

## SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made and entered into this 24th day November, 2014, by and between Providence Health & Services - Oregon (“Providence”), an Oregon corporation, Courtney Thanane, Joni Howe, the Class (as defined below), and the Oregon Nurses Association (“ONA”).

Subject to the approval of the United States District Court for the District of Oregon (the “Court”) pursuant to Federal Rule of Civil Procedure 23(e) and 29 U.S.C. §§ 201-219, the Parties agree to the following terms and conditions:

### A. RECITALS

1. In May 2013, ONA commenced a Grievance against Providence on behalf of ONA bargaining unit members working at the Providence St. Vincent Medical Center (the “Grievance”).

2. In the Grievance, ONA alleged that that supervisors at the St. Vincent facility improperly altered employee start and stop times to ensure that the rounding of the employees’ hours worked, as computed by the Kronos (or “Provtime”) timekeeping system, favored Providence, and that Providence, through the timekeeping system, deducted 30 minutes from employees’ time worked for meal breaks which the employees did not take.

3. On September 13, 2013, Courtney Thanane and Joni Howe (the “Class Representatives”) filed a Class Action Allegation Complaint with the Court to commence a proposed class action against Providence, entitled *Courtney Thanane and Joni Howe vs. Providence Health & Services – Oregon, d.b.a., Providence St. Vincent Medical Center*, Case No. 3:13-cv-01620-MO (the “Action.”).

4. On November 24, 2014, the Class Representatives filed a First Amended Class Action Allegation Complaint in the Action (the “Complaint”). The Complaint alleges Providence used a Kronos (“Provtime”) timekeeping system that rounded employees’ start and stop times. The Complaint further alleges that, as a result of the timekeeping system and policies

in place at Providence, throughout Oregon, Providence did not fully compensate employees for the time they actually worked because incidents of rounding adverse to the employees exceeded incidents of rounding favorable to the employees. The Complaint also alleges that Providence management employees altered employees' time punches to reduce the employees' recorded hours worked. The Complaint also alleges that Providence, through the timekeeping system, deducted meal breaks from employee hours worked without regard to whether an employee actually received a meal break.

5. The Complaint's first and third claims for relief allege that Providence engaged in racketeering activity under 18 U.S.C. § 1962 and O.R.S. § 166.720. The second claim for relief alleges that Providence failed to pay all overtime wages due under 29 U.S.C. § 207. The fourth claim for relief alleges that Providence failed to pay wages due under O.R.S. § 652.120. The fifth claim for relief alleges that Providence failed to pay wages due on termination under O.R.S. § 652.140. The sixth claim for relief alleges unlawful withholding of wages under O.R.S. § 652.610. The seventh claim for relief alleges failure to pay overtime under O.R.S. § 653.261. The eighth claim for relief alleges common law fraud.

6. The Complaint asserts these claims as a proposed class action under Rule 23 of the Federal Rules of Civil Procedure and as a proposed collective action under Section 216b of the Fair Labor Standard Act, 29 U.S.C. §§ 201-219 (the "FLSA") on behalf of all current and former employees of Providence who worked at any of Providence's facilities in Oregon and who recorded their time worked on the Kronos ("Provertime") timekeeping system within the six-year period preceding the filing of the original complaint in the Action.

7. Providence filed an Answer to the original complaint on November 4, 2013 and Providence will file an Answer to the Complaint by December 5, 2014, denying the claims and the material allegations in the Action in their entirety.

8. After Providence filed its first Answer, Providence, ONA and the Class Representatives entered a period of formal and informal discovery during which they also

commenced informal negotiations in an attempt to promptly and efficiently resolve the Action and the Grievance.

9. Counsel for all the Parties conducted extensive investigation and discovery during the Action and the Grievance, including, among other things: (a) inspection and analysis of documents produced by Providence; (b) interviews with putative class members; (c) jointly engaging a neutral statistician to analyze a sampling of time records; (d) analysis of the legal positions taken by each Party; (e) analysis of potential class-wide damages; and (f) research of the applicable law with respect to the claims asserted in the Action and the potential defenses thereto.

10. The Parties engaged in sufficient investigation and discovery to assess the relative merits of the claims of the proposed class and Class Representatives and of the defenses asserted.

11. On April 14, 2014, April 15, 2014, August 13, 2014 and September 3, 2014 the Parties engaged in mediation with an experienced mediator, Judge John V. Acosta. The Parties also met face to face on May 8, 2014 and July 29, 2014, and on other occasions, and communicated throughout the spring and summer of 2014 to resolve the Action and the Grievance, and thereafter came to this Agreement on a class-wide settlement, subject to and conditioned on the Court's approval.

## **B. DEFINITIONS**

As used in this Agreement, in addition to the terms already defined above and in addition to any terms defined elsewhere in this Agreement, the following terms shall have the meanings specified below:

1. "Administrator" shall mean Tilghman & Co., P.C., who will provide the class administration services described below and whose fees shall be paid by Providence.

2. "Claims" means all causes of action which were or could have been asserted in the Action or the Grievance that are subject to the release described below.

3. "Class Counsel" shall mean, collectively, Thomas K. Doyle and Bennett, Hartman, Morris & Kaplan, LLP.

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

5. "Class" shall mean all current or former non-exempt employees of Providence who worked in Oregon and who used the Oregon Kronos timekeeping system (also known as "Provtime") to record their hours worked between September 13, 2007 and September 13, 2013.

6. "Class Notice" shall mean the Notice of Pendency and Proposed Settlement of Class Action and Hearing on Final Approval of Settlement, as set forth in the form of Exhibit 2 attached hereto, which is to be mailed to Class Members.

7. "Class Period" shall mean September 13, 2007 through September 13, 2013.

8. "Class Settlement" shall mean the settlement embodied in this Agreement, which is subject to Court approval.

9. "Defense Counsel" shall mean collectively Christopher F. McCracken, Sarah E. Ames and Davis Wright Tremaine LLP.

10. "Effective Date" shall mean the Final Approval Date, or in the event there are objections to the Class Settlement, the date following the expiration of the time to file appeals of the Final Approval Order if no appeals are filed, or if there are any appeals of the Final Approval Order filed, the date following resolution of any such appeals.

11. "Enhancement Award" shall mean any additional monetary payment, in excess of the Net Individual Settlement Amount, awarded by the Court to the Class Representatives for their efforts on behalf of the Class in this Action and in exchange for execution of the Full Release of Claims contained herein.

12. “Fees and Expense Award” means the amount authorized by the Court to be paid to Class Counsel for all services they have rendered and will render, and expenses they have incurred and will incur, in prosecuting the Action.

13. “Final Approval Date” shall mean the date upon which the Court enters an Order approving the Class Settlement, after having determined that the Class Settlement is fair, adequate, and reasonable to the Class as a whole, following (i) notice to the Class; (ii) an opportunity to submit timely objections to the settlement; and (iii) a hearing on the fairness of the terms of the settlement.

14. “Final Approval Hearing” shall mean the final hearing held to ascertain the fairness, reasonableness, and adequacy of the Class Settlement, at which time the Parties anticipate the Court will enter its Order approving the Class Settlement.

15. “Final Date for Completion of Opt-In Forms and Opt-Out Requests” shall mean the date that is thirty (30) days after the date that the Class Notice is sent to the Class Members.

16. “FLSA Claims” shall mean the Second Claim for Relief of the Complaint or any other claim under 29 U.S.C. §§ 201-219 that was or could have been asserted alleging any violation of the FLSA by Providence during the Class Period.

17. “FLSA Claims Settlement Amount” shall mean that portion of the Individual Settlement Amount the Parties designate as payment for the FLSA Claims and which payment is conditioned on the Class Member timely filing an Opt-In Form.

18. “Full Release of Claims” shall mean the Released Claims and all other employment related claims that Class Representatives may have. The Full Release applies only to the Class Representatives.

19. “Hearing on Preliminary Approval” shall mean the hearing held on the joint motion for preliminary approval of the Class Settlement.

20. “Individual Settlement Amount” shall mean the amount calculated for each Class Member, 85% of which is designated as the “State Claims Settlement Amount” and 15% of

which is designated the “FLSA Claims Settlement Amount” (which amount is conditioned on the Class Member timely filing an Opt-In Form).

21. “Participating Class Members” shall mean all Class Members excluding the Opt-Outs and the Unfound.

