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ELECTRONICALLY  
**FILED**

Superior Court of California,  
County of San Francisco

**07/16/2021**  
Clerk of the Court  
BY: JACKIE LAPREVOTTE  
Deputy Clerk

14  
15 **SUPERIOR COURT OF CALIFORNIA**  
16 **COUNTY OF SAN FRANCISCO**  
17 **UNLIMITED JURISDICTION**

18 SHELBY STEWART, CHARLETA  
19 DABROWSKI, BENEDICT JOHNSON, and  
KENYA MAYFIELD, on behalf of themselves  
and all others similarly situated,

20 **Plaintiffs,**

21 v.

22  
23 KAISER FOUNDATION HEALTH PLAN, INC.,  
24 KAISER FOUNDATION HOSPITALS, THE  
PERMANENTE MEDICAL GROUP, INC., and  
25 SOUTHERN CALIFORNIA PERMANENTE  
MEDICAL GROUP,

26 **Defendants.**

**Case No. CGC-21-590966**

PLAINTIFFS' UNOPPOSED MOTION FOR  
PRELIMINARY APPROVAL OF CLASS  
SETTLEMENT AND MEMORANDUM OF  
LAW IN SUPPORT OF MOTION FOR  
PRELIMINARY APPROVAL OF CLASS  
SETTLEMENT

Hearing Date: July 29, 2021

Hearing Time: 2:00pm

Department: 613

Date Action Filed: April 22, 2021

Trial Date: Not Yet Scheduled


1 **NOTICE OF MOTION**

2 **PLEASE TAKE NOTICE** that on July 29, 2021, at 2:00 pm, in Department 613 of this Court,  
3 located at 400 McAllister Street, San Francisco, California 94102, Plaintiffs Shelby Stewart, Charleta  
4 Dabrowski, Benedict Johnson, and Kenya Mayfield, on behalf of themselves and all others similarly  
5 situated, will and hereby do move for an order provisionally certifying the settlement class and  
6 granting preliminary approval of the class action settlement filed herewith.

7 This unopposed Motion is based on this Notice of Motion, Plaintiffs' Memorandum of Points  
8 and Authorities in Support of Motion for Preliminary Approval of the Class Settlement, the supporting  
9 Declaration of Felicia Medina, which include the executed Class and PAGA Settlement Agreement and  
10 Release, a [Proposed] Order Granting Plaintiffs' Motion for Preliminary Approval of the Class  
11 Settlement, and Proposed Notice to the Class, and the supporting Declaration of Kelly Dermody, all  
12 filed with this Notice.

13  
14  
15 DATED: July 16, 2021

Respectfully submitted,

  
\_\_\_\_\_

17 Felicia Medina  
18 Shauna Madison  
19 MEDINA ORTHWEIN LLP

20 Kelly M. Dermody  
21 Jallé Dafa  
22 LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

23 *Attorneys for Plaintiffs Shelby Stewart, Charleta*  
24 *Dabrowski, Benedict Johnson, Kenya Mayfield, and the*  
25 *Class*

26 \_\_\_\_\_  
27 <sup>1</sup> This motion was previously submitted on April 23, 2021. Following the Court's designation of the case as complex, the  
28 case was assigned to Judge Anne-Christine Massulo. The Court then sustained a Peremptory Challenge and reassigned the  
case to Judge Andrew Y.S, Cheng, and set a hearing for the Plaintiffs' Motion for Preliminary Approval. Plaintiffs resubmit  
this motion on instruction by the court.

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 On behalf of themselves, and a class of approximately 2,225 current and former Black employees  
4 at Kaiser Foundation Health Plan, Inc., Kaiser Foundation Hospitals, The Permanente Medical Group,  
5 Inc., and Southern California Permanente Medical Group (collectively, “Kaiser,” “Defendants,” or the  
6 “Company”), Plaintiffs Shelby Stewart, Charleta Dabrowski, Benedict Johnson, and Kenya Mayfield  
7 (together the “Named Plaintiffs”) respectfully request that the Court: (1) conditionally certify the below  
8 defined Class for settlement purposes only, pursuant to Code of Civil Procedure section 382; (2)  
9 preliminarily approve the Class and PAGA Settlement Agreement and Release (hereafter, the  
10 “Settlement”); (3) appoint Medina Orthwein LLP and Lieff Cabraser Heimann & Bernstein LLP Class  
11 Counsel; (4) direct that the Notice be disseminated to the Class; and (5) schedule a final approval hearing.

