

## SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (“**Agreement**”) is made and entered into this 12th day of September 2013 by and between Washington State Nurses Association (“**WSNA**”) and MultiCare Health System (“**MultiCare**”).

### Recitals

A. WSNA is and was the exclusive bargaining representative for registered nurses employed at Good Samaritan Hospital and Tacoma General Hospital of MultiCare, as described more specifically in the collective bargaining agreements between WSNA and MultiCare at each of those facilities, for the time period from October 11, 2007 and before and through the date of this Agreement (“**the Represented Nurses**”).

B. Three individual cases were filed in Pierce County Superior Court against MultiCare. WSNA filed Cause Numbers 10-2-13885-0 (Washington State Nurses Association v. MultiCare Health System d/b/a Tacoma General Hospital) and 10-2-13896-5 (Washington State Nurses Association v. MultiCare Health System d/b/a Good Samaritan Hospital) on October 11, 2010, which asserted, *inter alia*, that MultiCare violated RCW 49.46.130 and RCW 49.52.050 by failing to pay the Represented Nurses for missed rest breaks and violated RCW 49.46.070 by failing to maintain accurate records relating to rest breaks (the “**WSNA Cases**”). These actions were consolidated along with a putative class action lawsuit served on MultiCare on May 27, 2010 and filed on June 11, 2010 by Heidi Malloque and Felicia Rachner, Cause Number 10-2-10146-8 (Malloque et al. v. MultiCare Health System) purporting to represent a class that includes, among others, all the Represented Nurses (the “**Class Case**”). MultiCare answered each of the complaints, denying the allegations and liability, and asserting affirmative defenses. The three cases were consolidated on December 17, 2010 into the Class Case, Cause Number 10-2-10146-8.

C. WSNA and MultiCare desire to resolve their differences and to fully and finally settle any and all claims between them and for and on behalf of the Represented Nurses.

### Agreement

For valuable consideration, including but not limited to the mutual promises contained in this Agreement, and the receipt and sufficiency of which consideration is hereby acknowledged, the parties agree:

1. MultiCare’s Obligations. MultiCare agrees to both retroactive and prospective relief for the benefit of the Represented Nurses.
  - a. Missed Breaks Process to be put into effect by or before the completion of MultiCare’s scheduled system wide introduction of the Kronos time-keeping system, currently scheduled to begin in 2014:
    - (1) Managers of each department or unit of Tacoma General Hospital and Good Samaritan Hospital will adopt mechanisms, practices or policies that assure each Represented Nurse is relieved of patient care duties for a 15-minute rest period

every four hours of work. In no case shall the mechanism used result in a violation of the staffing plan established by the Nurse Staffing committee. Represented Nurses will work cooperatively to implement whatever mechanisms are used in each department or unit. Except in exigent circumstances, RNs will accept a rest break when relief is provided and, in the RN's judgment, patient needs will be met and is consistent with the Nurse Practice Act.

