

1 MICHAEL R. LINDSAY, CA BAR NO. 110845  
mlindsay@nixonpeabody.com  
2 MICHAEL P. CURTIS, CA BAR NO. 252392  
mcurtis@nixonpeabody.com  
3 NIXON PEABODY LLP  
Gas Company Tower, 555 West Fifth St., 46th Floor  
4 Los Angeles, California 90013-1010  
Telephone: (213) 629-6000  
5 Fax: (213) 629-6001

6 SETH NEULIGHT, CA Bar No. 184440  
sneulight@nixonpeabody.com  
7 NIXON PEABODY LLP  
8 One Embarcadero Center, 18th Floor  
San Francisco, CA 94111-3600  
9 Telephone: (415) 984-8200  
Facsimile: (415) 984-8300

10 Attorneys for Respondents.

11  
12  
13 UNITED STATES DISTRICT COURT  
14 CENTRAL DISTRICT OF CALIFORNIA  
15

16 JAMES F. SMALL, REGIONAL  
17 DIRECTOR OF REGION 21 OF THE  
NATIONAL LABOR RELATIONS  
18 BOARD, FOR AND ON BEHALF OF  
THE NATIONAL LABOR RELATIONS  
19 BOARD

20 Petitioner,

21 vs.

22 SOUTHERN CALIFORNIA  
PERMANENTE MEDICAL GROUP;  
23 AND KAISER FOUNDATION  
HOSPITALS

24 Respondents.  
25  
26

Civil Case No. CV 10 7395 GAF FMOx

**STIPULATION OF THE PARTIES  
RE HEARING DATE, FILING OF  
ALJ TRANSCRIPT AND BRIEFING  
SCHEDULE AND ORDER  
THEREON**

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

27 STIPULATION OF THE PARTIES RE  
28 HEARING DATE, FILING OF ALJ  
TRANSCRIPT AND BRIEFING SCHEDULE  
AND ORDER THEREON



1 Board. The Parties have agreed that they will not object to  
2 testimony before the Administrative Law Judge as to the merits of  
3 either the Motion or the underlying charge on the grounds of  
4 relevance, and that they will jointly move the Administrative Law  
5 Judge to allow such testimony if an issue is raised at the hearing.  
6 They further agree that they will inform the Administrative Law  
7 Judge of this Stipulation and Order and jointly move for its  
8 admission in the record before the Administrative Law Judge.  
9 Further the Parties agree that by consenting to allow testimony  
10 before the Administrative Law Judge they are nevertheless  
11 preserving their respective rights to argue that some of the  
12 testimony adduced under this paragraph is not necessarily relevant  
13 to the merits of the proceeding before the Administrative Law  
14 Judge. Accordingly, the Parties also stipulate that while testimony  
15 as to issues of irreparable harm or other issues related exclusively  
16 to the Motion may be adduced at the hearing before the  
17 Administrative Law Judge, provided that the party seeking the  
18 testimony makes clear that it is as to the Motion and not as to the  
19 merits of the underlying matter, such testimony is accepted without  
20 waiver of any objection as to its relevance in connection with the  
21 merits of the underlying proceeding.

- 22 3. Petitioner will file with this Court a copy of the transcript hearing  
23 before the Administrative Law Judge on or before November 8,  
24 2010 together with any supplemental papers (not to exceed 25  
25 pages in length) in support of the Motion as Petitioner may deem  
26 proper. Respondents will file their papers in opposition to the

-3-

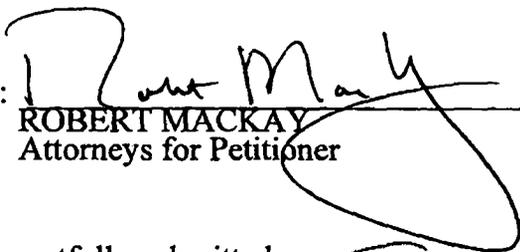


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5. The Parties agree that they will not seek any further continuances of the hearing on the Motion, even if the hearing before the Administrative Law Judge is not completed by October 22, 2010.

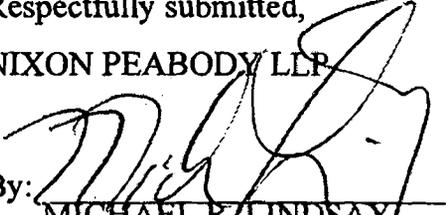
DATED: October 13, 2010

Respectfully submitted,

By:   
ROBERT MACKAY  
Attorneys for Petitioner

DATED: October 13, 2010

Respectfully submitted,

NIXON PEABODY LLP  
By:   
MICHAEL R. LINDSAY  
Attorneys for Respondents  
SOUTHERN CALIFORNIA  
PERMANENTE MEDICAL  
GROUP; AND KAISER  
FOUNDATION HOSPITALS

IT IS SO ORDERED

October 19, 2010

DATED: ~~October 13, 2010~~

By: \_\_\_\_\_  
HONORABLE GARY A. FEESS,  
JUDGE, UNITED STATE  
DISTRICT COURT

1 ROBERT MACKAY (192423)  
robert.mackay@nlrb.gov  
2 NEIL WARHEIT (133218)  
WILLIAM M. PATE (45734)  
3 National Labor Relations Board  
Region 21  
888 South Figueroa Street, Ninth Floor  
4 Los Angeles, CA 90017-5449  
Telephone: (213) 894-5204  
5 Facsimile: (213) 894-2778

6 Attorneys for Petitioner

7  
8 UNITED STATES DISTRICT COURT  
9 FOR THE CENTRAL DISTRICT OF CALIFORNIA

10  
11 JAMES F. SMALL, Regional Director  
of Region 21 of the National Labor  
12 Relations Board, for and on behalf of  
the NATIONAL LABOR  
13 RELATIONS BOARD,

14 Petitioner,

15 and

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

18  
19 Respondents.  
20  
21

Civil No. CV10-7395 GAF FM0x

NLRB's *EX PARTE* APPLICATION  
FOR AN ORDER PERMITTING THE  
FILING OF SUPPLEMENTAL  
MOTION; AND MEMORANDUM OF  
POINTS AND AUTHORITIES IN  
SUPPORT

Date: January 10, 2011  
Time: 9:30 a.m.  
Judge: Hon. Gary A. Feess  
Courtroom: Roybal 740

22  
23 Pursuant to Local Rule 7-19, the Petitioner, National Labor Relations Board,  
24 an agency of the United States Government, hereby applies *ex parte* for an order  
25 allowing Petitioner to file a Motion to supplement the record with the decision of  
26 the Administrative Law Judge (hereinafter ALJ) from the administrative  
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1 proceeding, along with a copy of the revised transcript referred to by the ALJ in his  
2 decision. The Motion is being filed concurrently herewith.

3 This Application is made upon the following grounds:

4 1. Petitioner filed its Petition with the Court on October 4, 2010, seeking  
5 to enjoin Respondents from engaging in certain conduct and to direct Respondents  
6 to engage in certain affirmative conduct.

7 2. The matter is currently under submission by the Court. As of the date  
8 of this filing, the Court has not issued its decision in this matter.

9 3. The record in the NLRB proceeding closed on October 19, 2010, and  
10 briefs were filed with the ALJ on November 17, 2010.