12 This Settlement was realized prior to the formal initiation of this lawsuit and without in-court  
13 litigation activity. Plaintiffs and Kaiser (the “Parties”) exchanged information (employee data, policy  
14 documents, and interviews of persons most knowledgeable about pay and promotion practices at Kaiser)  
15 and then commenced intense negotiations for more than two years with the assistance of a mediator and  
16 expert labor statisticians. The result of multiple mediations and negotiations related to alleged racial  
17 inequities produced the proposed Settlement Plaintiffs hereby submit. As detailed in Plaintiffs’ complaint,  
18 the Class consists of current and former, full-time, non-union, non-clinical Black employees employed by  
19 the Company from January 1, 2015 until March 31, 2021 (the “Class Period”) at the Director level and  
20 below in the Administrative Support or Consulting Services job families in the California locations of the  
21 Program Offices Region, Northern California Region, Southern California Region, and the KP-IT region  
22 (the “Class”). The Class totals approximately 2,225 members.

23 Plaintiffs allege that Defendants are liable on a class-wide basis for maintaining a policy or practice  
24 of paying Black employees less than their similarly-situated non-Black counterparts and promoting  
25 similarly-situated non-Black employees over similarly-situated Black employees. Plaintiffs brought  
26  
27

1 causes of action for violations of the California Equal Pay Act and the Fair Employment and Housing Act  
2 for, among other things, unequal pay and promotion discrimination.

3 As set forth herein, the Settlement the Parties reached is fair and reasonable in light of the risks  
4 and costs of continued litigation and provides meaningful and prompt relief to Class Members. The  
5 Settlement provides for a non-reversionary monetary fund of \$11,504,759. In addition, the Settlement  
6 provides for robust programmatic relief, paid for by Kaiser, that Plaintiffs believe will help Kaiser to  
7 become a more inclusive and equitable workplace, including significant new programs and extensive work  
8 by an independent third-party expert selected jointly by the Parties.

9 Plaintiffs respectfully submit that they satisfy all elements for certification and settlement  
10 approval. First, Plaintiffs maintain that the Class meets the requirements for class certification for  
11 settlement purposes under Code of Civil Procedure section 382. Second, the Settlement is fair, reasonable,  
12 and adequate, warranting preliminary approval. Third, Plaintiffs maintain that they are adequate to serve  
13 as the Class Representatives. Fourth, Plaintiffs' attorneys are adequate to serve as Class Counsel.<sup>2</sup> Fifth,  
14 the proposed notice procedures, and related forms, fully comport with due process and adequately apprise  
15 the Class Members of their rights. Sixth, and lastly, a final fairness hearing may be scheduled to allow  
16 Class Members an opportunity to be heard regarding the Settlement and to give it finality. Accordingly,  
17 and for the reasons detailed below, the Court should grant this Motion in its entirety.

18 **II. FACTUAL AND PROCEDURAL BACKGROUND**

19 In their Complaint, filed in this Court on April 22, 2021, Plaintiffs allege that Kaiser maintains  
20 common, universal pay and promotion policies and procedures that cause Black employees to be  
21 underpaid and under-promoted as compared to their similarly-situated non-Black counterparts. Plaintiffs  
22 assert five causes of action under the California Fair Employment and Housing Act, Cal. Gov't Code  
23 section 12940, *et seq.* ("FEHA"), the California Equal Pay Act, as amended, Cal. Labor Code § 1197.5  
24 (AKA the California Fair Pay Act) ("California EPA"), the California Unfair Competition Law, Cal. Bus.  
25 & Prof. Code section 17200, *et seq.*, the California Private Attorneys General Act of 2004, Cal. Lab. Code

26 \_\_\_\_\_  
27 <sup>2</sup> The terms "Plaintiffs' Counsel" and "Class Counsel" are interchangeably used in this memorandum to refer to Plaintiffs' attorneys, Medina Orthwein LLP and Loeff Cabraser Heimann & Bernstein LLP.

1 section 2698, *et seq.* (“PAGA”), Title VII of the Civil Rights Act, 42 U.S.C. § 2000e *et seq.* (“Title VII”);  
2 42 U.S.C. § 1981 (“Section 1981”), and related statutes. (Complaint, ¶¶ 63-91.)

3 Plaintiffs’ Counsel began investigating Plaintiffs’ potential claims in October 2018. On August 8,  
4 2019, the Parties entered into a tolling agreement, pursuant to which Plaintiffs and Defendants agreed not  
5 to invoke the statute of limitations or the tolling period as a defense to any proposed action pled by  
6 Plaintiffs or to any affirmative defenses proffered by Defendants. (Medina Decl., ¶ 19.) Over the course  
7 of more than two years, Plaintiffs conducted an extensive pre-filing investigation and engaged in  
8 substantial informal data, document, and witness discovery with Defendants. (*Id.*, ¶ 20.) Following  
9 extensive negotiations, Plaintiffs obtained multiple rounds of class-wide data and retained an expert, Alex  
10 Vekker, Ph.D., to conduct a statistical analysis of pay and promotion disparities across the Class and to  
11 determine the scope and scale of potential Class exposure and risk. (*Id.*, ¶ 23.) The class data production  
12 included 72 variables that reflected Class Members’ compensation and various job attributes, such as: job  
13 history, personnel actions, performance review ratings, job families, functions, departments, manager  
14 levels, EEO category, and salary grade. Plaintiffs’ expert ran multiple sophisticated multivariate  
15 regression analyses to isolate the effect of race on base pay and incentive compensation, and to  
16 demonstrate potential class-wide exposure.<sup>3</sup>

