest.

4 "Class Notice" shall mean the Notice of Pendency And Proposed Settlement of  
5 Class Action and Hearing On Final Approval of Settlement, as set forth in the form of  
6 Exhibit "A" attached hereto, or as otherwise approved by the Court, which is to be mailed  
7 to Class Members.

8 "Class Participant(s)" shall mean any and all Class Members who receive a Class  
9 Notice, other than those who timely request exclusion (i.e., who elect to "opt out") as  
10 provided herein.

11 "Class Period" shall mean January 1, 2001, through the present.

12 "Class Representative" shall mean Grace Fontana.

13 "Class Settlement" or "Settlement" shall mean the settlement embodied in this  
14 Stipulation, which is subject to Court approval.

15 "Court" means the Superior Court of the County of Orange, State of California.

16 "Defendant" shall mean St. Joseph Hospital of Orange

17 "Defense Counsel" or "Counsel for Defendant" shall mean, collectively, Tami S.  
18 Smason, Esq., and Joshua M. Sable, Esq., Foley & Lardner LLP, 2029 Century Park East,  
19 Suite 3500, Los Angeles, California 90067, Telephone (310) 277-2223.

20 "Enhancement Award" shall mean any additional monetary payment provided to  
21 the Named Plaintiff for her efforts on behalf of the Class in this Action.

22 "Escrow Agent Expenses" shall mean any fees and expenses incurred by  
23 Defendant in connection with PEHI storage and management.

24 "Final Approval Date" shall mean the date upon which the Court enters an Order  
25 approving the Class Settlement and enters dismissal of the Action, with prejudice, after  
26 having determined that the Class Settlement is fair, adequate, and reasonable to the Class  
27 as a whole, following (i) notice to the Class; (ii) an opportunity to submit timely  
28 objections to the settlement; and (iii) a hearing on the fairness of the terms of the

1 settlement.

2 "Final Approval Hearing" shall mean the final hearing held to ascertain the  
3 fairness, reasonableness, and adequacy of the Class Settlement, at which time the Court  
4 will enter its Order approving the Class Settlement.

5 "Gross Settlement Amount" means the \$1,575,000.00 which is the maximum  
6 amount to be paid by Defendant pursuant to this Stipulation of Settlement.

7 "Hearing on Preliminary Approval" shall mean the hearing held on the Parties'  
8 joint motion for preliminary approval of the Class Settlement.

9 "Individual Settlement Amount" shall mean the amount to be, and which is,  
10 distributed to any and each Class Participant.

11 "Named Plaintiff" shall mean Grace Fontana.

12 "Notice Returns" shall mean envelopes containing the Class Notice that were  
13 mailed by the Settlement Administrator to Class Members but were undelivered and  
14 returned to the Settlement Administrator by the United States Postal Service.

15 "Opt-Out(s)" shall mean any and all persons who timely and validly request  
16 exclusion from the Class in accordance with the terms of the Class Notice.

17 "Opt-Out Form" or "Request for Exclusion Form" shall mean the form attached to  
18 the Class Notice for use in complying with the procedures a Class Member must use to  
19 make an Opt-Out Request or Request for Exclusion from the Settlement Class.

20 "Opt-Out Request" or "Request for Exclusion" shall mean a timely and valid  
21 request for exclusion from the Class in accordance with the terms of the Class Notice.

22 "Parties" shall mean St. Joseph Hospital of Orange, and Class Representative  
23 Grace Fontana.

24 "PEHI" shall mean the identical and any substantially similar versions of the pre-  
25 employment health inventory form that Grace Fontana and others were asked to complete  
26 allegedly containing prohibited questions in connection with an application for  
27 employment or employment by St. Joseph Hospital of Orange during the Class Period.

28 The Parties believe St. Joseph Hospital of Orange stopped requiring applicants and

1 employees to answer or respond to the PEHI containing the allegedly prohibited  
2 questions in May, 2002.

3 "Preliminary Approval Date" means the date upon which the Court enters an  
4 Order preliminarily approving this Stipulation, pending notice, an opportunity to submit  
5 objections, and a fairness hearing thereon.

6 "Redirected Notice" shall mean a second Class Notice mailed by the Settlement  
7 Administrator to a new or different address to a Class Member that was obtained by the  
8 Settlement Administrator as a result of a Notice Return.

9 "Released Claims" means any and all claims, demands, rights, liabilities, and/or  
10 causes of action of any nature and description whatsoever, known or unknown, in law or  
11 in equity, whether or not concealed or hidden, asserted or that might have been asserted  
12 by the Named Plaintiff or by any Class Member, including, but not limited to, claims  
13 based on alleged violations of any state or federal statutes, rules or regulations, that arise  
14 out of any claims or allegations raised in the Action from the beginning of time through  
15 the Preliminary Approval Date, as a result of St. Joseph's use of the PEHI in connection  
16 with applications for employment or employment during the Class Period by the Named  
17 Plaintiff, as well as all Class Members.

18 "Released Parties" shall mean St. Joseph Hospital of Orange, St. Joseph Health  
19 System, the Sisters of St. Joseph of Orange, and their present and former parent  
20 companies, subsidiaries, affiliates, related entities, and joint ventures, and each of their  
21 respective present and former officers, directors, controlling stockholders, agents,  
22 employees, insurers, co-insurers, reinsurers, attorneys, accountants, auditors, advisors,  
23 representatives, consultants, pension and welfare benefit plans, plan fiduciaries,  
24 administrators, trustees, general and limited partners, predecessors, successors and  
25 assigns.

26 "Remainder" shall mean that portion of the Settlement Fund which remains once  
27 all Administrative Expenses have been paid.

28 "Settlement Administrator" shall mean the firm of Rust Consulting, Inc., which

1 the Parties have agreed will be responsible for administration of the Settlement Fund and  
2 related matters.

3 "Settlement Class" shall mean any and all employment applicants and/or  
4 individuals who had received conditional offers of employment from St. Joseph Hospital  
5 of Orange and who were asked and/or required to complete the PEHI on or after January  
6 1, 2001.

7 "Settlement Fund" shall mean the \$500,000.00 more fully described in Section  
8 E.3, from which Class Participants' claims, taxes, and possibly administrative costs will  
9 be paid. Class Participants are solely responsible for all taxes owed on the Settlement  
10 Fund and Individual Settlement Amounts, as well as the costs associated with tax returns  
11 and filings relating to the Settlement Fund and Individual Settlement Amounts. The  
12 Settlement Administrator shall be responsible for issuing IRS Form 1099s to all Class  
13 Participants. The Parties agree the Settlement Fund and Individual Settlement Amounts  
14 do not represent lost wages.

15 "Settlement Fund Account" shall mean the bank account established pursuant to  
16 the terms of this Stipulation from which all monies payable under the terms of this  
17 Stipulation shall be paid, as set forth herein.

18 "Settling Parties" shall mean Grace Fontana, the Settlement Class members who  
19 are not members of the Non-Released Class, and St. Joseph Hospital of Orange.

20 "St. Joseph" shall mean, collectively, St. Joseph Hospital of Orange, St. Joseph  
21 Health System, and their present and former parent companies, subsidiaries, affiliates,  
22 related entities, and joint ventures, and each of their respective present and former  
23 officers, directors, stockholders, agents, employees, insurers, co-insurers, re-insurers,  
24 attorneys, accountants, auditors, advisors, representatives, consultants, pension and  
25 welfare benefit plans, plan fiduciaries, administrators, trustees, general and limited  
26 partners, predecessors, successors and assigns.

27 **B. BACKGROUND OF ACTION**

28 On or about February 5, 2003, Plaintiff filed a Complaint in the Superior Court of

1 the County of Orange, entitled *Grace Fontana v. St. Joseph Health Systems [sic], et al.*,  
2 Orange County Superior Court Case No. 03CC02559. A First Amended Complaint (the  
3 "FAC") was filed in the Action on February 14, 2003.

4 The FAC alleges, among other things, (a) that applicants for employment by St.  
5 Joseph were asked or required to complete the PEHI form, (b) that this conduct was  
6 discriminatory against a number of protected characteristics including but not limited to  
7 age, sex, disability, pregnancy, and medical condition, and (c) opposition to this conduct  
8 resulted in illegal retaliation against Grace Fontana. The proposed Class is estimated to  
9 be comprised of approximately eight hundred seventy (870) persons.

### 10 C. PRE-TRIAL PROCEEDINGS AND NEGOTIATIONS

#### 11 1. Discovery, Investigation and Research

12 Class Counsel has conducted extensive discovery and investigation during the  
13 prosecution of the Action, has engaged in extensive law and motion practice, and has  
14 successfully negotiated a settlement which includes injunctive relief and damages to all  
15 Class Members. This discovery and investigation has included, among other things, (a)  
16 inspection and analysis of documents produced by Defendant; (b) analysis of the legal  
17 positions taken by Defendant; (c) interviews of material witnesses; (d) analysis of class-  
18 wide damages; (e) research of the applicable law with respect to the claims asserted in the  
19 FAC and the potential defenses thereto; and (f) Class Counsel has taken depositions of  
20 representatives of St. Joseph's representatives and persons most knowledgeable regarding  
21 the material facts of the Action. The law and motion practice Class Counsel has engaged  
22 in includes, but is not limited to: (a) filing a motion for class certification; (b) having the  
23 Court's denial of class certification reversed on appeal; (c) filing a renewed motion for  
24 class certification which was granted by the Court; and (d) opposing Defendant's motion  
25 for summary judgment. Defendant's motion was denied by the Court.

