

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Jeffrey S. Mitchell Mitchell Law Group 473 Jackson Street, 3rd Floor San Francisco, CA 94111 TELEPHONE NO.: 415-692-7540 E-MAIL ADDRESS (Optional): Jeff@mitchellllawsf.com ATTORNEY FOR (Name): Delores Lee, Petitioner	FOR COURT USE ONLY <div style="text-align: center; font-size: 1.5em; font-weight: bold; margin: 10px 0;">FILED</div> <div style="text-align: center; font-size: 0.8em; margin: 5px 0;">Superior Court of California County of San Francisco</div> <div style="text-align: center; font-size: 1.2em; margin: 10px 0;">FEB 07 2014</div> <div style="text-align: center; font-weight: bold; margin: 10px 0;">CLERK OF THE COURT</div> BY: <u> </u> Deputy Clerk
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO STREET ADDRESS: 400 McAllister Street MAILING ADDRESS: 400 McAllister Street CITY AND ZIP CODE: San Francisco, 94102 BRANCH NAME: Civic Center Courthouse	CASE NUMBER: <div style="font-size: 1.5em; font-weight: bold; margin-top: 10px;">CPF-14 513489</div>
CASE NAME: Ferdinand v. Kaiser, et al.	HEARING DATE: <div style="font-size: 1.2em; margin-top: 10px;">APRIL 10, 2014</div>
PETITION TO APPROVE: <input type="checkbox"/> COMPROMISE OF DISPUTED CLAIM <input checked="" type="checkbox"/> COMPROMISE OF PENDING ACTION <input type="checkbox"/> DISPOSITION OF PROCEEDS OF JUDGMENT <input checked="" type="checkbox"/> Minor <input checked="" type="checkbox"/> Person With a Disability	DEPT.: <u>514</u> TIME: <u>09:00 Am</u>
<div style="text-align: center; font-weight: bold; margin-bottom: 10px;">NOTICE TO PETITIONERS:</div> <p>Except as noted below, you must use this form to request court approval of (1) the compromise of a disputed claim of a minor, (2) the compromise of a pending action or proceeding in which a minor or a person with a disability (including a conservatee) is a party, or (3) the disposition of the proceeds of a judgment for a minor or person with a disability. (See Code Civ. Proc., § 372; Prob. Code, § 3600 et seq.) You and the minor or disabled person must attend the hearing on this petition unless the court for good cause dispenses with a personal appearance. The court may require the presence and testimony of witnesses, including the attending or examining physician, and other evidence relating to the merits of the claim and the nature and extent of the injury, care, treatment, and hospitalization. The court may consider on an expedited basis without a hearing requests for approval of the compromises of certain claims and actions or the disposition of the proceeds of certain judgments. If your claim, action, or judgment qualifies for expedited consideration and you want to request it, you must use form MC-350EX for your request. See Cal. Rules of Court, rule 7.950.5.</p>	

1. **Petitioner (name):** Delores Lee, Guardian ad Litem for minor plaintiff
2. **Claimant (name):** Demorea Ferdinand
- a. **Address:** 665 Miller Drive, Oakley, CA 94561
- b. **Date of birth:** 12-02-2006 c. **Age:** 7 d. **Sex:** M e. ☒ Minor ☒ Person with a disability
3. **Relationship** Petitioner's relationship to the claimant (check all applicable boxes):
- a. ☐ Parent g. ☒ Other relationship (specify:) Great-Grandmother
- b. ☒ Guardian ad litem
- c. ☒ Guardian
- d. ☐ Conservator
- e. ☐ Disabled adult claimant is a petitioner. (See instructions for items 3e and 3f below.)
- f. ☐ Disabled adult claimant's express consent to the relief requested in this petition is provided on Attachment 3f.
(If you checked item 3e or 3f, state facts on Attachment 3e or 3f showing that the claimant has capacity under Probate Code section 812 to petition or consent to a petition. Only an adult claimant who has sufficient capacity and who does not have a conservator of the estate may petition or consent to a petition. See Probate Code section 3613.)
4. **Nature of claim** The claim of the minor or adult person with a disability:
- a. ☒ Has not been filed in an action or proceeding. (Complete items 5-23.)
- b. ☐ Is the subject of a pending action or proceeding that will be compromised without a trial on the merits of the claim.
- Name of court:** S
- Case no.:** Trial date: (Complete items 5-23.)

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4. **Nature of claim** The claim of the minor or adult person with a disability:
 c. ☒ Is the subject of a pending action or proceeding that has been or will be reduced to a judgment for the claimant against the defendants named below in the total amount (exclusive of interest and costs) of (specify below):

\$ 4,000,000.00

Defendants (names)

Kaiser Foundation Hospitals; Kaiser Foundation Health Plan, Inc.; and The Permanente Medical Group

☐ Additional defendants listed on Attachment 4. ☐ The judgment was filed on (date):
 (Attach a copy of the (proposed) judgment as Attachment 4c and complete items 13-23.)

5. ☒ **Incident or accident** The incident or accident occurred as follows:
 a. Date and time: December 2, 2006 before and during labor and delivery
 b. Place: Kaiser Hospital, San Francisco, CA
 c. Persons involved (names): Physicians and nurses at Kaiser, San Francisco

☐ Continued on Attachment 5.

6. ☒ **Nature of incident or accident**
 The facts, events, and circumstances of the incident or accident are (describe):
 On December 2, 2006, defendants' negligent medical care caused delays in the delivery of the minor plaintiff despite days of signs and symptoms of plaintiff's mother being in labor. The delay in delivery caused plaintiff to sustain catastrophic injuries.

☐ Continued on Attachment 6.

7. ☒ **Injuries**
 The following injuries were sustained by the claimant as a result of the incident or accident (describe):
 Plaintiff sustained severe global developmental delay in all domains – gross/fine motor skills, communication and adaptive; spastic quadriparetic cerebral palsy; symptomatic epilepsy; feeding difficulty; hip dysplasia and probable cortical visual impairment.

☐ Continued on Attachment 7.

8. ☒ **Treatment**
 The claimant received the following care and treatment for the injuries described in item 7 (describe):

The minor plaintiff is seen regularly by a number of specialists, including neurology, physical medicine, orthopedics and educational therapy.

☐ Continued on Attachment 8.

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9. ☒ **Extent of injuries and recovery** (An original or a photocopy of all doctors' reports containing a diagnosis of and prognosis for the claimant's injuries, and a report of the claimant's present condition, must be attached to this petition as Attachment 9. A new report is not necessary so long as a previous report accurately describes the claimant's current condition.)

- a. ☐ The claimant has recovered completely from the effects of the injuries described in item 7, and there are no permanent injuries.
- b. ☐ The claimant has not recovered completely from the effects of the injuries described in item 7, and the following injuries from which the claimant has not recovered are temporary (describe the remaining injuries):

☐ Continued on Attachment 9b.

- c. ☒ The claimant has not recovered completely from the effects of the injuries described in item 7, and the following injuries from which the claimant has not recovered are permanent (describe the permanent injuries):

Global developmental delay; spastic quadriparetic cerebral palsy, symptomatic epilepsy; feeding difficulty; hip dysplasia; and probable cortical visual impairment.

☐ Continued on Attachment 9c.

10. ☒ **Petitioner has made a careful and diligent inquiry and investigation to ascertain the facts relating to the incident or accident in which the claimant was injured; the responsibility for the incident or accident; and the nature, extent, and seriousness of the claimant's injuries. Petitioner fully understands that if the compromise proposed in this petition is approved by the court and is consummated, the claimant will be forever barred from seeking any further recovery of compensation from the settling defendants named below even though the claimant's injuries may in the future appear to be more serious than they are now thought to be.**

11. ☒ **Amount and terms of settlement**

By way of settlement, the defendants named below have offered to pay the following sums to the claimant:

- a. The total amount offered by all defendants named below is (specify):
- b. The defendants and amounts offered by each are as follows (specify):

\$ 4,000,000.00

Kaiser Foundation Hospitals; Kaiser Foundation Health Plan, Inc.;
and The Permanente Medical Group

<u>Defendants (names)</u>	<u>Amounts</u>
	\$
	\$
	\$ 4,000,000.00
	\$
	\$

☐ Defendants and amounts offered continued on Attachment 11.