17 Defendants’ document production included hundreds of pages of challenged policies in this action,  
18 including, but not limited to, manuals, guidelines, handbooks, tools, and training materials concerning  
19 compensation, job analysis, promotions, career progressions and management development, performance  
20 reviews, discrimination complaint processes and investigations, workforce surveys, and personnel action  
21 changes. (Medina Decl., ¶ 24.) After reviewing these policies, Plaintiffs’ Counsel conducted in-depth  
22 interviews with four Kaiser managers regarding the Company’s compensation policies, promotion  
23 policies, and performance reviews. (*Id.*)

24  
25  
26 <sup>3</sup> Defendants have informed Plaintiffs that they do not agree with the methodologies that Dr. Vekker used to conduct his  
27 regression analyses but, for purposes of the proposed Settlement only, have agreed not to oppose Plaintiffs’ characterization of  
and reliance on his analyses.

1           Following months of investigation and informal discovery, the Parties participated in a mediation  
2 on September 11, 2019 with David Rotman, a highly regarded mediator with more than 25 years of  
3 experience handling complex class and collective action negotiations. (Medina Decl., ¶ 25.) When the  
4 Parties failed to reach agreement during the first mediation, the Parties continued to negotiate and  
5 participated in an additional mediation with Mediator Rotman on December 6, 2019, during which the  
6 Parties agreed on preliminary monetary settlement. After agreeing on preliminary monetary terms, the  
7 Parties then participated in extensive negotiations regarding programmatic relief in the form of business  
8 practices changes that would address pay equity, promotional opportunities, and diversity, equity, and  
9 inclusion at Kaiser in the future.

10           After a delay caused by the COVID-19 pandemic, Kaiser produced additional pay data for 2020  
11 and for the first quarter of 2021, which the Parties analyzed for additional alleged exposure during the  
12 expanded class period. Following that analysis, the Parties agreed on an expanded non-reversionary  
13 settlement fund of \$11,504,759, the net to be distributed to the Class after fees, expenses, and settlement  
14 administration. This non-reversionary fund of \$11,504,759, along with substantial business practice  
15 changes, more than satisfy the standards for settlement approval of this action. Plaintiffs now move for  
16 preliminary approval, which Defendants do not oppose. (Medina Decl., ¶ 27.)

### 17 **III. OVERVIEW OF THE SETTLEMENT**

18           The complete terms of the Settlement are set forth in the Joint Stipulation of Settlement and  
19 Release, attached as Exhibit 1 to the Medina Declaration. The essential terms are summarized below.

#### 20 **A. Class Definition**

21           The Class is defined as all current and former Black or African-American employees employed by  
22 any of the Kaiser-Related Entities in California in a Covered Position—which is defined as: full-time,  
23 exempt or non-exempt, non-union, non-clinical, Director-level or below jobs in the Administrative  
24 Support or Consulting Services job families as set forth in Appendix 1 to the Settlement—in any of the  
25 following Regions at any time between January 1, 2015 and March 31, 2021: Northern California,  
26  
27

1 Southern California, California locations of the Program Offices Region; and California locations of the  
2 KP-1T Region. (Settlement, ¶¶ III.A.3. and III.A.10.)

3 **B. Monetary Terms**

4 The Settlement establishes a Class Settlement Fund (“CSF”) of \$11,504,759 million, which,  
5 contingent upon Court approval, will be provisionally allocated as follows: 30% to attorneys’ fees, in  
6 addition to reasonably-incurred costs not to exceed \$65,000, \$86,285.70 to the state of California for  
7 settlement of the PAGA claims, Class Representative awards ranging from \$60,000 to \$75,000 for each  
8 Named Plaintiff, claims administration costs, which Plaintiffs estimate to be \$45,000, and a \$50,000  
9 contingency fund to effectuate the purposes of the Settlement. (Settlement, ¶ X.A.) The Settlement Award  
10 Fund (“SAF”) remaining after the foregoing costs are accounted for will be distributed by the Claims  
11 Administrator to participating Settlement Class Members. (Settlement, ¶ III.A.26.) The Claims  
12 Administrator will distribute the NSF to Settlement Class Members based on an allocation formula,  
13 described in more detail in Section V(C) below.