11 4. The ALJ issued his recommended decision on December 13, 2010,  
12 which decision was received by the attorney for the Petitioner on December 13,  
13 2010.

14 5. Under Petitioner's own Rules and Regulations, Petitioner has an  
15 obligation to apprise the Court of changed circumstances in an injunction  
16 proceeding. (See 29 C.F.R. Sec. 102.94(b)).

17 6. Recognizing that the case has been submitted and that the Court may  
18 soon issue its decision in this matter, the Petitioner seeks to act promptly, and  
19 hereby files this ex parte application to immediately place this matter before the  
20 Court.

21 7. Petitioner hereby seeks permission to file a supplemental motion  
22 based on changed circumstances resulting from the ALJ's issuance of his  
23 recommended decision.

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1  
2 8. Attorneys for the Respondents are:

3 Michael R. Lindsay, Attorney at Law  
4 Nixon Peabody, LLP  
5 Gas Company Tower  
6 555 West Fifth Street, 46th Floor  
7 Los Angeles, CA 90013-1010  
8 Telephone: (213) 629-6000  
9 E-mail: mlindsay@nixonpeabody.com

10 Christopher D. Baker, Attorney at Law  
11 Seth Neulight, Attorney at Law  
12 Nixon Peabody, LLP  
13 One Embarcadero Center, 18th Floor  
14 San Francisco, CA 94111-3600  
15 Telephone: (415) 984-8200  
16 E-mails: sneulight@nixonpeabody.com  
17 cbaker@nixonpeabody.com

18 Dated at Los Angeles, California, this 14th day of December, 2010.

19 Respectfully submitted,

20 Robert MacKay  
21 Attorney for Petitioner  
22  
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6 Attorneys for Petitioner

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8 UNITED STATES DISTRICT COURT  
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10

11 JAMES F. SMALL, Regional Director  
of Region 21 of the National Labor  
12 Relations Board, for and on behalf of  
the NATIONAL LABOR  
13 RELATIONS BOARD,  
14 Petitioner,  
15 and  
16 SOUTHERN CALIFORNIA  
PERMANENTE MEDICAL GROUP;  
17 AND KAISER FOUNDATION  
HOSPITALS,  
18 Respondents.  
19  
20  
21

Civil No. CV10-7395 GAF FM0x  
NOTICE OF MOTION re: NLRB'S  
MOTION TO SUPPLEMENT THE  
RECORD WITH THE  
ADMINISTRATIVE LAW JUDGE'S  
DECISION, and REVISED  
TRANSCRIPT REFERRED TO IN THE  
DECISION  
Date: January 10, 2011  
Time: 9:30 a.m.  
Judge: Hon. Gary A. Feess  
Courtroom: Roybal 740

22  
23 To Respondents Southern California Medical Group; and Kaiser Foundation  
24 Hospitals:

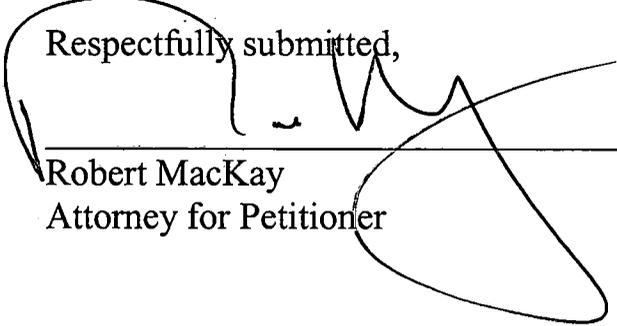
25 You are hereby notified that on the 10th day of January, 2011, at 9:30 a.m.,  
26 or as soon thereafter as counsel can be heard, Petitioner will move the court for  
27 issuance of an Order granting Petitioner's motion to supplement the record with the  
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Administrative Law Judge's decision in the underlying administrative proceeding,  
along with a copy of the revised transcript referred to by the ALJ in his decision.

This Motion is excepted from Local Rule 7-3, as it is in connection with  
Petitioner's request for a preliminary injunction.

Dated at Los Angeles, California, this 14th day of December, 2010.

Respectfully submitted,  
  
\_\_\_\_\_  
Robert MacKay  
Attorney for Petitioner

1 ROBERT MACKAY (192423)  
1 robert.mackay@nlrb.gov  
2 NEIL WARHEIT (133218)  
2 WILLIAM M. PATE (45734)  
3 National Labor Relations Board  
3 Region 21  
4 888 South Figueroa Street, Ninth Floor  
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6 Attorneys for Petitioner

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8 UNITED STATES DISTRICT COURT  
9 FOR THE CENTRAL DISTRICT OF CALIFORNIA

10  
11 JAMES F. SMALL, Regional Director )  
11 of Region 21 of the National Labor )  
12 Relations Board, for and on behalf of )  
12 the NATIONAL LABOR )  
13 RELATIONS BOARD, )  
14 Petitioner, )  
15 and )  
16 SOUTHERN CALIFORNIA )  
16 PERMANENTE MEDICAL GROUP; )  
17 AND KAISER FOUNDATION )  
17 HOSPITALS, )  
18 Respondents. )  
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Civil No. CV10-7395 GAF FM0x

NLRB's MOTION TO SUPPLEMENT  
RECORD WITH ADMINISTRATIVE  
LAW JUDGE DECISION, and  
REVISED TRANSCRIPT REFERRED  
TO IN THE DECISION

Date: January 10, 2011  
Time: 9:30 a.m.  
Judge: Hon. Gary A. Feess  
Courtroom: Roybal 740

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1 The Petitioner, National Labor Relations Board, an agency of the United  
2 States Government, hereby moves to supplement the record with the decision of  
3 the Administrative Law Judge (hereinafter ALJ) from the administrative  
4 proceeding, and a copy of the revised transcript referred to in the ALJ's decision.  
5 The motion is made on following grounds:

6 1. Petitioner filed its Petition for Injunction under Section 10(j) of the  
7 National Labor Relations Act (hereinafter Petition) with the Court on October 4,  
8 2010, seeking to enjoin Respondents from engaging in certain conduct and to  
9 direct Respondents to engage in certain affirmative conduct.

10 2. The matter is currently under submission by the Court. As of the date  
11 of this filing, the Court has not issued its decision in this matter.

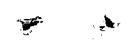
12 3. The record in the NLRB proceeding closed on October 19, 2010, and  
13 briefs were filed with the ALJ on November 17, 2010.

14 4. The ALJ issued his recommended decision on December 13, 2010, a  
15 copy of which is attached as Exhibit 1.

16 5. In his decision, at page 2, footnote 2, the ALJ explained the  
17 circumstances surrounding the issuance of a revised transcript. A copy of the  
18 revised transcript is attached as Exhibit 2.

19 6. Under Petitioner's own Rules and Regulations, Petitioner has an  
20 obligation to apprise the Court of changed circumstances in an injunction  
21 proceeding. (See 29 C.F.R. Sec. 102.94(b)).