- c. The terms of settlement are as follows (if the settlement is to be paid in installments, both the total amount and the present value of the settlement must be included):

See Attachment 11 and the Attachments to Petition for Minor's Compromise regarding periodic payments to the Demorea Ferdinand Special Needs Trust.

☐ Continued on Attachment 11.

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12. ☒ Settlement payments to others

- a. ☐ No defendant named in item 11b has offered to pay money to any person or persons other than the claimant to settle claims arising out of the same incident or accident that resulted in the claimant's injury.
- b. ☒ By way of settlement, one or more defendants named in item 11b have also offered to pay money to a person or persons other than claimant to settle claims arising out of the same incident or accident that resulted in the claimant's injury.

(1) The total amount offered by all defendants to others (specify): \$ 100,000.00

(2) Petitioner ☐ is not ☒ is a claimant against the recovery of the claimant (other than for reimbursement for expenses paid by petitioner and listed under item 15).

(If you answered "is," explain in Attachment 12 the circumstances and the effect your claim has on the proposed compromise of the claim described in this petition.)

(3) Petitioner ☒ is not ☐ is a plaintiff in the same action with the claimant.

(If you answered "is," explain in Attachment 12 the circumstances and the effect your claim and its disposition has on the proposed compromise of the claim or action described in this petition.)

(4) ☒ Petitioner would receive money under the proposed settlement.

(5) The settlement payments are to be apportioned and distributed as follows:

<u>Other plaintiffs or claimants (names)</u>	<u>Amounts</u>
Delores Lee, GAL and care provider of minor plaintiff	\$ 100,000.00
	\$
	\$

☐ Additional plaintiffs or claimants and amounts are listed on Attachment 12.

(6) Reasons for the apportionment of the settlement payments between the claimant and each other plaintiff or claimant named above are specified on Attachment 12.

13. The claimant's medical expenses, including medical expenses paid by petitioner and insurers, to be reimbursed from proceeds of settlement or judgment

a. Totals

(1) Total medical expenses: \$ _____

(2) Total outstanding medical expenses to be paid from the proceeds: \$ (3) Total out-of-pocket, co-payments, or deductible payments to be reimbursed from proceeds: \$

b. Medical expenses were paid and are to be reimbursed from proceeds as follows:

(1) ☐ Paid by petitioner in the amount of: \$ (2) ☐ Paid by private health insurance or a self-funded plan under:(a) ☐ An Employee Retirement Income Security Act (ERISA) insured plan.(b) ☐ An ERISA self-funded plan.(c) ☐ A Non-ERISA insured plan.(d) ☐ A Non-ERISA self-funded plan.

(e) Amount paid by plan: \$ _____

(f) Amount of reimbursement to the plan from proceeds of settlement or judgment:

(i) ☐ No reimbursement is requested by the plan.(ii) ☐ Reimbursement is to be made to the plan and:(A) ☐ There is a contractual reduction of \$ (_____)(B) ☐ There is a negotiated reduction of \$ (_____)(C) ☐ No reduction has been agreed to,for a total reimbursement to the plan in the amount of: \$

b. Medical expenses were paid and are to be reimbursed from proceeds as follows:

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14. The claimant's attorney's fees and all other expenses (except medical expenses), including expenses advanced by claimant's attorney or paid or incurred by petitioner to be reimbursed from proceeds of settlement or judgment

a. Total amount of attorney's fees for which court approval is requested: \$668,737.69

(If fees are requested, attach as Attachment 14a, a declaration from the attorney explaining the basis for the request, including a discussion of applicable factors listed in rule 7.955(b) of the Cal. Rules of Court. Respond to item 18a(2) on page 7 and attach a copy of any written attorney fee agreement as Attachment 18a.)

b. The following additional items of expense (other than medical expenses) have been incurred or paid, are reasonable, resulted from the incident or accident, and should be paid out of claimant's share of the proceeds of the settlement or judgment:

Items	Payees (names)	Amounts
Attorneys' costs from plaintiff's co-counsel, Heimberg Barr LLP		\$ 7,152.56
Attorneys' costs from plaintiff's co-counsel, Mitchell Law Group		\$ 12,372.83
Delores Lee, GAL and care provider of Demorea Ferdinand		\$ 100,000.00
Cost Reserve		\$ 30,000.00

☒ Continued on Attachment 14b.

Total: \$ 149,525.39

15. Reimbursement of expenses paid by petitioner

a. ☒ Petitioner has paid none of the claimant's expenses listed in items 13 and 14 for which reimbursement is requested.

b. ☐ Petitioner has paid (or become obligated to pay) the following total amounts of the claimant's expenses for which reimbursement is requested.

- (1) ☐ Medical expenses listed in item 13: \$
- (2) ☐ Attorney's fees included in the total fee amount shown in item 14a: \$
- (3) ☐ Other expenses included in the total shown in item 14b: \$

Total: \$ -0-

(Attach proofs of the expenses incurred and payments made or obligations to pay incurred, e.g., bills or invoices, canceled checks, credit card statements, explanations of benefits from insurers, etc.)

16. Net balance of proceeds for the claimant

The balance of the proceeds of the proposed settlement or judgment remaining for the claimant after payment of all requested fees and expenses is:

\$ 3,042,429.59

17. Summary

- a. Gross amount of proceeds of settlement or judgment for claimant: \$ 4,000,000.00
- b. Medical expenses to be paid from proceeds of settlement or judgment: \$ 139,307.33
- c. Attorney's fees to be paid from proceeds of settlement or judgment: \$ 668,737.69
- d. Expenses (other than medical) to be paid from proceeds of settlement or judgment: \$ 149,525.39
- e. Total of fees and expenses to be paid from proceeds of settlement or judgment (add (b), (c), and (d)): \$ (957,570.41)
- f. Balance of proceeds of settlement or judgment available for claimant after payment of all fees and expenses (subtract (e) from (a)): \$ 3,042,429.59

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18. Information about attorney representing or assisting petitioner

a. (1) ☐ Petitioner has not been represented or assisted by an attorney in preparing this petition or in any other way with respect to the claim asserted. (Go to item 19.)

(2) ☒ Petitioner has been represented or assisted by an attorney in preparing this petition or with respect to the claim asserted. Petitioner and the attorney ☐ do not ☒ do have an agreement for services provided in connection with the claim giving rise to this petition. (If you answered "do," attach a copy of the agreement as Attachment 18a, and complete items 18b.-18f.)

b. The attorney who has represented or assisted petitioner is (name): Jeffrey S. Mitchell and Marsha Fernandez-Barr

(1) State Bar number: 188751 and 200896

(2) Law firm: Mitchell Law Group

(3) Address: 473 Jackson Street, 3rd Floor
San Francisco, CA 94111

Heimberg Barr LLP

800 West Sixth Street, Suite 1500

Los Angeles, California 90017

(4) Telephone number: 415-692-7540

213-213-1500

c. The attorney ☒ has not ☐ has received attorney's fees or other compensation in addition to that requested in this petition for services provided in connection with the claim giving rise to this petition. (If you answered "has," identify the person who paid the fees or other compensation, the amounts paid, and the dates of payment):

From whom (names)

Amounts

Dates

\$
\$
\$
\$
\$

☐ Continued on Attachment 18c.

d. The attorney ☒ did not ☐ did become concerned with this matter, directly or indirectly, at the instance of a party against whom the claim is asserted or a party's insurance carrier. (If you answered "did," explain the circumstances in Attachment 18d.)

e. The attorney ☒ is not ☐ is representing or employed by any other party or any insurance carrier involved in the matter. (If you answered "is," identify the party or carrier and explain the relationship in Attachment 18e.)

f. The attorney ☒ does not ☐ does expect to receive attorney's fees or other compensation in addition to that requested in this petition for services provided in connection with the claim giving rise to this petition. (If you answered "does," identify the person who will pay the fees or other compensation, the amounts to be paid, and the expected dates of payment):

From whom (names)

Amounts

Expected dates

\$
\$
\$
\$
\$

☐ Continued on Attachment 18f.