26 The Class Representatives have vigorously prosecuted this case, and Defendant  
27 has vigorously contested it. The Parties have engaged in sufficient discovery and  
28 investigation, both formal and informal, to assess the relative merits of the claims of the

1 Class Representative and of Defendant's defenses to them.

2                   **2. Allegations of the Class Representatives and Benefits of**  
3                   **Settlement**

4           The discussions between counsel, and the discovery conducted in this matter, have  
5 been adequate to give the Class Representative and Class Counsel a sound understanding  
6 of the merits of their position and to evaluate the worth of the claims of the Class. This  
7 Settlement was reached after arm's-length bargaining by the Parties, with the assistance  
8 of a nationally recognized labor and employment law mediator, and after Class Counsel  
9 thoroughly reviewed all available evidence. The formal and informal discovery  
10 conducted in this Action, and the information exchanged through the Parties'  
11 negotiations, are sufficient to assess reliably the merits of the respective Parties' positions  
12 and to compromise the issues on a fair and equitable basis.

13           The Class Representative and Class Counsel believe that the causes, allegations  
14 and contentions asserted in the Action have merit. In addition, through the efforts of  
15 Class Counsel, a class was certified in the Action despite the fact that there appears to be  
16 no published decisions or case authority in the State of California in which a class was  
17 certified under the California Fair Employment and Housing provisions regarding  
18 unlawful inquiries to applicants or employees. However, the Class Representative and  
19 Class Counsel recognize and acknowledge the expense and delay of continued lengthy  
20 proceedings necessary to prosecute the Action against Defendant through trial and  
21 through appeals. Class Counsel has taken into account the uncertain outcome and the  
22 risk of any litigation, especially in complex actions such as this Action, as well as the  
23 difficulties and delays inherent in such litigation, and the potential difficulty maintaining  
24 the Action as a class action given the different circumstances surrounding each Class  
25 Member's claims. Class Counsel is also mindful of the inherent problems of proof under,  
26 and possible defenses to, the alleged harm claimed by Class Members as a result of  
27 completing the PEHI. Class Counsel believes that the Settlement set forth in this  
28 Stipulation confers substantial benefits upon the Class Participants and each of the

1 members of the Class, and that an independent review of this Stipulation of Settlement by  
2 the Court in the approval process will confirm this conclusion. Based on their own  
3 independent investigation and evaluation, Class Counsel have determined that the  
4 Settlement set forth in the Stipulation is in the best interests of the Class Representative  
5 and the members of the Settlement Class.

6 **3. Defendant's Denials of Wrongdoing and Liability**

7 Defendant has denied and continues to deny each and all of the claims and  
8 contentions alleged by the Class Representative in the Action. Defendant asserts that its'  
9 use of the PEHI did not violate any laws, statutes, rules or regulations. Defendant has  
10 expressly denied and continues to deny all charges of wrongdoing or liability against it  
11 arising out of any of the conduct, statements, acts or omissions alleged, or that could have  
12 been alleged, in the Action. Defendant also has denied, and continues to deny, the  
13 allegations that the Class Representative or the Class Members have suffered damage by  
14 reason of use of the PEHI, or that the Class Representative or the Class Members were  
15 harmed by the conduct alleged in the Action. Nonetheless, Defendant has concluded that  
16 the further litigation of the Action would be protracted and expensive. Moreover, it is  
17 desirable that the Action be fully and finally settled in the manner and upon the terms and  
18 conditions set forth in this Stipulation in order to limit further expense, inconvenience  
19 and distraction, and to dispose of burdensome and protracted litigation. Settlement of  
20 this Action will also permit St. Joseph to continue to serve the needs of its patients in the  
21 community and advance its core values without further expensive litigation and the  
22 distraction and diversion of St. Joseph personnel with respect to matters in issue in the  
23 Action. Defendant also has taken into account the uncertainty and risks inherent in any  
24 litigation, especially in complex cases such as the Action. Defendant has, therefore,  
25 determined that it is desirable and beneficial to it that the Action be settled in the manner  
26 and upon the terms and conditions set forth in this Stipulation.

27 **4. Intent of the Settlement**

28 The Class Settlement set forth herein intends to achieve the following: (1) entry of

1 an Order approving the Class Settlement, monetary relief to the class participants, and the  
2 parties' agreement requiring Defendant to lodge the PEHIs with a third-party escrow  
3 agent subject to the terms described herein; (2) entry of judgment and dismissal with  
4 prejudice of the Action; and (3) discharge of Released Parties from liability for any and  
5 all of the Released Claims.

6 **D. PROCEDURAL ISSUES**

7 **1. Preliminary Approval**

8 Class Counsel and Defense Counsel will jointly submit this Stipulation to the  
9 Court for preliminary approval and shall jointly apply for its preliminary approval.

10 **2. The Settlement Administrator**

11 The firm of Rust Consulting, Inc., will act as Settlement Administrator. The  
12 Settlement Administrator will mail the Class Notice and Opt-Out Forms to Class  
13 Members, receive and process Opt-Out Forms, administer the Settlement Fund, calculate  
14 claims against the Settlement Fund, handle inquiries from Class Members concerning the  
15 Class Notice and determination of Individual Settlement Amounts or any other issue,  
16 distribute payments for Individual Settlement Amounts to all Class Participants, and  
17 resolve any differences between St. Joseph's records and information provided by a Class  
18 Participant, and prepare and file all required tax reporting documents.

19 All fees and costs of the Settlement Administrator for administration of the  
20 Settlement shall be paid by Class Counsel. However, any residual amounts from the  
21 Settlement Fund remaining in the Settlement Fund Account after all payments have been  
22 disbursed to the Class Participants may then be applied to satisfy the fees and costs of the  
23 Settlement Administrator pursuant to Section E.6. of this Agreement.

24 **3. Notice to Class Members**

25 Notice shall be provided to Class Members in the following manner:

26 Within thirty (30) days after entry by the Court of its Order of Preliminary  
27 Approval, St. Joseph shall provide the Settlement Administrator with a database or list  
28 containing names and last-known addresses for each Class Member. The Settlement

1 Administrator shall send each Class Member the Class Notice via first-class United States  
2 mail. Such Notice shall be in the form attached hereto as Exhibit "A," or as otherwise  
3 approved by the Court. An Opt -Out Form, shall be included in the Class Notice as  
4 attached hereto as Exhibit "A" or as otherwise approved by the Court. The Notice and  
5 Opt-Out Form shall be mailed by the Settlement Administrator on or before March 15,  
6 2008. It is the opinion of Defendant that any Class Member who elects to opt-out will  
7 find that his or her Released Claims are time-barred.

8 Any envelopes containing the Class Notice from this mailing that are returned to  
9 the Settlement Administrator with forwarding addresses will be used by the Settlement  
10 Administrator to locate Class Members. In the event that, prior to the Final Date for  
11 Submission of Opt-Out Forms, any Notice mailed to a Class Member is returned as  
12 having been undelivered by the U.S. Postal Service ("Notice Returns"), the Settlement  
13 Administrator shall seek an address correction for such Class Member(s), and, within  
14 seven days, a Redirected Notice will be sent to any new or different address obtained.  
15 For mailings returned as undeliverable with no forwarding address or address correction  
16 within forty-five (45) days of the initial mailing, the Claims Administrator shall attempt  
17 to obtain a correct address using a skip trace, computer or other search. However,  
18 nothing in this paragraph shall be deemed to extend or modify the Final Date for  
19 Submission of Opt-Out Forms.

20 It will be conclusively presumed that if the Settlement Administrator has not  
21 received a return of an envelope containing the Class Notice and Opt-Out form within  
22 thirty (30) days of the mailing that the Class Member received the Notice. At least ten  
23 (10) days prior to the Final Approval Hearing, the Settlement Administrator shall provide  
24 Defense Counsel and Class Counsel with a declaration of Due Diligence and Proof of  
25 Mailing with regard to the mailing of the Notice and its attempts to locate Class  
26 Members. The declaration shall specify the number of Class Members to whom Class  
27 Notices were sent and the number of Class Members to whom Class Notices were not  
28 delivered as evidenced by Notice Returns except those Notice Returns for which a

1 Redirected Notice was mailed but not returned as undelivered within thirty days. Class  
2 Counsel shall file this declaration with the Court.

3 **4. Payment of Individual Settlement Amounts**

4 Any Class Member for whom an Opt-Out form, a Notice Return, or the return of  
5 an undelivered Redirected Notice has not been received by the Class Administrator shall  
6 be eligible for payment of the Individual Settlement Amount and be deemed a Class  
7 Participant.

8 The Settlement Administrator shall determine if each Class Member is a Class  
9 Participant. Only Class Participants may receive a monetary distribution from the  
10 Settlement Fund Account.

11 Within sixty days following the Final Approval Hearing in which the Court  
12 approves the class settlement, the Settlement Administrator shall distribute a check  
13 payable by funds in the Settlement Fund in the amount of the Individual Settlement  
14 Amount to each Class Participant by first class mail to the last known address of each  
15 Class Participant as determined by the Settlement Administrator.

16 **5. Resolution of Disputes Concerning Class Notice, Opt-Out**  
17 **Forms, and Payments of Individual Settlement Amounts**

18 In the event there is any dispute between a Class Participant and/or Class Counsel,  
19 on the one hand, and Defendant, on the other, with regard to (a) any material deficiency  
20 in a Class Notice or any Opt-Out Form; (b) the validity of any Opt-Out Form; (c)  
21 designation of any Class Member as a Class Participant; or (d) the payment of any  
22 Individual Settlement Amount, then the Settlement Administrator shall make a final and  
23 binding determination with regard to such dispute after first giving not less than seven (7)  
24 days written notice to both Class Counsel and Defense Counsel, and an opportunity,  
25 within said seven (7) days, each to submit additional information bearing on such dispute.  
26 The Settlement Administrator shall give written notice to the Parties' counsel of its  
27 determination within three (3) business days of the expiration of the seven (7) day notice  
28 period.