22. “Net Individual Settlement Amount” shall mean the amount calculated for the payments to individual, Participating Class Members under Section E(2) below.

23. “Opt-In Form” shall mean the Consent to Join form substantially in the form attached hereto as Exhibit 3, which will be sent to each Class Member and by which each Class Member, upon timely completion and return of the form, may opt into the case, consent to join as a party to the FLSA Claims, and request payment of his or her individual FLSA Claims Settlement Amount.

24. “Opt-Out(s)” shall mean any and all persons who timely and validly requests exclusion from the Class in accordance with the terms of the Class Notice.

25. “Opt-Out Request” shall mean a timely and valid request by a Class Member for exclusion from the Class in accordance with the terms of the Class Notice.

26. “Parties” shall mean Providence, ONA, the Class, and the Class Representatives.

27. “Preliminary Approval Date” shall mean the date upon which the Court enters an Order preliminarily approving the Class Settlement, pending notice, an opportunity to submit objections, and a fairness hearing thereon.

28. “Released Claims” shall means any and all wage claims, rights, demands, liabilities and causes of action of every nature and description, whether known or unknown, arising during the period from September 13, 2007 to the Preliminary Approval Date. The Released Claims include, but are not limited to, statutory, constitutional, contractual or common law claims for wages, damages, unpaid costs, penalties, liquidated damages, punitive damages, interest, attorneys’ fees, litigation costs, restitution, or equitable relief, based on or arising out the following categories of allegations: (a) any alleged failure to pay wages; (b) any alleged failure

to timely pay wages due at termination; (c) any alleged failure to timely pay wages; (d) any alleged improper deduction from wages (including any alleged failure to provide itemized wage statements); and (d) any alleged failure to provide meal or rest periods or compensation in lieu thereof. The Released Claims include, without limitation, all claims asserted in the Complaint or the Grievance. The Released Claims include, without limitation, all claims under Oregon Revised Statutes (“O.R.S.”) 652.010 *et. seq.*; 653.010 *et. seq.*; 166.720 *et seq.*, 164.377 *et seq.*, 29 U.S.C. § 201 *et. seq.*, 18 U.S.C. § 1962, 18 U.S.C. § 1343, and any other provision of Oregon or federal law governing or potentially governing wages or penalties, (other than claims for work place injury covered by Oregon Workers’ Compensation statutes). The Released Claims in any of the categories listed above include wage claims which Class Members do not know or suspect may exist in their favor against Providence as of the Preliminary Approval Date.

29. “Released Parties” shall mean Providence, and its present and former parent companies, subsidiaries, successors, predecessors, affiliates (including without limitation, Providence Strategic & Management Services), related entities, and joint ventures, and each of their respective present and former officers, directors, agents, employees, insurers, co-insurers, reinsurers, attorneys, accountants, auditors, advisors, representatives, consultants, pension and welfare benefit plans, plan fiduciaries, administrators, trustees, general and limited partners, predecessors, successors and assigns.

30. “State Claims” shall mean the Third, Fourth, Fifth, Sixth, Seventh and Eighth Claims for Relief of the Complaint or any other claim that was or could have been asserted alleging any violation of Oregon’s wage statutes (including ORS 652.010 *et seq.* or ORS 653.010 *et seq.*) by Providence during the Class Period.

31. “State Claims Settlement Amount” shall mean that portion of the Individual Settlement Amount that is designated as payment for the State Claims and which does not require the Participating Class Member to file any claim form. No State Claims Settlement

Amount will be paid to any Class Member who files an Opt Out form or who is deemed Unfound.

32. "Unfound" shall mean any Class Member whose Class Notice is returned to the Class Administrator as "undeliverable" or similar designation.

### **C. INTENT OF THE SETTLEMENT**

The Parties, through the Class Settlement set forth in this Agreement, intend to achieve the following: (1) entry of an Order approving the Class Settlement and granting the monetary relief set forth in this Agreement to the Participating Class Members; (2) entry of a judgment and dismissal with prejudice of the Action; (3) dismissal with prejudice of the Grievance; and (4) discharge of the Released Parties from any liability for any and all of the Released Claims.

### **D. PROCEDURAL STEPS TO SETTLEMENT**

1. **Preliminary Approval.** Providence and the Class Representatives, through counsel, will jointly submit this Agreement to the Court and will jointly move for the Court's preliminary approval of the Agreement. Each Party shall cooperate to present this Agreement to the Court for preliminary approval in a timely fashion. The Court's preliminary approval of this Settlement shall be embodied in an Order substantially in the form attached hereto as Exhibit 1, and the Parties hereby stipulate to entry of such an Order in the Action.

#### **2. The Administration of the Settlement.**

a. Tilghman & Co., P.C., shall serve as the settlement Administrator.

b. The Administrator shall: (1) send the Class Notice to each Class Member; (2) receive and process Opt-In Forms and Opt-Out Requests from each Class Member; (3) handle inquiries from Class Members concerning the Class Notice; and (4) and prepare such reports and declarations as set forth below.

3. **Notice to Class Members.** Notice shall be provided to Class Members in the following manner:



a. Within sixty (60) calendar days after entry by the Court of its order of preliminary approval, Providence shall provide the Administrator and Class Counsel with a list containing the names, last known addresses and Individual Settlement Amounts for each Class Member. Providence will provide ONA a similar list for each ONA bargaining-unit member that is also a Class Member. Providence shall provide Class Counsel with the calculations and underlying data used to calculate the Individual Settlement Amounts fourteen days before providing the list of names, addresses, and Individual Settlement Amounts to the Administrator. Class Counsel may, at their own expense, hire an independent third party to review the data and calculations. In the case of a dispute over the calculations the Parties agree to negotiate in good faith towards a resolution. If the Parties are unable to resolve such dispute then Providence or Class Counsel on behalf of the Class, may terminate this Agreement. Class Counsel, ONA, the Administrator, and any independent third party shall maintain the confidentiality of both the list of names, last known addresses and Individual Settlement Amounts and the calculations and underlying data, and shall not disclose or use that information for any purpose other than the administration of this Settlement as provided in this Agreement. If Providence determines it needs additional time to assemble the information, Providence will provide notice to the other Parties of the need and all Parties agree to cooperate to adjust the schedule set forth in this Agreement.

b. Within ten (10) calendar days after receiving the above information, the Administrator shall send each Class Member the Class Notice via first-class United States mail. Such Notice shall be in the form attached hereto as Exhibit 2, or as otherwise approved by the Court. An Opt-In Form in the form attached as Exhibit 3, or as otherwise approved by the Court, shall also be included with the Class Notice.

c. Any returned envelopes containing the Class Notice from this mailing with forwarding addresses will be used by the Administrator to locate Class Members. In the event that, prior to the Final Date for Submission of Opt-Ins Forms and Opt-Out Requests, any Notice mailed to a Class Member is returned as having been undelivered by the U.S. Postal Service, the

Administrator shall seek from Class Counsel and, if the Class Member is an ONA bargaining unit member, from ONA, an address correction for such Class Member(s), and a second Notice will be sent to any new or different address obtained. However, nothing in this paragraph shall be deemed to extend or modify the Final Date for Submission of Opt-In Forms and Opt-Out Requests.

d. It will be conclusively presumed that if an envelope containing the Class Notice has not been returned within thirty (30) days of the mailing, the Class Member received the Notice.

#### **4. Reports by Settlement Administrator to Counsel.**

a. On a periodic basis, the Administrator will provide reports to Class Counsel and Defense Counsel updating them as to the number of timely received Opt-In Forms, Opt-Out Requests, the names of individuals deemed Unfound, as well as any objections submitted by Class Members. The Administrator will provide Class and Defense Counsel, date-stamped copies of the original Opt-In, Opt-Out Requests, and any challenges, objection statements, or withdrawal of objection statements on a weekly basis, with seven (7) days after their receipt.

b. Class Counsel shall file all timely Opt-In Forms and all Opt-Out Requests with the Court within 14 days following the Final Date for Completion of Opt-In Forms and Requests for Exclusion.

c. No later than 14 days before the Final Approval Hearing, the Administrator will provide Class Counsel and Defense Counsel with a declaration of due diligence and proof of mailing of the Class Notice and Opt-In Forms. The declaration will specify (a) the number of Class Members to whom Class Notice was sent; (b) the number of Class Members who timely returned Opt-In Forms; (b) the number of timely Opt-Outs; (c) the number of Class Members who the Administrator deemed Unfound; and (d) the number of Class Members who sent objection to the Class Settlement to the Administrator. On the same date, the Administrator will also provide Class Counsel and Defense Counsel a report identifying for each Class Member:

the date of the mailing of the Class Notice and Opt-In Form, the date of any re-mailing, the date of any Opt-In Form, the date of any Opt-Out Request, and the date of any objection to the Class Settlement.

d. Defense Counsel shall file the declaration with the Court at least 7 days before the Final Approval Hearing.