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19. Disposition of balance of proceeds of settlement or judgment

Petitioner requests that the balance of the proceeds of the settlement or judgment be disbursed as follows:

- a. ☐ There is a guardianship of the estate of the minor or a conservatorship of the estate of the adult person with a disability filed in (*name of court*):

Case no.:

- (1) ☐ \$ _____ of the proceeds in money or other property will be paid or delivered to the guardian of the estate of the minor or the conservator of the estate of the conservatee. The money or other property is specified in Attachment 19a(1).
- (2) ☐ Petitioner is the guardian or conservator of the estate of the minor or the adult person with a disability. Petitioner requests authority to deposit or invest \$ _____ of the money or other property to be paid or delivered under 19a(1) with one or more financial institutions in this state or with a trust company, subject to withdrawal only as authorized by the court. The money or other property and the name, branch, and address of each financial institution or trust company are specified in Attachment 19a(2).
- (3) ☐ Petitioner proposes that all or a portion of the proceeds **not** become part of the guardianship or conservatorship estate. Petitioner requests authority to deposit or transfer these proceeds as follows (*check all that apply*):
- (a) ☐ \$ _____ will be deposited in insured accounts in one or more financial institutions in this state from which no withdrawals can be made without a court order. The name, branch, and address of each depository are specified in Attachment 19a(3).
- (b) ☐ \$ _____ will be invested in a single-premium deferred annuity subject to withdrawal only on order of the court. The terms and conditions of the annuity are specified in Attachment 19a(3).
- (c) ☐ \$ _____ will be transferred to a custodian for the benefit of the minor under the California Uniform Transfers to Minors Act. The name and address of the proposed custodian and the property to be transferred are specified in Attachment 19a(3).
- (d) ☐ \$ _____ will be transferred to the trustee of a trust that is either created by or approved of in the order approving the settlement or the judgment given or to be given for the minor. This trust is revocable when the minor attains the age of 18 years and contains all other terms and conditions determined to be necessary by the court to protect the minor's interests. The terms of the proposed trust and the property to be transferred are specified in Attachment 19a(3). ☐ A copy of the (proposed) judgment is attached as Attachment 4c.
- (e) ☐ \$ _____ will be transferred to the trustee of a special needs trust under Probate Code sections 3602(d) and 3604 for the benefit of the minor or the adult person with a disability. The terms of the proposed special needs trust and the property to be transferred are specified in Attachment 19a(3).

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19. Disposition of balance of proceeds of settlement or judgment (cont.)

Petitioner requests that the balance of the proceeds of the settlement or judgment be disbursed as follows:

- b.
- ☒
- There is no guardianship of the estate of the minor or conservatorship of the estate of the adult person with a disability.

Petitioner requests that the balance of the proceeds of the settlement or judgment be disbursed as follows

(check all that apply):

- (1) ☐ A guardian of the estate of the minor or a conservator of the estate of the adult person with a disability will be appointed. \$ _____ of money and other property will be paid or delivered to the person so appointed. The money or other property are specified in Attachment 19b(1).
- (2) ☐ \$ _____ of money will be deposited in insured accounts in one or more financial institutions in this state, subject to withdrawal only upon the authorization of the court. The name, branch, and address of each depository are specified in Attachment 19b(2).
- (3) ☒ \$ 1,750,000.00 of money will be invested in a single-premium deferred annuity, subject to withdrawal only upon the authorization of the court. The terms and conditions of the annuity are specified in Attachment 19b(3).
- (4) ☒ \$ 1,292,429.59 will be paid or transferred to the trustee of a special needs trust under Probate Code sections 3604 and 3611(c) for the benefit of the minor or the adult person with a disability. The terms of the proposed special needs trust and the money or other property to be paid or transferred are specified in Attachment 19b(4).
- (5) ☐ \$ _____ will be paid or delivered to a parent of the minor, upon the terms and under the conditions specified in Probate Code sections 3401–3402, without bond. The name and address of the parent and the money or other property to be delivered are specified in Attachment 19b(5). (*Value of minor's entire estate, including the money or property to be delivered, must not exceed \$5,000.*)
- (6) ☐ \$ _____ will be transferred to a custodian for the benefit of the minor under the California Uniform Transfers to Minors Act. The name and address of the proposed custodian and the money or other property to be transferred are specified in Attachment 19b(6).
- (7) ☐ \$ _____ will be transferred to the trustee of a trust that is either created by or approved of in the order approving the settlement or the judgment given or to be given for the minor. This trust is revocable when the minor attains the age of 18 years and contains all other terms and conditions determined to be necessary by the court to protect the minor's interests. The terms of the proposed trust and the money or other property to be transferred are specified in Attachment 19b(7).
☐ A copy of the (proposed) judgment is attached as Attachment 4c.
- (8) ☐ \$ _____ of money will be held on such conditions as the court in its discretion determines is in the best interest of the minor or the adult person with a disability. The proposed conditions are specified in Attachment 19b(8). (*Value must not exceed \$20,000.*)
- (9) ☐ \$ _____ of property other than money will be held on such conditions as the court in its discretion determines is in the best interest of the minor or the adult person with a disability. The proposed conditions and the property are specified in Attachment 19b(9).
- (10) ☐ \$ _____ will be deposited with the county treasurer of the County of (name): _____
 The deposit is authorized under and subject to the conditions specified in Probate Code section 3611(h).
- (11) ☐ \$ _____ will be paid or transferred to the adult person with a disability. The money or other property is specified in Attachment 19b(11).
- ☐ Continued on Attachment 19.

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20. ☐ **Statutory liens for special needs trust**

Petitioner requests a court order for payment of funds to a special needs trust (explain how statutory liens under Probate Code section 3604, if any, will be satisfied):

☐ Continued on Attachment 20.

21. ☒ **Additional orders**

Petitioner requests the following additional orders (specify and explain):

Petitioner requests the Court order that within 10 days of receipt by attorneys for payer herein of a fully executed original Release and the Order of the court approving the Petition to Approve the Compromise of the minor plaintiff's claims, payer shall deliver to counsel for petitioner a check in the amount of \$2,250,000 made payable to "Mitchell Law Group as trustee for Demorea Ferdinand" for distribution as approved by the court herein.

☐ Continued on Attachment 21.

22. Petitioner recommends the compromise settlement or the proposed disposition of the proceeds of the judgment for the claimant to the court as being fair, reasonable, and in the best interest of the claimant and requests that the court approve this compromise settlement or proposed disposition and make such other and further orders as may be just and reasonable.

23. Number of pages attached: _____

Date: February 4, 2014

Jeffrey S. Mitchell

(TYPE OR PRINT NAME OF ATTORNEY)

(SIGNATURE OF ATTORNEY)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: 2-5-14

Delores Lee, Guardian ad Litem for minor plaintiff

(TYPE OR PRINT NAME OF PETITIONER)

(SIGNATURE OF PETITIONER)

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ATTACHMENT (Number): 9

(This Attachment may be used with any Judicial Council form.)

Attached is the report regarding the October 24, 2013 exam conducted by Donald M. Olson, M.D. of the Department of Neurology at Lucile Packard Children's Hospital at Stanford. His report details the plaintiff's current medical conditions and diagnoses.