14 Defendants will have fifteen days after Final Approval to pay the CSF, and Class Members will  
15 have three months from mailing of the Notice of Award to cash their checks. (Settlement, ¶ X.E.1.) If  
16 more than \$100,000 of the SAF remains uncashed after the initial three months, the Settlement  
17 Administrator will issue a second distribution to Settlement Class Members. (Settlement, ¶ X.E.2.) Any  
18 undistributed funds after these six months will be distributed to the Equal Justice Society. (*Ibid.*)

19 **C. Non-Monetary Programmatic Relief**

20 The Settlement also contemplates significant programmatic relief addressing pay equity,  
21 promotional opportunities, and diversity, equity, and inclusion, as set forth in more detail in Exhibit B to  
22 the Settlement detailing Business Practice Changes, including but not limited to:

23 1) The retention of an independent expert industrial organizational psychologist (“I/O  
24 Psychologist”), chosen by both parties and paid for by Defendants, to:

1 a) Develop and manage a thorough job analysis review. This review will be completed within  
2 one year (from the Effective Date of the Settlement), and be used to facilitate pay equity for  
3 employees performing substantially similar work;

4 b) Within 18 months of the Effective Date of the Settlement, incorporate the validated  
5 qualifications and competencies from the job analysis work into job descriptions and promotion  
6 selection criteria; develop training for managers in the use of validated selection criteria for  
7 selection decisions; and provide, or guide the development of, improved tools/templates for use in  
8 making selection decisions (e.g., structured interview guides);

9 c) Within 18 months of the Effective Date of the Settlement, use the job analysis to identify  
10 career tracks and develop career guides, including identifying overview of roles and  
11 similarities/differences in competencies and competency proficiencies, goals, and responsibilities,  
12 likely roles to be promoted to-from within/across the related job families and role entry  
13 requirements, and developmental recommendations (incorporating information outlined below)  
14 and formal development steps, if appropriate (e.g., licenses, training);

15 d) Within 18 months of the Effective Date of the Settlement, assist in the creation of  
16 developmental resource guides for certain key roles identified from the job analysis work,  
17 including using job analysis output and working with subject matter experts to identify resources  
18 and experiences that facilitate the development of skills for movement into identified jobs;

19 e) Based on the job analysis output and relevant leadership needs, will assist Defendants in  
20 determining whether and how to develop and implement leadership assessment(s) focused on  
21 modeling the capabilities and competencies (including DEI) that are needed for particular  
22 management-level and above jobs;

23 f) Based on the job analysis output, provide guidance on training managers on their  
24 accountability to established decision-making criteria;

1 g) Review existing mentorship programs designed to support managers from historically  
2 underrepresented groups, including African Americans, and provide feedback for how they can be  
3 improved; and

4 f) Inform the model for the statistical work conducted on an annual basis by an independent  
5 expert monitoring pay equity

6 2) The retention of an independent expert statistician paid for by Kaiser to:

7 a) Conduct an annual pay analysis for three annual cycles (beginning one year from the  
8 Effective Date of the Settlement) to review base pay, incentive pay, and promotion outcomes  
9 throughout the covered entities;

10 b) Conduct annual monitoring of Defendants' promotion data for three annual cycles  
11 (beginning one year from the Effective Date of the Settlement) to review for disparate impact and  
12 to ensure that open jobs have been posted consistent with Defendants' posting policy. If any impact  
13 is indicated, Defendants shall undertake further audits to determine any potential root causes, with  
14 reporting to Class Counsel on these efforts.

15 3) To remediate pay disparities, if any, identified in the annual pay equity monitoring within three  
16 months, both addressing any gap in the pay and curing the gap going forward;

17 4) Training for employees and management on racial bias and equity, including Upstander  
18 Intervention training, equity training, implicit bias, and debiasing programs for those engaged in enforcing  
19 company policy on equal employment opportunity, as well as significant investment of DEI resources to  
20 the Belong@KP initiative;

21 5) Training on pay practices and on candidate selection;

22 6) Leadership statements on racial equity matters;

23 7) An increase in EEO investigation staff by three (3) persons to total at least fifteen (15)  
24 investigators and an annual audit of complaint logs for trends, including identification of potential  
25 concerns, if any, within certain parts of the organization. These results will be shared with Kaiser's CHRO  
26 to consider and create appropriate remediation efforts, if any;



1 8) The results of the analyses and progress of implementation efforts will be shared in the semi-  
2 annual meetings between Kaiser and Class Counsel for a period of three years to ensure compliance of  
3 the Settlement; and

4 9) The appointment of an internal Compliance Officer to oversee the implementation of these  
5 policies and procedures and continued compliance with the Settlement.

