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2 NEIL WARHEIT (133218)  
WILLIAM M. PATE (45734)  
3 National Labor Relations Board  
Region 21  
4 888 South Figueroa Street, Ninth Floor  
Los Angeles, CA 90017-5449  
5 Telephone: (213) 894-5204  
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6 Attorneys for Petitioner  
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8

9 UNITED STATES DISTRICT COURT  
10 FOR THE CENTRAL DISTRICT OF CALIFORNIA  
11

12 JAMES F. SMALL, Regional  
Director of Region 21 of the National  
13 Labor Relations Board, for and on  
behalf of the NATIONAL LABOR  
14 RELATIONS BOARD,

15 Petitioner,

16 and

17 SOUTHERN CALIFORNIA  
PERMANENTE MEDICAL GROUP;  
18 AND KAISER FOUNDATION  
HOSPITALS,  
19

20 Respondents.  
21  
22

Civil No. CV10-7395 GAF FM0x

NOTICE OF LODGING OF  
(PROPOSED) ORDER GRANTING  
PRELIMINARY INJUNCTION  
UNDER SECTION 10(j) OF THE  
NATIONAL LABOR RELATIONS  
ACT, AS AMENDED [29 U.S.C. SEC.  
160(j)];

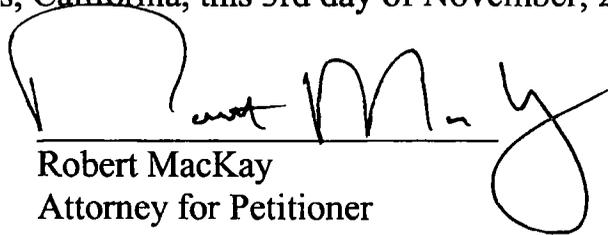
Date: December 6, 2010  
Time: 9:30 a.m.  
Judge: Hon. Gary A. Feess  
Courtroom: Roybal 740

23  
24 To the Clerk of the United States District Court, Central District of  
California, and to all parties and their attorneys of record:  
25

26 Please take notice the Petitioner National Labor Relations Board hereby  
27 lodges its Proposed Order Granting Petition for Preliminary Injunction under  
28

1 Section 10(j) of the National Labor Relations Act, as amended (29 U.S.C. §160(j))  
2 Pending Final Disposition by the National Labor Relations Board.

3  
4 DATED at Los Angeles, California, this 3rd day of November, 2010.

5   
6 \_\_\_\_\_  
7 Robert MacKay  
8 Attorney for Petitioner  
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Civil No. CV10-7395 GAF FM0x

(PROPOSED) ORDER GRANTING  
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NATIONAL LABOR RELATIONS  
ACT, AS AMENDED [29 U.S.C. SEC.  
160(j)];

Date: December 6, 2010  
Time: 9:30 a.m.  
Judge: Hon. Gary A. Feess  
Courtroom: Roybal 740

23  
24 This case came to be heard on the petition of James F. Small, Regional  
25 Director of Region 21 of the National Labor Relations Board, for a preliminary  
26 injunction pursuant to Section 10(j) of the National Labor Relations Act, as  
27 amended (29 U.S.C. § 160(j)) (herein the Act), pending final disposition on the  
28 matters involved pending before the Board. The Court, upon consideration of the

1 pleadings, evidence, briefs, arguments of counsel, and the entire record in this case,  
2 has made and filed its findings of fact and conclusions of law, finding and  
3 concluding that Petitioner is likely to successfully establish in administrative  
4 proceedings that Respondents have engaged in and are engaging in, acts and  
5 conduct in violation of Section 8(a)(1) and (5) of the Act (29 U.S.C. Sec. 158(a)(1)  
6 and (5)), affecting commerce within the meaning of Section 2(6) and (7) of the Act  
7 (29 U.S.C. Sec. 152(2), and (7), and that such acts and conduct will likely be  
8 repeated or continued unless enjoined.