#### **5. Submission and Review of Opt-In Forms**

a. Any Class Member who wishes to receive the FLSA Claims Settlement Amount must complete the Opt-In Form in full, and return it to the Administrator postmarked by the Final Date for Submission of Opt-In Forms and Opt-Out Requests (i.e., the date that is thirty (30) days after the date that the Class Notice is sent to the Class Members).

b. The Administrator shall determine if each Opt-In Form has been signed and completed in full, or is somehow materially deficient, and shall inform Class and Defense Counsel of any such deficiency on a periodic basis. If an Opt-In Form is incomplete, Class Counsel shall send a deficiency/cure letter to the putative Class Member. The putative Class Member will have fourteen (14) days from the date that the deficiency/cure letter is sent to correct the deficiency.

c. Any person who fails to submit a timely and valid Opt-In Form shall not receive the Class Members' FLSA Claims Settlement Amount. A Class Member who does not timely submit a valid Opt-In Form is nonetheless bound by the provisions of this Agreement with regard to the State Class Claims, including without limitation Section H (Releases, Dismissals, and Waivers).

d. Any person who timely submits both an Opt-In Form and an Opt-Out Request shall be deemed to have submitted only a valid Opt-In Form and the Opt-Out Request shall be deemed null and void.

#### **6. Resolution of Disputes Concerning Opt-In Forms or Opt-Out Requests.**

If any dispute arises with regard to (a) any material deficiency in an Opt-In Form or Opt-

Out Request; (b) the validity of any Opt-In Form or Opt-Out Request, or; (c) the timeliness of any Opt-In Form or Opt-Out Request, then the Court shall make a final and binding determination with regard to such dispute. Class Counsel and Defense Counsel will first endeavor in good faith to resolve the dispute.

#### **7. Determination of Unfound**

In the event any Class Notice is returned as undeliverable and Class Counsel is either unable to find a more current address or Class Notice is returned after the Final Date for Submission of Opt-In Form or Opt-Out Request, the Administrator will designate the Class Member as Unfound and the Administrator's determination is final and binding. Any Class Member who is deemed Unfound is nonetheless bound by the provisions of this Agreement with regard to the State Class Claims, including without limitation Section H (Releases, Dismissals, and Waivers).

### **E. SETTLEMENT TERMS**

#### **1. The Settlement Class**

For the purposes of this Agreement, the Parties agree to certification of the Class, as follows:

All current or former non-exempt employees of Providence who worked in Oregon and who used the Oregon Kronos timekeeping system (also known as "Provertime") to record their hours worked between September 13, 2007 and September 13, 2013.

The Parties agree to certification, for purposes of this Class Settlement only, as a class action pursuant to Federal Rule of Civil Procedure 23 and as a collective action under 29 U.S.C. § 216(b). Should for whatever reason the Class Settlement not become final, the fact that the Parties were willing to stipulate to class or collective action certification as part of this Agreement shall have no bearing on, and shall not be admissible in connection with, the issue of whether a class action or collective action should be certified in a non-settlement context in the Action or the Grievance. Providence expressly reserves its right to oppose class and collective

action treatment in the Action and in the Grievance if this Class Settlement does not become final.

## **2. Calculation of the Individual Settlement Amounts**

Providence will pay the Net Individual Settlement Amount to each Participating Class Member, calculated as follows:

a. First, Providence will calculate for each Participating Class Member the Individual Settlement Amount, which will be the highest of the following three alternative amounts for which the Participating Class Member qualifies:

- (1) All Participating Class Members qualify to receive all unpaid wages they sustained since November 1, 2009 caused by a time punch adjustment of 7 minutes or less that changed the direction of rounding adverse to the Participating Class Member. The hourly wage rate to determine the amount of unpaid wages due will be the current base rate for those Participating Class Members who were current employees as of September 13, 2013, or the last base rate for Participating Class Members who were former employees as of September 13, 2013, except for Participating Class Members who are ONA represented nurses at the Providence St. Vincent Medical Center for the period of two years prior to the September 13, 2013, for whom the rate shall be, where overtime is applicable, the contractual overtime rate at the then current rate for changes made in the two-year period before September 13, 2013. For the period prior September 13, 2011, the applicable rate for the Participating Class Members who are ONA represented nurses at the Providence St. Vincent Medical Center shall be the current base rate for those who were current employees as of September 13, 2013, or last base rate for those who were former employees as of September 13, 2013. Providence will not investigate the adjustments to determine if a legitimate reason existed for the adjustment.

Providence will pay a full quarter of an hour, at the applicable wage rate as described above, in each instance of an adverse adjustment of 7 minutes or less; or

(2) Alternatively, any Participating Class Member who was a current employee of Providence as of September 13, 2013, is qualified to receive \$92.00; or

(3) Alternatively, any Participating Class Member whose employment with Providence ended between September 13, 2011 and September 13, 2013 and who was a full time equivalent employee when their employment ended is qualified to receive \$200, while any Participating Class Member whose employment with Providence ended between September 13, 2011 and September 13, 2013 and who was a part time employee when their employment ended is qualified to receive \$150.00, and any Participating Class Member whose employment with Providence ended between September 13, 2011 and September 13, 2013 and who was an on-call employee when their employment ended is qualified to receive \$65.00.

b. Second, each Individual Settlement Amount determined under Section E(2)(a) shall be allocated as follows:

(1) 85% of the Individual Settlement Amount, defined herein as the State Claims Settlement Amount, will be paid to any Participating Class Member without the Class Member taking any other steps; and

(2) The remaining 15% of the Individual Settlement Amount, defined herein as the FLSA Claims Settlement Amount, will be paid to any Participating Class Member who timely files an Opt-In Form, in addition to the State Claims Settlement Amount.

c. Third, each Individual Settlement Amount determined under Section E(2)(b) will be reduced by any payment(s) made to the Participating Class Member in response to any

complaint about unpaid wages or as the result of any audit or investigation into any alleged unpaid wages at any time during the Class Period.

d. Fourth, each Individual Settlement Amount determined under Section E(2)(c) will be reduced by 15% for payment of the Attorney Fee and Expense Award for Class Counsel (as described below in Section E(8), thereby arriving at the Net Individual Settlement Amount for each Participating Class Member.

### **3. Tax Treatment of Settlement Payment**

a. The Parties deem seventy percent (70%) of the amount calculated under Section E(2)(c) to be wages from which legally required state and federal payroll deductions shall be taken and an IRS W-2 form issued by Providence.

b. The Parties deem the remaining thirty percent (30%) of the amount calculated under Section E(2) (c) to be payment for penalties which will not be subject to payroll deductions.

c. Providence will issue such IRS 1099 forms as may be required by law for the portions of the payment deemed to be payments for penalties or attorney fees.