Courthouse News Service

(If the item that this Attachment concerns is made under penalty of perjury, all statements in this Attachment are made under penalty of perjury.)

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(Add pages as required)



STANFORD UNIVERSITY MEDICAL CENTER
DEPARTMENT OF NEUROLOGY AND NEUROLOGICAL SCIENCES
DIVISION OF CHILD NEUROLOGY



Name: Demorea Ferdinand
DOB: 12/2/06
Age at examination: 6 years 10 months
Date of examination: 10/24/13
Location: Stanford, CA
Present at examination: Great grandmother, Mr. Mitchell

History:

Demorea's Great grandmother identifies the following as the main problems he has:

He cannot talk or communicate.
He cannot walk or crawl or sit independently. He can roll over or scoot some, but cannot get to a target elsewhere in the room.
He has hip pain and will need hip surgery.
He cannot feed himself and is at risk of choking if not fed carefully.
He has epileptic seizures which, while controlled at times, have recurred and increased in frequency recently, resulting in a need to restart an anti-seizure medication, levetiracetam, which is now being titrated. Seizures sound tonic or tonic clonic, but could be partial.

Medication:

Levetiracetam 100 mg/mL: 3 mL twice daily; titrating to target of 5 mL twice daily.
Baclofen 10 mg tablets: 1 tablet twice daily
Albuterol: as needed for reactive airway disease; has not needed recently.
Calcium carbonate 500 mg (Tums): 1 daily
Omega-3 fatty acids: daily

Allergies: No known drug or environmental allergies.

Social: He lives with his Great grandmother who is his guardian and primary care giver. Her nephew helps provide care for Demorea. She is approved for 30 hours per month respite.

Review of systems:

HEENT: Head without problems. He has seen a dentist for examinations but has not needed procedures. He has been examined without sedation but the dentist has said he would need sedation for x-rays (and presumably for procedures).

Vision: He can see. He will look at the TV. He will look at people in the room and follow their movements.

Hearing: He responds to noise and voice.

Pulmonary: No known problems except some reactive airway disease which was worse in the past. No recent pneumonia since 3 years old.

Cardiac: No known problems.

GI: Some constipation but managed via diet. He has Miralax available but has not needed it.

Musculoskeletal: Hip problems. He is followed by an orthopedic surgeon who believes he will need hip surgery (osteotomy?) in 2014. He also has tightness of muscles and across joints necessitating various orthoses detailed below.

Dermatologic: No significant skin problems.

Renal: No problems. Probably goes through 6-7 diapers in an average day.

Feeding: Regular food; no formula or caloric supplements. He does not chew well, so relatively tough food has to be cut up small (but not pureed). He needs careful supervision while eating to prevent choking. Usually takes three meals per day. Feeding takes between 30 and 60 minutes.

Toilet/hygiene: Dependent.

Dressing and grooming: Dependent.

Sleep: Usually sleeps well. He goes down about 8 p.m. and usually gets up at 5:45 a.m. Usually sleeps in same bed with Great grandmother.

Physicians:

Pediatrics: Dr. Bassali at the Brentwood Clinic

Neurology: Dr. Mostajelean and NP Kimberly Moffat at Children's Hospital Oakland

Orthopedics: Dr. Scott Hoffinger

Therapies:

Physical therapy and Occupational therapy monthly through CCS. Recently decreased from more frequent sessions due to lack of progression.

Speech therapy at school once a week.

Adaptive equipment:

Bilateral AFOs

Left hand rigid splint and neoprene thumb abduction splint.

Right arm semi-rigid elbow splint.

Stander

Tilt in space wheelchair with head, trunk support.

Overhead lift in home.

Bath Chair

Potty chair.

Van with wheelchair modifications (manual operation)

Physical examination:

Weight: 21.9 kg (25%). Head circumference 48 cm (2nd %)

General: Well groomed. No dysmorphic features. Fussing and crying much of the time, but not in obvious pain.

Head: Atraumatic; symmetrical. Eyes: Clear conjunctivae. Oral: Moist membranes; no obvious dental problem. Neck: Full range of motion; no tenderness or mass.

Spine: Straight without visible defect or tenderness.

Extremities: Full range of motion with slow movements, except at hips: decreased abduction both straight and flexed at hips. Allis sign: longer leg on right by about 2 cm.

Lungs: Clear breath sounds.

Heart: No murmur. Intact pulses.

Abdomen: Soft; non-tender. No hepatomegaly. Male genitalia.

Skin: No rash, jaundice, bruising, or neuro-cutaneous lesions.

Mental status: Awake. Cries easily as if anxious; calms at times to Great grandmother's voice and touch. More upset with examiner. No words or obviously symbolic vocalizations. Unable to follow commands. Aware of people in room and objects of interest based on gaze and change in behavior.

Cranial nerves: Unable to examine fundi. Fixes and follows toys, light transiently. Fixes on face and follows both horizontal (best) and vertical. Unable to check peripheral vision.

Face sensation and movement intact. Hearing intact: changes behavior to various auditory stimuli such as voice, other noises. Deferred gag. Tongue symmetrical. Head control diminished but able to support sitting in midline and lift when supine; too upset to test prone.

Motor: Decreased trunk tone; increased extremity tone all four extremities with spasticity predominating. Tends to scissor legs. Tends to keep fingers flexed and thumbs adducted. No chorea or athetosis. Spontaneous movements mostly reactive, i.e., not reaching for toy of interest. Able to maintain head midline for about 30 seconds with moderate-to-maximum assist sitting. Not able to test weight bearing.

Sensation: Appreciates touch as apparent from changes in behavior.

Reflexes: Hyperactive 3+ in upper extremities, 4+ in lower extremities. Crossed adductor response. Toes extend with plantar stimulation bilaterally.

No seizures witnessed.

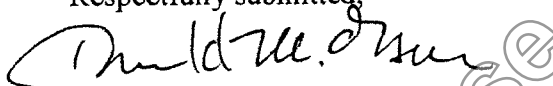
Impression:

Demorea is a nearly 7 year old boy with the following problems:

Global developmental delay: severe in all domains - gross motor, fine motor, communication, and adaptive.
Spastic quadriparetic cerebral palsy.
Symptomatic epilepsy.
Feeding difficulty.
Hip dysplasia.
Probable cortical visual impairment.

He is appropriately characterized as having a severe static encephalopathy. He is dependent for all activities of daily life. It is unlikely he will acquire skills for most such activities, so he will be dependent on others for the rest of his life. This care will include 24 hour a day supervision (i.e., he cannot be left alone in the home), physical therapy intervention primarily to maintain range of motion, meal preparation and feeding, all grooming, dressing and hygiene, and all mobility needs. He will have additional medical needs above and beyond those required by a normally developed child including additional primary care visits as well as care from (at least) neurology, physical medicine, and orthopedic specialists.

Respectfully submitted,


Donald M. Olson, MD
Lucile Packard Children's Hospital at Stanford
Department of Neurology and Neurological Sciences
Division of Child Neurology
Stanford University School of Medicine

Prepared 10/28/13

SHORT TITLE: Ferdinand v. Kaiser, et al.	CASE NUMBER:
--	--------------

ATTACHMENT (Number): 11

(This Attachment may be used with any Judicial Council form.)

Attached is the periodic payment schedule regarding the monthly payments to be made to the Demorea Ferdinand Special Needs Trust. The cost of the periodic payments through Berkshire Hathaway Life of NE is \$1,750,000.