9  
10 Now, therefore, upon the entire record, it is ORDERED, ADJUDGED AND  
11 DECREED, that, pending final disposition of the matters involved pending before  
12 the Board:

13  
14 *Respondents Southern California Permanente Medical Group; and Kaiser*  
15 *Foundation Hospitals*

16 1. Southern California Permanente Medical Group; and Kaiser  
17 Foundation Hospitals (herein collectively called Respondents), their officers,  
18 representatives, agents, servants, employees, attorneys and all persons acting in  
19 concert with them are enjoined from:

20 (a) Failing and refusing to bargain collectively and in good faith with  
21 the National Union of Healthcare Workers (herein called the Union) as the  
22 exclusive bargaining representative of the employees in the Healthcare  
23 Professionals and Psych-Social units, as certified in Cases 21-RC-21117, and  
24 21-RC-21118, by unilaterally implementing changes in terms and conditions of  
25 employment during negotiations for a collective-bargaining agreement in the  
26 absence of an overall impasse on the entire agreement.  
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1 (b) In any like or related manner interfering with, restraining, or  
2 coercing employees in the exercise of the rights guaranteed them by Section 7 of  
3 the Act (29 U.S.C. Sec. 157).

4 2. Respondents, their officers, representatives, agents, servants,  
5 employees, attorneys and all persons acting in concert with them are affirmatively  
6 ordered pending final Board adjudication to:

7 (a) Bargain collectively and in good faith with the Union as the  
8 exclusive representative of the employees in the units described above concerning  
9 terms and conditions of employment and, if an understanding is reached, embody it  
10 in a signed agreement.

11 (b) Grant prospectively the unlawfully withheld April 2010 annual  
12 across-the-board raise.

13 (c) Restore the tuition-reimbursement program.

14 (d) Restore the steward training program.

15 (e) Post copies of the District Court's Order at the Respondents'  
16 facilities where notices to employees are customarily posted, those postings to be  
17 maintained during the pendency of the Board's administrative proceedings free  
18 from all obstructions and defacements; all unit employees shall have free and  
19 unrestricted access to said notices.

20 (f) Grant to agents of the Board reasonable access to Respondents'  
21 facilities in order to monitor compliance with this posting requirement; and

22 (g) Within twenty (20) days of the issuance of the District Court's  
23 Order, file with the District Court and submit a copy to the Regional Director of  
24

1 Region 21 of the Board, a sworn affidavit from a responsible official of  
2 Respondents setting forth, with specificity, the manner in which Respondents have  
3 complied with the terms of this decree, including how they have posted the  
4 documents required by the Court's decree.

5 3. This case shall remain on the docket of this Court. On compliance by  
6 Respondents with their obligations undertaken hereto, and upon final dispositions  
7 of the matters pending before the Board, the Petitioner shall cause this proceeding  
8 to be dismissed.

9  
10 *Respondent Kaiser Foundation Hospitals*

11 1. Kaiser Foundation Hospitals, herein called Respondent Foundation,  
12 its officers, representatives, agents, servants, employees, attorneys and all persons  
13 acting in concert with it are enjoined from:

14  
15 (a) Failing and refusing to bargain collectively and in good faith with  
16 the National Union of Healthcare Workers (herein called the Union) as the  
17 exclusive bargaining representative of the employees in the AFN unit as certified  
18 in Case 21-RC-21157, by unilaterally implementing changes in terms and  
19 conditions of employment during negotiations for a collective-bargaining  
20 agreement in the absence of an overall impasse on the entire agreement.

21  
22 (b) In any like or related manner interfering with, restraining, or  
23 coercing employees in the exercise of the rights guaranteed them by Section 7 of  
24 the Act (29 U.S.C. Sec. 157).

25  
26 2. Respondent Foundation, its officers, representatives, agents, servants,  
27 employees, attorneys and all persons acting in concert with it are affirmatively  
28 ordered pending final Board adjudication to:

1 (a) Bargain collectively and in good faith with the Union as the  
2 exclusive representative of the employees in the unit described above concerning  
3 terms and conditions of employment and, if an understanding is reached, embody it  
4 in a signed agreement.

5 (b) Grant prospectively the unlawfully withheld April 2010 annual  
6 across-the-board raise.

7  
8 (c) Restore the tuition-reimbursement program.

9 (d) Restore the steward training program.

10  
11 (e) Post copies of the District Court's Order at Respondent  
12 Foundation's facilities where notices to employees are customarily posted, those  
13 postings to be maintained during the pendency of the Board's administrative  
14 proceedings free from all obstructions and defacements; all unit employees shall  
15 have free and unrestricted access to said notices.

16 (f) Grant to agents of the Board reasonable access to Respondent  
17 Foundation's facilities in order to monitor compliance with this posting  
18 requirement; and

19  
20 (g) Within twenty (20) days of the issuance of the District Court's  
21 Order, file with the District Court and submit a copy to the Regional Director of  
22 Region 21 of the Board, a sworn affidavit from a responsible official of  
23 Respondent Foundation setting forth, with specificity, the manner in which  
24 Respondent Foundation has complied with the terms of this decree, including how  
25 it has posted the documents required by the Court's decree.