### **4. Enhancement Awards for the Class Representatives and Full Release.**

a. Providence will pay the Class Representatives an Enhancement Award of \$7,500.00 each, for their efforts on behalf of the Class in this Action and for the following Full Release of Claims.

b. In addition to the Release of Claims as defined herein, and in consideration of the Enhancement Award and other benefits provided for in this Agreement, each Class Representative and her successors and assigns forever release and discharge Providence, any of Providence's parent, subsidiary, or related companies, any Providence-sponsored employee benefit plans in which either Class Representative participates, or was participating in, (collectively the "Plans") and all of their respective officers, members, managers, partners, directors, trustees, agents, employees, and all of their successors and assigns (collectively "Releasees") from any and all

claims, actions, causes of action, rights, or damages, including costs and attorneys' fees (other than as provided for by this Agreement), which the Class Representative may have arising out of her employment, on behalf of herself, known, unknown, or later discovered which arose prior to the date the Class Representative signs this Agreement. This release includes but is not limited to, any claims under any local, state, or federal laws prohibiting discrimination in employment, including without limitation the Civil Rights Acts, or the Oregon State Law Against Discrimination, the Americans with Disabilities Act, the Age Discrimination in Employment Act, or claims under the Employee Retirement Income Security Act, or claims alleging any legal restriction on Providence's right to discipline, demote or terminate its employees, any claims the Class Representative has relating to her rights to or against any of the Plans, or personal injury claims, including without limitation wrongful discharge, retaliation, breach of contract, defamation, tortious interference with business expectancy, constructive discharge, or infliction of emotional distress. Each Class Representative represents that she has not filed any claim against Providence or its Releasees, and that she will not do so at any time in the future concerning claims released in this Agreement. By signing this Agreement, each Class Representative affirmatively represents that she has not filed any claim against Providence or any of its Releasees, and is affirming that she will not file any claim released in this Agreement in the future, other than any pending claims for workers' compensation benefits. In addition, to the extent required by law, each Class Representative is not prohibited from filing or participating in an administrative claim with the Equal Employment Opportunity Commission ("EEOC"), but because the Class Representative is receiving payment under this Agreement, she waives any right to receive monetary relief as a result of any EEOC proceeding or subsequent individual or EEOC lawsuits.

c. The Enhancement Awards paid to the Class Representative shall be in addition to any distribution to which she may otherwise be entitled as a Participating Class Member. The Enhancement Award shall be considered wages, from which legally required state and federal



payroll deductions shall be taken and Providence will issue the Class Representatives an IRS W-2 form reflecting such payments.

#### **5. Manager Training**

Providence agrees that all current managers, directors, supervisors and Chief Nursing Officers, and all newly hired managers, directors, supervisors and Chief Nursing Officers will be provided training on wage and hour laws within six (6) months after the Effective Date or six (6) months after their hire, whichever is later. The training will include the importance of accurate timekeeping and will emphasize that managers may not alter employee time punches without written authorization. The training will also emphasize that any willful violation of the expectations stated in the training, including the prohibition against unauthorized changes to time punches, will result in discipline action, up to and including termination. Providence also agrees to implement new procedures for any time punch change, specifically a new form for authorizing changes which will be signed (or electronically signed or authorized) by both the employee and a manager before a change is made. The Parties agree that wage and hour compliance will be a standing agenda item for the St. Vincent's Labor Management Task Force for one (1) year following the Effective Date.

#### **6. Spot Audits**

Providence agrees that for a period of two years following its implementation of the new form described in the preceding section that it will, at periodic intervals (every 6 months for a period of 2 years), conduct random spot audits of its records to verify use of the aforementioned form when making adjustments to non-exempt employees' Kronos timecards. These audits are privileged and confidential, but Providence will, for a period of two (2) years following the Effective Date, provide to ONA a summary of audit results relating to employees who are ONA bargaining unit members and actions taken in regard to the audit. This summary will include the following information: (1) the number of occasions where the form was present in bargaining unit members' files when adjustments were made to members' Kronos timecards; (2) the

number of occasions where the form was not present in non-exempt bargaining unit members' files when adjustments were made to members' Kronos timecards; and, (3) a short description of actions, if any, taken by Providence following the audits, i.e., counseling, additional training provided, or formal corrective/disciplinary action. ONA understands and agrees that this summary will not include the names of specific managers or bargaining unit members and that ONA is not entitled to records of actions taken by Providence regarding specific managers.

**7. Time for Payment of Individual Settlement Amounts and Enhancement Award to the Class Representatives**

a. Not later than forty (40) calendar days after the Effective Date, the Administrator shall make every effort to mail, by first-class US Mail to the last-known address, the Net Individual Settlement Amount to each Participating Class Member. Concurrently, the Administrator shall transmit to Class Counsel by U.S. Mail: (1) Class Counsel's Attorneys' Fees and Expense Award; and (2) the Enhancement Awards for the Class Representatives.

b. If the Administrator is not able to mail all required payments within the time period set forth above, it shall so inform Class Counsel and Defense Counsel, and provide an approximate date by which the Net Individual Settlement Amounts will be mailed.

c. Under no circumstances shall the Administrator distribute checks to Participating Class Members until jointly instructed by Class Counsel and Defense Counsel that distribution is appropriate and timely under this Agreement and any order of the Court.

d. Within ten (10) business days of mailing the Net Individual Settlement Amounts to Class Members, the Administrator shall file with the Court and provide to Class Counsel a declaration of payment.

e. Settlement checks that remain uncashed after ninety days from mailing or which are returned after mailing shall be returned to Providence and shall be Providence's property, and the funds to pay those checks shall revert to Providence.

## **8. Class Counsel Attorneys' Fees and Expense Award.**

a. Subject to Court approval at the Final Approval hearing, Class Counsel will receive as its Attorney Fees and Expense Award, fifteen percent (15%) of the total of the Individual Settlement Amounts paid to Participating Class Members under Section E(2)(c) above. If fifteen percent (15%) of the Individual Settlement Amounts paid to Participating Class Members under Section E(2)(c) totals less than \$225,000, then Providence will pay an additional amount to Class Counsel as needed to increase the amount of the Attorney Fee Expense Award to \$225,000. For example, if fifteen percent (15%) of the Individual Settlement Amounts paid to Participating Class Members under Section E(2)(c) totals \$180,000, then Providence will pay an additional \$45,000.00 to Class Counsel. If fifteen percent (15%) of the Individual Settlement Amounts paid to Participating Class Members under section E(2)(c) totals more than \$225,000, say for example \$400,000, then Class Counsel will receive that greater amount (e.g., \$400,000) from the Individual Settlement Amounts, with no additional payment by Providence. Providence will issue IRS Form(s) 1099 for the Fees and Expense Award, or any portion thereof, as required.

b. As a condition of this Agreement, the Class, the Class Representatives, Class Counsel, and ONA agree to not to pursue any attorney fees or cost recovery in the Action or the Grievance except for the Attorney Fees and Expense Award agreed to in this Agreement.

c. The Parties agree that the Attorney Fee and Expense Award satisfies all claims in the Action and in the Grievance for attorney fees or costs including: (a) all work performed and costs incurred by any attorney purporting to represent the Class, ONA, or ONA's members through the date of this Agreement; (b) all work to be performed and costs to be incurred in connection with approval by the Court of the Class Settlement; and (c) all work and costs, if any, incurred in connection with administering the Settlement through dismissal of the Action and the Grievance with prejudice.

d. The Attorney Fee and Expense Award, if approved by the Court, shall be paid by the Settlement Administrator according to the timeline set forth in Section E(7) above.

e. Providence shall bear its own fees and costs of every kind in connection with the Action and the negotiation of the settlement of the Action and the Grievance.

#### **9. Extension of Time to Pay and/or Process Claims**

The Parties agree that if the Administrator needs more time than is provided under this Agreement to complete any of its obligations, then the Administrator may request, in writing, such additional time (including an explanation of the need for additional time) from Defense Counsel and Class Counsel. If Defense Counsel and/or Class Counsel do not agree, in writing, to the Administrator's request for additional time, the Administrator may seek such additional time from the Court.

#### **10. No Effect on Employee Benefit Plans**

Neither the Class Settlement nor any amounts paid under the Class Settlement will modify any previously credited hours or days of service under any employee benefit plan, policy or bonus program sponsored by Providence. Such amounts will not form the basis for additional contributions to, benefits under, or any other monetary entitlement under Providence's sponsored benefit plans, policies or bonus programs. The payments made under the terms of this Agreement shall not be applied retroactively, currently, or on a going forward basis, as salary, earnings, wages, or any other form of compensation for the purposes of any of Providence's benefit plan, policy or bonus program. Providence retains the right to modify the language of its benefits plans, policies and bonus programs to effect this intent, and to make clear that any amounts paid pursuant to this Agreement are not for "hours worked," "hours paid," "hours of service," or any similar measuring term as defined by applicable plans, policies and bonus programs for purpose of eligibility, vesting, benefit accrual, or any other purpose, and that additional contributions or benefits are not required by this Agreement.

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

### **1. Non-approval of the Agreement**

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

### **2. Invalidation**

Invalidation of any material portion of this Agreement shall invalidate this Agreement in its entirety, unless the Parties shall subsequently agree in writing that the remaining provisions of the Agreement remain in full force and effect.