22 7. Accordingly, Petitioner moves that the recommended decision of the  
23 ALJ be received into the record, along with the revised transcript.  
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1 I. Argument

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3 1. As was previously discussed in the original Memorandum of Points &  
4 Authorities in Support of the Petition for Injunction, the legal standard for the  
5 Court to apply in injunction proceedings under Section 10(j) of the Act includes  
6 the analysis of whether or not there is a likelihood of success on the merits before  
7 the Board. Thus, the ALJ's recommended decision regarding the administrative  
8 complaint is relevant to the Court's consideration of whether the Acting General  
9 Counsel would ultimately prevail in the administrative proceeding. The next step  
10 in the administrative process is an appeal of the ALJ's decision to the Board. Thus,  
11 the ALJ's findings with respect to the administrative complaint are relevant to the  
12 matter pending before the Court. Petitioner therefore moves for the admission of  
13 the ALJ's recommended decision into the record for the Court's consideration.

14 2. Petitioner respectfully submits that the decision of the ALJ  
15 substantially strengthens the Regional Director's likelihood of success on the  
16 merits of the 10(j) petition and thus warrants the granting of the interim relief  
17 requested. Courts have repeatedly relied on ALJ decisions in Section 10(j)  
18 proceedings, finding that favorable ALJ decisions bolster the Board's "reasonable  
19 cause" or "likelihood of success." See *Overstreet v. El Paso Disposal, LP*,  
20 668 F.Supp.2d 988, 1005 n. 28 (W.D. Tex. 2009), affd. \_\_\_ F.3d \_\_\_, 2010 WL  
21 4351961 (5<sup>th</sup> Cir. November 4, 2010); *Pye v. Excel Case Ready*, 238 F.3d 69, 73  
22 n.8 (1st Cir. 2001); *Rivera-Vega v. ConAgra, Inc.*, 70 F.3d 153, 157 n. 3, 160-61  
23 (1st Cir. 1995). See also, e.g., *Lineback v. Spurlino Materials, LLC*, 546 F.3d 491,  
24 502-503 (7th Cir, 2008); *Ahearn v. Jackson Hospital*, 351 F.3d 226, 238 (6th Cir.  
25 2003); *Silverman v. J.R.L. Food Corp.*, 196 F.3d 334, 337-38 (2d Cir. 1999).

26 3. The decision by the ALJ is only an interim decision and does not  
27 negate the NLRB's request for injunctive relief. Section 10(j) of the National  
28



1 Labor Relations Act authorizes the NLRB to seek interim injunctive relief to  
2 preserve or restore the status quo while the parties are awaiting resolution of the  
3 unfair labor practice dispute by the Board. An injunction under Section 10(j)  
4 remains in effect until the Board conducts its review of the administrative law  
5 judge's recommendation and issues its decision. See *Schaub v. West Michigan*  
6 *Plumbing & Heating, Inc.*, 250 F.3d 962, 968 (6th Cir. 2001); *Sharp v. Webco*  
7 *Industries*, 225 F.3d 1130, 1136 (10th Cir. 2000)(noting that ALJ decision is not  
8 self enforcing). Thus, as the administrative litigation is still ongoing and the time  
9 before a final Board Order may be months away, or longer, the risk of irreparable  
10 harm not only continues, but also increases.

11 4. The ALJ concluded that Respondents violated Section 8(a)(1) and (5)  
12 of the Act by unilaterally cancelling the April 1st wage increase and discontinuing  
13 the benefits at issue in the underlying case, and has recommended an order calling  
14 for Respondents to restore the wage increase and benefits at issue. Based upon the  
15 Regional Director's strong likelihood of success on the merits as now supported by  
16 the decision of the ALJ, the interim relief requested by the Board is just and proper  
17 and would be in the public interest to protect the employees' statutory rights and  
18 the parties' collective-bargaining relationship.

19 WHEREFORE, the Petitioner respectfully prays that an order issue  
20 receiving the ALJ's decision, along with the revised transcript referred to by the  
21 ALJ in the decision, into the record in this matter.

22  
23 Dated at Los Angeles, California, this 14th day of December, 2010.

24 Respectfully submitted,

25  
26  
27 Robert MacKay  
28 Attorney for Petitioner

100

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1 ROBERT MACKAY (192423)  
robert.mackay@nlrb.gov  
2 NEIL WARHEIT (133218)  
WILLIAM M. PATE (45734)  
3 National Labor Relations Board  
Region 21  
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4 Los Angeles, CA 90017-5449  
Telephone: (213) 894-5204  
5 Facsimile: (213) 894-2778

6 Attorneys for Petitioner

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8 UNITED STATES DISTRICT COURT  
9 FOR THE CENTRAL DISTRICT OF CALIFORNIA  
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11 JAMES F. SMALL, Regional Director )  
of Region 21 of the National Labor )  
12 Relations Board, for and on behalf of )  
the NATIONAL LABOR )  
13 RELATIONS BOARD,

14 Petitioner,

15 and

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

19 Respondents.  
20  
21

Civil No. CV10-7395 GAF FM0x

DECLARATION OF ROBERT N.  
MACKAY IN SUPPORT OF NLRB'S  
EX PARTE APPLICATION FOR  
ORDER PERMITTING THE FILING  
OF SUPPLEMENTAL MOTION

Date: January 10, 2011  
Time: 9:30 a.m.  
Judge: Hon. Gary A. Feess  
Courtroom: Roybal 740

4  
1 8. Under Petitioner's own Rules and Regulations, Petitioner has an  
2 obligation to apprise the Court of changed circumstances in an injunction  
3 proceeding. (See 29 C.F.R. Sec. 102.94(b)).

4 9. On December 13, 2010, the undersigned telephoned Respondents'  
5 attorney, Michael Lindsay, at about 4: 11 p.m., and left a voicemail message  
6 informing him that on December 14, 2010, Petitioner will file with this Court an ex  
7 parte application for the purpose of seeking permission to file a motion to  
8 supplement the record with the decision of the ALJ from the administrative  
9 proceeding, and the revised transcript referred to by the ALJ in his decision.  
10 The undersigned also e-mailed Mr. Lindsay of this intent at about 4:16 p.m. on  
11 December 13, 2010. Thereafter, and also on December 13, 2010, Mr. Lindsay and  
12 the undersigned exchanged e-mail communications in which the undersigned  
13 answered questions Mr. Lindsay had regarding the filing.

14 10. In its communications, the undersigned asked that Mr. Lindsay  
15 provide him with the Respondents' position regarding the filing, by no later than  
16 10:00 a.m. on December 14, 2010. Today, Mr. Lindsay informed the undersigned  
17 by e-mail that Respondents oppose the ex parte application because they disagree  
18 with Petitioner's interpretation of Local Rule 7-3 and because they wish to address  
19 the effects of the ALJ's decision on the matter before the Court.

20 In accordance with 28 U.S.C. Sec. 1746, I declare under the penalty of  
21 perjury that the foregoing is true and correct to the best of my knowledge and  
22 belief.