Gross Settlement:	\$4,000,000.00
Less Attorneys' Costs:	\$ 19,525.39
Less Attorneys' Fees:	\$ 668,737.69
Less Reimbursement to Medi-Cal	\$ 139,307.33
Less Payment to GAL for past attendant care	\$ 100,000.00
Less Cost Reserve (for costs incurred but not yet billed)	\$ 30,000.00
Less Cost of Periodic Payments	<u>\$1,750,000.00</u>

Net cash to Demorea Ferdinand Special Needs Trust: \$1,292,429.59

Plaintiff's counsel will use the \$30,000 cost reserve to pay for costs that have been incurred but not yet invoiced. Once the invoices are received and paid, the amount remaining from the \$30,000 cost reserve will be deposited into the Demorea Ferdinand Special Needs Trust.

(If the item that this Attachment concerns is made under penalty of perjury, all statements in this Attachment are made under penalty of perjury.)

Page 16 of 34

(Add pages as required)

**ATTACHMENT TO PETITION
FOR MINOR'S COMPROMISE
FOR:
DEMOREA FERDINAND – DOB: 12/02/2006**

In consideration of the Petition for Minor's Compromise, attached hereto, Kaiser Foundation Hospitals, Kaiser Foundation Health Plan, Inc., and The Permanente Medical Group (the "Releasees"), agrees to pay to Demorea Ferdinand (the "Plaintiff"), according to the schedule as follows (the "Periodic Payments"):

Periodic Payments:

<u>GUARANTEED PAYOUT</u>	<u>EXPECTED PAYOUT</u>
-------------------------------------	-----------------------------------

Periodic Payments made payable to The Demorea Ferdinand Special Needs Trust (the "Payee") according to the schedule as follows (the "Periodic Payments"):

Payable to The Demorea Ferdinand Special Needs Trust:

Monthly Lifetime Payments

\$7,075 paid monthly, for the life of Demorea Ferdinand, guaranteed 30 years.

Commencing 05/01/2014 with the last guaranteed payment 04/01/2044.

\$ 2,547,000

\$4,245,000

The cost of the above Periodic Payments is \$1,750,000.

Following Demorea Ferdinand's death, upon written instruction to BHG Structured Settlements, Inc. ("BHGSS"), the remaining and unpaid certain payments described in this Attachment to Petition for Minor's Compromise shall be commuted in exchange for a lump sum equal to 95% of the present value of the unpaid payments (the "Commutation Payment"), as calculated by Annuity Issuer. The Commutation Payments shall be paid to the person or persons named as the Contingent Payee under the Annuity Contract. Such payments may constitute a specific portion of or all of the certain payments and are not in addition to such payments.

If Demorea Ferdinand has transferred a portion of any specific payment to any other person pursuant to an order of a court under applicable state law, the amount so transferred will first be considered to be part of that portion of said payment that is not subject to commutation (the "Commutable Payments"). If the amount transferred cannot be fully satisfied exclusive of the Commutable Payments, any remaining amount necessary to satisfy said transfer shall be deemed to have been removed from the Commutable Payments.

The present value of the Commutable Payments will be computed by Annuity Issuer at a discount rate equal to the yield of the highest yielding U.S. treasury strip available on the date of death of Demorea Ferdinand's Life plus 200 basis points. The appropriate yield shall be the annual effective yield as reported in the Wall Street Journal (or an equivalent source of such information). If the date of death of the Demorea Ferdinand is not a business day, Annuity Issuer will use the yield reported on the following business day. The Commutation Payment will be determined as of a date not later than 30 days after BHGSS's receipt of proof of death of Demorea Ferdinand. Any remaining portion of payments not subject to commutation will not be commuted nor paid in a lump sum, but will continue to be paid on the specified due date(s) for such payment(s) and to the Beneficiary.

COMMUTABLE PAYMENTS

\$7,075 paid monthly, for the life of Demorea Ferdinand, guaranteed 30 years.

Commencing 05/01/2014 with the last guaranteed payment 04/01/2044.

All sums set forth herein constitute damages on account of personal physical injuries or physical sickness, within the meaning of Section 104(a)(2) of the Internal Revenue Code of 1986, as amended.

Plaintiff's Rights to Payments

The Plaintiff acknowledges that the Periodic Payments cannot be accelerated, deferred, increased or decreased by the Plaintiff or any Payee and no part of the payments called for herein nor any assets of the Releasees is to be subject to execution of any legal process for any obligation in any manner, nor shall any the Plaintiff or any Payee have the power to sell, mortgage, encumber, or anticipate the Periodic Payments, or any part thereof, by assignment or otherwise.

Consent to Qualified Assignment

The Plaintiff acknowledges and agrees that the Releasees may make a "Qualified Assignment" within the meaning of Section 130(c), of the Internal Revenue Code of 1986, as amended, of the Releasees' liability to make the Periodic Payments set forth herein. Specifically, Kaiser Foundation Hospitals, Kaiser Foundation Health Plan, Inc., and The Permanente Medical Group (the "Assignor") and as the payor of the consideration recited herein, shall assign its obligation by signing a Qualified Assignment Release and Pledge Agreement document that transfers their obligation to the Assignee to make the Periodic Payments called for above in this Attachment to Petition for Minor's Compromise to BHG Structured Settlements, Inc. (the "Assignee"). The Assignee's obligation for payment of the Periodic Payments shall be no greater than that of the Releasees (whether by judgment or agreement) immediately preceding the assignment of the Periodic Payments obligation. The parties acknowledge that Columbia Insurance Company and National Indemnity Company have agreed to guaranty the Assignee's payment obligations hereunder, and that such guaranties shall be governed by the terms and conditions of the Corporate Guarantee issued by each respective company. Berkshire Hathaway Life Insurance Company of Nebraska has received high ratings from A. M. Best, (A++) and Standard & Poor's, (AA+). (See attached ratings sheet).

Such assignment shall be accepted by the Plaintiff without right of rejection and shall completely release and discharge the Releasees from the Periodic Payments obligation assigned to the Assignee. The Plaintiff recognizes that the Assignee shall be the sole obligor with respect to the Periodic Payments obligation, and that all other releases with respect to the Periodic Payments obligation that pertain to the liability of the Releasees shall thereupon become final, irrevocable, absolute and non-contingent.

Right to Purchase an Annuity

The Releasees, themselves or through their Assignee, reserve the right to fund the liability to make the Periodic Payments by purchasing a "qualified funding asset", within the meaning of Section 130(d) of the Code, in the form of an annuity policy from Berkshire Hathaway Life Insurance Company of Nebraska. The Assignee shall be the sole owner of the annuity policy and shall have all rights of ownership. The Assignee may have Berkshire Hathaway Life Insurance Company of Nebraska mail payments directly to the Payee. The Plaintiff shall be responsible for maintaining the accuracy of the current mailing address and mortality information for the Plaintiff with the Assignee.

Non-Assignment

None of the Periodic Payments and no rights to or interest in any of the Periodic Payments (all of the foregoing being hereinafter collectively referred to as "Payment Rights") can be

- i. Accelerated, deferred, increased or decreased by any recipient of any of the Periodic Payments; or
- ii. Sold, assigned, pledged, hypothecated or otherwise transferred or encumbered, either directly or indirectly, unless such sale, assignment, pledge, hypothecation or other transfer or encumbrance (any such transaction being hereinafter referred to as a "Transfer") has been approved in advance in a "Qualified Order" as defined in Section 5891(b)(2) of the Code (a "Qualified Order") and otherwise complies with applicable state law, including without limitation any applicable state structured settlement protection statute.

iii. No Successor Payee shall have the power to effect any Transfer of Payment Rights except as provided in sub-paragraph (ii) above, and any other purported Transfer of Payment Rights shall be wholly void. If Payment Rights under this Agreement become the subject of a Transfer approved in accordance with sub-paragraph (ii) above, the rights of any direct or indirect transferee of such Transfer shall be subject to the terms of this Agreement and any defense or claim in recoupment arising hereunder.