### **3. Stay Upon Appeal**

In the event of a timely appeal from the judgment and dismissal, the Parties agree that judgment shall be stayed, and the no payment shall be due or shall be paid to Participating Class Members, the Class Representatives, or to Class Counsel, and any actions required by this Agreement shall not take place until all appeal rights have been exhausted by operation of law.

### **4. Providence's Right to Withdraw Based on Opt-Outs**

If more than ten percent (10%) combined of all Class Members have filed proper and timely Opt-Out Requests in accordance with the provisions of the Class Notice, Providence shall have the sole and absolute discretion to terminate this Agreement. In the event Providence elects to so terminate this Agreement, Providence shall, at its own expense, provide such Notice of Termination in writing by first-class United States mail to Class Counsel and each Class Member no later than thirty (30) calendar days after the Administrator notifies the parties of the

all valid and timely Opt-Outs. If Providence elects to so to terminate this Agreement, it shall be responsible for all costs of administration incurred up to the date of termination. If Providence elects to so terminate, such termination shall have the same effect as would non-approval pursuant under this Section.

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

1. The Final Approval Hearing shall be held before the Court as soon as practical after the completion of the class administration.

2. At the Final Approval Hearing, Class Members and Providence shall jointly move the Court for entry of a final order, certifying the Class for settlement purposes only, approving the Agreement as being fair, reasonable and adequate to the Class Members within the meaning of Rule 23 of the Federal Rules of Civil Procedure, certifying the Action as a collective action under the FLSA, and for the entry of a Final Judgment of Dismissal with Prejudice of the Action consistent with the terms of the Agreement. Class Counsel and Defense Counsel shall submit to the Court such pleading and/or evidence as may be required for the Court's determination.

3. At the Final Approval Hearing, the Court will, among other things, be asked to enter an Order permanently enjoining all Class Members from pursuing and/or seeking to reopen claims for unpaid compensation and related penalties, as are included within the Released Claims.

#### **H. RELEASES, DISMISSALS, AND WAIVERS**

1. **Scope of Release.** Upon approval of this Agreement at the Final Approval Hearing, the Class, including each Class Member, and the Class Representatives, each release the Released Parties, and each of them, of and from any and all of the Released Claims.

2. **Dismissal of All Claims with Prejudice in the Action.** The Parties intend to include within the effect of this Agreement the dismissal with prejudice of any and all claims, damages, causes of action, and claims for attorneys' fees, asserted in the Action, subject to the terms and conditions of this Agreement. The Parties also agree that upon the Final Approval Date, all the

claims, damages, and causes of action, and claims for attorneys' fees, that were asserted in the Action and all claims reasonably related to those asserted in the Action, including the Released Claims, are fully and finally resolved, and are to be dismissed with prejudice as to each and every Class Member, except those who are Opt-Outs.

**3. Dismissal with Prejudice of Grievance.** ONA agrees that upon the Final Approval Date, all the claims, damages, and causes of action, and claims for attorneys' fees, that were asserted in the Grievance and all claims reasonably related to those asserted in the Grievance, including the Released Claims, are to be deemed fully and finally resolved, and that the Grievance is dismissed with prejudice. ONA further agrees that it will not commence any new Grievances relating to any matters raised in the Action or the Grievance at any other Providence facility or ministry.

## **I. DUTIES OF THE PARTIES**

### **1. Mutual Full Cooperation**

The Parties agree to cooperate fully with one another to accomplish and implement the terms of this Agreement. Such cooperation shall include, but not be limited to, execution of such other documents and the taking of such other actions as may be reasonably necessary to fulfill the terms of this Agreement. The Parties shall use their best efforts, including all efforts contemplated by this Agreement and any other efforts that may become necessary by Court Order, or otherwise, to effectuate this Agreement and the terms set forth herein. As soon as practicable after execution of this Agreement, Class Counsel and Counsel for ONA with the cooperation of Providence and Defense Counsel shall take all necessary and reasonable steps to secure the Court's Final Approval of this Agreement.

### **2. Duty to Support and Defend the Agreement**

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

### **3. Mediation Materials**

The Parties agree to continue to abide by their prior agreement governing the Mediation Materials exchanged between the Parties, and further agree that within 40 days of the Effective Date they will destroy, or return to the producing Party, all data and materials which the producing Party had designated as Mediation Materials under that agreement.

## **J. MISCELLANEOUS PROVISIONS**

### **1. Different Facts**

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

### **2. No Prior Assignments**

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

### **3. Non-Admission**

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



#### 4. Press and Other Public Statements

a. On the date that the Class Representatives and Providence file the joint motion for preliminary approval of this Agreement with the Court, Providence and ONA agree to issue the following joint press release:

“Providence Health & Services – Oregon, the Oregon Nurses Association and the plaintiffs in a lawsuit entitled *Thanane v. Providence Health & Services – Oregon*, have reached a proposed settlement over adjustments to employees’ timecards. A notice about the terms of the settlement will be sent to affected employees once the court approves the settlement.

Several employees at Providence discovered that their timecards were being adjusted in a way they believed reduced the time they were entitled to be paid. ONA filed a grievance contesting these adjustments. Providence conducted a comprehensive audit which confirmed that on occasion, employee timecards were being adjusted without the proper documentation.

Providence wants to emphasize that it has taken the concerns raised in this process very seriously. Providence has taken steps to make sure its employees are correctly compensated for all time worked, and will continue to do so in the future. It appreciates the individual nurses and employees who brought these alterations forward, and is committed to maintaining our healthy work environment where all employees feel free to raise concerns.”

b. ONA further agrees that it will not publish any newsletter, mass email or flyer with details of the settlement terms until the date that the Class Representatives and Providence file the joint motion for preliminary approval of this Agreement. When providing a status update to its members prior to the date that the Class Representatives and Providence file the joint motion for preliminary approval, ONA agrees that it will publish a status update as follows:

“Providence, ONA and the class action attorneys have been working hard on reaching a settlement. We are now in the process of finalizing the settlement terms, and will give you details as soon as that has been completed, which we anticipate will be in the next 60 days. Should this date change, we will notify you. You may also check the ONA website for any updates if this timeline changes.”

#### **5. Construction**

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

#### **6. Choice of Law**

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

#### **7. Captions and Interpretations**

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

#### **8. Modification**

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

#### **9. Integration Clause**

This Agreement contains the entire agreement between the Parties relating to the settlement of the Action and the Grievance and the transactions contemplated thereby, and all prior or contemporaneous agreements, understandings, representations, and statements, whether

oral or written, and whether by a party or such party's legal counsel, are merged herein. No rights under this Agreement may be waived except in writing.

#### **10. Successors and Assigns**

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

#### **11. Class Counsel Signatories**

Because the Class Members are so numerous, the Parties agree that it is impossible or impractical to have each Class Member sign this Agreement. It is agreed that, for purposes of seeking approval of the Class Settlement, this Agreement may be executed on behalf of the Class by Class Counsel and the Class Representatives.

#### **12. Corporate Signatories**

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

#### **13. Execution in Counterparts**

This Agreement shall be effective, subject to its terms, upon its execution by all of the undersigned. The Parties may execute this Agreement in counterparts, and execution of counterparts shall have the same force and effect as if all Parties had signed the same instrument.