26  
27 3. This case shall remain on the docket of this Court. On compliance by  
28 Respondent Foundation with its obligations undertaken hereto, and upon final

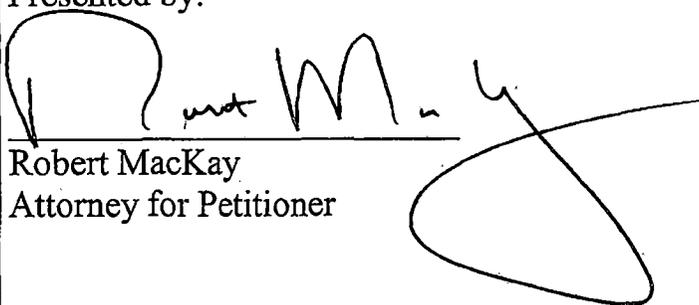
1 dispositions of the matters pending before the Board, the Petitioner shall cause this  
2 proceeding to be dismissed.

3 IT IS SO ORDERED.

4 Done at Los Angeles, California, this \_\_\_\_\_ day of December, 2010.  
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7

8 \_\_\_\_\_  
9 The Hon. Gary A. Feess  
10 United States District Judge

11 Presented by:

12   
13 \_\_\_\_\_  
14 Robert MacKay  
15 Attorney for Petitioner  
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## Notices

2:10-cv-07395-GAF -FMO James F. Small v. Southern California Permanente Medical Group et al  
(FMOx), DISCOVERY

### UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA

#### Notice of Electronic Filing

The following transaction was entered by MacKay, Robert on 11/3/2010 at 12:45 PM PDT and filed on 11/3/2010

**Case Name:** James F. Small v. Southern California Permanente Medical Group et al  
**Case Number:** 2:10-cv-07395-GAF -FMO  
**Filer:** James F. Small  
**Document Number:** 12

#### Docket Text:

**NOTICE OF LODGING filed re Petition (case opening), Petition (case opening), Petition (case opening)[1], MOTION for Order for Petition for Injunction Under section 10(j) of the National Labor Relations Act[2] (Attachments: # (1) Proposed Order Proposed Order) (MacKay, Robert)**

**2:10-cv-07395-GAF -FMO Notice has been electronically mailed to:**

Michael R Lindsay mlindsay@nixonpeabody.com

Neil A Warheit neil.warheit@nlrb.gov

Robert N MacKay robert.mackay@nlrb.gov

**2:10-cv-07395-GAF -FMO Notice has been delivered by First Class U. S. Mail or by fax to :**

William M Pate , Jr  
National Labor Relations Board Region 21  
888 South Figueroa Street 9th Floor  
Los Angeles, CA 90017-5449

The following document(s) are associated with this transaction:

**Document description:**Main Document

**Original filename:**H:\R21com\Region 21 C Cases\21-CA-39296\HQ Guidance\10(j)\Finalized Scanned Subsequent Filings\Notice of Lodging Proposed Order.pdf

**Electronic document Stamp:**

[STAMP cacdStamp\_ID=1020290914 [Date=11/3/2010] [FileNumber=10601666-0]  
] [4bdd6afb065793c14935d26586c3c9d54d02f5dadcc97e46156fcca57bfb266f0b1  
15a2248ccbd5aae64ce52f1b847df7f11ff6ccc15657e3816ee045cd9b0e9]]

**Document description:** Proposed Order Proposed Order

**Original filename:** H:\R21com\Region 21 C Cases\21-CA-39296\HQ Guidance\10(j)\Finalized Scanned Subsequent Filings\Proposed Order.pdf

**Electronic document Stamp:**

[STAMP cacdStamp\_ID=1020290914 [Date=11/3/2010] [FileNumber=10601666-1] [3f094950ed17a426359556c78c55d1d34113115590c3eeb4ebad486b791d2cf2fa09e7d0a6c3a4166efd48a80fc3a525d34b2ccec04aa73f41b30a05816aef00]]

Proposal was successfully submitted!

## **IMPORTANT!**

If you do not receive a confirmation email within the next 15 minutes, please email your proposed documents directly to chambers using the following email address:

Judge's Initials\_chambers@cacd.uscourts.gov  
(example: abc\_chambers@cacd.uscourts.gov).