6 Kaiser estimates the implementation of the programmatic relief will entail at least \$2 million in  
7 internal costs. Plaintiffs believe these measures put racial equity front and center within the Company and  
8 will help to advance a culture inclusive and positive for Black employees. In addition, Kaiser's culture  
9 change training program, *Belong@KP*, will cost an additional estimated \$7 million over the three years  
10 of the Settlement monitoring period. Plaintiffs believe that this programmatic relief, which implements  
11 systems enhancements to ensure that Black employees earn and advance at the same rate as their non-  
12 Black peers and that racial equity remains a focus, provides significant value to Class Members and other  
13 employees that would not have been possible without the Settlement.

14 **D. Reasonable Scope of Release of Claims**

15 Class Members will have 45 days after the Notice of the Settlement is mailed to the Class to opt  
16 out of the Settlement. (Settlement, ¶ V.C.7.) All Class Members who do not timely opt out of the  
17 Settlement will release all claims arising from the Complaint, pursuant to Section VI.A of the Settlement.  
18 Named Plaintiffs are further agreeing to release individual, non-class claims against Kaiser, pursuant to a  
19 separate agreement. (Settlement, ¶ VI.B.)

20 **E. Tax Treatment**

21 For tax purposes, 33% of Claimants' Awards will be attributable to lost wages in connection with  
22 the claims alleged during the Class Period and will be subject to all applicable tax deductions and  
23 withholdings. This portion will be reported on an IRS Form W2. (Settlement, ¶ X.G.2.) The remaining  
24 67% of Claimants' Awards will not be subject to tax deductions or withholdings, and an IRS Form 1099  
25 will be issued for this amount. (*Ibid.*)

1 **F. Notice**

2 Kaiser will provide Class Members’ information to the Claims Administrator within five days after  
3 Preliminary Approval, and Notice of the Settlement will be sent to each Class Member via first class mail  
4 by the Claims Administrator within ten days after Preliminary Approval. (Settlement, ¶ V.B.2.) If the  
5 Court approves, the Notice will be substantially in the form of the proposed Notice attached as Exhibit B  
6 to the Settlement. After Notice of the Settlement is mailed, Class Members will have 45 days to submit  
7 written objections to the Settlement. (Settlement, ¶ V.C.1.)

8 **IV. THE CLASS MEETS ALL THE REQUIREMENTS FOR CLASS CERTIFICATION**  
9 **UNDER CODE OF CIVIL PROCEDURE 382**

10 Under Code of Civil Procedure section 382, a class may be certified if: (1) it is ascertainable and  
11 its members are too numerous for joinder to be practical; (2) the representative and absent class members  
12 share a community of interest and questions of law and fact common to the class predominate over  
13 questions unique to individual class members; (3) the representative’s claims are typical of the class’  
14 claims; and (4) the representative will fairly and adequately represent the class’ interests. (See, e.g.,  
15 *Richmond v. Dart Industries, Inc.* (1981) 29 Cal.3d 462, 470.)

16 California law and policy favor the fullest and most flexible use of the class action procedure, so  
17 any doubts as to the appropriateness of certification should be resolved in favor of certification. (See *Sav-*  
18 *On Drug Stores, Inc. v. Superior Court* (2004), 34 Cal. 4th 319, 329 (*Sa-On*) [“Presuming in favor of the  
19 certification, as we must...”]; *Richmond v. Dart Indus., Inc.* (1981) 29 Cal.3d 462, 473–74 [“Since this  
20 state has a public policy which encourages the use of the class action device, rules promulgated by this  
21 court should reflect that policy.”].)

22 “[I]t is also well established that trial courts should use different standards to determine the  
23 propriety of a settlement class, as opposed to a litigation class certification. Specifically, a lesser standard  
24 of scrutiny is used for settlement cases.” (*Global Minerals & Metals Corp. v. Super. Ct.* (2003) 113  
25 Cal.App.4th 836, 859 [citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1807 & fn.19 (*Dunk*)].)  
26 As the court noted in *Dunk*, although certification requirements are intended “to protect the interests of  
27

1 the non-representative class members,” that concern is “protected by the trial court’s fairness review of  
2 the settlement.” (*Dunk*, 48 Cal.App.4th at p. 1807 n.19.)

3 **A. The Class Is Objectively Ascertainable**

4 A class is “ascertainable if it identifies a group of unnamed plaintiffs by describing a set of  
5 common characteristics sufficient to allow a member of that group to identify himself as having a right to  
6 recover.” (*Harper v. 24 Hour Fitness, Inc.* (2008) 167 Cal.App.4th 966, 977.) Plaintiffs maintain that  
7 this requirement is met in this case. The Class is defined as all current and former, full-time, non-union,  
8 non-clinical Black employees employed by the Company at the Director level and below in the  
9 Administrative Support or Consulting Services job families in the California locations of the Program  
10 Offices Region, Northern California Region, Southern California Region, and KP-IT Region from January  
11 1, 2015 until March 31, 2021, inclusive. (Settlement, ¶¶ III.A.3. and III.A.10.) Kaiser has already  
12 identified potential Class Members in the datasets it has produced to Plaintiffs’ Counsel.