23 Executed at Los Angeles, California, on December 14, 2010.

24  
25  
26 Robert MacKay  
27 Attorney for Petitioner  
28

## Ex Parte Application

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 12/14/2010 at 11:33 AM PST and filed on 12/14/2010

**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:** 18

#### Docket Text:

**First EX PARTE APPLICATION to Supplement the record *Declaration of Robert N. MacKay in Support of Ex Parte Application* filed by Petitioner James F. Small.(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)\Scanned Version of ALJD filing\Declaration.pdf

#### Electronic document Stamp:

[STAMP cacdStamp\_ID=1020290914 [Date=12/14/2010] [FileNumber=10804409-0] [9cf1db7d6cd64ebf84661d2a19dd951b04678bb33800184c0a049bfecb9d7571e8ab362ed0693fb1de527a88296904c83c83c23f71812066ef6ece79cf26123d]]

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6 Attorneys for Petitioner  
7  
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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  
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Civil No. CV10-7395 GAF FM0x

NOTICE OF LODGING OF  
(PROPOSED) ORDER GRANTING  
PETITIONER'S *EX PARTE*  
APPLICATION TO FILE MOTION TO  
SUPPLEMENT THE RECORD WITH  
THE ADMINISTRATIVE LAW  
JUDGE'S DECISION, AND REVISED  
TRANSCRIPT REFERRED TO IN THE  
DECISION

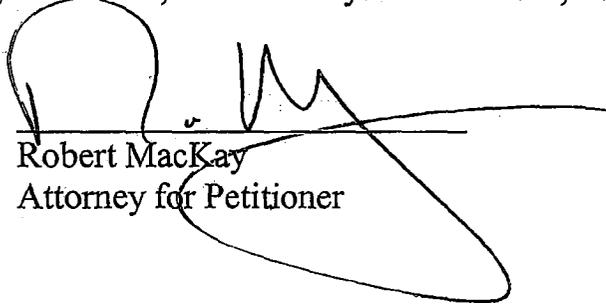
Date: January 10, 2011  
Time: 9:30 a.m.  
Judge: Hon. Gary A. Feess  
Courtroom: Roybal 740

22  
23 To the Clerk of the United States District Court, Central District of  
24 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 order granting Petitioner's *Ex Parte* Application to file a  
27  
28

7  
1 motion to supplement the record with the Administrative Law Judge's decision,  
2 and revised transcript referred to in the decision.

3 DATED at Los Angeles, California, this 14th day of December, 2010.

4  
5   
6 Robert MacKay  
7 Attorney for Petitioner  
8

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14 Petitioner, )

15 and )

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PERMANENTE MEDICAL GROUP; )  
17 AND KAISER FOUNDATION )  
HOSPITALS, )

18 Respondents. )  
19  
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Civil No. CV10-7395 GAF FM0x

(PROPOSED) ORDER GRANTING  
PETITIONER'S *EX PARTE*  
APPLICATION TO FILE MOTION TO  
SUPPLEMENT THE RECORD WITH  
THE ADMINISTRATIVE LAW  
JUDGE'S DECISION, and REVISED  
TRANSCRIPT REFERRED TO IN THE  
DECISION

Date: January 10, 2011  
Time: 9:30 a.m.  
Judge: Hon. Gary A. Feess  
Courtroom: Roybal 740

22  
23 Petitioner National Labor Relations Board filed its ex parte application  
24 under Local Rule 7-19, requesting an order allowing Petitioner to file a motion to  
25 supplement the record with the decision of the Administrative Law Judge from the  
26 administrative proceeding, along with the revised transcript referred to in the  
27 decision.  
28

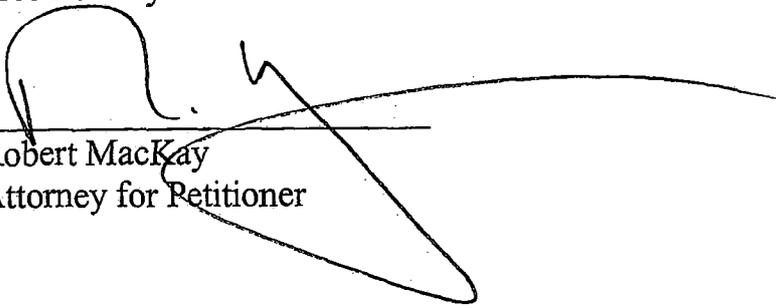
1 Good cause having been shown for the requested order, Petitioner's ex parte  
2 application to file a motion to supplement the record with the decision of the  
3 Administrative Law Judge, and the revised transcript referred to in the decision, is  
4 granted.

5  
6 IT IS SO ORDERED.

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

9  
10  
11 \_\_\_\_\_  
12 The Hon. Gary A. Feess  
13 United States District Judge

14 Presented by:

15   
16 \_\_\_\_\_  
17 Robert MacKay  
18 Attorney for Petitioner

ROBERT MACKAY (192423)  
robert.mackay@nlrb.gov  
NEIL WARHEIT (133218)  
WILLIAM M. PATE (45734)  
National Labor Relations Board  
Region 21  
888 South Figueroa Street, Ninth Floor  
Los Angeles, CA 90017-5449  
Telephone: (213) 894-5204  
Facsimile: (213) 894-2778

Attorneys for Petitioner

UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA

JAMES F. SMALL, Regional Director )  
of Region 21 of the National Labor )  
Relations Board, for and on behalf of )  
the NATIONAL LABOR )  
RELATIONS BOARD, )  
Petitioner, )  
and )  
SOUTHERN CALIFORNIA )  
PERMANENTE MEDICAL GROUP; )  
AND KAISER FOUNDATION )  
HOSPITALS, )  
Respondents.

Civil No. CV10-7395 GAF FM0x  
ORDER GRANTING PETITIONER'S  
*EX PARTE* APPLICATION TO FILE  
MOTION TO SUPPLEMENT THE  
RECORD WITH THE  
ADMINISTRATIVE LAW JUDGE'S  
DECISION, and REVISED  
TRANSCRIPT REFERRED TO IN THE  
DECISION  
Date: January 10, 2011  
Time: 9:30 a.m.  
Judge: Hon. Gary A. Feess  
Courtroom: Roybal 740

Petitioner National Labor Relations Board filed its ex parte application under Local Rule 7-19, requesting an order allowing Petitioner to file a motion to supplement the record with the decision of the Administrative Law Judge from the administrative proceeding, along with the revised transcript referred to in the decision.

1 Good cause having been shown for the requested order, Petitioner's ex parte  
2 application to file a motion to supplement the record with the decision of the  
3 Administrative Law Judge, and the revised transcript referred to in the decision, is  
4 granted.

5  
6 The hearing scheduled for January 10, 2011 is hereby VACATED.  
7 IT IS SO ORDERED.