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**E. SETTLEMENT TERMS**

**1. The Settlement Class**

For the purposes of this Stipulation, the Settlement Class to be conditionally certified pursuant to C.C.P. Section 382 shall consist of any and all employees or applicants of St. Joseph Hospital of Orange who were asked and/or required to complete the PEHI at any time between January 1, 2001 and the present.

**2. Deposit of PEHIs With A Third Party Escrow Agent**

Within sixty (60) days of final approval of the settlement, Defendant will deposit all Pre-Employment Health Inventories (PEHI) in its possession, custody or control with a third-party escrow agent. The instructions to be given to the third-party escrow agent are attached hereto as Exhibit "B" and incorporated herein. Any costs and expenses associated with the third-party escrow agent will be paid by Defendant. The maintenance of, and access to, the PEHI records held by the escrow agent are to be governed by the following terms and conditions:

**(a) Efforts by Defendant To Obtain The Information.**

In order to obtain any of the completed PEHI's, or any information contained therein, Defendant would have to obtain a court order authorizing such disclosure by the escrow agent. Defendant will not be required to obtain a court order to obtain any of the completed PEHI's, or any information contained therein, if disclosure of this information is the response to a formal written request made by any federal, state, or local government agency, or quasi-governmental body such as JCAHO which regulates, licenses or certifies Defendant's operations.

**(b) Efforts By Third Parties To Obtain The Information.**

If any third party attempts to subpoena any of the completed PEHI's, or any information contained therein, Defendant will provide notice to the affected individual(s) within seven (7) business days. Defendant shall inform the affected individual(s) of his or her right to move to quash the subpoena also, upon request of the affected individual, provide the affected individual(s) with a copy of the class action settlement in this case and

1 inform him or her of his or her right to move to quash the subpoena.

2                                   (c)   **Efforts By Class Members To Obtain Their Own**  
3 **Information.** Class Members shall be permitted to obtain their own information without  
4 the necessity of a court order by making a request of an authorized representative of St.  
5 Joseph Hospital, accompanied by appropriate identification. St. Joseph Hospital will then  
6 request that the escrow agent release a copy of the PEHI at issue. The escrow agent shall  
7 release the information to St. Joseph in a sealed envelope marked "Confidential." St.  
8 Joseph will then provide the sealed envelope to the requesting class member  
9 accompanied by a notice to class member/consumer stating, among other things, that  
10 he/she is under no obligation to provide or divulge the information to St. Joseph, that the  
11 information has been in the possession of the third party escrow agent pursuant to the  
12 terms of a settlement agreement in this Action (to be identified by case name and  
13 number), and that the Class Member is entitled to receive a copy of the settlement  
14 agreement upon request to St. Joseph.

15                                   (d)   If St. Joseph, third parties, or any class members, attempt to  
16 obtain the information contained in the completed PEHI's, Class Counsel shall be  
17 provided with notice of such an attempt.

18                                   (e)   **Maintenance Period.** The Escrow Agent shall retain the  
19 PEHI records for a period of Twenty Years ("Maintenance Period") from the date the  
20 Court grants Final Approval of the Class Settlement. The Escrow Agent shall destroy all  
21 maintained PEHI records and copies within thirty days of the expiration of the  
22 Maintenance Period.

23                                   (f)   **Selection of Escrow Agent.** Iron Mountain is an acceptable  
24 Escrow Agent. St. Joseph and Class Counsel may stipulate to the selection of an  
25 alternative Escrow Agent at any time, including the selection of successor Escrow Agents  
26 as may be necessary or proper.

27                                   (g)   **Court to Retain Jurisdiction.** Pursuant to Code of Civil  
28 Procedure section 664.6, the Court will retain instruction of the Action to enforce the

1 terms of sections E2(a) – E2(f).

2 **3. Creation of the Settlement Fund**

3 The claims of all Class Members are settled for the Settlement Fund of Five-  
4 Hundred Thousand Dollars (\$500,000.00), with the exception of those class members  
5 who file an Opt-Out or Request for Exclusion.

6 Within thirty days of the Final Settlement Hearing in which the Court approves the  
7 settlement, St. Joseph shall cause the Settlement Fund to be deposited in an interest  
8 bearing account (“Settlement Fund Account”) established at a bank to be selected by the  
9 Settlement Administrator. All payments to be made to Class Participants under the terms  
10 of this Stipulation shall be drawn on the Settlement Fund Account. The Settlement  
11 Administrator shall be the only entity authorized to make withdrawals or payments from  
12 the Settlement Fund Account.

13 The Settlement Administrator will: (a) acknowledge that it has fiduciary  
14 obligations to the Parties, and will attest that it will not allow any disbursements to be  
15 made from the Settlement Fund except as expressly authorized by this Stipulation; (b)  
16 agree that it will receive no disbursements or fees from the Settlement Fund Account for  
17 actions undertaken or expenses incurred without prior approval by Defense Counsel and  
18 Class Counsel; and (c) acknowledge its obligations to return the entire Settlement Fund to  
19 St. Joseph (less any administrative expenses incurred by the Settlement Administrator) in  
20 the event that this Stipulation: (i) does not receive final approval of the Court; (ii) is  
21 modified or reversed on appeal; and/or (iii) is otherwise rendered null and void.

22 **4. Disbursement of Funds by Settlement Administrator**

23 The Settlement Administrator shall not disburse the Settlement Fund except as  
24 provided in this Stipulation, as ordered by the Court, or as agreed upon, in writing, by  
25 Defendant and Class Counsel. Subject to further orders and/or directions as may be made  
26 by the Court, the Settlement Administrator is authorized to execute such transactions on  
27 behalf of the Class Members as are consistent with the terms of this Stipulation.

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**5. Court Retains Jurisdiction Over Settlement Fund**

All funds held by the Settlement Administrator shall be deemed and considered to be in *custodia legis* of the Court, and shall remain subject to the jurisdiction of the Court until such time as such funds shall be distributed pursuant to this Stipulation and/or further order(s) of the Court.

**6. Calculation of the Individual Settlement Amounts**

The portion of the Settlement Fund payable to each Class Participant will be calculated as follows:

The Settlement Fund shall be divided by the total number of Class Members as determined by the total number of Class Members included in the database or list provided by Defendant to the Settlement Administrator for issuance of Class Notices. The Individual Settlement Amount payable shall not be affected by Opt-Out forms, Notice Returns, returned Redirected Notices, or any other factor that may affect the ultimate number of Class Participants.

**7. Enhancement Award for Named Plaintiff**

Named Plaintiff may, at the discretion of the Court, receive an Enhancement Award, subject to court approval, in the amount of seventy-five thousand dollars (\$75,000.00) for her efforts on behalf of the Class in this Action. Defendant shall not oppose the request by Named Plaintiff for an Enhancement Award, provided that Named Plaintiff executes a general release of all claims in the form attached as Exhibit "C."

Any Enhancement Award approved by the Court shall be paid by St. Joseph to the Named Plaintiff separately out of the Gross Settlement Amount, and shall be in addition to any distribution to which she may otherwise be entitled as a Class Member. Such Enhancement Award shall not be considered wages, and St. Joseph shall issue the Named Plaintiff a Form 1099 reflecting such payment.

**8. Distribution of Residuals**

The Settlement Administrator shall be responsible for calculating what portion of the amounts remaining in the Settlement Fund after it has disbursed the Individual

1 Settlement Amounts to all Class Participants, are due to Opt-Outs, on the one hand, and  
2 Notice Returns, Returned Redirected Notices or non-negotiated checks, on the other  
3 hand. Any residual shall first be used to repay Class Counsel for the fees and costs of the  
4 Settlement Administrator. Payment to Class Counsel shall come equally from the pool of  
5 money due to Opt-Outs, and the pool of money due to Notice Returns, Returns  
6 Redirected Notices and non-negotiated checks. In the event one pool of money is  
7 exhausted before Class Counsel is fully reimbursed for the fees and costs of the  
8 Settlement Administrator, the other pool of money shall be used for this purpose. Any  
9 further balance remaining as a result of Notice Returns, Returned Redirected Notices or  
10 non-negotiated checks shall be paid to the Bethany House. Any further balance  
11 remaining as a result of Opt-Outs shall be returned to Defendant.

12 **9. Time for Payment of Individual Settlement Amounts**

13 The Settlement Administrator shall make every effort to mail, by first class United  
14 States Mail to the last-known mailing address, the Individual Settlement Amount to each  
15 Class Participant within 90 days of the Final Approval Hearing. If the Settlement  
16 Administrator is not able to mail the Individual Settlement Amounts to Class Participants  
17 within the time period set forth above, it shall so inform Class Counsel and Defense  
18 Counsel, and provide an approximate date by which the Individual Settlement Amounts  
19 will be mailed. Under no circumstances shall the Settlement Administrator make any  
20 disbursement to a Class Member until the Settlement Administrator has determined the  
21 Class Member is a Class Participant. In the event that any Class Participant is deceased,  
22 payment shall be made payable to the estate of that Class Member and delivered to the  
23 executor or administrator of that estate, unless the Settlement Administrator has received  
24 an affidavit or declaration pursuant to Section 13101 of the California Probate Code, in  
25 which case payment shall be made to the affiant(s) or declarant(s).

26 **10. Class Counsel Attorneys' Fees and Litigation Costs**

27 Class Counsel may submit an application for an award of attorneys' fees and costs  
28 in the collective, aggregate, and total maximum amount of One Million Dollars

1 (\$1,000,000.00), representing Administrative Expenses. The application is to be heard by  
2 the Court at the Final Approval Hearing. Defendant and its attorneys agree not to object  
3 to any such fee and cost application in that amount. Class Counsel have asserted a  
4 statutory fee claims, including claims pursuant to the California Fair Employment and  
5 Housing Act. As a condition of this Settlement, Class Counsel has agreed to pursue their  
6 fees only in the manner reflected by this paragraph. Any fees and costs awarded by the  
7 Court up to the maximum amount shall be paid by St. Joseph to Class Counsel as the  
8 Court may direct, separately out of the Gross Settlement Amount, and shall not constitute  
9 payment to any Class Member(s). Each Class Counsel payee pursuant to the Court's  
10 order shall provide St. Joseph with a W-9 form for the payee signed by an authorized  
11 representative within thirty days preceding anticipated payment.