Please ensure you include the case number in the subject of the email and attach your proposed documents in word or wordperfect format along with your newly e-filed document in PDF format.

NOTE: Check your spam and junk email folders in your email program to ensure you receive the confirmation email. The confirmation email will include copies of the documents you are sending to Chambers.

[Submit Another Proposed Order](#)

**Parker, Lindsay**

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**From:** MacKay, Robert  
**Sent:** Wednesday, November 03, 2010 1:13 PM  
**To:** Parker, Lindsay  
**Subject:** FW: PROPOSED ORDER: LA10CV07395-1-GAF-Small, J

**Attachments:** Kaiser.Proposed Order.doc; Proposed Order.pdf



Kaiser.Proposed Order.doc (93 KB)  
Proposed Order.pdf (204 KB)

-----Original Message-----

From: ecf-helpdesk@cacd.uscourts.gov [mailto:ecf-helpdesk@cacd.uscourts.gov]  
Sent: Wednesday, November 03, 2010 1:01 PM  
To: MacKay, Robert  
Subject: PROPOSED ORDER: LA10CV07395-1-GAF-Small, J

\*\*\* ATTORNEY COPY \*\*\*

=====  
This is an automatically generated email, please  
do not respond.  
=====

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Civil No. CV10-7395 GAF FM0x

NOTICE OF LODGING OF  
(PROPOSED) FINDINGS OF FACT  
AND CONCLUSIONS OF LAW;

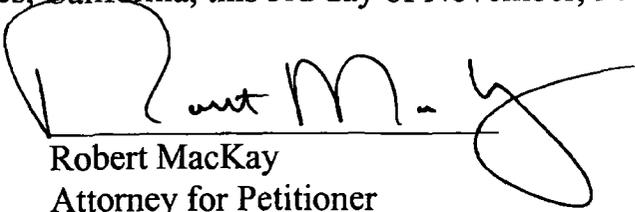
Date: December 6, 2010  
Time: 9:30 a.m.  
Judge: Hon. Gary A. Feess  
Courtroom: Roybal 740

23  
24 To the Clerk of the United States District Court, Central District of  
California, and to all parties and their attorneys of record:

25 Please take notice the Petitioner National Labor Relations Board hereby  
26 lodges its Proposed Findings of Fact and Conclusions of Law.  
27  
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DATED at Los Angeles, California, this 3rd day of November, 2010.



Robert MacKay  
Attorney for Petitioner

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robert.mackay@nlrb.gov  
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13 Relations Board, for and on behalf of )  
the NATIONAL LABOR )  
RELATIONS BOARD, )

14 Petitioner,  
15

16 and

17 SOUTHERN CALIFORNIA )  
PERMANENTE MEDICAL GROUP; )  
18 AND KAISER FOUNDATION )  
HOSPITALS, )

19 Respondents.  
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Civil No. CV10-7395 GAF FM0x

(PROPOSED) FINDINGS OF FACT  
AND CONCLUSIONS OF LAW

Date: December 6, 2010

Time: 9:30 a.m.

Judge: Hon. Gary A. Feess

Courtroom: Roybal 740

23 This case came to be heard on the petition of James F. Small, Regional  
24 Director of Region 21 of the National Labor Relations Board, for a preliminary  
25 injunction pursuant to Section 10(j) of the National Labor Relations Act, as  
26 amended (29 U.S.C. § 160(j)) (herein the Act), pending final disposition on the  
27 matters involved pending before the Board. The Court has fully considered the  
28

1 petition, evidence, and arguments of counsel, and upon the entire record, the Court  
2 makes the following:

3  
4 **I. FINDINGS OF FACT**

5 1. Petitioner is the Regional Director of Region 21 of the Board, an  
6 agency of the United States. This petition is filed for and on behalf of the Board.

7 2. The Court's jurisdiction is invoked pursuant to Section 10(j) of the  
8 Act (29 U.S.C. Sec. 160(j)), herein called Section 10(j) of the Act.

9 3. On February 3, 2010, following three separate Board elections, the  
10 National Union of Healthcare Workers (herein called the Union) was certified, in  
11 Cases 21-RC-21117, 21-RC-21118, and 21-RC-21157, as the collective-  
12 bargaining representative of 3 separate bargaining units of employees employed by  
13 the Respondents: (1) a unit of employees consisting of healthcare professionals;  
14 (2) a unit of employees consisting of mental health workers; and (3) a unit of  
15 employees consisting of nurses. Prior to February 3, 2010, these 3 units of  
16 employees were represented by a different union, the Service Employees  
17 International Union-United Healthcare Workers West.