[SIGNATURE PAGE TO FOLLOW]

DATED: \_\_\_\_\_

PROVIDENCE HEALTH & SERVICES – OREGON

By: \_\_\_\_\_

Its: \_\_\_\_\_

DATED: \_\_\_\_\_

CLASS REPRESENTATIVES:

\_\_\_\_\_  
Courtney Thanane

\_\_\_\_\_  
Joni Howe

DATED: \_\_\_\_\_

OREGON NURSES ASSOCIATION

By: \_\_\_\_\_

Its: \_\_\_\_\_

**APPROVED AS TO FORM AND CONTENT**

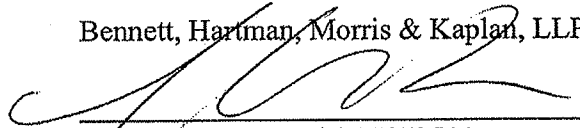
Davis Wright Tremaine LLP

DATED: \_\_\_\_\_

\_\_\_\_\_  
Christopher F. McCracken, OSB #894002  
Sarah E. Ames, OSB #132675  
Attorneys for Providence

Bennett, Hartman, Morris & Kaplan, LLP

DATED: 11/25/2014

  
\_\_\_\_\_  
Thomas K. Doyle, OSB#972511  
Attorneys for Class Representatives and Proposed  
Class Counsel

DATED: \_\_\_\_\_

PROVIDENCE HEALTH & SERVICES – OREGON

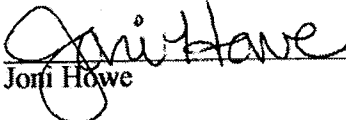
By: \_\_\_\_\_

Its: \_\_\_\_\_

DATED: 11/25/14

CLASS REPRESENTATIVES:

\_\_\_\_\_  
Courtney Thanane

  
\_\_\_\_\_  
Joni Howe

DATED: \_\_\_\_\_

OREGON NURSES ASSOCIATION

By: \_\_\_\_\_

Its: \_\_\_\_\_

**APPROVED AS TO FORM AND CONTENT**

Davis Wright Tremaine LLP

DATED: \_\_\_\_\_

\_\_\_\_\_  
Christopher F. McCracken, OSB #894002  
Sarah E. Ames, OSB #132675  
Attorneys for Providence

Bennett, Hartman, Morris & Kaplan, LLP

DATED: \_\_\_\_\_

\_\_\_\_\_  
Thomas K. Doyle, OSB#972511  
Attorneys for Class Representatives and Proposed  
Class Counsel

DATED: \_\_\_\_\_

PROVIDENCE HEALTH & SERVICES – OREGON

By: \_\_\_\_\_

Its: \_\_\_\_\_

DATED: 11/25/2014

CLASS REPRESENTATIVES:

  
\_\_\_\_\_  
Courtney Thanane

\_\_\_\_\_  
Joni Howe

DATED: \_\_\_\_\_

OREGON NURSES ASSOCIATION

By: \_\_\_\_\_

Its: \_\_\_\_\_

**APPROVED AS TO FORM AND CONTENT**

Davis Wright Tremaine LLP

DATED: \_\_\_\_\_

\_\_\_\_\_  
Christopher F. McCracken, OSB #894002  
Sarah E. Ames, OSB #132675  
Attorneys for Providence

Bennett, Hartman, Morris & Kaplan, LLP

DATED: \_\_\_\_\_

\_\_\_\_\_  
Thomas K. Doyle, OSB#972511  
Attorneys for Class Representatives and Proposed  
Class Counsel

DATED: \_\_\_\_\_ PROVIDENCE HEALTH & SERVICES – OREGON  
By: \_\_\_\_\_  
Its: \_\_\_\_\_

DATED: \_\_\_\_\_ CLASS REPRESENTATIVES:  
  
\_\_\_\_\_  
Courtney Thanane

\_\_\_\_\_  
Joni Howe

DATED: Nov 24, 2014 OREGON NURSES ASSOCIATION  
By: \_\_\_\_\_  
Its: Legal Counsel

**APPROVED AS TO FORM AND CONTENT**

Davis Wright Tremaine LLP

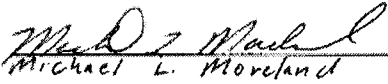
DATED: \_\_\_\_\_  
\_\_\_\_\_  
Christopher F. McCracken, OSB #894002  
Sarah E. Ames, OSB #132675  
Attorneys for Providence

Bennett, Hartman, Morris & Kaplan, LLP

DATED: \_\_\_\_\_  
\_\_\_\_\_  
Thomas K. Doyle, OSB#972511  
Attorneys for Class Representatives and Proposed  
Class Counsel

DATED: 9/24/14

PROVIDENCE HEALTH & SERVICES - OREGON

By:   
Michael L. Moreland

Its: Chief Human Resources Officer - Oregon

DATED: \_\_\_\_\_

CLASS REPRESENTATIVES:

\_\_\_\_\_  
Courtney Thanane

\_\_\_\_\_  
Joni Howe

DATED: \_\_\_\_\_

OREGON NURSES ASSOCIATION

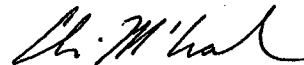
By: \_\_\_\_\_

Its: \_\_\_\_\_

**APPROVED AS TO FORM AND CONTENT**

Davis Wright Tremaine LLP

DATED: 9/24/14



Christopher F. McCracken, OSB #894002  
Sarah E. Ames, OSB #132675  
Attorneys for Providence

Bennett, Hartman, Morris & Kaplan, LLP

DATED: \_\_\_\_\_

\_\_\_\_\_  
Thomas K. Doyle, OSB#972511  
Attorneys for Class Representatives and Proposed  
Class Counsel



**EXHIBIT 1 to SETTLEMENT  
AGREEMENT:  
PRELIMINARY APPROVAL ORDER**

[EXHIBIT 1 TO SETTLEMENT AGREEMENT]

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

**COURTNEY THANANE and JONI HOWE,**

Plaintiffs,

v.

**PROVIDENCE HEALTH & SERVICES –  
OREGON, d.b.a., PROVIDENCE ST.  
VINCENT MEDICAL CENTER,**

Defendant.

Case No. 3:13-cv-01620-MO

**[Proposed] ORDER GRANTING JOINT  
MOTION FOR PRELIMINARY  
APPROVAL OF SETTLEMENT**

The Parties' Joint Motion for Preliminary Approval of Settlement (the "Motion") came on for hearing before the Honorable Michael W. Mosman on \_\_\_\_\_, 201\_. The Court having considered the papers submitted in support of the Motion and having heard oral argument of the Parties,

HEREBY ORDERS THE FOLLOWING:

1. The Court grants preliminary approval of the Class Settlement upon the terms set forth in Settlement Agreement which is attached as Exhibit 1 to Motion. The Class Settlement appears to be fair, adequate, and reasonable to the Class;
2. The Class Settlement falls within the range of reasonableness and appears to be presumptively valid, subject to any objections that may be raised at the Final Approval Hearing;
3. The Court approves, as to form and content, the Notice of A Pending Class Action (the "Class Notice"), attached as Exhibit 2 to the Settlement Agreement, and the Consent to Join form attached as Exhibit 3 to the Settlement Agreement;
4. The Court directs the mailing of the Class Notice and the Consent to Join form by first class mail to the Class Members in accordance with the terms of the Settlement Agreement

and the schedule set forth in the Settlement Agreement. The Court finds that the procedures and dates selected for the mailing, distribution, and return of the Class Notice, the Opt-In Form, the Opt-Out Requests, and for the filing of any objections to the Settlement Agreement, as set forth in the Settlement Agreement, satisfy the requirements of due process and provide the best notice practicable under the circumstances and shall constitute due and sufficient notice to all persons entitled thereto;

5. It is ordered that the Class is preliminary certified, for settlement purposes only, as a class action under Federal Rule of Civil Procedure 23 and as a collective action under Section 216(b) of the Fair Labor Standards Act;

6. The Court confirms Thomas K. Doyle and Bennett, Hartman, Morris & Kaplan, LLP as Class Counsel, and preliminary approves an award of attorney fees to Class Counsel in accordance with Section E(8) of the Settlement Agreement, subject to final approval by the Court after Class Members have had time to file Opt-Out Requests or objections to the Settlement Agreement;

7. The Court confirms Courtney Thanane and Joni Howe as the Class Representatives and grants preliminary approval to the proposed Enhancement Award to them in an amount of \$7,500.00, subject to final approval by the Court after Class Members have had time to file Opt-Out Requests or objections to the Settlement Agreement;

8. The Court hereby approves Tilghman & Co., P.C., as the settlement Administrator; and

9. The Court sets \_\_\_\_\_, \_\_\_\_ 201\_\_, at \_\_\_\_\_ for the Final Approval Hearing.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2014.

---

Hon. Michael W. Mosman  
United States District Court Judge

**EXHIBIT 2 to SETTLEMENT AGREEMENT:**  
**THE CLASS NOTICE**

**NOTICE OF A PENDING CLASS ACTION, A PROPOSED SETTLEMENT OF THAT CLASS ACTION AND THE HEARING DATE FOR COURT APPROVAL OF THE PROPOSED SETTLEMENT**

COURTNEY THANANE and JONI HOWE v. PROVIDENCE HEALTH & SERVICES – OREGON, UNITED STATES DISTRICT COURT, DISTRICT OF OREGON, CASE NO. 3:13-CV-01620-MO

**TO:** All current or former non-exempt employees of Providence Health & Services – Oregon (“Providence”) who worked in Oregon and who used the Oregon Kronos timekeeping system (also known as “Provtime”) to record their hours worked between September 13, 2007 and September 13, 2013.