12 The attorneys' fees and costs approved by the Court shall encompass: (a) all work  
13 performed and costs incurred through the date of this Stipulation; (b) all work to be  
14 performed and costs to be incurred in connection with approval by the Court of the Class  
15 Settlement; and (c) all work and costs, if any, incurred in connection with administering  
16 the Settlement through dismissal of the Action with prejudice.

17 Class Counsel attorneys' fees and costs as awarded by the Court shall be paid by  
18 St. Joseph directly to Class Counsel within thirty days of the award or fourteen days  
19 following receipt of the payee's W-9, whichever is later.

20 Defendant shall bear its own fees and costs of every kind in connection with the  
21 Action and the negotiation of the settlement of the Action.

22 **11. Extension of Time to Pay and/or Process Claims**

23 Should the Settlement Administrator need more time than is provided under this  
24 Stipulation to complete any of its obligations, the Settlement Administrator may request,  
25 in writing, such additional time (including an explanation of the need for additional time)  
26 from Defense Counsel and Class Counsel. If Defense Counsel and/or Class Counsel do  
27 not agree, in writing, to the Settlement Administrator's request for additional time, the  
28 Settlement Administrator may seek such additional time from the Court.

1                   **12. Entry of Judgment of Dismissal with Prejudice of the Action.**

2                   Within seven (7) days after the Final Approval Date, the Court shall make and  
3 enter an order of judgment of dismissal with prejudice of the Action. Notwithstanding  
4 the dismissal of the Action with prejudice, the Court shall retain jurisdiction to interpret  
5 and enforce this Stipulation of Settlement.

6                   **13. Prohibition Against Future Use of the PEHI.**

7                   Defendant agrees not to: (a) use the PEHI in the future, (b) ask employees or  
8 applicants to complete the PEHI, or (c) utilize the PEHI in any manner contrary to or  
9 inconsistent with the terms of the Stipulation of Class Action Settlement. The Court shall  
10 retain jurisdiction of the Action to enforce the terms of this provision pursuant to Code of  
11 Civil Procedure section 664.6.

12                   **F. NULLIFICATION OF THE SETTLEMENT AGREEMENT**

13                   **1. Non-approval of the Stipulation of Settlement**

14                   If (a) the Court should for any reason fail to approve this Stipulation of Settlement  
15 in the form agreed to by the Parties, or (b) the Court should for any reason fail to enter a  
16 judgment and dismissal with prejudice of the Action, or (c) the judgment and dismissal is  
17 reversed, modified or declared or rendered void, then this Settlement shall be considered  
18 null and void, and neither this Settlement, nor any of the related negotiations or  
19 proceedings, shall be of any force or effect, and all parties to this Settlement shall stand in  
20 the same position, without prejudice, as if the Settlement had been neither entered into  
21 nor filed with the Court.

22                   **2. Invalidation**

23                   Invalidation of any material portion of this Settlement shall invalidate this  
24 Settlement in its entirety, unless the Parties shall subsequently agree in writing that the  
25 remaining provisions of the Settlement are to remain in full force and effect.

26                   **3. Non-distribution of the Settlement Fund**

27                   In the event that, for any reason, final distribution of the Settlement Fund does not  
28 occur (for example, because the Settlement is modified or reversed on appeal), the entire

1 Settlement Fund (less any administrative expenses and fees incurred by the Settlement  
2 Administrator), and any interest on the principal of the Settlement Fund, shall  
3 immediately be returned to St. Joseph.

4 **4. Stay Upon Appeal**

5 In the event of a timely appeal from the judgment and dismissal, the judgment  
6 shall be stayed, and none of the Settlement Fund shall be distributed to Class Members or  
7 Class Counsel, and the actions required by this Stipulation shall not take place pending  
8 the completion and final resolution of any such appeal.

9 **5. Defendant's Right to Withdraw Based on Opt-Outs.**

10 If, prior to the Hearing for Final Approval, more than fifteen percent of the  
11 members of the Settlement Class, have filed proper and timely Opt Out Forms in  
12 accordance with the provisions of the Class Notice, Defendant shall have the sole and  
13 absolute discretion to terminate the Settlement.

14 In the event Defendant elects to so terminate this Stipulation of Settlement,  
15 Defendant shall, at its own expense, provide such Notice of Termination in writing by  
16 first-class United States mail to Class Counsel and each Class Participant no later than  
17 twenty (20) calendar days before the Final Approval Hearing.

18 In the event Defendant elects to so terminate this Stipulation of Settlement, it shall  
19 not be responsible for paying any of the attorneys' fees or costs set forth herein, or any  
20 other fees and/or costs incurred by Class Counsel to effectuate this Stipulation. In the  
21 event of termination by Defendant pursuant to this subparagraph, Defendant shall be  
22 responsible for all costs of administration, except for attorney fees and costs, incurred up  
23 to the date of termination. In the event Defendant elects to terminate, such withdrawal  
24 shall have the same effect as would non-approval pursuant to Section F.1.

25 **G. FINAL APPROVAL HEARING AND ENTRY OF JUDGMENT**

26 The Final Approval Hearing shall be held before the Court as soon as the matter  
27 can practically be heard.

28 At the Final Approval Hearing, Class Participants and Defendant shall jointly

1 move the Court for entry of the Final Order, certifying the Class for settlement purposes  
2 only, approving the Settlement as being fair, reasonable and adequate to the Class  
3 Participants within the meaning of Sections 877 and 877.6 of the California Code of Civil  
4 Procedure, and for the entry of a Final Judgment of Dismissal with Prejudice of the  
5 Action consistent with the terms of the Settlement. Class Counsel and Defendant's  
6 Counsel shall submit to the Court such pleading and/or evidence as may be required for  
7 the Court's determination.

8 At the Final Approval Hearing, the Court will, among other things, be asked for  
9 the entry of an Order permanently enjoining all Class Participants from pursuing and/or  
10 seeking to reopen claims as are included within the Released Claims.

#### 11 H. RELEASES AND WAIVERS

##### 12 1. Release of Claims by Settlement Class.

13 Upon approval of the Stipulation of Settlement at the Final Approval Hearing, the  
14 Released Class, including each member thereof and each Class Participant, and the Class  
15 Representative, each releases the Released Parties, and each of them, of and from any and  
16 all of the Released Claims.

##### 17 2. Release of Class Representative and Class Counsel

18 Upon approval of the Stipulation of Settlement and the Final Approval Hearing,  
19 St. Joseph releases the Class Representatives, Class Counsel and Class Counsel's  
20 respective partners, associates, counsel, employees, servants, successors, indemnitors and  
21 representatives (collectively "Released Class Representatives/Counsel) from any and all  
22 claims, causes of action, rights, duties, requests, suits, administrative proceedings,  
23 damages, costs or other demands that might or could have been brought arising from or  
24 related to the initiation, prosecution and settlement of the Action.

##### 25 3. Waiver of Unknown Claims

26 Each and all of the Class Participants, and the Class Representative, on the one  
27 hand, and St. Joseph on the other, waive all rights and benefits afforded by Section 1542  
28 of the Civil Code of the State of California, and do so understanding the significance of

1 that waiver. Section 1542 provides:

2 **A general release does not extend to claims which the**  
3 **creditor does not know or suspect to exist in his or her**  
4 **favor at the time of executing the release, which if known**  
5 **by him or her must have materially affected his or her**  
6 **settlement with the debtor.**

7 In order to achieve a full and complete release of the Released Parties, and each  
8 Class Member on the one hand, and St. Joseph on the other, acknowledge that this  
9 Stipulation is intended to include in its effect all claims that each does not know or  
10 suspect to exist in his or her or its favor at the time that the Court enters a Final Order  
11 approving the Class Settlement.

12 **4. Judgment of Dismissal of All Claims with Prejudice**

13 It is hereby stipulated that this Stipulation of Settlement is intended to include  
14 within its effect any and all claims, damages, causes of action, and claims for attorneys'  
15 fees, asserted in the Action, subject to the terms and conditions of this Stipulation, and  
16 upon Final Approval of this Stipulation, all such claims, damages, and causes of action,  
17 and claims for attorneys' fees, that were asserted in the Action are deemed to be fully and  
18 finally resolved, and a judgment of dismissal with prejudice will be entered as to each  
19 and every member of the Class, except as to those who Opt Out.

20 **I. DUTIES OF THE PARTIES**

21 **1. Mutual Full Cooperation**

22 The Parties agree to cooperate fully with one another to accomplish and  
23 implement the terms of this Stipulation of Settlement. Such cooperation shall include,  
24 but not be limited to, execution of such other documents and the taking of such other  
25 actions as may reasonably be necessary to fulfill the terms of this Settlement. The Parties  
26 shall use their best efforts, including all efforts contemplated by this Stipulation of  
27 Settlement and any other efforts that may become necessary by Court Order, or  
28 otherwise, to effectuate this Stipulation and the terms set forth herein. As soon as  
practicable after execution of this Stipulation, Class Counsel with the cooperation of  
Defendant and its Counsel, shall take all necessary and reasonable steps to secure the

1 Court's Final Approval of this Stipulation.

2 **2. Duty to Support and Defend the Settlement**

3 The Parties hereto agree to abide by all of the terms of the Settlement in good faith  
4 and to support the Settlement fully, and to use their best efforts to defend this Class  
5 Settlement from any legal challenge, whether by appeal or collateral attack.