18 4. On or about the dates set forth in subparagraphs (a) through (b)  
19 below, the Union filed with the Board the original and amended charge as follows:

20 (a) The Union filed the original charge in Case 21-CA-39296 on  
21 March 30, 2010, alleging that Respondent Southern California Permanente  
22 Medical Group (herein Respondent Permanente) and Respondent Kaiser  
23 Foundation Hospitals (herein Respondent Foundation) and collectively called  
24 Respondents, violated Section (8)(a)(1) and 8(a)(5) of the Act by: failing to  
25 bargain in good faith by unilaterally implementing changes and failing to maintain  
26 the status quo with the certified representative of its employees in cases numbered  
27 21-RC-21117, 21-RC-21118, and 21-RC-21157. The Union alleged that the  
28

1 Respondents unilaterally determined that the terms and conditions of employment  
2 in the applicable national agreements with the predecessor union do not apply to  
3 the bargaining units and have refused to maintain the status quo and/or bargain  
4 over unilateral changes.

5 (b) The Union filed an amended charge on June 14, 2010,  
6 maintaining the allegations described above in subparagraph 4(a), and alleging  
7 more specifically that Respondents violated Section 8(a)(1) and (5) of the Act by  
8 unilaterally discontinuing: (1) the tuition-reimbursement policy; (2) the paid  
9 monthly training for shop stewards; (3) the planned April 2010 wage increase; and  
10 (4) the special assignments of the coordinators of the unit-based teams.

11 5. The charges referenced in Paragraph 4 above were referred to the  
12 Regional Director of Region 21 of the Board. Thereafter, following a field  
13 investigation during which all parties had an opportunity to submit evidence and  
14 legal analysis, the Acting General Counsel of the Board, on behalf of the Board,  
15 pursuant to Section 3(d) of the Act (29 U.S.C. Sec. 153(d)), by the Regional  
16 Director of Region 21, issued a Complaint and Notice of Hearing against  
17 Respondents on August 27, 2010, pursuant to Section 10(b) of the Act (29 U.S.C.  
18 Sec. 160(b)).<sup>1</sup>

19 6. The merits of the Complaint were heard before an Administrative  
20 Law Judge of the Board in Los Angeles, California, from October 18-19, 2010.

21 7. Respondent has refused to settle or remedy the allegations of the  
22 Complaint.

23 8. Petitioner asserts that there is a strong likelihood that the Board will  
24 find that Respondents engaged in, and are engaging in, unfair labor practices  
25

---

26  
27 <sup>1</sup>The Regional Director did not issue complaint as to the special assignments of the  
28 coordinators.

within the meaning of Section 8(a)(1) and (5) of the Act; and that said unfair labor practices affect commerce within the meaning of Section 2(6), and (7) of the Act (29 U.S.C. Sec. 152(6), and (7)).

9. More particularly, there is a strong likelihood that the Board will find that the Regional Director, in the underlying administrative proceedings, established that:

(a) At all material times, Respondent Permanente has been a California professional partnership engaged in the provision of medical services to health plan members, and the operation of health care clinics; and Respondent Foundation has been a California nonprofit public benefit corporation engaged in the operation of various health care facilities in California, Oregon, and Hawaii. Together, with Kaiser Foundation Health Plan, Inc., a nonprofit health maintenance organization, they provide health care services to Health Plan members and others at various locations and facilities in Southern California.

(b) During the 12-month period ending July 30, 2010, a representative period, Respondent Permanente, in conducting its business operations described above in subparagraph 9(a), derived gross revenues in excess of \$250,000 and purchased and received at its Southern California facilities goods valued in excess of \$5,000 directly from points outside the State of California.

(c) During the 12-month period ending July 30, 2010, a representative period, Respondent Foundation, in conducting its business operations described above in subparagraph 9(a), derived gross revenues in excess of \$250,000 and purchased and received at its Southern California facilities goods valued in excess of \$5,000 directly from points outside the State of California.

(d) At all material times, Respondent Permanente has been an employer engaged in commerce within the meaning of Section 2(2) (29 U.S.C.

1 Sec. 152(2)), (6) and (7) of the Act, and a health care institution within the  
2 meaning of Section 2(14) of the Act (29 U.S.C. Sec. 152(14)).

3 (e) At all material times, Respondent Foundation has been an  
4 employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of  
5 the Act, and a health care institution within the meaning of Section 2(14) of the  
6 Act.