Plaintiff's Beneficiary

Any payments to be made after the death of the Plaintiff pursuant to the terms of this Attachment to Petition for Minor's Compromise shall be made to Delores Lee or to such person or entity as shall be designated in writing by the Plaintiff, upon reaching the age of majority, to the Assignee. If no person or entity is so designated by the Plaintiff, or if the person designated is not living at the time of the Plaintiff's death, such payments shall be made to the estate of the Plaintiff. No such designation, nor any revocation thereof, shall be effective unless it is in writing and delivered to the Assignee. The designation must be in a form acceptable to the Assignee before such payments are made.

Discharge of Obligation

The obligation of the Assignee to make each Periodic Payment shall be discharged upon the mailing of a valid check to the designated address or upon electronic transfer in the amount of such payment to the Payee named in this Attachment to Petition for Minor's Compromise. Upon notice from the Payee that a payment was not received, the Assignee will initiate reasonable stop payment action and, upon confirmation that the funds were not negotiated or deposited, the Assignee will process a replacement payment.

¹ This process involves the herein referenced Releasees issuing a check payable to BHG Structured Settlements, Inc. and signing a Qualified Assignment Release and Pledge Agreement document to assign their obligation for these payments to the Assignee.

List of Company Ratings

Company: Berkshire Hathaway Life of NE
Domicile: NE
Established: 1993

Superior. Assigned to companies that have, in our opinion, a superior ability to meet their ongoing obligations to policyholders.

An insurer rated 'AA' has VERY STRONG financial security characteristics, differing only slightly from those rated higher.

The Comdex gives the average percentile ranking of this company in relation to all other companies that have been rated by the rating services. The Comdex Ranking is the percentage of companies that are rated lower than this company.

A Best's Financial Strength Rating opinion addresses the relative ability of an insurer to meet its ongoing insurance obligations. It is not a warranty of a company's financial strength and ability to meet its obligations to policyholders. View our Important Notice: Best's Credit Ratings for a disclaimer notice and complete details at <http://www.ambest.com/ratings/notice>.

Watch list identifiers follow the ratings if the company is on the rating service's watch list. The identifier indicates a possible upgrade (w+), downgrade (w-), or unknown change (w).

The ratings on this report are current as of February 03, 2014. These ratings have been selected by your life insurance advisor from among the ratings assigned to this insurer.

Presented by: J. Douglas Merritt, Ringler Associates, Inc., 1981 N. Broadway, Suite 440, Walnut Creek, CA 94596 Phone: 8003521912 Email: jmerritt@ringlerassociates.com

SHORT TITLE: Ferdinand v. Kaiser, et al.

CASE NUMBER:

ATTACHMENT (Number): 12

(This Attachment may be used with any Judicial Council form.)

Regarding 12(b)(2):

Demorea Ferdinand has lived full time with his great-grandmother and Guardian ad Litem, Delores Lee, since he was 6 months old. Delores Lee has provided in-home attendant care to her great-grandson and claimant, Demorea Ferdinand, for the past 6.5 years. This care is above and beyond that which a parent or great-grandmother usually provides in that Demorea has required 24 hour care since the day he was born for all activities of daily living. Based on plaintiff's expert economist, the past value of attendant care provided by Delores Lee based on the median wage for home health aides between 2007 and 2013 of approximately \$10 an hour for sixteen hours per day, 365 days per year from July 1, 2007 to December 31, 2013, is \$387,794. However, Ms. Lee requests only \$100,000 be paid to her for the past attendant care she has provided to Demorea Ferdinand.

(If the item that this Attachment concerns is made under penalty of perjury, all statements in this Attachment are made under penalty of perjury.)

Page 21 of 34

(Add pages as required)

SHORT TITLE: Ferdinand v. Kaiser, et al.

CASE NUMBER:

ATTACHMENT (Number): 13b(4)

(This Attachment may be used with any Judicial Council form.)

Attached is the February 4, 2014 email correspondence from Ms. Alberta Baral, Collection Representative for the Department of Health Care Services, confirming receipt of plaintiff's counsel's February 3, 2014 email notifying the DHCS that defendants had settled for \$4,000,000.00.

Also attached is Ms. Baral's December 5, 2013 correspondence confirming Medi-Cal's lien of \$139,307.33.

I, Rebecca L. Byrne, am an attorney at law, duly licensed to practice law in all California courts and an Associate with the law firm of Mitchell Law Group, attorneys for plaintiff. I make the following declaration based upon my personal knowledge. If called as a witness, I could and would, testify competently thereto.

On February 4, 2014 at approximately 11:20 a.m., I spoke with Ms. Baral on the phone regarding the settlement in this matter. She confirmed that the final lien amount will be provided within the next week or two. She also confirmed that the final lien will be reduced by the standard 25%. Accordingly, plaintiff requests the Court reserve jurisdiction over this issue until the final lien is confirmed.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 4th day of February, 2014 in San Francisco, California.

Rebecca L. Byrne
Rebecca L. Byrne

(If the item that this Attachment concerns is made under penalty of perjury, all statements in this Attachment are made under penalty of perjury.)

Page 22 of 34

(Add pages as required)

Microsoft

Exchange
Hosted Encryption

rebecca@mitchelllawsf.com

Help

Sign Out

Reply

Reply to All

Forward

From: alberta.baral@dhcs.ca.gov (Authenticated by encryption.messaging.microsoft.com) ✓ Valid Signature (Help)
To: Rebecca@mitchelllawsf.com
Sent: Tue Feb 4, 2014 11:18 AM (4 minutes ago)
Subject: RE: Demorea E Ferdinand [secure]

Rebecca, Please provide the date case settled, so that I may provide you with a final lien.

Thank you

*Alberta Baral, AGPA
Medical Malpractice & Trust Unit
1500 Capital Avenue, Bldg. 172, 3rd Fl
MS 4720
Sacramento, CA. 95814
Ph: (916) 650-0572*

IMPORTANT DHCS WARNING:

Do you need to report a new personal injury case involving a Medi-Cal beneficiary, request an updated lien amount for your court date, or tell us about a settlement on your case? Use the online forms at the Medi-Cal Personal Injury Program web pages http://www.dhcs.ca.gov/services/Pages/TPLRD_PersonalInjuryProgram.aspx. They're faster, cheaper, and better for the environment

This message is intended for the use of the person or entity to which it is addressed and may contain information that is privileged and confidential, the disclosure of which is governed by applicable law. If you are not the intended recipient, or the employee or agent responsible to deliver it to the intended recipient, you are hereby notified that any disclosure, copying or distribution of this information is strictly prohibited. If you have received this message by error, please notify the sender and delete it from the system immediately.

From: Rebecca Byrne [mailto:Rebecca@mitchelllawsf.com]
Sent: Monday, February 03, 2014 3:13 PM
To: Baral, Alberta (DHCS-TPLRD)
Cc: Darrell Lackey
Subject: FW: Demorea E Ferdinand
Importance: High

Dear Ms. Baral:

As a follow-up to Darrell Lackey's email below, this case settled for \$4,000,000.00. We are scheduling a hearing on the Petition for Mino's Compromise and will provide you with that hearing date once it is obtained.

Thank you,
Rebecca

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Rebecca Byrne, Esq.
Mitchell Law Group
473 Jackson Street, Third Floor
San Francisco, CA 94111
T: (415) 692-7540 Ext. 1002
F: (415) 276-9099



From: Darrell Lackey
Sent: Friday, January 31, 2014 3:29 PM
To: 'Baral, Alberta (DHCS-TPLRD)' (Alberta.Baral@dhcs.ca.gov)
Subject: Demoree E Ferdinand
Importance: High

Hello Alberta,

As you know we represent the Ferdinand family in this matter. The DHCA Account Number is C93347785E-002T. This injury date is 12/02/2006. We are in settlement discussions. Can you please send us the current lien amount?

We would really appreciate it. If we could get that as quickly as possible, it would be great. Thank you so much.