6 **3. Duties Prior to Court Approval**

7 The Parties shall promptly submit this Stipulation to the Court for preliminary  
8 approval and determination by the Court as to its fairness, adequacy, and reasonableness.  
9 Promptly upon execution of this Stipulation, the Parties shall apply to the Court for the  
10 entry of a preliminary order scheduling a hearing on the question of whether the proposed  
11 Class Settlement should be approved as fair, reasonable, and adequate as to the Class  
12 Members, approving as to form and content the proposed Class Notice attached hereto as  
13 Exhibit "A," and directing the mailing of the Class Notice to Class Members.

14 **J. MISCELLANEOUS PROVISIONS**

15 **1. Different Facts**

16 The Parties hereto, and each of them, acknowledge that, except for matters  
17 expressly represented herein, the facts in relation to the dispute and all claims released by  
18 the terms of the Stipulation may turn out to be other than or different from the facts now  
19 known by each party and/or its counsel, or believed by such party or counsel to be true,  
20 and each party therefore expressly assumes the risk of the existence of different or  
21 presently unknown facts, and agrees that this Stipulation shall be in all respects effective  
22 and binding despite such difference.

23 **2. No Prior Assignments**

24 The Parties hereto represent, covenant, and warrant that they have not directly or  
25 indirectly assigned, transferred, encumbered, or purported to assign, transfer, or  
26 encumber to any person or entity any portion of any liability, claim, demand, action,  
27 cause of action, or right herein released and discharged except as set forth herein.

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**3. Non-Admission**

Nothing in this Stipulation shall be construed to be or deemed an admission by Defendant of any liability, culpability, negligence, or wrongdoing toward the Class Representative, the Class Members, or any other person, and Defendant specifically disclaims any liability, culpability, negligence, or wrongdoing toward the Class Representative, the Class Members, or any other person. Each of the Parties has entered into this Stipulation with the intention to avoid further disputes and litigation with the attendant inconvenience, expenses, and contingencies.

**4. Confidentiality**

Named Plaintiff and Defendant, and their respective counsel, agree that they will not knowingly initiate any direct contact with any individuals employed by a union or initiate any steps to contact the media regarding the terms of this Stipulation, the fact of the settlement embodied in this Stipulation, the disposition of the Action, and all matters relating to the litigation of the Action, including discovery proceedings therein, and evidence obtained during the course of the Action. In the event Plaintiff or her counsel are contacted by the media on these subjects, they agree to strongly encourage the media outlet to contact Defendant to obtain its position on the same. The Parties agree that the non-breaching party will be entitled to injunctive relief in the event it learns of a threatened breach of this provision. Notwithstanding the foregoing, Class Counsel may provide information regarding the Action and Class Settlement on their respective websites. In addition, nothing in this section shall prohibit Plaintiff or her counsel from responding to any media contact initiated by the media or by an objector to the settlement.

**5. Retaining of Jurisdiction**

The Court shall retain jurisdiction for purposes of resolving any dispute arising under or relating to this Agreement, any claim asserted hereunder or any claim to which this Settlement Agreement provides a defense.

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**6. Construction**

The Parties hereto agree that the terms and conditions of this Stipulation are the result of lengthy, intensive, arm's-length negotiations between the Parties, and that this Stipulation is not to be construed in favor of or against any party by reason of the extent to which any party or its counsel participated in the drafting of this Stipulation.

**7. Choice of Law**

This Stipulation is intended to and shall be governed by the laws of the State of California, without regard to conflicts of law principles.

**8. Captions and Interpretations**

Paragraph titles or captions contained herein are inserted as a matter of convenience and for reference only, and in no way define, limit, extend, or describe the scope of this Stipulation or any provision thereof.

**9. Modification**

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

**10. Integration Clause**

This Stipulation of Settlement contains the entire agreement between the Parties relating to the settlement of the Action and the transactions contemplated thereby, and all prior or contemporaneous agreements, understandings, representations, and statements, whether oral or written, and whether by a party or such party's legal counsel, are merged herein. No rights under this Stipulation may be waived except in writing.

**11. Successors and Assigns**

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

**12. Class Counsel Signatories**

Because the Members of the Class are so numerous, the Parties agree that it is

1 impossible or impractical to have each Class Member sign this Stipulation. It is agreed  
2 that, for purposes of seeking approval of the Class Settlement, this Stipulation may be  
3 executed on behalf of the Class by Class Counsel and the Class Representative, and shall  
4 have the same force and effect as if executed by each member of the Class. Class  
5 Counsel and the Class Representative represent that they are fully authorized to enter into  
6 this Stipulation and bind the Class Members to the terms and conditions thereof.

7 **13. Corporate Signatories**

8 Any person executing this Stipulation or any such related document on behalf of a  
9 corporate signatory hereby warrants and promises, for the benefit of all Parties hereto,  
10 that such person has been duly authorized by such corporation to execute this Stipulation  
11 or any such related document.

12 **14. Execution in Counterparts**

13 This Stipulation shall become effective upon its execution by all of the  
14 undersigned. The Settling Parties may execute this Stipulation in counterparts, and  
15 execution of counterparts shall have the same force and effect as if all Settling Parties had  
16 signed the same instrument.

17 The Parties hereby stipulate to the entry of an Order encompassing the terms  
18 contained herein.

19 DATE: MARCH 18 2008

20 FOLEY & LARDNER LLP  
21 TAMIS. SMASON  
22 JOSHUA M. SABLE


23 By:

24 JOSHUA M. SABLE  
25 ATTORNEYS FOR DEFENDANT ST. JOSEPH  
26 HOSPITAL OF ORANGE

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DATE: MARCH 14, 2008

ST. JOSEPH HOSPITAL OF ORANGE

By:   
MARY LEAHY  
VICE PRESIDENT, HUMAN RESOURCES  
*Alan Garret*  
Chief operating officer


DATE: MARCH 19, 2008

CLASS COUNSEL:  
LAW OFFICES OF SCHONBRUN  
DESIMONE SEPLOW HARRIS & HOFFMAN  
LLP

By:   
V. JAMES DE SIMONE, ESQ. OR  
MICHAEL MORRISON, ESQ.  
ATTORNEYS FOR PLAINTIFF  
GRACE FONTANA

DATE: MARCH 19, 2008

CLASS COUNSEL:  
LAW OFFICES OF HELMER FRIEDMAN LLP

By:   
ANDREW H. FRIEDMAN  
GREGORY D. HELMER  
ATTORNEYS FOR PLAINTIFF  
GRACE FONTANA

DATE: MARCH 18, 2008

CLASS REPRESENTATIVE

By:   
GRACE FONTANA

# **EXHIBIT**

**“A”**

March 11, 2008

**NOTICE OF CONSENT DECREE AND OF PAYMENT TO YOU UNDER THE TERMS OF A PROPOSED SETTLEMENT OF A CLASS ACTION LAWSUIT AGAINST ST. JOSEPH HOSPITAL OF ORANGE, AS WELL AS YOUR RIGHT TO OBJECT OR EXCLUDE YOURSELF FROM THE SETTLEMENT**

You have been identified as a member of a proposed class to be certified by the Court for the purposes of settlement of a class action lawsuit against St. Joseph Hospital of Orange ("St. Joseph Hospital"). This notice explains your right to participate in the settlement, as well as your right to object and/or exclude yourself from the settlement. *If you wish to participate in the Settlement and accept the terms described in this notice, you do not need to do anything in response to this notice. If the Court grants final approval of the settlement, a check for approximately \$500 will automatically be sent to you.*

**A. Background of the Lawsuit and the Settlement**

On or about February 5, 2003, Grace Fontana ("Plaintiff") filed a lawsuit titled *Fontana v. St. Joseph Health System, et al.*, Orange County Superior Court, Case No. 03CC02559. In the lawsuit, she alleges that St. Joseph Hospital required her to complete a Pre-Employment Health Inventory ("PEHI") as a condition of employment that contained a number of questions St. Joseph Hospital was legally prohibited from asking as a condition of employment. Plaintiff alleges St. Joseph Hospital only stopped using the PEHI as a result of her legal efforts. St. Joseph Hospital alleges it voluntarily stopped using the PEHI at issue in May 2002. St. Joseph Hospital believes the PEHI in use since May 2002 complies with all laws.

St. Joseph Hospital denies the Plaintiff's allegations and contends that its Pre-Employment Health Inventory was entirely proper, and, as a result, that it did not violate any statutes or regulations. St. Joseph Hospital also denies that Plaintiff or any Class Member suffered damage by reason of the use of the PEHI. Nonetheless, St. Joseph Hospital has concluded that further litigation of this action would be protracted and expensive and it is desirable that the action be fully and finally settled. In addition, settlement of the action will allow St. Joseph Hospital to use its time, energy and resources on providing care to the members of the community and advancing its core values.

The lawsuit has been actively litigated. There has been extensive investigation and discovery, as well as extensive settlement discussions, including a full-day mediation before a very experienced mediator.

The Parties have now entered into a Settlement Agreement, which the Court has preliminarily approved, that includes a settlement for any and all employment applicants and/or individuals who received conditional offers of employment and who were asked and/or required by St. Joseph Hospital of Orange to complete the PEHI after January 1, 2001 ("Class"). The settlement will resolve all claims any member of the Class may have related to St. Joseph Hospital's use of the PEHI. You have been identified as a member of the Class because it is believed that you were required to respond to the PEHI, and as a result, you are entitled to participate in the Settlement. You are not required to participate in the Settlement, but you must request to be excluded from the Settlement according to the instructions below if you do not wish to participate.

## **B. Proposed Settlement Terms**

Under the settlement agreement, the PEHI completed by each class member shall be deposited with a third-party escrow agent who will be responsible for maintaining the security and privacy of the PEHI. St. Joseph Hospital will only be able to access the PEHIs (1) after obtaining a Court order or (2) after receiving a written request from any federal, state, or local government agency, or quasi-governmental body such as JCAHO which regulates, licenses or certifies St. Joseph Hospital's operations. In addition, Class members may obtain a copy of their pre-employment health inventory upon a written request to St. Joseph Hospital. The Court will retain jurisdiction of this case for the purpose of ensuring that this provision is complied with.