7 (f) At all material times, the Union has been a labor organization  
8 within the meaning of Section 2(5) of the Act (29 U.S.C. Sec. 152(5)).

9 (g) At all material times, the following individuals held the  
10 positions set forth opposite their respective names and have been supervisors of  
11 Respondents within the meaning of Section 2(11) of the Act (29 U.S.C. Sec.  
12 152(11)) and agents of Respondents within the meaning of Section 2(13) of the Act  
13 (29 U.S.C. Sec. 152(13)):

14	Maryanne Malzone	Director of Labor Relations
15	Arlene Peasnal	Vice President of Human Resources
16	Richard Rosas	Assistant Director of Labor Relations

17 (h) The following employees of Respondents, herein called the  
18 Healthcare Professionals Unit, constitute a unit appropriate for the purposes of  
19 collective bargaining within the meaning of Section 9(b) of the Act (29 U.S.C. Sec.  
20 159(b):

21 Included: All employees including per diems covered by collective-  
22 bargaining agreement including dietician I, dietician II, health educator I,  
23 health educator II, audiologist, audiologist level II, audiologist CFY, speech  
24 pathologist, and speech pathologist CFY employed by Southern California  
25 Permanente Medical Group, and Kaiser Foundation Hospitals within the  
26 Southern California Region.  
27  
28

1           Excluded: All office clerical employees, guards, and supervisors as defined  
2           in the Act.

3           (i)     The following employees of Respondents, herein called the  
4 Psych-Social Chapter Unit, constitute a unit appropriate for the purposes of  
5 collective bargaining within the meaning of Section 9(b) of the Act:

6           Included: All employees including per diems covered by collective-  
7 bargaining agreement including CDRC III, behavioral health nurse case  
8 manager, behavioral health case manager, psychiatric social worker,  
9 psychiatric associate, child development specialist, medical social worker  
10 III, psychosocial clinician II, psychosocial counselor II, psychosocial  
11 clinician III, psychosocial counselor III, psychologist, psychologist – San  
12 Diego, CDRC I, social worker associate, medical social worker I, associate  
13 psychosocial clinician, CDRC II, psychological assistant, educational  
14 therapist, medical social worker II, psychiatric counselor, psychosocial  
15 clinician I, psychosocial counselor, psychiatric RN, psychiatric nurse, R.N. –  
16 San Diego, clinical nurse specialist, psychiatric nurse counselor, health  
17 connect coordinator, psychosocial advice nurse, psychiatric nurse, R.N., and  
18 psychosocial counselor I employed by Southern California Permanente  
19 Medical Group and Kaiser Foundation Hospitals within the Southern  
20 California Region.

21           Excluded: All office clerical employees, guards, and supervisors as defined  
22           in the Act.

23           (j)     The following employees of Respondent Foundation, herein  
24 called the AFN Unit, constitute a unit appropriate for the purposes of collective  
25 bargaining within the meaning of Section 9(b) of the Act:  
26

27           Included: All employees covered by collective-bargaining agreement  
28           including all in-patient registered nurses, all home health and hospice

1 registered nurses including level II hospital, level II step down, level III  
2 specialty unit, level III charge and PHN employed by Kaiser Foundation  
3 Hospitals at its facility located at Kaiser Los Angeles Medical Center, 1526  
4 North Edgemont Street, Los Angeles, California.

5 Excluded: All office clerical employees, guards and supervisors as defined  
6 in the Act.

7 (k) On February 3, 2010, the Union was certified as the exclusive  
8 collective-bargaining representative of the Healthcare Professionals Unit.

9 (l) On February 3, 2010, the Union was certified as the exclusive  
10 collective-bargaining representative of the Psych-Social Chapter Unit.

11 (m) On February 3, 2010, the Union was certified as the exclusive  
12 collective-bargaining representative of the AFN Unit.

13 (n) At all times since February 3, 2010, based on Section 9(a) of  
14 the Act (29 U.S.C. Sec. 159(a)), the Union has been the exclusive collective-  
15 bargaining representative of the Healthcare Professionals Unit.

16 (o) At all times since February 3, 2010, based on Section 9(a) of  
17 the Act, the Union has been the exclusive collective-bargaining representative of  
18 the Psych-Social Chapter Unit.

19 (p) At all times since February 3, 2010, based on Section 9(a) of  
20 the Act, the Union has been the exclusive collective-bargaining representative of  
21 the AFN Unit.