8 Done at Los Angeles, California, this 16<sup>th</sup> day of December, 2010.

9  
10  
11 

12 The Hon. Gary A. Geess  
13 United States District Judge

14 Presented by:

15  
16 \_\_\_\_\_  
17 Robert MacKay  
18 Attorney for Petitioner  
19  
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1 ROBERT MACKAY (192423)  
robert.mackay@nlrb.gov  
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  
Facsimile: (213) 894-2778

6 Attorneys for Petitioner  
7  
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

Civil No. CV10-7395 GAF FM0x

NOTICE OF LODGING OF  
(PROPOSED) ORDER GRANTING  
PETITIONER'S MOTION TO  
SUPPLEMENT THE RECORD WITH  
THE ADMINISTRATIVE LAW  
JUDGE'S DECISION, and REVISED  
TRANSCRIPT REFERRED TO IN  
DECISION

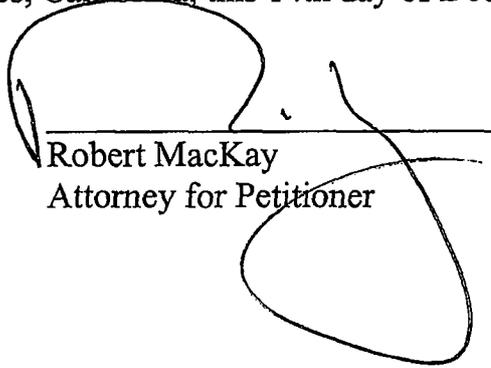
Date: January 10, 2011  
Time: 9:30 a.m.  
Judge: Hon. Gary A. Feess  
Courtroom: Roybal 740

22  
23 To the Clerk of the United States District Court, Central District of  
24 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 Petitioner's motion to supplement the record  
28

1 with the Administrative Law Judge's decision, and revised transcript referred to in  
2 the decision.

3 DATED at Los Angeles, California, this 14th day of December, 2010.

4   
5 \_\_\_\_\_  
6 Robert MacKay  
7 Attorney for Petitioner  
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8 UNITED STATES DISTRICT COURT  
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11 JAMES F. SMALL, Regional Director  
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14 Petitioner,

15 and

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PERMANENTE MEDICAL GROUP;  
17 AND KAISER FOUNDATION  
HOSPITALS,

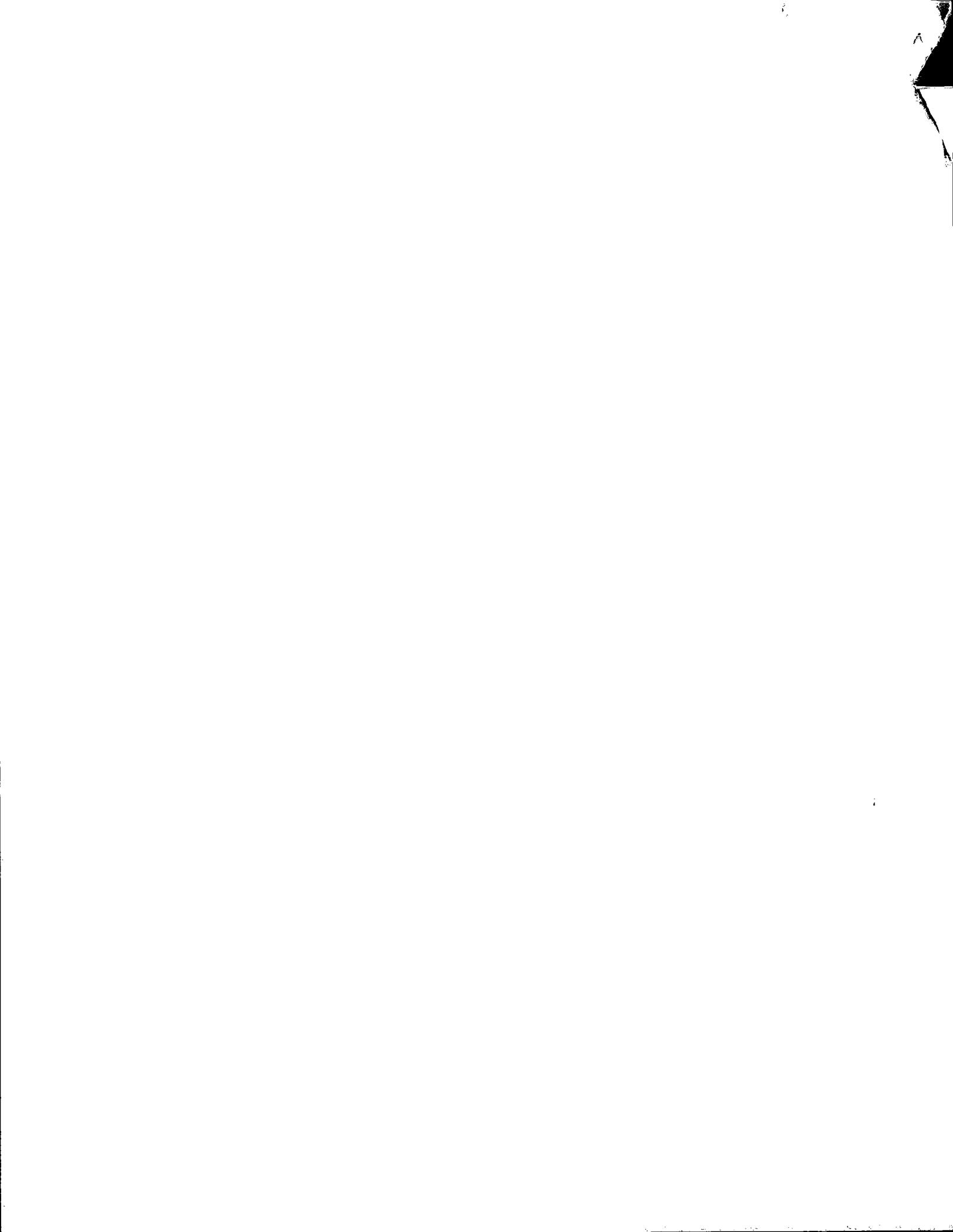
18 Respondents.  
19  
20  
21

Civil No. CV10-7395 GAF FM0x

(PROPOSED) ORDER GRANTING  
PETITIONER'S MOTION TO  
SUPPLEMENT THE RECORD WITH  
THE ADMINISTRATIVE LAW  
JUDGE'S DECISION, and REVISED  
TRANSCRIPT REFERRED TO IN THE  
DECISION

Date: January 10, 2011  
Time: 9:30 a.m.  
Judge: Hon. Gary A. Feess.  
Courtroom: Roybal 740

22  
23 Petitioner National Labor Relations Board filed its motion on December 14,  
24 2010, requesting an order receiving the decision of the Administrative Law Judge,  
25 and the revised transcript referred to in the decision, into the record.  
26  
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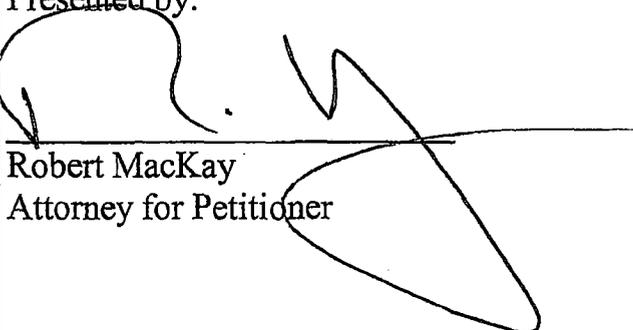
1 Good cause having been shown for the requested order, Petitioner's motion  
2 to supplement the record with the decision of the Administrative Law Judge, and  
3 the revised transcript referred to in the decision, is granted.

4  
5 IT IS SO ORDERED

6  
7 Done at Los Angeles, California, this \_\_\_\_ day of \_\_\_\_.