- (2) MultiCare will provide a simple electronic timekeeping system for the Represented Nurses to record missed rest breaks. The Nurse shall record a missed rest break by making an appropriate electronic entry associated with each missed rest break and enter the relevant reason and shall only be required to record a missed rest break one time. Management approval shall not be required in order for a nurse to record or be paid for a missed rest period.
  - (3) Paychecks given to the Represented Nurses will continue to reflect payments for missed rest breaks on a separate category on the paycheck.
  - (4) In the rare case that a missed rest break occurs, the missed rest breaks shall be treated as hours worked and will be compensated at rate of 15 minutes of overtime pay when the missed rest break, counted as if it were additional hours worked, causes the Represented Nurse to exceed forty hours in the work week (or more than eight hours in the day for a nurse on an "8/80" schedule)("Statutory Overtime").
  - (5) MultiCare will not tolerate any retaliation of any kind of a Nurse who requests relief to take a rest period or records a missed rest period. MultiCare will promptly investigate any accusation of retaliation against a Represented Nurse for requesting relief or recording a missed break and take corrective action to ensure that retaliation does not reoccur. In accordance with the principles of a culture of safety, in no case shall MultiCare discipline or counsel a Nurse for recording a missed rest period or requesting relief. This section shall not apply to and does not bar the administration of otherwise permissible counseling or other forms of corrective action in response to performance or behavioral issues concerning an individual employee that may involve breaks.
  - (6) MultiCare will track and provide WSNA department-level data on missed rest breaks on a quarterly basis.
- b. Education Process: MultiCare will conduct mandatory staff meetings in all departments to train all employees on the procedures for rest breaks. Some of the topics covered in this education may be integrated into MultiCare's educational program associated with its roll out of the Kronos time keeping system; after the initial training, MultiCare may, at its discretion chose to repeat some or all of the components of this training on an annual basis. Topics to be covered will include:
- (1) Use of the timekeeping system for documenting missed breaks.

- (2) Each unit's/department's determination as to how it will comply with the process and create unit specific procedures for assuring that the Represented Nurses receive rest breaks.
  - (3) Education on the importance of Represented Nurses taking all their rest breaks and the right of the Represented Nurses to record and be paid for missed rest breaks without fear of retaliation.
  - (4) Training of managers of their responsibility to create conditions which assure the Represented Nurses take their rest breaks.
  - (5) Training of managers that emphasizes that MultiCare will not tolerate retaliation against any Represented Nurse who records a missed rest break or requests relief to take a rest break.
- c. Back Wages, Attorneys' Fees and Costs:

- (1) MultiCare will pay Represented Nurses for back wages due to recorded rest periods that resulted in Statutory Overtime as follows: For Represented Nurses working at Tacoma General Hospital, MultiCare will review payroll records to determine all missed rest breaks which, when treated as hours worked, put the Represented Nurse in Statutory Overtime ("overtime breaks"). MultiCare will pay such Represented Nurses an amount equal to one-third of the amount already paid for the missed overtime breaks since May 27, 2007. MultiCare will upon request supply WSNA with these calculations for verification purposes.
- (2) MultiCare will pay each Represented Nurse employed at Good Samaritan Hospital as of November 30, 2013 an amount equal to the amount paid to the Represented Nurse for missed rest breaks in the previous twelve months.
- (3) MultiCare will pay WSNA's attorneys' fees and costs in this matter in the amount of Three Hundred Fifty Thousand Dollars and No Cents (\$350,000.00).
- (4) MultiCare will make the payments to the Represented Nurses by adding the amount due to the Represented Nurses' regular paychecks no later than December 20, 2013. Payment to Represented Nurses no longer employed will be sent checks to their last known addresses. If the checks are not deposited after 60 days after mailing, 25 percent of the unclaimed funds shall be submitted to the Washington State Legal Foundation and 75 percent shall be submitted to the Washington State Nurses Foundation.

2. WSNA's Obligations. WSNA agrees to undertake the following actions.

- (1) Upon verification of the payment calculation called for in Section 1(c)(1), above, and the approval of the Court as called for by Section 3(h), below, WSNA will dismiss the WSNA Cases, with prejudice and without further cost or attorneys fees.

- (2) WSNA specifically agrees to support this Agreement as a fair settlement of all claims made in the Class Case on behalf of Represented Nurses and others. WSNA will, if necessary and as possible, provide affidavits or other supporting evidence in the Class Case in support of this Agreement even after the WSNA Cases have been dismissed.
- (3) WSNA will not voluntarily cooperate in the prosecution, in any form, of the Class Case. WSNA will not provide the Class with privileged information or attorney work product, and will not authorize its counsel to do so.