13 **B. The Class Is Sufficiently Numerous**

14 Given that there are approximately 2,225 Class Members, including Named Plaintiffs, the Class’s  
15 membership is more than sufficiently numerous. (See *Daar v. Yellow Cab Co.* (1967) 67 Cal.2d 695.)

16 **C. Common Questions Predominate Over Individual Questions**

17 The commonality requirement is met if there are questions of law or fact common to the class.  
18 (*Williams v. Sup. Ct.* (2013) 221 Cal.App.4th 1353, 1369 [a single common question can create  
19 commonality].) A question of law or fact is common to the members of a class if it may be resolved  
20 through common proof. (See, e.g., *Jaimez v. Daijohs USA, Inc.* (2010) 181 Cal.App.4th 1286, 1305.) As  
21 for predominance, it “is a comparative concept, and ‘the necessity for class members to individually  
22 establish eligibility and damages does not mean individual fact questions predominate.” (*Sav-On*, 34  
23 Cal.4th 319, 334 [quoting *Reyes v. San Diego County Bd. of Supervisors* (1979) 196 Cal.App.3d 1263,  
24 1278].) In evaluating predominance, “the ultimate question ... is whether the issues which may be jointly  
25 tried, when compared with those requiring separate adjudication, are so numerous or substantial that the  
26

1 maintenance of a class action would be advantageous to the judicial process and to the litigants.” (*Brinker*  
2 *Rest. Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1021 [internal quotation marks omitted].)

3 Here, Plaintiffs maintain that common questions include, but are not limited to: (1) whether Kaiser  
4 paid Black employees less than non-Black employees performing substantially similar work; (2) whether  
5 Kaiser’s compensation and/or promotion policies and procedures have an adverse impact on its Black  
6 employees; and (3) whether Kaiser intentionally discriminated against Black employees in terms of pay  
7 and promotion. Plaintiffs further maintain that these questions can be resolved through common proof  
8 concerning Kaiser’s uniform pay and promotion policies and its common workforce data which may be  
9 analyzed for statistical trends. Plaintiffs allege that these are exactly the types of common evidence  
10 approved by California courts. (*See Brinker Rest. Corp.*, 53 Cal.4th at 1033 [“Claims alleging that a  
11 uniform policy consistently applied to a group of employees is in violation of the wage and hour laws are  
12 of the sort routinely, and properly, found suitable for class treatment.”]; *Bradley v. Networkers Int’l, LLC*,  
13 211 Cal.App.4th 1129, 1143 [same]; *Jaimez v. Daiohas USA, Inc.* (2010) 181 Cal.App.4th 1286, 1298  
14 [105 Cal.Rptr.3d 443] [“California courts consider ‘pattern and practice evidence, statistical evidence,  
15 sampling evidence, expert testimony, and other indicators of a defendant’s centralized practices in order  
16 to evaluate whether common behavior towards similarly situated plaintiffs makes class certification  
17 appropriate.”].)

18 Plaintiffs allege common facts for each challenged practice:<sup>4</sup>

19 **Compensation:** All Class Members are subject to the same compensation guidelines and practices.  
20 (Complaint, ¶ 16.) Decisions related to increasing pay formulas are centralized within Kaiser’s Human  
21 Resources Compensation Team and senior leadership team. (*Id.*, ¶ 17.) Kaiser’s regional branches in  
22 California have a uniform structure for setting base pay and merit increases. (*Id.*, ¶ 18.) Moreover,  
23 Kaiser’s “midpoint” compensation formula locks in existing pay disparities. Plaintiffs’ expert found pay  
24 gaps to exist at statistically significant levels across the Class, after controlling for age, tenure with Kaiser,  
25 job family, job function, salary plan, department, year, and performance. (Medina Decl., ¶ 41.) Plaintiffs’

26 \_\_\_\_\_  
27 <sup>4</sup> Defendants have informed Plaintiffs that they dispute Plaintiffs’ allegations but, for purposes of the proposed Settlement only,  
do not oppose this Motion.

1 expert found that Exempt Class Members were, on average, paid approximately 7.1% less than their non-  
2 Black counterparts in base pay and 6.51% in incentive pay, and Non-Exempt Class Members were, on  
3 average, paid approximately 0.9% less than their non-Black counterparts in base pay and 1.36% less in  
4 incentive pay.<sup>5</sup> The Class monetary relief formula reflects the relative difference in these numbers.

