

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 32**

**KAISER FOUNDATION HEALTH PLAN, INC.;;
KAISER FOUNDATION HOSPITALS;
SOUTHERN CALIFORNIA PERMANENTE
MEDICAL GROUP; AND THE PERMANENTE
MEDICAL GROUP, INC.**

and

Case 32-CA-169979

**ENGINEERS AND SCIENTISTS OF
CALIFORNIA, IFPTE LOCAL 20, AFL-CIO &
CLC**

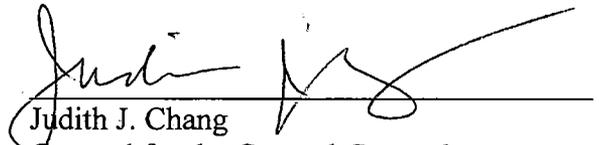
**COUNSEL FOR THE GENERAL COUNSEL’S BRIEF ANSWERING RESPONDENTS’
EXCEPTIONS TO THE ADMINISTRATIVE LAW JUDGE’S DECISION**

On August 24, 2018, Administrative Law Lisa D. Thompson (the Judge) issued her decision in this case, applying *Purple Communications, Inc.*, 361 NLRB 1050 (2014) to find that Respondents violated Section 8(a)(1) of the Act by maintaining a policy restricting employees’ personal emails to usage that is “incidental [and] limited in frequency and scope ...” and forbidding employees from sending “mass” personal messages, like chain letters, jokes or other personal mass mailings without a business purpose. Applying this rationale, the Judge found that Respondents may not restrict/ prohibit employees from using their email systems during nonworking time absent a showing that special circumstances are necessary to maintain production or discipline that justify the policy or rules. On October 22, 2018, Respondents filed their Exceptions to the Judge’s Decision arguing for a reversal of the Judge’s Decision as well as overruling *Purple Communications*. Recently, the General Counsel filed a brief responding to the Board’s August 1, 2018 Notice and Invitation to File Briefs in *Rio All-Suites Hotel & Casino* (2018 WL 3703476). In this brief, the General Counsel urged the Board to reverse *Purple*

Communications and to return to the holding of *Register Guard*, 351 NLRB 1110 (2007). In light of this new development, the Board should dismiss the Complaint in this matter.

DATED AT Oakland, California this 30th day of October 2018.

Respectfully submitted,



Judith J. Chang
Counsel for the General Counsel
National Labor Relations Board, Region 32
1301 Clay Street, Room 300N
Oakland, CA 94612-5224

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**ENGINEERS AND SCIENTISTS OF CALIFORNIA,
IFPTE LOCAL 20, AFL-CIO & CLC**

Case 32-CA-169979

Date: October 30, 2018

**AFFIDAVIT OF SERVICE OF COUNSEL FOR THE GENERAL COUNSEL'S BRIEF
ANSWERING RESPONDENTS' EXCEPTIONS TO THE ADMINISTRATIVE LAW
JUDGE'S DECISION**

I, the undersigned employee of the National Labor Relations Board, being duly sworn, depose and say that on the date indicated above I served the above-entitled document(s) upon the persons at the addresses and in the manner indicated below. Persons listed below under "E-Service" have voluntarily consented to receive service electronically, and such service has been effected on the same date indicated above.

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October 30, 2018

Date

Ida Lam, Regional Attorney of NLRB

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Signature