22 (q) Before February 3, 2010, employees in the Healthcare  
23 Professionals Unit, the Psych-Social Chapter Unit, and the AFN Unit had been  
24 represented by Service Employees International Union, United Healthcare  
25 Workers-West (herein the SEIU).

26 (r) While represented by the SEIU, employees in the Healthcare  
27 Professionals Unit, the Psych-Social Chapter Unit, and the AFN Unit, as well as  
28

1 employees in other units represented by different labor organizations, had been  
2 covered by a group of collective-bargaining agreements among Respondent  
3 Permanente, Respondent Foundation, Respondents, the SEIU, and other labor  
4 organizations.

5 (s) Following the February 3, 2010 certifications in the Healthcare  
6 Professionals Unit, the Psych-Social Chapter Unit, and the AFN Unit, Respondent  
7 Permanente, Respondent Foundation, and Respondents failed to maintain the  
8 established terms and conditions of employment for employees in these three units.

9 (t) In or about March 2010, Respondents changed the terms and  
10 conditions of employment of their employees in the Healthcare Professionals Unit  
11 and the Psych-Social Chapter Unit by refusing to provide tuition-reimbursement  
12 benefits.

13 (u) In or about March 2010, Respondents changed the terms and  
14 conditions of employment of their employees in the Healthcare Professionals Unit  
15 and the Psych-Social Chapter Unit by refusing to provide time for monthly shop-  
16 steward training and development.

17 (v) On or about April 1, 2010, Respondents changed the terms and  
18 conditions of employment of their employees in the Healthcare Professionals Unit  
19 and the Psych-Social Chapter Unit by refusing to grant an April 1, 2010 wage  
20 increase.

21 (w) The subjects set forth above in subparagraphs 9(t) through (v)  
22 relate to wages, hours, and other terms and conditions of employment of the  
23 Healthcare Professionals Unit and the Psych-Social Chapter Unit, and are  
24 mandatory subjects for the purposes of collective bargaining.

25 (x) There is a likelihood of success of showing in the  
26 administrative proceeding that Respondents engaged in the conduct described  
27 above in subparagraphs 9(t) through (v) without prior notice to the Union and  
28

1 without affording the Union an opportunity to bargain with Respondents with  
2 respect to this conduct or the effects of this conduct.

3 (y) In or about March 2010, Respondent Foundation changed the  
4 terms and conditions of employment of its employees in the AFN Unit by refusing  
5 to provide tuition-reimbursement benefits.

6 (z) In or about March 2010, Respondent Foundation changed the  
7 terms and conditions of employment of its employees in the AFN Unit by refusing  
8 to provide time for monthly shop-steward training and development.

9 (aa) On or about April 1, 2010, Respondent Foundation changed  
10 the terms and conditions of employment of its employees in the AFN Unit by  
11 refusing to grant a April 1, 2010 wage increase.

12 (bb) The subjects set forth above in subparagraphs 9(y) through (aa)  
13 relate to wages, hours, and other terms and conditions of employment of the AFN  
14 Unit, and are mandatory subjects for the purposes of collective bargaining.

15 (cc) There is a likelihood of success of showing in the  
16 administrative proceeding that Respondent Foundation engaged in the conduct  
17 described above in subparagraphs 9(y) through (aa) without prior notice to the  
18 Union and without affording the Union an opportunity to bargain with Respondent  
19 Foundation with respect to this conduct or the effects of this conduct.

20 (dd) There is a likelihood of success of showing in the  
21 administrative proceeding that by the conduct described above in subparagraphs  
22 9(t) through (x), Respondents have been failing and refusing to bargain collectively  
23 and in good faith with the exclusive collective-bargaining representative of their  
24 employees in violation of Section 8(a)(1) and (5) of the Act.

25 (ee) There is a likelihood of success of showing in the  
26 administrative proceeding that by the conduct described above in subparagraphs  
27

9(y) through (cc), Respondent Foundation has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(1) and (5) of the Act.

(ff) There is a likelihood of success of showing in the administrative proceeding that the unfair labor practices of Respondent Permanente, Respondent Foundation, and Respondents described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

(gg) The unfair labor practices described above have taken place within this judicial district.

10. Respondents' unfair labor practices, as described above have and are continuing to irreparably harm the Union, the employees, and the Board's remedial processes.