-Darrell

Darrell A. Lackey, Office Administrator
Mitchell Law Group
473 Jackson Street, 3rd Floor
San Francisco, CA 94111
T: 415.692.7540
F: 415.276.9099
www.mitchelllawsf.com



Exchange linked description
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[Reply](#)[Reply to All](#)[Forward](#)

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State of California

EDMUND G. BROWN JR., Governor

=====
Department of Health Care Services
Recovery Section, MS 4720
P.O. Box 997425
Sacramento, CA 95899-7425
(916) 650-0572

December 05, 2013

MITCHELL LAW GROUP
473 JACKSON STREET. 3RD FL.
SAN FRANCISCO, CA 94111

RE : DEMOREA E FERDINAND
DHCS Account No. : C93347785E-002T
Injury Date : December 02, 2006
Current Medi-Cal
Paid Services : \$139,307.33

THIS IS NOT THE FINAL LIEN AMOUNT

An itemization of payments made by the Medi-Cal program for medical services related to the beneficiary's injury is enclosed.

When this claim nears settlement, you are required by Welfare and Institutions Code, Sections 14124.76 and 14124.79, to notify us so that we may furnish you with an updated lien amount.

Please notify this office if Med-Pay is available.

ALBERTA BARAL
Collection Representative

Enclosure
CAS3020 (02/12)

25

SHORT TITLE: Ferdinand v. Kaiser, et al.

CASE NUMBER:

ATTACHMENT (Number): 14(a)

(This Attachment may be used with any Judicial Council form.)

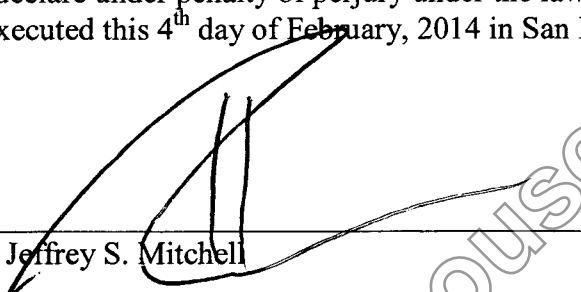
I, Jeffrey S. Mitchell, am an attorney at law, duly licensed to practice law in all California courts and the principal for the law firm of Mitchell Law Group, attorneys for plaintiff. I make the following declaration based upon my personal knowledge. If called as a witness, I could and would, testify competently thereto.

This is a medical negligence case. Pursuant to Business & Professions Code Section 6146, attorneys' fees are limited to the following:

Forty percent of the first fifty-thousand dollars recovered:	\$ 20,000.00
Thirty-three and one-third percent of the next fifty-thousand dollars recovered:	\$ 16,666.50
Twenty-five percent of the next five hundred thousand dollars recovered:	\$125,000.00
Fifteen percent of any amount by which the recovery exceeds six hundred thousand dollars:	<u>\$507,071.19</u>
Total Fees:	\$668,737.69

The attorneys' fees of \$668,737.69 were calculated on the net after costs of \$19,525.39 were deducted from the gross settlement of \$4,000,000.00.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 4th day of February, 2014 in San Francisco, California.



Jeffrey S. Mitchell

(If the item that this Attachment concerns is made under penalty of perjury, all statements in this Attachment are made under penalty of perjury.)

Page 20 of 34
(Add pages as required)

SHORT TITLE: Ferdinand v. Kaiser, et al.

CASE NUMBER:

ATTACHMENT (Number): 14(b)

(This Attachment may be used with any Judicial Council form.)

Plaintiff's counsel requests a \$30,000 cost reserve to pay for costs that have been incurred in pursuing this case, but have not yet been invoiced. Once these invoices are received and paid, the amount remaining from the \$30,000 cost reserve will be deposited into the Demorea Ferdinand Special Needs Trust.

Courthouse News Service

(If the item that this Attachment concerns is made under penalty of perjury, all statements in this Attachment are made under penalty of perjury.)

Page 27 of 34

(Add pages as required)

SHORT TITLE: Ferdinand v. Kaiser, et al.

CASE NUMBER:

ATTACHMENT (Number): 18(a)

(This Attachment may be used with any Judicial Council form.)

Delores Lee, the minor plaintiff's Guardian ad Litem, signed a contingency fee (MICRA) retainer agreement with Heimberg Barr, LLP (formerly Heimberg Law Group LLP) and an Associate Attorney Authorization with Heimberg Barr, LLP and Mitchell Law Group. The Retainer Agreement and Associate Attorney Authorization signed by Delores Lee is "a written fee contract . . . deemed to be a confidential communication within the meaning of subdivision (e) of Section 6068 and of Section 952 of the Evidence Code." (*Business & Professions Code* 6149.) As such, it will not be attached to the Petition, but a copy of the Retainer Agreement and Associate Attorney Authorization will be made available for review by the Court at the hearing on this matter.

Courthouse News Service

(If the item that this Attachment concerns is made under penalty of perjury, all statements in this Attachment are made under penalty of perjury.)

Page 28 of 34
(Add pages as required)

SHORT TITLE: Ferdinand v. Kaiser, et al.

CASE NUMBER:

ATTACHMENT (Number): 19(b)(3)

(This Attachment may be used with any Judicial Council form.)

Attached is the summary of the terms and conditions of the periodic payments that will be deposited into the Demorea Ferdinand Special Needs Trust.

Courthouse News Service

(If the item that this Attachment concerns is made under penalty of perjury, all statements in this Attachment are made under penalty of perjury.)

Page 29 of 34

(Add pages as required)

**ATTACHMENT TO PETITION
FOR MINOR'S COMPROMISE
FOR:
DEMOREA FERDINAND – DOB: 12/02/2006**

In consideration of the Petition for Minor's Compromise, attached hereto, Kaiser Foundation Hospitals, Kaiser Foundation Health Plan, Inc., and The Permanente Medical Group (the "Releasees"), agrees to pay to Demorea Ferdinand (the "Plaintiff"), according to the schedule as follows (the "Periodic Payments"):

Periodic Payments:	<u>GUARANTEED PAYOUT</u>	<u>EXPECTED PAYOUT</u>
Periodic Payments made payable to The Demorea Ferdinand Special Needs Trust (the "Payee") according to the schedule as follows (the "Periodic Payments"):		

Payable to The Demorea Ferdinand Special Needs Trust:

Monthly Lifetime Payments

\$7,075 paid monthly, for the life of Demorea Ferdinand, guaranteed 30 years.

Commencing 05/01/2014 with the last guaranteed payment 04/01/2044.

\$ 2,547,000

\$4,245,000

The cost of the above Periodic Payments is \$1,750,000.

Following Demorea Ferdinand's death, upon written instruction to BHG Structured Settlements, Inc. ("BHGSS"), the remaining and unpaid certain payments described in this Attachment to Petition for Minor's Compromise shall be commuted in exchange for a lump sum equal to 95% of the present value of the unpaid payments (the "Commutation Payment"), as calculated by Annuity Issuer. The Commutation Payments shall be paid to the person or persons named as the Contingent Payee under the Annuity Contract. Such payments may constitute a specific portion of or all of the certain payments and are not in addition to such payments.

If Demorea Ferdinand has transferred a portion of any specific payment to any other person pursuant to an order of a court under applicable state law, the amount so transferred will first be considered to be part of that portion of said payment that is not subject to commutation (the "Commutable Payments"). If the amount transferred cannot be fully satisfied exclusive of the Commutable Payments, any remaining amount necessary to satisfy said transfer shall be deemed to have been removed from the Commutable Payments.