Under the Settlement Agreement a Settlement Fund in the amount of \$500,000.00 will be created. Each member of the Class will receive his or her proportionate share, which is approximately \$500.00, unless the member has requested to be excluded from the Settlement. Any portion of the Settlement Fund not disbursed, except for those monies which would have been paid to members of the Class who elect to opt-out, will be paid to the Bethany House.

The Settlement Agreement also provides that the Plaintiff (Grace Fontana) will be paid an additional \$75,000.00 for her services as Class representative, and her willingness to accept the risk of paying St. Joseph Hospital's costs in the event of an unsuccessful outcome.

The Settlement Agreement also provides that the attorneys for the Class ("Plaintiffs' Attorneys") may apply for an award of attorneys' fees and costs (including the costs they incurred in prosecuting, settling and administering this action and this settlement) up to \$1,000,000.00.

Plaintiffs' Attorneys believe these amounts for attorneys' fees and the enhancement payment to the Plaintiff are reasonable and St. Joseph Hospital has agreed that it will not object to these amounts. However, the Court must approve the amounts paid to Plaintiffs' Attorneys in fees, costs, and the amount of the enhancement payment to the Plaintiff. The Court may change these amounts. The reasonableness of the attorneys' fees and costs are based on the fact that Plaintiffs' counsel consists of two law firms that have litigated this matter for over four years and have incurred considerable monetary expenses and attorney time in the prosecution of this action. Class Counsel has conducted extensive discovery and investigation during the prosecution of the Action, has engaged in extensive law and motion practice, and has successfully negotiated a settlement, which includes St. Joseph Hospital depositing the PEHIs with a third party escrow agent and compensation to all Class Members. Among other things, they opposed a motion for summary judgment brought by the defendant; filed briefs with the Court of Appeal to reverse the Trial Court's denial of class certification; and filed a renewed motion for class certification, which was granted. Class Counsel has also taken numerous depositions of St. Joseph Hospital's representatives and persons most knowledgeable regarding the material facts of the Action. They have spent considerable time and effort in inspecting and analyzing documents produced by the defendants; analyzing defendants' legal positions; and analyzing class-wide damages; researching applicable law pertaining to the class claims and the potential defense thereto.

The Plaintiff and Plaintiffs' Attorneys believe this Settlement is fair and reasonable in light of the inherent risk of trial on the merits, the risk of not obtaining class certification or being decertified on appeal, and the delays associated with further litigation.

### **C. Participation in the Settlement**

If you wish to participate in the Settlement, you do not need to do anything in response to this notice. After the Court's final approval of the settlement, a settlement check will be sent to you by mail to the address where this Notice was mailed or to the last address you have timely submitted to the Settlement Administrator.

The Settlement is intended to fully release St. Joseph Hospital, St. Joseph Health System, the Sisters of St. Joseph of Orange and their present and former parent companies, subsidiaries affiliates, related entities, and joint ventures and each of their respective present and former officers, directors, controlling stockholders, agents, employees, insurers, co-insurers, reinsurers, attorneys, accountants, auditors, advisors, representatives, consultants, pension and welfare benefit plans, plan fiduciaries, administrators, trustees, general and limited partners, predecessors, successors, and assigns from any and all claims, demands, rights, liabilities, and/or causes of action of any nature and description whatsoever, known or unknown, in law or in equity, whether or not concealed or hidden, asserted or that might have been asserted by the Named Plaintiff or by any Class Member, including, but not limited to, claims based on alleged violations of any state or federal statutes, rules or regulations, that arise out of any claims or allegations raised in the Action from the beginning of time through the Preliminary Approval Date, as a result of St. Joseph Hospital's use of the PEHI in connection with applications for employment or employment during the Class Period by the Named Plaintiff, as well as all Class Members who do not affirmatively opt out of the settlement. If you were an employee or applicant of St. Joseph Hospital of Orange who was asked and/or required to complete the PEHI, between January 1, 2001 and the present, and you do not elect to exclude yourself from the Settlement Class, you will be deemed to have entered into this release and to have released all such claims and rights. If the Settlement is not approved by the Court or does not become final for some other reason, the litigation will continue and your claims and rights will not be released.

### **D. Excluding Yourself from the Settlement**

If you wish exclude yourself from the Settlement, you must complete, sign, and return the enclosed Request for Exclusion form. To be effective, the Request for Exclusion form must be returned and received by the Claims Administrator no later than May 15, 2008 to:

*Fontana v. St. Joseph Hospital* Claims Administrator  
C/o Rust Consulting, Inc.  
625 Marquette Avenue, Suite 880  
Minneapolis, MN 55402

If you exclude yourself from the Settlement, you may, at your own expense, pursue any claims you may have against St. Joseph Hospital relating to use of that version of the PEHI which the hospital stopped requiring applicants and employees to answer or respond to in May 2002. It is the opinion of St. Joseph Hospital that any person who opts-out will find that his or her released claims are time-barred. If you do not file a complete and timely written Request for Exclusion Form, you will be included in the Settlement Class, and you will be bound by the terms of the Settlement, whether or not you object to the Settlement.

### **E. Objecting to the Settlement**

You may also object to the terms of the Settlement before it is finally approved. However, if the Court rejects your objection, you will still be bound by the terms of the Settlement. To object, you must file, with the court, a written objection or a Notice of Intention to Appear at the Final Approval Hearing, which is currently set for June 12, 2008 at 1:30 pm. Any such objections or Notices of Intention to Appear must be filed with the Clerk of the Orange County Superior Court, 751 West Santa Ana Boulevard, Santa Ana, California 92701 and copies must be sent via U.S. mail to the following:

#### **ATTORNEYS FOR PLAINTIFF:**

V. James DeSimone, Esq.  
Schonbrun DeSimone Seplow Harris &  
Hoffman LLP  
723 Ocean Front Walk  
Venice, CA 90291

Andrew H. Friedman, Esq.  
Gregory D. Helmer, Esq.  
Helmer Friedman, LLP  
723 Ocean Front Walk  
Venice, CA 90291

#### **ATTORNEYS FOR DEFENDANT ST. JOSEPH HOSPITAL:**

Tami S. Smason, Esq.  
Joshua M. Sable, Esq.  
FOLEY & LARDNER LLP  
2029 Century Park East, Suite 3500  
Los Angeles, CA 90067-3021

Any written objections or Notice of Intention to Appear must include all reasons for your objection and any legal support for your objection. Your objection or Notice of Intention to Appear must also state your full name, address, date of birth, and the dates of your employment at St. Joseph Hospital. To be valid and effective, any objections to approval of the Settlement or Notice of Intention to Appear must be filed with the Clerk of the Court and served upon each of the above-listed attorneys by U.S. mail postmarked no later than May 15, 2008.

If you choose to file an objection to the terms of this Settlement, you may choose to represent yourself or enter an appearance through your own attorney. If you choose to be represented by an attorney, you will be solely responsible for your attorneys' fees and costs.

*If you object to the Settlement and the Court overrules your objection, you will be included in the settlement for all purposes including your right to receive a settlement payment as well as the release of your rights and claims.*

### **G. Final Settlement Approval Hearing**

The Court will hold a hearing in Department CX101 of the Orange Superior Court, 751 West Santa Ana Boulevard, Santa Ana, California 92701 on June 12, 2008 at 1:30 p.m. to determine whether the Settlement should be finally approved as fair and reasonable. The Court will also be asked to approve Plaintiffs' Attorneys' request for attorneys' fees and reimbursement of costs and expenses and an enhancement payment to the Plaintiff. Plaintiffs' Attorneys' application for attorneys' fees and reimbursement of expenses will be on file with the Court no later than May 22, 2008, and will be available for review after that date.

The hearing may be continued without further notice to the Settlement Class. *You do not have to appear at this hearing unless you have timely filed an objection or Notice of Intention to Appear with the Court.*

**H. Additional Information**

The above is a summary of the basic terms of the Settlement. For the precise terms and conditions of the Settlement, you may consult the detailed "Settlement Agreement," which is on file with the Clerk of the Court. The pleadings and other records in this litigation, including that stipulation, may be examined at any time during regular business hours at the Office of the Clerk of the Orange County Superior Court, Complex Civil Center, 751 West Santa Ana Boulevard, Santa Ana, California 92701. You can also review the Settlement Agreement in its entirety at [www.helmerfriedman.com](http://www.helmerfriedman.com) or [www.sdshh.com](http://www.sdshh.com).

**PLEASE DO NOT TELEPHONE THE COURT OR THE OFFICE OF THE CLERK FOR INFORMATION REGARDING THIS SETTLEMENT OR THE CLAIM PROCESS! THE CLERK IS NOT ABLE TO PROVIDE ANY INFORMATION OR ADVICE REGARDING THIS NOTICE.**

*The Orange County Superior Court authorized this Notice*

**REQUEST TO BE EXCLUDED FROM CLASS SETTLEMENT  
(OPT-OUT FORM)**

I elect to be excluded from the class and class settlement in accordance with the provisions of the foregoing Notice. I understand that I will not be bound by any disposition of the class action and I will retain any claims I may have against St. Joseph Hospital of Orange. I also understand that I will not share in any recovery that may be paid to class members if the class representative is successful in trial or from any settlement that may be obtained on behalf of the class.