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

13 Presented by:

14   
15 \_\_\_\_\_  
16 Robert MacKay  
17 Attorney for Petitioner  
18  
19  
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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 12/14/2010 at 12:29 PM PST and filed on 12/14/2010

**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:** 22

#### Docket Text:

**NOTICE OF LODGING** filed re **MOTION to Supplement the record with Administrative Decision and Revised Transcripts[21], Notice (Other)[20]** (Attachments: # (1) Proposed Order Granting Motion to Supplement Record with Administrative Decision and Revised Transcript)(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)\Scanned Version of ALJD filing\Notice of Lodging Proposed Order Motion.pdf

#### Electronic document Stamp:

[STAMP cacdStamp\_ID=1020290914 [Date=12/14/2010] [FileNumber=10804973-0] [0e369eb2a1473cfeb5b595d8bbc6f75af3161e96ef52497c15e1bc0f361e0a8724944f62a43083afb6c04d33ff6b0590b03179a2fbe741568bfe486b217a4664]]

**Document description:** Proposed Order Granting Motion to Supplement Record with Administrative Decision and Revised Transcript

**Original filename:** H:\R21com\Region 21 C Cases\21-CA-39296\HQ Guidance\10(j)\Scanned Version of ALJD filing\Proposed Order Granting Motion to Supp.pdf

**Electronic document Stamp:**

[STAMP cacdStamp\_ID=1020290914 [Date=12/14/2010] [FileNumber=10804973-1] [747db5396068bf7f43656e0026ed1707e62c3f0411a8d725c62eb2cf2d0cbbf644f54d04a352ca65c136b548e7805a552f7ab3a16a219b38b5208e28311c6750]]

**Parker, Lindsay**

---

**From:** MacKay, Robert  
**Sent:** Tuesday, December 14, 2010 12:46 PM  
**To:** Parker, Lindsay  
**Subject:** FW: PROPOSED ORDER: LA10CV07395-GAF-Small, James

**Attachments:** (Proposed) Order Granting Motion to file ALJD.doc; Proposed Order Granting Motion to Supp.pdf



(Proposed) Order Granting Moti.    Proposed Order Granting Motion.

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

From: ecf-helpdesk@cacd.uscourts.gov [mailto:ecf-helpdesk@cacd.uscourts.gov]  
Sent: Tuesday, December 14, 2010 12:32 PM  
To: MacKay, Robert  
Subject: PROPOSED ORDER: LA10CV07395-GAF-Small, James

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

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

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](#)

1 ROBERT MACKAY (192423)  
robert.mackay@nlrb.gov  
2 NEIL WARHEIT (133218)  
WILLIAM M. PATE (45734)  
3 National Labor Relations Board  
Region 21  
888 South Figueroa Street, Ninth Floor  
4 Los Angeles, CA 90017-5449  
Telephone: (213) 894-5204  
5 Facsimile: (213) 894-2778

6 Attorneys for Petitioner

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UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA

JAMES F. SMALL, Regional Director )  
of Region 21 of the National Labor )  
Relations Board, for and on behalf of )  
the NATIONAL LABOR )  
RELATIONS BOARD, )  
Petitioner, )  
and )  
SOUTHERN CALIFORNIA )  
PERMANENTE MEDICAL GROUP; )  
AND KAISER FOUNDATION )  
HOSPITALS, )

Civil No. CV10-7395 GAF FM0x

SUPPLEMENTAL FILING IN  
SUPPORT OF PETITIONER'S  
PETITION FOR TEMPORARY  
INJUNCTION UNDER SECTION 10(j)  
OF THE NATIONAL LABOR  
RELATIONS ACT

Respondents.

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

I. INTRODUCTION

22  
23  
24 Pursuant to the terms of the October 19, 2010 Stipulation and Order  
25 approved in this matter, the Petitioner hereby submits this Supplemental Filing in  
26 support of its Petition for Injunctive Relief under Section 10(j) of the National  
27 Labor Relations Act (herein the Act), as amended, 29 U.S.C. Sec. 160 (j) (herein  
28 Section 10(j)).

1 As the Court is aware, the Petitioner's initial filings included a Points &  
2 Authorities ("P&A") in support of the Petition. The *Statement of Facts* section  
3 contained therein cited to evidence that had been obtained during the course of the  
4 administrative investigation of the underlying unfair labor practice charge, which  
5 facts the Petitioner argues showed that it had a strong likelihood of success in  
6 establishing that Respondents committed the unfair labor practices alleged.

7 On October 18 and 19, 2010, the administrative hearing (trial) was held in  
8 Los Angeles, California, before an administrative law judge of the National Labor  
9 Relations Board ("Board"). At the hearing, Respondents and Petitioner each had  
10 the opportunity to present witnesses and other evidence in support of their  
11 respective cases. The determinations by the Board as to whether or not  
12 Respondents committed the alleged unfair labor practices will be based on the  
13 record evidence from the hearing.<sup>1</sup>

14 Thus, Petitioner hereby submits this Supplemental Filing, the purpose of  
15 which is twofold. The first is to provide to the Court citations to the record that  
16 support the *Statement of Facts* section set forth in Petitioner's P&A. As these  
17 same relevant facts were introduced at the hearing, Petitioner remains of the  
18 position that it has a strong likelihood of success in establishing that Respondents  
19 committed the alleged unfair labor practices. The second purpose is to highlight  
20 for the Court the additional evidence of irreparable harm that was presented at the  
21 hearing.<sup>2</sup>

22  
23  
24 <sup>1</sup> Pursuant to the October 19th Stipulation and Order, Petitioner has filed with the  
25 Court, the transcripts and exhibits developed during the administrative hearing.  
26 This Supplemental Filing will cite to the relevant pages of the transcript and the  
27 exhibits from the administrative hearing.

28 <sup>2</sup> The Board in due course will be making its determinations regarding whether  
Respondents committed the alleged unfair labor practices. It will not, however, be  
making determinations as to whether the Union will suffer "irreparable harm" in  
the interim. Therefore, with respect to evidence presented on the issue of

## II. STATEMENT OF FACTS

1 Respondents run several medical centers and clinics in Southern California.<sup>3</sup>  
2  
3 Prior to February 3, certain employees at those facilities were represented by the  
4 SEIU-United Healthcare Workers-West (herein SEIU-UHW) in 3 separate  
5 bargaining units: a unit consisting of nursing employees (herein AFN Unit); a unit  
6 consisting of mental-health workers (herein Psych-Social Unit); and a unit  
7 consisting of healthcare professionals (herein Healthcare Professionals Unit).  
8 (GCx. 1(g), GCx. 1(i), GCx. 2, GCx. 3; Tr. 28-31).<sup>4</sup>

9 The SEIU-UHW negotiated separate, but similar, collective-bargaining  
10 agreements with Respondents (herein contract or CBA) on behalf of each of the 3  
11 units that incorporated a Local Agreement, a Master Agreement, and a National  
12 Agreement. The Local, Master, and National Agreements complement each other  
13 and apply as a single integrated agreement. (GCx. 2, GCx. 3, GCx. 12; Tr. 28-31).  
14

15 irreparable harm, the Court should continue to look to the evidence previously  
16 cited and presented by the Petitioner. Note however, that pursuant to the October  
17 19th Stipulation and Order, Respondents had the opportunity during the  
18 administrative hearing to cross-examine Union agents Ralph Cornejo, Gabriel  
19 Kristal, and John Borsos, about, among other matters, the issue of irreparable  
20 harm. The witnesses' answers to Respondents' questions on this issue continue to  
21 support Petitioner's arguments, as discussed further below.