The present value of the Commutable Payments will be computed by Annuity Issuer at a discount rate equal to the yield of the highest yielding U.S. treasury strip available on the date of death of Demorea Ferdinand's Life plus 200 basis points. The appropriate yield shall be the annual effective yield as reported in the Wall Street Journal (or an equivalent source of such information). If the date of death of the Demorea Ferdinand is not a business day, Annuity Issuer will use the yield reported on the following business day. The Commutation Payment will be determined as of a date not later than 30 days after BHGSS's receipt of proof of death of Demorea Ferdinand. Any remaining portion of payments not subject to commutation will not be commuted nor paid in a lump sum, but will continue to be paid on the specified due date(s) for such payment(s) and to the Beneficiary.

COMMUTABLE PAYMENTS

\$7,075 paid monthly, for the life of Demorea Ferdinand, guaranteed 30 years.

Commencing 05/01/2014 with the last guaranteed payment 04/01/2044.

All sums set forth herein constitute damages on account of personal physical injuries or physical sickness, within the meaning of Section 104(a)(2) of the Internal Revenue Code of 1986, as amended.

Plaintiff's Rights to Payments

The Plaintiff acknowledges that the Periodic Payments cannot be accelerated, deferred, increased or decreased by the Plaintiff or any Payee and no part of the payments called for herein nor any assets of the Releasees is to be subject to execution of any legal process for any obligation in any manner, nor shall any the Plaintiff or any Payee have the power to sell, mortgage, encumber, or anticipate the Periodic Payments, or any part thereof, by assignment or otherwise.

Consent to Qualified Assignment¹

The Plaintiff acknowledges and agrees that the Releasees may make a "Qualified Assignment" within the meaning of Section 130(c), of the Internal Revenue Code of 1986, as amended, of the Releasees' liability to make the Periodic Payments set forth herein. Specifically, Kaiser Foundation Hospitals, Kaiser Foundation Health Plan, Inc., and The Permanente Medical Group (the "Assignor") and as the payor of the consideration recited herein, shall assign its obligation by signing a Qualified Assignment Release and Pledge Agreement document that transfers their obligation to the Assignee to make the Periodic Payments called for above in this Attachment to Petition for Minor's Compromise to BHG Structured Settlements, Inc. (the "Assignee"). The Assignee's obligation for payment of the Periodic Payments shall be no greater than that of the Releasees (whether by judgment or agreement) immediately preceding the assignment of the Periodic Payments obligation. The parties acknowledge that Columbia Insurance Company and National Indemnity Company have agreed to guaranty the Assignee's payment obligations hereunder, and that such guaranties shall be governed by the terms and conditions of the Corporate Guarantee issued by each respective company. Berkshire Hathaway Life Insurance Company of Nebraska has received high ratings from A. M. Best, (A++) and Standard & Poor's, (AA+). (See attached ratings sheet).

Such assignment shall be accepted by the Plaintiff without right of rejection and shall completely release and discharge the Releasees from the Periodic Payments obligation assigned to the Assignee. The Plaintiff recognizes that the Assignee shall be the sole obligor with respect to the Periodic Payments obligation, and that all other releases with respect to the Periodic Payments obligation that pertain to the liability of the Releasees shall thereupon become final, irrevocable, absolute and non-contingent.

Right to Purchase an Annuity

The Releasees, themselves or through their Assignee, reserve the right to fund the liability to make the Periodic Payments by purchasing a "qualified funding asset", within the meaning of Section 130(d) of the Code, in the form of an annuity policy from Berkshire Hathaway Life Insurance Company of Nebraska. The Assignee shall be the sole owner of the annuity policy and shall have all rights of ownership. The Assignee may have Berkshire Hathaway Life Insurance Company of Nebraska mail payments directly to the Payee. The Plaintiff shall be responsible for maintaining the accuracy of the current mailing address and mortality information for the Plaintiff with the Assignee.

Non-Assignment

None of the Periodic Payments and no rights to or interest in any of the Periodic Payments (all of the foregoing being hereinafter collectively referred to as "Payment Rights") can be

- i. Accelerated, deferred, increased or decreased by any recipient of any of the Periodic Payments; or
- ii. Sold, assigned, pledged, hypothecated or otherwise transferred or encumbered, either directly or indirectly, unless such sale, assignment, pledge, hypothecation or other transfer or encumbrance (any such transaction being hereinafter referred to as a "Transfer") has been approved in advance in a "Qualified Order" as defined in Section 5891(b)(2) of the Code (a "Qualified Order") and otherwise complies with applicable state law, including without limitation any applicable state structured settlement protection statute.

iii. No Successor Payee shall have the power to effect any Transfer of Payment Rights except as provided in sub-paragraph (ii) above, and any other purported Transfer of Payment Rights shall be wholly void. If Payment Rights under this Agreement become the subject of a Transfer approved in accordance with sub-paragraph (ii) above, the rights of any direct or indirect transferee of such Transfer shall be subject to the terms of this Agreement and any defense or claim in recoupment arising hereunder.

Plaintiff's Beneficiary

Any payments to be made after the death of the Plaintiff pursuant to the terms of this Attachment to Petition for Minor's Compromise shall be made to Delores Lee or to such person or entity as shall be designated in writing by the Plaintiff, upon reaching the age of majority, to the Assignee. If no person or entity is so designated by the Plaintiff, or if the person designated is not living at the time of the Plaintiff's death, such payments shall be made to the estate of the Plaintiff. No such designation, nor any revocation thereof, shall be effective unless it is in writing and delivered to the Assignee. The designation must be in a form acceptable to the Assignee before such payments are made.

Discharge of Obligation

The obligation of the Assignee to make each Periodic Payment shall be discharged upon the mailing of a valid check to the designated address or upon electronic transfer in the amount of such payment to the Payee named in this Attachment to Petition for Minor's Compromise. Upon notice from the Payee that a payment was not received, the Assignee will initiate reasonable stop payment action and, upon confirmation that the funds were not negotiated or deposited, the Assignee will process a replacement payment.

ⁱ This process involves the herein referenced Releasees issuing a check payable to BHG Structured Settlements, Inc. and signing a Qualified Assignment Release and Pledge Agreement document to assign their obligation for these payments to the Assignee.

List of Company Ratings

Company: Berkshire Hathaway Life of NE
Domicile: NE
Established: 1993

Superior. Assigned to companies that have, in our opinion, a superior ability to meet their ongoing obligations to policyholders.

An insurer rated 'AA' has VERY STRONG financial security characteristics, differing only slightly from those rated higher.

The Comdex gives the average percentile ranking of this company in relation to all other companies that have been rated by the rating services. The Comdex Ranking is the percentage of companies that are rated lower than this company.

A Best's Financial Strength Rating opinion addresses the relative ability of an insurer to meet its ongoing insurance obligations. It is not a warranty of a company's financial strength and ability to meet its obligations to policyholders. View our Important Notice: Best's Credit Ratings for a disclaimer notice and complete details at <http://www.ambest.com/ratings/notice>.

Watch list identifiers follow the ratings if the company is on the rating service's watch list. The identifier indicates a possible upgrade (w+), downgrade (w-), or unknown change (w).

The ratings on this report are current as of February 03, 2014. These ratings have been selected by your life insurance advisor from among the ratings assigned to this insurer.

Presented by: J. Douglas Merritt, Ringler Associates, Inc., 1981 N. Broadway, Suite 440, Walnut Creek, CA 94596 Phone: 8003521912 Email: jmerritt@ringlerassociates.com

SHORT TITLE: Ferdinand v.Kaiser, et al.

CASE NUMBER:

ATTACHMENT (Number): 19(b)(4)

(This Attachment may be used with any Judicial Council form.)

The probate action to establish the Demorea Ferdinand Special Needs Trust will be opened and the proposed Special Needs Trust will be submitted to the Court.

Susan Gibbs, Esq., of the Law Office of Susan Gibbs, has been retained to prepare the Special Needs Trust and the Petition for Approval of the Special Needs Trust.

Courthouse News Service

(If the item that this Attachment concerns is made under penalty of perjury, all statements in this Attachment are made under penalty of perjury.)

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(Add pages as required)