You are receiving this Notice because Providence’s records reflect that you were employed as a non-exempt employee in Oregon by Providence and that you used the Kronos timekeeping system, also known as “Provtime”, to record your hours worked between September 13, 2007 and September 13, 2013. As a result, you may be eligible to participate in the settlement of a lawsuit.

PLEASE READ THIS NOTICE CAREFULLY. This Notice relates to a proposed settlement of a class action lawsuit and a collective action lawsuit. This notice contains important information about your ability to receive payment as part of that lawsuit, your right to exclude yourself from that lawsuit (and receive no payment), and your right to object to the proposed settlement of that lawsuit.

By order of the United States District Court for the District of Oregon (the “Court”) in the case of *Courtney Thanane, et al. v. Providence Health & Services – Oregon*, Case No. 3:13-CV-01620-MO (the “Lawsuit”), entered on \_\_\_\_\_, \_\_, 201\_\_, the Preliminary Approval Date, YOU ARE NOTIFIED THAT:

A SETTLEMENT AGREEMENT HAS BEEN REACHED BETWEEN THE PARTIES IN THE LAWSUIT. THE SETTLEMENT CLASS AND THE SETTLEMENT COLLECTIVE ACTION CONSISTS OF ALL CURRENT OR FORMER NON-EXEMPT EMPLOYEES OF PROVIDENCE WHO WORKED IN OREGON AND WHO USED THE OREGON KRONOS TIMEKEEPING SYSTEM (ALSO KNOWN AS “PROVTIME”) TO RECORD THEIR HOURS WORKED BETWEEN SEPTEMBER 13, 2007 AND SEPTEMBER 13, 2013.

**BACKGROUND OF THE LAWSUIT**

In May 2013, the Oregon Nurses Association (“ONA”) commenced a Grievance against Providence on behalf of ONA bargaining unit members working at the Providence St. Vincent

Medical Center (the "Grievance"). In the Grievance, ONA alleged that that supervisors at the St. Vincent facility improperly altered employee start and stop times to ensure that the rounding of the employees' hours worked, as computed by the Kronos (or "Provtime") timekeeping system, favored Providence, and that Providence, through the timekeeping system, deducted 30 minutes from employees' time worked for meal breaks which the employees did not take.

On September 13, 2013, Courtney Thanane and Joni Howe (the "Class Representatives") filed a complaint in the Court to start the Lawsuit. On November 24, 2014, the Class Representatives filed an amended complaint in the Lawsuit (the "Complaint"). The Complaint alleges Providence used a Kronos (or "Provtime") timekeeping system that rounded employees' start and stop times. The Complaint further alleges that, as a result of the timekeeping system and policies in place at Providence, Providence did not fully compensate employees for the time they actually worked because incidents of rounding adverse to the employees exceeded incidents of rounding favorable to the employees. The Complaint also alleges that management employees at Providence altered employee's time punches to reduce the employees' recorded hours worked. Finally, the Complaint alleges that Providence deducted meal breaks from employee work hours without regard to whether an employee actually received a meal break.

The Complaint's first and third claims for relief allege that Providence engaged in racketeering activity under 18 U.S.C. § 1962 and O.R.S. § 166.720. The second claim for relief alleges that Providence failed to pay all overtime wages due under 29 U.S.C. § 207. The fourth claim for relief alleges that Providence failed to pay wages due under O.R.S. § 652.120. The fifth claim for relief alleges that Providence failed to pay wages due on termination under O.R.S. § 652.140. The sixth claim for relief alleges unlawful withholding of wages under O.R.S. § 652.610. The seventh alleges failure to pay overtime under O.R.S. § 653.261. The eighth claim for relief alleges common law fraud.

The Complaint asserts these claims on behalf of the Class Representatives and on your behalf as a proposed class action and as a proposed collective action under the Fair Labor Standard Act.

Providence disagrees. Providence disputes all claims asserted in the Grievance and the Lawsuit.

Despite the disagreement, Providence, the ONA and the Class Representatives have expended time and effort in the exchange of information, have met on multiple occasions, and have spent four working days with an experienced settlement judge, to try to resolve the disputes raised in the Grievance and the Lawsuit.

As a result of those efforts, Providence, ONA and the Class Representatives have reached a settlement agreement. Here is a summary of that settlement:

## SUMMARY OF THE PROPOSED SETTLEMENT

### **Payment.**

“Participating Class Members” include all class members except for those class members who cannot be found and those who ask to be excluded from the Lawsuit. Providence will pay each Participating Class Member the greatest of the three, alternative amounts described below for which that Participating Class Member qualifies:

(1) All Participating Class Members qualify to receive all unpaid wages they sustained since November 1, 2009 caused by a time punch adjustment of 7 minutes or less that changed the direction of rounding adverse to the Participating Class Member. The hourly wage rate to determine the amount of unpaid wages due will be the current base rate for those Participating Class Members who were current employees as of September 13, 2013, or the last base rate for Participating Class Members who were former employees as of September 13, 2013, except for Participating Class Members who are ONA represented nurses at the Providence St. Vincent Medical Center for the period of two years prior to the September 13, 2013, for whom the rate shall be, where overtime is applicable, the contractual overtime rate at the then current rate for changes made in the two-year period before September 13, 2013. For the period prior September 13, 2011, the applicable rate for the Participating Class Members who are ONA represented nurses at the Providence St. Vincent Medical Center shall be the current base rate for those who were current employees as of September 13, 2013, or last base rate for those who were former employees as of September 13, 2013. Providence will not investigate the adjustments to determine if a legitimate reason existed for the adjustment. Providence will pay a full quarter of an hour, at the applicable wage rate as described above, in each instance of an adverse adjustment of 7 minutes or less; or

(2) Alternatively, any Participating Class Member who was a current employee of Providence as of September 13, 2013, is qualified to receive \$92.00; or

(3) Alternatively, any Participating Class Member whose employment with Providence ended between September 13, 2011 and September 13, 2013 and who was a full time equivalent employee when their employment ended is qualified to receive \$200, while any Participating Class Member whose employment with Providence ended between September 13, 2011 and September 13, 2013 and who was a part time employee when their employment ended is qualified to receive \$150.00, and any Participating Class Member whose employment with Providence ended between September 13, 2011 and September 13, 2013 and who was an on-call employee when their employment ended is qualified to receive \$65.00. Each class member that participates in the settlement may therefore receive a payment that is different in amount from the payment to other participating class members.

The net amount each Participating Class Member qualifies to receive, as described above, will be reduced in four ways.

First, the Class Representatives in the Lawsuit filed the Lawsuit as both a class action asserting claims based on Oregon state law, and as a collective active asserting claims under federal law, specifically the federal Fair Labor Standards Act (“FLSA”). As part of the settlement, the parties

agree that 85% of each individual class member's recovery is allocated to the state law claims which have been certified as a class action. The parties agree that the remaining 15% of each class member's claim is allocated as a payment for the FLSA claim. If you qualify to receive payment under the settlement, then to recover the 85% portion of your individual recovery, you need to take no action. Assuming you can be found in accordance with the procedures set forth in the Settlement Agreement, Providence will send your payment to you with no action on your part. However, to receive the additional 15% of any individual recovery for which you qualify, you must timely sign and return the enclosed Consent to Join Form. If you do not timely sign and return the Consent to Join Form your recovery will be reduced by fifteen percent (15%).

Second, regardless of whether you consent to join, your recovery, if any, will be reduced by any amounts you have been already paid in response to any complaint about unpaid wages or as the result any audit or investigation into any unpaid wages that may have occurred during the time period covered by the Lawsuit.

Third, your recovery, if any, will be reduced by fifteen percent (15%), which is the amount being paid to the lawyers representing you and the other class members in the Lawsuit.

Fourth, your net recovery, if any, will be reduced by any necessary tax withholding, which will be reported on an IRS Form W-2. Providence will issue, as appropriate, tax forms to those who receive payments under the settlement agreement.