22 <sup>3</sup> Respondent Southern California Permanente Medical Group and Respondent  
23 Kaiser Foundation Hospitals are jointly the employers of the Healthcare  
24 Professionals and the Psych-Social units of employees while Respondent Kaiser  
25 Foundation Hospitals is the sole employer of the AFN unit. Because Petitioner  
26 alleges that both Respondents jointly engaged in the same unlawful conduct as to  
27 all 3 units of employees, Petitioner refers to the 2 entities collectively as  
28 Respondents.

<sup>4</sup> All citations to the transcript from the administrative hearing will be referred to as  
"Tr." followed by the appropriate page number. "GCx" will refer to exhibits  
offered by the Counsel for the Acting General Counsel, who is otherwise identified  
as Petitioner in this proceeding. "Rx." will refer to exhibits offered by  
Respondents Southern California Permanente Medical Group and Kaiser  
Foundation Hospitals, otherwise identified as Respondents in this proceeding.

1 The National Agreement arose from collective bargaining between  
2 Respondents and a coalition of labor unions (including SEIU-UHW) who represent  
3 employees at Respondents' facilities across the nation.<sup>5</sup> (GCx. 2, GCx. 3, GCx.  
4 12; Tr. 28-31).

5 The three CBAs negotiated by the SEIU-UHW established a series of yearly  
6 across-the-board wage increases, one of which mandated a 2-percent wage increase  
7 for all 3 units, that was due in April. (Tr. 32-36; GCx. 7; and *Petition* Exhibits,  
8 Exh. 7, pp. 259-261, 274-275; Exh. 8, pp. 456-458, 471-472; Exh. 9, pp. 668-670,  
9 683-684).<sup>6</sup>

10 These CBAs also established the terms of regular shop-steward<sup>7</sup> training and  
11 a right to tuition reimbursement for the cost of courses taken for continuing  
12 education or to maintain licensure. (Tr. 37-39; Rx. 3; *Petition* Exhibits, Exh. 7, pp.  
13 132, 178-179, 242, 244; Exh. 8, pp. 367, 439, 441; and Exh. 9 pp. 547, 651, 653).

14 On February 3,<sup>8</sup> following a mail ballot election held by Petitioner, the  
15 National Union of Healthcare Workers (herein NUHW or the Union) was certified  
16

---

17 <sup>5</sup> Respondents and the coalition of labor unions formed the Labor Management  
18 Partnership (herein LMP) in order to facilitate collective bargaining. (GCx.2,  
19 GCx. 3).

20 <sup>6</sup> During the course of the administrative hearing, the Healthcare Professional  
21 unit's CBA was entered onto the record as GCx. 4, the American Federation of  
22 Nurses unit's as GCx. 5, and the Psych-Social Chapter unit's as GCx. 6. In order  
23 to avoid overburdening the Court's docket with multiple sets of identical  
24 documents, Petitioner has not re-filed these three voluminous CBAs along with its  
25 filing of the transcripts and exhibits from the hearing, as these three documents are  
26 already on the docket as part of Petitioner's exhibits to its Petition. Accordingly,  
27 when citing to the 3 CBAs, Petitioner will cite to Exhibits 7-9 of the Petition in lieu  
28 of citing to GCx. 4-6. Should the Court prefer that GCx. 4-6 from the hearing  
record also be filed, Petitioner will gladly comply.

<sup>7</sup> Shop stewards are rank-and-file employees who volunteer their time on behalf of  
their union to help monitor their CBA, assist in processing employee grievances,  
and act as a messenger for their union, among other duties.

<sup>8</sup> All dates that follow are in 2010.

1 by the Petitioner as the new collective-bargaining representative in each of the 3  
2 units. (GCx. 1(g), GCx. 1(i)).<sup>9</sup> Following the NUHW's certifications,  
3 Respondents met with the NUHW several times beginning in February to discuss  
4 bargaining ground rules and to prepare for negotiations for new collective-  
5 bargaining agreements between Respondents and the NUHW. (Tr. 40-54).

6 At the first of these meetings, the Union asked Respondents to apply the  
7 terms of the SEIU-UHW contracts through October, and specifically requested  
8 continuation of the tuition-reimbursement and steward training programs. (Tr. 40-  
9 43).

10 At the second meeting, Respondents informed the Union that they would not  
11 grant the 2-percent April wage increase, and that they were discontinuing the  
12 tuition-reimbursement and shop-steward training programs. In subsequent  
13 meetings and communications during February and March, the Union continued to  
14 request that Respondents maintain all terms and conditions of the SEIU-UHW  
15 contracts. Respondents refused, contending that the National Agreement no longer  
16 applies to the unit employees because the Union is not a member of the coalition.  
17 Based on this position, Respondents canceled the 2-percent April wage increase  
18 and discontinued the tuition-reimbursement and steward training programs.<sup>10</sup> (Tr.  
19

20  
21 <sup>9</sup> NUHW is not a member of the coalition of labor unions. (Tr. 40).

22 <sup>10</sup> As the record demonstrates, when Respondents first informed the Union that the  
23 wage increases and benefits at issue in this case no longer applied to the employees  
24 in the 3 units, that decision had already been made. Respondents further concede  
25 that the operative or effective date of the decision was February 3, 2010, the date  
26 of the Union's certification. The Union was not given advance notice or an  
27 opportunity to bargain over this decision before it was made, nor did the Union  
28 ever acquiesce or agree to it. Furthermore, both simultaneous with, and  
subsequent to the announcement of the decision, Respondents took the position  
that the elimination of the wage increases and benefits at issue was not a  
bargainable decision.

1 representation by the SEIU-UHW, why Respondents were punishing them for  
2 choosing the Union as their representative, and why Respondents were helping the  
3 SEIU-UHW by denying them their wage increase. (Tr. 100-107).

4 Furthermore, elected unit-employee shop stewards have complained to  
5 Union representatives that Respondents' actions have cost them personal  
6 credibility among their fellow unit employees and made them look like bad  
7 employee leaders. (Tr. 107-108). Additionally, attendance at regular shop-steward  
8 meetings and trainings has decreased by over 50 percent. (Tr. 112). The shop  
9 stewards cite the fact that Respondents have ceased granting them time off and  
10 ceased paying them for these meetings and trainings, ever since the Union's  
11 certification, as reason for the decreased attendance at these meetings and  
12 trainings. These shop stewards also cite their general dissatisfaction with the  
13 Union, resulting from Respondents' refusal to continue the wage increases and  
14 other benefits, as reasons for their increasing lack of interest in the meetings and  
15 trainings. (Tr. 113-114).