3. Additional Provisions.

- a. Each of the individuals signing this Agreement on behalf of a party warrants that he or she has the authority to sign the Agreement and thereby to bind the party on whose behalf he or she signs, and each party hereto warrants that it has the authority to enter into this Agreement and thereby to bind it. This Agreement shall be binding upon the successors and assigns of the parties.
- b. This Agreement is designed strictly for the purpose of compromising and settling disputed claims and matters and avoiding the expense, delay and risks of continued and protracted litigation. It is expressly understood and agreed, as a condition hereof, that this Agreement is not, and shall not, constitute or be construed or characterized as an admission of liability or wrongdoing on the part of any party or an admission of any sort by any party hereto or as evidencing or indicating in any degree an admission of the truth or correctness of any claims asserted or facts alleged. Without limiting the foregoing, the parties expressly agree and acknowledge that this Agreement is not intended to in any way address or apply to the legality or propriety of intermittent as opposed to uninterrupted rest breaks.
- c. To be effective, any notice of breach or default under this Agreement shall be in writing and delivered to the appropriate party at the addresses set forth below, or to such other address as the parties may hereinafter designate. All such notices and other written communications shall be effective upon three (3) business days after having been correctly addressed, postmarked and delivered to the Post Office (or postmarking by the Post Office):

If to WSNA:

Judith A. Huntington, MN, RN  
Executive Director  
Washington State Nurses Association  
575 Andover Park West, Suite 101  
Seattle, WA 98188

And to:

Christine Himmelsbach, MN, RN  
Assistant Executive Director of Labor Relations  
Washington State Nurses Association  
575 Andover Park West, Suite 101  
Seattle, WA 98188

With a copy to:

Carson Glickman-Flora  
Schwerin Campbell Barnard Igtizin & Lavitt  
18 W. Mercer, Suite 400  
Seattle, WA 98119

If to MultiCare, to:

Barbara Barronian  
Assistant General Counsel  
MultiCare Health System  
PO Box 5299, Mailstop 222J-1-LEG  
Tacoma, WA 98415

And to:

Jody Lynn Smith, MBA, PHR  
Director, Employee and Labor Relations  
MultiCare Health System  
PO Box 5299, MS:603-1-HR I  
Tacoma WA 98415-0299

With a copy to:

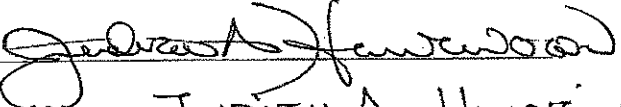
Timothy J. O'Connell  
Stoel Rives, LLP  
600 University St., Ste 3600  
Seattle, WA 98101

- d. The interpretation and enforcement of this Agreement shall be governed by the laws of the State of Washington. Any disputes arising out of this Agreement shall be submitted to the grievance process in the applicable collective bargaining agreement, culminating in final and binding arbitration, if necessary.
- e. This Agreement has been jointly drafted by the parties and their counsel following negotiations between them. It shall be construed according to the fair intent of the language as a whole and not for or against any party.


- f. The parties hereto declare that the terms and conditions of this Agreement have been completely read, reviewed and are fully understood and voluntarily accepted.
- g. This Agreement may be signed in counterpart copies and shall be effective when each party hereto has signed at least one copy. This Agreement is executed by the parties in duplicate, each copy of which shall have the same force and effect as an original. Signatures transmitted by facsimile or PDF (via e-mail) shall be acceptable and just as binding as a signature on the original hereof.
- h. This Agreement is contingent in its entirety upon approval by the Pierce County Superior Court in the Lawsuit as may deemed appropriate and necessary and/or required. The parties agree to fully cooperate to obtain the approval of the Court.

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the date first appearing herein above.

**Washington State Nurses Association**

By:   
 Printed Name: JUDITH A. HUNTINGTON  
 Its: EXECUTIVE DIRECTOR  
 Date signed: 09-12-13

**MultiCare Health System**

By:   
 Printed Name: William T. Greenbeck  
 Its: VP HR  
 Date signed: 9/12/13