5 **Promotion:** Kaiser’s promotion policies are also common to the Class. Kaiser’s promotion  
6 policies are collectively developed and revised during a monthly “HR Roundtable,” involving  
7 representatives across regions and job functions. (Complaint, ¶¶ 25-26.) When determining the salary  
8 increase an employee will receive as a result of their promotion, Kaiser applies a common policy which  
9 considers the employee’s salary level in their new pay band, “hard to recruit skills” the employee may  
10 have, and the employee’s experience and qualifications, among other factors. (*Id.*, ¶ 26.) Although Class  
11 Members have generally received comparable performance evaluations as non-Class Members, Black  
12 employees across the Class have not been promoted in the same manner as non-Black employees in  
13 Kaiser’s common promotion system. (*Id.*, ¶ 27.)

14 Plaintiffs maintain that commonality is satisfied.

15 **D. Plaintiffs Are Typical of the Class**

16 Typicality “requires a showing that the class representative has claims or defenses typical of the  
17 class.” (See, e.g., *Fireside Bank v. Superior Court* (2007) 40 Cal.4th 1069.) “Typicality refers to the  
18 nature of the claim or defense of the class representative, and not to the specific facts from which it arose  
19 or the relief sought. . . . The test of typicality is whether other members have the same or similar injury,  
20 whether the action is based on conduct which is not unique to the named plaintiffs, and whether other  
21 class members have been injured by the same course of conduct.” (*Martinez v. Joe’s Crab Shack Holdings*  
22 (2014) 231 Cal.App.4th 362, 375 [quotation marks and citations omitted].)

23 Plaintiffs allege that, like Class Members, each of the Named Plaintiffs worked for Defendants  
24 and was subject to the same policies and procedures that applied to the Class. (Medina Decl., ¶ 42.) In

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25 <sup>5</sup> Where there are common questions of liability across the class, individualized issues regarding the amount of damages do not  
26 defeat a class action. (See, e.g., *Faulkinbury v. Boyd & Associates, Inc.* 216 Ca.App.4th 220, 232-340; *Jones v. Farmers Ins.*  
27 *Exchange* (2013) 221 Cal.App.4th 986,997 [164 Cal.Rptr.3d 663]; *Benton v. Telecom Network Specialist, Inc.* (2013) 220  
Cal.App.4th 701, 726 [163 Cal.Rptr.3d 415].)

1 addition, Plaintiffs allege that they are subject to the same common defenses arising from Kaiser’s  
2 common pay and promotion policies. Furthermore, Plaintiffs allege that Plaintiffs and Class Members  
3 were subject to the same or similar injuries, namely, being underpaid or under-promoted compared to their  
4 non-Black colleagues. Plaintiffs maintain that they satisfy typicality.

5 **E. Plaintiffs Will Adequately Represent the Class**

6 The adequacy requirement is met where the plaintiffs are represented by counsel qualified to  
7 conduct the litigation and the plaintiffs’ interest in the litigation is not antagonistic to the class’s interests.  
8 (*McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 451.) In other words, where the plaintiff has  
9 adequate counsel, the plaintiff may represent the entire class absent any disabling conflicts of interest that  
10 might hinder the plaintiffs’ ability to represent the class. (*Ibid.*)

11 Plaintiffs maintain that both requirements are met in this case. First, Plaintiffs’ Counsel is adequate  
12 to represent the Class. Plaintiffs’ attorneys collectively have extensive experience in employment  
13 litigation, including numerous class action matters. (Medina Decl., ¶ 42.) Second, Plaintiffs are adequate  
14 representatives. Plaintiffs and Class Members worked at Kaiser during the same time period, were  
15 subjected to the same alleged injuries derived from the same common policies, and there is no evidence  
16 of any conflict of interest between Plaintiffs and Class Members. Furthermore, Plaintiffs have  
17 demonstrated their dedication to the Class, participating in all aspects of more than a two-year process  
18 that included numerous meetings and calls (both individually and as a group), collecting factual  
19 information, speaking with colleagues about possible solutions, attending multiple mediation sessions  
20 lasting days at a time, exposing themselves to the risks and costs of litigation if this case had been  
21 unsuccessful, and ultimately exposing themselves to the professional downside of stepping forward to  
22 assist others in a class action case. Telling of their commitment to pursuing a class-wide resolution,  
23 Plaintiffs have done so much of this work in the midst of a global health crisis that has put them and their  
24 colleagues on the front line. Plaintiffs have more than demonstrated that they are capable of “vigorously  
25 and tenaciously protect[ing] the interests of the class.” (*Simons v. Horowitz* (1984) 151 Cal.App.3d 834,  
26 846.)