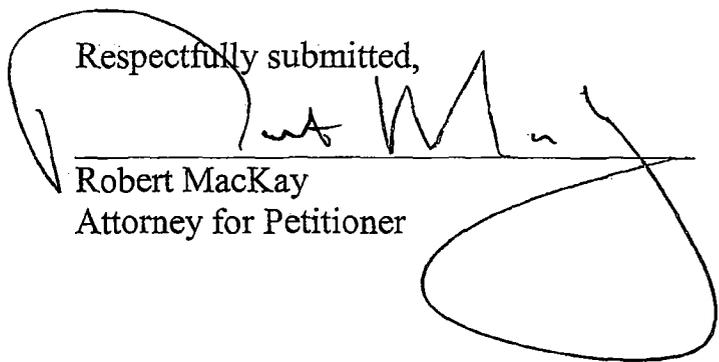
16 Consequently, the evidence presented both during Petitioner's unfair labor  
17 practice investigation, and during the course of the administrative proceeding  
18 makes clear that as a result of Respondents' unlawful actions: The Union has lost  
19 significant support among Respondents' employees in the 3 units; the Union has  
20 lost both bargaining power and legitimacy in the eyes of its members; and because  
21 the ultimate Board order cannot remedy the Union's loss of support and the loss of  
22 bargaining power that has occurred and continues to occur due to Respondent's  
23 conduct, the Board's remedial processes have suffered.

**III. CONCLUSION**

1  
2 Interim relief is just and proper to prevent further frustration of the policies  
3 and remedial purposes of the Act. In both its initial and supplemental filings, the  
4 Petitioner has shown that he has a strong likelihood of prevailing in the  
5 administrative proceeding before the Board and establishing that Respondents have  
6 committed violations of Section 8(a)(1) and (5) of the Act. Unless enjoined by this  
7 Court, Respondents' commission of these unfair labor practices will continue to  
8 undermine the collective-bargaining process and the Board's remedial powers.  
9 Accordingly, Petitioner respectfully requests that this Court grant the requested  
10 relief.

11 Dated at Los Angeles, California, this 3rd day of November, 2010.

12 Respectfully submitted,  
13

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15 \_\_\_\_\_  
16 Robert MacKay  
17 Attorney for Petitioner  
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ROBERT MACKAY (192423)  
robert.mackay@nlrb.gov  
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WILLIAM M. PATE (45734)  
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Region 21  
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Facsimile: (213) 894-2778

Attorneys for Petitioner

UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA

JAMES F. SMALL, Regional Director  
of Region 21 of the National Labor  
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RELATIONS BOARD,  
  
Petitioner,  
  
and  
  
SOUTHERN CALIFORNIA  
PERMANENTE MEDICAL GROUP;  
AND KAISER FOUNDATION  
HOSPITALS,  
  
Respondents.

Civil No. CV10-7395 GAF FM0x

NOTICE OF FILING OF THE  
TRANSCRIPT OF ADMINISTRATIVE  
PROCEEDINGS

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

Pursuant to the terms of the October 19, 2010 Stipulation and Order  
approved in this matter, the Petitioner hereby submits, as an attachment hereto, the  
transcript and exhibits from the hearing before the administrative law judge.<sup>1</sup>

<sup>1</sup> In effort to prevent confusion by the parties and the Court in citing to portions of  
the transcript and exhibits, Petitioner has not paginated the transcript or exhibit  
pages consecutive to this document.

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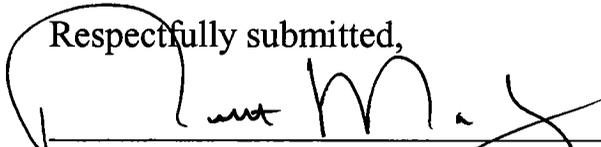
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1 Note that in order to avoid overburdening the Court's docket with multiple sets of  
2 identical documents, Petitioner has intentionally omitted from the attached  
3 administrative transcript the exhibits identified as GCx. 4, GCx. 5, and GCx. 6.  
4 These three voluminous Collective- Bargaining Agreements are already on the  
5 Court's docket as Exhibits 7, 8 and 9 to Petitioner's original Petition filed on  
6 October 4, 2010.<sup>2</sup>

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8 Dated at Los Angeles, California, this 3rd day of November, 2010.

9 Respectfully submitted,

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11 \_\_\_\_\_  
12 Robert MacKay  
13 Attorney for Petitioner 

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27 <sup>2</sup> Should the Court prefer that GCx. 4-6 from the administrative hearing record also  
28 be filed, Petitioner will gladly comply.



1 ROBERT MACKAY (192423)  
 1 robert.mackay@nlrb.gov  
 2 NEIL WARHEIT (133218)  
 2 WILLIAM M. PATE (45734)  
 3 National Labor Relations Board  
 3 Region 21  
 4 888 South Figueroa Street, Ninth Floor  
 4 Los Angeles, CA 90017-5449  
 5 Telephone: (213) 894-5204  
 5 Facsimile: (213) 894-2778

6 Attorneys for Petitioner

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8

UNITED STATES DISTRICT COURT

9

FOR THE CENTRAL DISTRICT OF CALIFORNIA

10

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

Civil No. CV10-7395 GAF FM0x

14

Petitioner,

Stipulation of Dismissal

15

v.

Honorable Gary A. Feess  
No Hearing Required

16

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

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Respondents.

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**I. Background**

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2 1. On October 4, 2010, Petitioner James F. Small, Regional Director of  
3 Region 21 of the National Labor Relations Board (NLRB), for and on behalf of the  
4 NLRB, petitioned the Court for a preliminary injunction in this matter under  
5 29 U.S.C. Sec. 160(j), pending final determination of the charge filed with the  
6 NLRB by the National Union of Healthcare Workers against Southern California  
7 Permanente Medical Group and Kaiser Foundation Hospitals (Respondents).

8 2. On December 16, 2010, the Court issued its Order granting the  
9 petition for injunction. The Order is reported at 2010 WL 5509922  
10 (C.D.Cal. 2010).

11 3. On March 3, 2011, the NLRB issued its Decision and Order on the  
12 unfair labor practice complaint underlying the petition for injunction. The case is  
13 reported as Southern California Permanente Medical Group, and Kaiser  
14 Foundation Hospitals, 356 NLRB No. 106 (2011).

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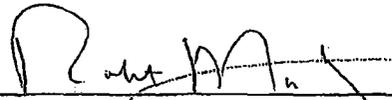
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**II. Discussion**

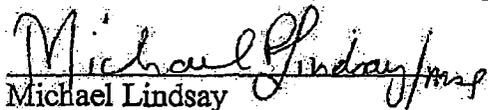
1. The issuance of the NLRB's Decision and Order renders the injunction proceeding moot. Johansen ex rel. NLRB v. Queen Mary Restaurant Corp., 522 F.2d 6 (9th Cir. 1975). Accordingly, and under Rule 41(a)(1)(A)(ii) of the Federal Rules of Civil Procedure, the parties stipulate to the dismissal of this action, without prejudice. Each party is to bear its own fees and costs.

Respectfully submitted,

Dated: 3/8/11

By:   
Robert MacKay  
Attorney for Petitioner  
National Labor Relations Board

Dated: 3/8/11

By:   
Michael Lindsay  
Attorney for Respondents Southern  
California Permanente Medical Group; and  
Kaiser Foundation Hospitals