## II. CONCLUSIONS OF LAW

11. It may be fairly anticipated that unless a temporary injunction is obtained, that employee support will continue to erode because of Respondents' onerous changes in critical terms and conditions of employment. Moreover, unless a temporary injunction is granted, the Union will be forced to continue to bargain from a position of weakness and Respondents' unilateral changes will persist in impeding the bargaining process for a first contract. These harms cannot be remedied in due course by the Board.

12. The Court's grant of a Section 10(j) injunction will maintain and restore the newly certified Union's legitimate level of support, preserve the efficacy of the Board's final order, preserve the employees' choice of the Union as their bargaining representative, and prevent further undermining of the collective-bargaining process and damage to the Board's remedial powers.

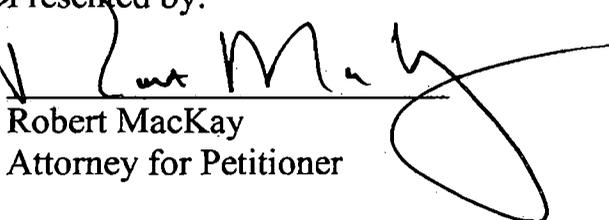
1 13. There is no adequate remedy at law for the irreparable harm being  
2 caused by Respondents' unfair labor practices described above. The equities in  
3 this matter, including the harm to the employees involved herein, the harm to the  
4 public interest, and the harm to the purposes and policies of the Act if the  
5 requested injunction is not granted, clearly outweigh any harm that the grant of a  
6 temporary injunction might have on Respondents. Granting the temporary  
7 injunction sought by Petitioner will cause no undue hardship to Respondents.

8 14. It may be fairly anticipated that, unless Respondent's unfair labor  
9 practices are immediately enjoined and restrained, Respondent will continue to  
10 engage in the acts and conduct alleged above.

11 15. In order to avoid the serious results referred to above, it is essential,  
12 just, proper, and appropriate, for the purposes of effectuating the policies of the  
13 Act and avoiding substantial, irreparable, and immediate injury to such policies, to  
14 the public interest, and Respondents' employees, and in accordance with the  
15 purposes of Section 10(j) of the Act, that, pending final disposition of the matters  
16 at issue before the Board, Respondents be enjoined and restrained as set forth in  
17 the order granting a preliminary injunction in this case.

18  
19 Entered at Los Angeles, California, this \_\_\_\_ day of December, 2010.  
20

21  
22  
23 \_\_\_\_\_  
The Hon. Gary A. Feess  
United States District Judge  
24

25 Presented by:  
26   
27 Robert MacKay  
Attorney for Petitioner  
28

**Notices**

2:10-cv-07395-GAF -FMO James F. Small v. Southern California Permanente Medical Group et al  
(FMOx), DISCOVERY

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA****Notice of Electronic Filing**

The following transaction was entered by MacKay, Robert on 11/3/2010 at 12:41 PM PDT and filed on 11/3/2010

**Case Name:** James F. Small v. Southern California Permanente Medical Group et al

**Case Number:** 2:10-cv-07395-GAF -FMO

**Filer:** James F. Small

**Document Number:** 11

**Docket Text:**

**NOTICE OF LODGING filed re Petition (case opening), Petition (case opening), Petition (case opening)[1], MOTION for Order for Petition for Injunction Under section 10(j) of the National Labor Relations Act[2] (Attachments: # (1) Proposed Order Proposed Findings of Fact and Conclusions of Law)(MacKay, Robert)**

**2:10-cv-07395-GAF -FMO Notice has been electronically mailed to:**

Michael R Lindsay mlindsay@nixonpeabody.com

Neil A Warheit neil.warheit@nlrb.gov

Robert N MacKay robert.mackay@nlrb.gov

**2:10-cv-07395-GAF -FMO Notice has been delivered by First Class U. S. Mail or by fax to: :**

William M Pate , Jr  
National Labor Relations Board Region 21  
888 South Figueroa Street 9th Floor  
Los Angeles, CA 90017-5449

The following document(s) are associated with this transaction:

**Document description:**Main Document

**Original filename:**H:\R21com\Region 21 C Cases\21-CA-39296\HQ Guidance\10(j)\Finalized Scanned Subsequent Filings\Notice of Lodging Proposed Findings of Fact.pdf

**Electronic document Stamp:**

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**Document description:** Proposed Order Proposed Findings of Fact and Conclusions of Law

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**Parker, Lindsay**

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**From:** MacKay, Robert  
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**Attachments:** Kaiser.Proposed Findings of Facts and Law.doc; Proposed Findings of Fact.pdf



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Proposed Findings of Fact.pdf

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