\_\_\_\_\_  
Full Printed Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**THIS FORM MUST BE COMPLETED AND RETURNED TIMELY TO BE EFFECTIVE.  
THE SETTLEMENT ADMINISTRATOR MUST RECEIVE THIS FORM  
ON OR BEFORE May 15, 2008, OR YOUR REQUEST TO BE EXCLUDED WILL NOT BE  
EFFECTIVE, AND YOU WILL BE BOUND BY THE DISPOSITION OF THE CLASS  
ACTION.**

Return this form to:

*Fontana v. St. Joseph Hospital* Claims Administrator  
C/o Rust Consulting, Inc.  
625 Marquette Avenue, Suite 880  
Minneapolis, MN 55402

# **EXHIBIT**

**“B”**

## ESCROW INSTRUCTIONS

The parties have entered into an agreement, which is enforceable pursuant to Court order and decree, whereby Defendant St. Joseph Hospital of Orange has agreed to deposit all Pre-Employment Health Inventories (PEHI) in its possession, custody or control with a third-party escrow agent. Defendant shall also submit one (1) copy of the PEHI completed by each class member in a sealed envelope marked "confidential." Any costs and expenses associated with the third-party escrow agent will be paid by Defendant. The settlement agreement orders that the maintenance of, and access to, the PEHI records held by the escrow agent are to be governed by the following terms and conditions:

**A. Efforts by Defendant To Obtain The Information.** In order to obtain any of the completed PEHI's, or any information contained therein, Defendant would have to obtain a court order authorizing such disclosure by the escrow agent. Defendant will not be required to obtain a court order to obtain any of the completed PEHI's, or any information contained therein, if disclosure of this information is made in response to a formal request made by any federal, state, or local government agency, or quasi-governmental body such as JCAHO which regulates, licenses or certifies Defendant's operations.

**B. Efforts By Third Parties To Obtain The Information.** If any third party attempts to subpoena any of the completed PEHI's, or any information contained therein, Defendant will provide notice to the affected individual(s) within seven (7) business days. Defendant shall inform the affected individual(s) of his or her right to move to quash the subpoena also, upon request of the affected individual, provide the affected individual(s) with a copy of the class action settlement in this case and inform him or her of his or her right to move to quash the subpoena.

**C. Efforts By Class Members To Obtain Their Own Information.** Class Members shall be permitted to obtain their own information without the necessity of a court order by making a request of an authorized representative of Defendant, accompanied by appropriate identification. Defendant will then request that the escrow agent release a copy of the PEHI at issue. The escrow agent shall release the information to St. Joseph in the sealed envelope marked "Confidential." Defendant will then provide the sealed envelope to the requesting class member accompanied by a notice to class member/consumer stating, among other things, that he/she is under no obligation to provide or divulge the information to Defendant, that the information has been in the possession of the third party escrow agent pursuant to the terms of a settlement agreement in this Action (to be identified by case name and number), and that the Class Member is entitled to receive a copy of the settlement agreement upon request to Defendant.

**D.** If Defendant, third parties, or any class members, attempt to obtain the information contained in the completed PEHI's, Class Counsel shall be provided with notice of such an attempt.

**E. Maintenance Period.** The Escrow Agent shall retain the PEHI records for a period of Twenty Years ("Maintenance Period") from the date the Court grants Final Approval of the Class Settlement which was June 12, 2008. The Escrow Agent shall

destroy all maintained PEHI records and copies within thirty days of the expiration of the Maintenance Period.

**F. Selection of Escrow Agent.** Iron Mountain is an acceptable escrow agent. Defendant and Class Counsel may stipulate to the selection of an alternative Escrow Agent at any time, including the selection of successor escrow agents as may be necessary or proper.

# **EXHIBIT**

**“C”**

**CLASS REPRESENTATIVE SETTLEMENT AGREEMENT  
AND RELEASE OF CLAIMS**

This Class Representative Settlement Agreement and Release of Claims ("Agreement") is between St. Joseph Hospital of Orange, referred to as the "Defendant," on the one hand, and Grace Fontana, who is referred to as the "Named Plaintiff," on the other hand. Defendant and Named Plaintiff are each a "Party" and are collectively the "Parties."

1. **Background.** Named Plaintiff Grace Fontana filed a lawsuit as a class representative against Defendant styled as *Grace Fontana v. St. Joseph Health Systems* [sic], *et al.*, Orange County Superior Court Case No. 03CC02559. Named Plaintiff filed a First Amended Complaint (the "FAC") in the action on February 14, 2003. This is referred to as the "Action" in the Stipulation of Class Action Settlement in the matter, and is referred to as the "Lawsuit" in this Agreement. Defendant denies the allegations and claims contained in the Lawsuit.

2. **No Admission of Liability.** Because of the disputes in the Lawsuit, the Parties have agreed to avoid the costs and uncertainty of continued litigation of the Lawsuit and to settle all disputes by voluntarily entering into this Agreement, which is not intended to be and shall not be construed as an admission of liability by either Named Plaintiff or Defendant. Nothing in this Agreement is meant to suggest that the Defendant has violated any law or contract or that Named Plaintiff has any legitimate claim against the Defendant.

3. **Payment of "Enhancement Award" Settlement Funds.** In return for the execution of this Agreement, and its becoming effective (see paragraph 18), the Defendant will pay the sum of seventy five thousand dollars (\$75,000.00) (U.S.) ("Settlement Funds") referred to as the "Enhancement Award" in Section E.7. of the "Stipulation of Class Action Settlement" in the Lawsuit within fourteen days of this Agreement's becoming effective (see paragraph 18) by delivering payment to Named Plaintiff's counsel as indicated in the notice provisions below.

A 1099 Form shall be issued for the Settlement Funds in Named Plaintiff's social security number. Defendant does not characterize the nature of the Settlement Funds. Named Plaintiff warrants and represents that no part of the Settlement Funds represent unpaid wages and that all of Named Plaintiff's wages earned from Defendant have been fully paid prior to entering into this Agreement. Named Plaintiff shall take full and complete responsibility for, and shall hold Defendant and all Releasees harmless from any and all tax liability incurred by Named Plaintiff resulting from payment of the Settlement Funds, including but not limited to, withholding, social security, SUI/SDI, federal, state or local taxes, and any interest or penalties incurred as a result of this settlement and Agreement as well as the characterization of the Settlement Funds.

4. **Acknowledgement.** The Named Plaintiff understands that the Settlement Funds will not be paid or provided unless she accepts this Agreement and it becomes effective (*see* paragraph 18).

5. **Dismissal of Lawsuit.** Upon Named Plaintiff's execution of this Agreement and its becoming effective pursuant to paragraph 18, Named Plaintiff agrees to voluntarily dismiss all

claims by her contained in the Lawsuit, with prejudice, and Defendant shall stipulate to such dismissal as may be required by the Court in which the Lawsuit is pending.

6. **Mutual Release.**

A. **Named Plaintiff's Release of Releasees**

The Named Plaintiff understands and agrees that acceptance of this Agreement means that, except as stated in paragraph 10, she is forever waiving and giving up and releasing all claims and causes of action that were or could have been brought in the Lawsuit, and any and all claims and causes of action she may have, whether known or unknown, against any "Releasee" for any personal monetary relief for herself, benefits or remedies that are based on any act or failure to act that occurred before she signed this Agreement.

1. The "Releasees" are defined as:
  - a. the Defendant;
  - b. St. Joseph Health System;
  - c. The Sisters of St. Joseph of Orange;
  - d. all of the parents, subsidiaries, associated ministries, and affiliates of Releasees (a) through (c), above;
  - e. all related companies and organizations of Releasees (a) through (d) above. Relatedness for this purpose is defined as an applicable Releasee having at least a ten percent ownership of, or a ten percent membership on any respective board of directors or trustees, of the company or organization in question; and
  - f. all employees, officers, directors, trustees, owners, attorneys and agents of Releasees (a) through (e), above.
2. The Named Plaintiff understands that this release and waiver of claims includes claims arising from or relating in any way to:
  - a. any relationship she claims to have had with any Releasee and any policy, practice, contract or agreement;
  - b. any tort or personal injury;
  - c. any policies, practices, laws or agreements governing the payment of wages, including but not limited to claims under the Fair Labor Standards Act and California Labor Code, commissions or other compensation;

- d. any laws governing employment discrimination or other varieties of discrimination, including, but not limited to, the Age Discrimination in Employment Act, Older Worker Benefits Protection Act, Title VII of the Civil Rights Act, the Employee Retirement Income Security Act, the Americans with Disabilities Act, the California Fair Employment and Housing Act, the Equal Pay Act, the Family Medical Leave Act, the California Family Rights Act, the California Unruh Civil Rights Act, Section 132a of the California Labor Code, or any other federal, state or local laws or regulations prohibiting employment discrimination;
- e. the California Business & Professions Code § 17200;
- f. any laws or agreements that provide for punitive, exemplary or statutory damages; and
- g. any laws or agreements that provide for payment of attorneys' fees, costs or expenses.

**B. Releasees' Release of Named Plaintiff and Class Counsel**

Releasees understand and agree that its acceptance of this Agreement means that they are forever waiving and giving up and releasing all claims and causes of action that were or could have been brought in the Lawsuit, and any and all claims and causes of action they may have, whether known or unknown, against the Named Plaintiff or her counsel for any monetary relief, benefits or remedies that are based on any act or failure to act before it signed this Agreement.

7. **California Civil Code § 1542.** The Parties expressly acknowledge that they are aware of the existence of California Civil Code § 1542 and its meaning and effect. They expressly acknowledge that they have read and understand the following provision of that section which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

The Parties expressly waive and release as set forth above any right to benefits that they may have under California Civil Code § 1542 to the fullest extent they may do so lawfully. They further acknowledge that they may later discover facts different from or in addition to those facts now known to them or believed by them to be true with respect to any or all of the matters covered by this Agreement, and they agree that this Agreement nevertheless shall remain in full and complete force and effect.

8. **No Disparagement.** The Named Plaintiff agrees not to make critical, negative or disparaging remarks about the Releasees or their services or products. Defendant's officers and directors agree not to make any critical, negative or disparaging remarks about the Named Plaintiff.