#### **Your Release of Claims.**

You and other class members, except those who request to be excluded from the Lawsuit, will surrender and release Providence and all Providence-related companies from the following "Released Claims" in exchange for the settlement payment:

"Released Claims" means any and all wage claims, rights, demands, liabilities and causes of action of every nature and description, whether known or unknown, arising during the period from September 13, 2007 to the Preliminary Approval Date. The Released Claims include, but are not limited to, statutory, constitutional, contractual or common law claims for wages, damages, unpaid costs, penalties, liquidated damages, punitive damages, interest, attorneys' fees, litigation costs, restitution, or equitable relief, based on or arising out the following categories of allegations: (a) any alleged failure to pay wages; (b) any alleged failure to timely pay wages due at termination; (c) any alleged failure to timely pay wages; (d) any alleged improper deduction from wages (including any alleged failure to provide itemized wage statement); and (d) any alleged failure to provide meal or rest periods or compensation in lieu thereof. The Released Claims include, without limitation, all claims asserted in the Complaint or the Grievance. The Released Claims include, without limitation, all claims under Oregon Revised Statutes ("O.R.S.") 652.010 et. seq.; 653.010 et. seq.; 166.720 et seq., 164.377 et seq., 29 U.S.C. § 201 et. seq., 18 U.S.C. § 1962, 18 U.S.C. § 1343, and any other provision of Oregon or federal law governing or potentially governing wages or penalties, (other than claims for work place injury covered by Oregon Workers' Compensation statutes). The Released Claims in any of the categories listed above include wage claims which you do not know



or suspect may exist in your favor against Providence as of the Preliminary Approval Date.

Under the terms of the settlement agreement your release extends not only to Providence but to all other Providence-related companies, and all employees and other individuals who have worked for those companies.

**Reasonableness of Settlement.**

The Court has given preliminary approval of the settlement and has appointed the Class Representatives and Class Counsel to represent you. The ONA, Class Counsel, the Class Representatives and Providence support this settlement. Among the reasons for support of the settlement are the defenses to liability potentially available to Providence, the risk of denial of class certification by the Court, the inherent risk of trial on the merits, and the delays and uncertainties associated with litigation.

**WHAT ARE YOUR RIGHTS AS A CLASS MEMBER?**

**A. Excluding Yourself from the Settlement.**

If you believe you have an individual claim against Providence pertaining to your employment, you should consult with your own counsel and decide whether you want to participate in the settlement, or whether you wish to exclude yourself from the settlement so you may bring your own lawsuit. If you do not wish to participate in the settlement, you must exclude yourself by sending a request for exclusion to the Administrator at the following address:

Tilghman & Co., P.C.  
Settlement Administration  
P.O. Box 11250  
Birmingham, AL 35202

To exclude yourself, you must sign, date and return by first class U.S. Mail, or the equivalent, a written request stating that you wish to be excluded from the settlement no later than \_\_\_\_\_ . You must send your request to be excluded by United States Postal Service first class mail or the equivalent. Do not use a postage meter as that may not result in a postmark appearing on the envelope containing your request for exclusion. Any person who sends a request for exclusion will not receive a payment from the settlement. If you do not exclude yourself, and the Court grants final approval of the class action and the settlement, then you will be bound by the Court's final judgment.

Do not submit both the Consent to Join form and a request for exclusion. If you submit both a Consent to Join form and a request for exclusion, then your request for exclusion will be invalid, you will be included in the settlement, and you will be bound by the terms of the settlement agreement, including the release of claims.

## **Objection to Settlement.**

You can object to the terms of the settlement before final approval. However, if the court rejects your objection, you will still be bound by the terms of the settlement unless you have submitted a valid and timely request for exclusion.

To object, you must file with the Court, Written Objections and a Notice of Intention to Appear at the Final Approval Hearing. The Court has set the Final Approval Hearing for \_\_\_\_\_, \_\_\_\_\_, at \_\_\_\_\_, before Judge Michael W. Mosman, To file objections with the Court you must file your objections with the Clerk of the United States District Court, 1000 SW Third Avenue, Portland, Oregon 97204, and send copies to the following:

### **Class Counsel:**

Thomas K Doyle  
Bennett, Hartman, Morris & Kaplan  
210 SW Morrison St., Ste. 500  
Portland, OR 97204

### **Providence's Counsel:**

Christopher F. McCracken  
Davis Wright Tremaine LLP  
1300 SW 5<sup>th</sup> Ave., Ste. 2400  
Portland, OR 97201

Any written objections must state each specific reason in support of your objection and any legal support for each objection. Your objections must also state the case name and number, your full name, address, date of birth, and dates of your employment with Providence. To be valid and effective, any objections to final approval of the settlement must be filed with the Clerk of the Court and served on each of the above-listed attorneys no later than \_\_\_\_\_, 2015, which is \_\_\_\_\_ days after the date of the initial mailing of this Notice. You may also enter an appearance in this case through your own attorney if you so desire.

**DO NOT TELEPHONE PROVIDENCE'S COUNSEL, THE COURT, OR THE OFFICE OF THE CLERK FOR MORE INFORMATION REGARDING OBJECTIONS.**

### **EFFECT OF THE SETTLEMENT**

The parties intend the settlement to settle all claims against Providence and the other released parties that have been asserted or could have been asserted in the Grievance or the Lawsuit regarding the employment relationship of the class members with Providence, including, without limitation, claims for unpaid wages, meal breaks, penalties, interest, liquidated damages, and attorney fees. By participating in the settlement, you acknowledge your understanding of the release and agree to abide by it.

If the Lawsuit is not approved by the Court or does not become final for some other reason, the Lawsuit may continue.

### **FINAL SETTLEMENT APPROVAL HEARING**

The Court will hold a hearing in the United States District Court, 1000 SW Third Avenue, Portland, Oregon 97204, in the courtroom of The Honorable Michael W. Mosman, on \_\_\_\_\_, 2015 at \_\_\_\_\_ [time], to determine whether the settlement should be finally approved as fair, reasonable, and adequate. The Court will also be asked to make a final ruling on class counsel's request for attorney fees and an enhanced payment to the two Class

Representatives. This hearing date may be continued or changed without further notice to you. It is not necessary for you to appear at this hearing unless you have timely filed an objection with the Clerk of the Court and wish to be heard by the Court with respect to your objection.

**ADDITIONAL INFORMATION**

This Notice provides just a summary of the basic terms of the settlement. For the precise terms and conditions of the settlement, you should review the detailed "Joint Motion for Preliminary Approval of Settlement" which is on file with the Clerk of the Court and which contains a copy of the parties' settlement agreement. The pleadings and other records in the Lawsuit may be examined at any time. Instructions on how to do that can be found at:

[www.ord.uscourts.gov/index.php/public/researching-court-cases](http://www.ord.uscourts.gov/index.php/public/researching-court-cases).

PLEASE DO NOT TELEPHONE THE COURT OR THE OFFICE OF THE CLERK FOR INFORMATION REGARDING THE SETTLEMENT OR THE CLAIMS PROCESS.

BY ORDER OF THE COURT.

**EXHIBIT 3**  
**CONSENT TO JOIN**

**CONSENT TO JOIN FLSA COLLECTIVE ACTION**

COMPLETE THIS FORM IF YOU WISH TO OBTAIN THE ADDITIONAL 15% SETTLEMENT ALLOCATED TO THE FLSA CLAIMS AS EXPLAINED IN THE NOTICE OF A PENDING CLASS ACTION, A PROPOSED SETTLEMENT OF THAT CLASS ACTION AND THE HEARING DATE FOR COURT APPROVAL OF THE PROPOSED SETTLEMENT

1. I hereby opt-in and consent to join a collective action as a party plaintiff against Providence Health & Services – Oregon to assert claims for unpaid wages as specified in the Complaint and as identified in the Notice of Pendency of Class Action which I have received.
  
2. I understand that certain claims in the Lawsuit are brought under the Fair Labor Standards Act, 29 U.S.C. § 201-219. I understand that by consenting to join this collective action I agree to be bound by any judgment of this Court and by the terms of any Settlement Agreement that the parties have or will enter into. I have received notice of the Settlement Agreement, and I release my claims against Providence as set forth in the Settlement Agreement, which is explained in the Notice of Pendency of Class Action, which I have also received.
  
3. I understand that by this Consent I agree to be represented by the attorneys at Bennett, Hartman, Morris & Kaplan, LLP.

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[Print Your Name]

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[Signature and Date]

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[Street Address]

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[City, State and Zip Code]