9. **No Expectation of Future Relationship.**

As part of the consideration for Defendant entering into this Agreement, Named Plaintiff agrees not to apply for, seek or accept employment, membership, or any other affiliation with any Releasee, at any time on or after the Settlement Funds become payable pursuant to Paragraph 18, below.

Named Plaintiff agrees that in the event such employment or affiliation occurs in the future, Named Plaintiff promptly shall resign her employment or affiliation and that this provision shall serve as good and just cause for termination of that employment or affiliation. Named Plaintiff knowingly and voluntarily waives all rights she may have under federal and/or state law to rehire or reinstatement of employment, membership, or any other affiliation with any Releasee.

10. **Claims Not Waived.** The Named Plaintiff understands that this Agreement does not waive any claims that she may have: (a) for compensation for illness or injury or medical expenses under any worker's compensation statute; (b) for benefits under any plan currently maintained by the Defendant that provides for retirement benefits; (c) under any law or any policy or plan currently maintained by the Defendant that provides health insurance continuation or conversion rights; or (d) any claim that by law cannot be released or waived. The Named Plaintiff warrants and represents that she is not presently aware of any such claims.

11. **Government Cooperation.** Nothing in this Agreement prohibits the Named Plaintiff from cooperating with any government agency.

12. **Prior Confidentiality Agreement(s), Disposition of Property, and Computer Access.** The Named Plaintiff agrees and understands that this Agreement does not supersede any obligation to which she was subject under a prior agreement while employed by Defendant that addresses confidentiality, trade secrets, noncompetition, patents or copyrights; nor does this Agreement reduce Named Plaintiff's obligations to comply with applicable laws including those relating to trade secrets, confidential information, unfair competition, patents and copyrights. Other than any documents or other items produced in the course of discovery, named Plaintiff warrants and represents that neither she nor her attorneys possess or control any material or property belonging to Defendant, including without limitation computer files and equipment, telephones or other devices, keys, passwords, business records or other recordings or data. Named Plaintiff agrees that if she or her attorney discovers that any such property is within the possession or control of either her or her attorney, such shall be returned immediately to counsel for Defendant as stated in the Notice provisions below, unless another disposition is expressly authorized in writing by counsel for Defendant. Named Plaintiff agrees that she will neither access nor attempt to access any of the Releasees' computers, computer networks, or other electronic information or business information.

13. **Voluntary Agreement.** The Named Plaintiff acknowledges and states that she has entered into this Agreement knowingly and voluntarily.

14. **Consulting An Attorney.** The Named Plaintiff acknowledges that the Defendant has told her that she should consult an attorney of her own choice about this Agreement and every matter that it covers before signing this Agreement. Named Plaintiff represents that she has consulted with the attorneys representing her in the Lawsuit regarding this Agreement.

15. **Obligation to Pay Attorneys' Fees and Costs.** The Parties understand and agree that if either violates the commitments they have made in this Agreement, the non-breaching party may seek to recover any payments and/or benefits provided in this Agreement and that, except as provided in paragraph 16, the breaching party will be responsible for paying the actual attorneys' fees and costs incurred by the non-breaching party in enforcing this Agreement or in defending a claim released by paragraphs 6 or 7. Otherwise, each party shall bear her or its own attorneys' fees and costs incurred in the Lawsuit and the preparation of this Agreement.

16. **Exception to Attorneys' Fees Obligation.** The obligation to pay the Defendant's attorneys' fees and costs does not apply to an action by the Named Plaintiff regarding the validity of this Agreement under the Age Discrimination in Employment Act (ADEA).

17. **Complete Agreement.** The Named Plaintiff understands and agrees that this document and the Stipulation for Class Action Settlement contain the entire agreement between her and the Defendant relating to her relationship and the termination of her relationship with the Defendant, that this Agreement, except as provided in paragraph 12, supersedes and displaces any prior agreements and discussions relating to such matters and that she may not rely on any such prior agreements or discussions.

18. **KNOWING AND VOLUNTARY RELEASE**

A. **21-Day Consideration Period.** The Named Plaintiff may consider whether to sign and accept this Agreement for a period of twenty-one days (21) from the day she received it. If this Agreement is not signed, dated and returned as described in paragraph 18(b) within twenty-two (22) days, the offer to pay Settlement Funds described in paragraph 3 will no longer be available.

B. **Effective Date and Revocation.** This Agreement shall not be effective until seven calendar days *after* the Named Plaintiff signs it and returns it to the Defendant's counsel pursuant to the notice instructions below, within the period provided in paragraph 18(a). During that seven-day period the Named Plaintiff may revoke her acceptance of this Agreement by delivering to Defendant written notice stating she wishes to revoke this Agreement or not be bound by it.

C. **Final Approval of Class Action Settlement.** If Named Plaintiff has not revoked her acceptance within the seven days provided under Paragraph 18(b), above, this Agreement will become effective on the date the Court enters an Order of final approval of Stipulation of Class Action Settlement in the Lawsuit. If the

Stipulation of Class Action Settlement is not finally approved, this Agreement will not become effective, and it will have no force or effect on any party.

19. **CONFIDENTIALITY**

A. Named Plaintiff agrees that she will not initiate any steps to contact the media or any individual or entity, except upon order of any court or except as required by law, regarding the terms of this Agreement and any and all allegations and claims against Releasees that form the basis of any and all of Named Plaintiff's claims giving rise to this Agreement. If asked about the claims giving rise to this Agreement or any of the terms contained herein, Named Plaintiff shall only provide truthful statements of fact. She will also strongly encourage any entity or individual that poses such inquiries to her to contact Defendant for its version of events.

B. If any legal proceeding is ever brought concerning an alleged violation of this confidentiality provision, the prevailing party shall recover all of its reasonable attorneys' fees and costs incurred in connection with such legal proceeding.

20. **Final and Binding Effect.** The Named Plaintiff understands that if this Agreement becomes effective it will have a final and binding effect and that by signing and not timely revoking this Agreement she may be giving up legal rights.

21. **Severability.** If any term of this Agreement is declared invalid for any reason, such determination shall not affect the validity of the remainder of the Agreement. The remaining parts of this Agreement shall remain in effect as if the Agreement had been executed without the invalid term.

22. **Applicable Law.** This Agreement shall be deemed to have been executed and delivered within the State of California, and the rights and obligations of the Parties hereto shall be construed and enforced in accordance with, and governed by, the laws of the State of California.

23. **Agreement Jointly Negotiated.** Each of the Parties acknowledge that this Agreement was jointly negotiated and reviewed and approved by them and their respective attorneys of record. The Agreement shall not be construed by any court of law or equity against any party solely by virtue of any party having drafted this Agreement.

24. **Counterparts.** This Agreement may be executed in counterparts. All counterparts when executed shall constitute one agreement binding upon all Parties notwithstanding that all of the Parties are not a signatory to the original or the same counterpart. Facsimile transmissions of executions shall be treated as originals.

25. **Named Plaintiff Has Authority; No Assignment, Liens, or Encumbrances.**

Named Plaintiff represents and warrants that she has the full power, capacity and authority to enter into this Agreement, that no portion of *any charge, claim, right, demand,*

*action or cause of action that she has arising out or relating to the transactions, omissions or acts referred to herein* has been assigned, transferred or conveyed to any third party, by way of subrogation, operation of law or otherwise, and that no other agreement, release, or settlement is necessary from any other person or entity to release and discharge completely the Releasees, except as provided in paragraph 11 or 12.

Named Plaintiff represents and warrants that there are no liens or encumbrances on the Settlement Funds, other than those which may be held by her attorneys. Named Plaintiff agrees to indemnify and hold Releasees harmless against any claim, demand, right, damage, liability, debt, account, action, cause of action, cost or expense, including attorneys' fees, arising out of or any way connected with any such liens, encumbrances, transfer or assignment, or any such purported claimed lien, encumbrance, transfer or assignment.

26. **Notices.** If Named Plaintiff wishes to provide any notice or delivery to Defendant, Named Plaintiff shall provide such notice or delivery to:

Tami S. Smason  
Joshua M. Sable  
Foley & Lardner LLP  
2029 Century Park East, Suite 3500  
Los Angeles, CA 90067  
Telephone (310) 277-2223  
Facsimile (310) 557-8475

If Defendant wishes to provide any notice or delivery to Named Plaintiff, Defendant shall provide such notice or delivery to:

Schonbrun DeSimone Seplow Harris & Hoffman LLP  
V. James DeSimone, Esq.  
Michael Morrison, Esq.  
723 Ocean Front Walk  
Venice, CA 90291

-and-

Helmer Friedman, LLP  
Andrew H. Friedman  
Gregory D. Helmer  
723 Ocean Front Walk  
Venice, CA 90291

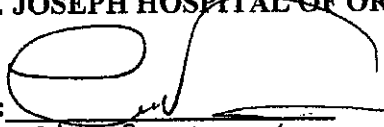
27. **Representations.** By signing this Agreement, the Named Plaintiff represents that she has read this entire document and understands all of its terms.

**ST. JOSEPH HOSPITAL OF ORANGE:**  
  
By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Dated: \_\_\_\_\_

**GRACE FONTANA**  
  
*Grace L. Fontana*  
**Grace Fontana**  
Dated: *18 Dec 07*

Date Agreement was originally given to the Named Plaintiff: \_\_\_\_\_.

27. **Representations.** By signing this Agreement, the Named Plaintiff represents that she has read this entire document and understands all of its terms.

**ST. JOSEPH HOSPITAL OF ORANGE:**  
  
By: \_\_\_\_\_  
Its: Chief operating officer  
Dated: 4/18/2008

**GRACE FONTANA**  
  
Grace Fontana  
Dated: \_\_\_\_\_

Date Agreement was originally given to the Named Plaintiff: \_\_\_\_\_.