1 **F. A Class Action Is Superior to Other Alternatives**

2 A class action would be vastly superior in this case to the alternative of each Class Member  
3 bringing individual claims to remedy Kaiser’s alleged common policies and procedures. “Generally, a  
4 class suit is appropriate when numerous parties suffer injury of insufficient size to warrant individual  
5 action and when denial of class relief would result in unjust advantage to the wrongdoer.” (*Linder v.*  
6 *Thrifty Oil Co.* (2000) 23 Cal.4th 446, 447.) Plaintiffs maintain that a class action is superior here because  
7 the Class Members’ claims have significantly overlapping factual issues, and if Class Members did bring  
8 individual claims, it would increase the delay and expense to all parties and multiply the burden on the  
9 judicial system. Participating in the Class allows Class Members to vindicate their claims and receive  
10 immediate relief without having to bring individual lawsuits. Second, Class Members will benefit from  
11 remaining anonymous, rather than risking their reputations and careers by bringing a lawsuit challenging  
12 their employers’ actions in their own names. Finally, Class Members will benefit from the widespread  
13 programmatic changes provided for in the Settlement—a result that Plaintiffs believe likely would not  
14 have been possible without the power of a collective.

15 In addition, Plaintiffs maintain that the Class is manageable. Third party administrator JND Legal  
16 Administration will provide Notice of the Settlement to the Class Members and distribute settlement funds  
17 based on a common formula. (*Six Mexican Workers v. Arizona Citrus Growers* (9th Cir. 1990) 904 F.2d  
18 1301, 1304.)

19 This case meets all the requirements for settlement certification.

20 **V. THE PROPOSED SETTLEMENT IS FAIR, ADEQUATE AND REASONABLE**  
21 **AND SHOULD BE APPROVED**

22 California courts favor settlement. (E.g., *Stambaugh v. Super. Ct.* (1976) 62 Cal.App.3d 231, 236.)  
23 Unlike most settlements, class action settlements involve a court approval process that exists to prevent  
24 fraud, collusion, and unfairness to class members. (*Malibu Outrigger Bd. of Governors v. Super. Ct.*  
25 (1980) 103 Cal.App.3d 573, 578–579.) In determining whether to approve or reject a proposed settlement,  
26 the court has broad discretion. (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 250.) The  
27

1 purpose of the preliminary evaluation of a proposed class action settlement is to determine only whether  
2 the settlement is within the range of possible approval, and thus whether notice to the class of the  
3 settlement terms and conditions and the scheduling of a formal fairness hearing are warranted. (*Id.* at pp.  
4 234–235, 251.)

5 A settlement is presumptively fair where it is reached through arm’s length bargaining, based on  
6 enough discovery and investigation to allow counsel and the court to act intelligently, counsel is  
7 experienced in similar litigation, and the percentage of objectors is small. (*Dunk*, 48 Cal.App.4th at p.  
8 1802.) The following “well-recognized factors” are typically considered when evaluating the  
9 reasonableness of a proposed settlement, but are not exhaustive and should be tailored to each case: (1)  
10 the strength of plaintiffs’ case; (2) the risk, expense, complexity and likely duration of further litigation;  
11 (3) the risk of maintaining class action status through trial; (4) the amount offered in settlement; (5) the  
12 extent of discovery completed and the stage of the proceedings; (6) the experience and views of counsel;  
13 (7) the presence of government participants; and (8) the reaction of the class members to the proposed  
14 settlement. (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128 (*Kullar*) [citing *Dunk*,  
15 48 Cal.App.4th at p. 1801].) At the preliminary approval stage, “the settlement need only be potentially  
16 fair, as the court will make a final determination of its adequacy at the hearing on final approval, after  
17 such time as any party has had a chance to object and/or opt out.” (*Acosta v. Trans Union, LLC* (C.D.  
18 Cal. 2007) 243 F.R.D. 377, 386.)

19 In addition, courts review the discovery process and information received through it to aid them  
20 in assessing whether the parties sufficiently developed the claims and their supporting factual bases before  
21 reaching settlement. (See *Kullar*, 168 Cal.App.4th at pp. 129–131.) Information is sufficient where it  
22 allows the parties and the court to form “an understanding of the amount that is in controversy and the  
23 realistic range of outcomes of the litigation.” (*Clark v. Am. Residential Servs. LLC* (2009) 175  
24 Cal.App.4th 785, 801.) This requirement exists so that the parties can provide the court with “a  
25 meaningful and substantiated explanation of the manner in which the factual and legal issues have been  
26 evaluated.” (*Kullar*, 168 Cal.App.4th at p. 118.) Courts often approve settlements where Class Members  
27



1 receive only pennies, or coupons or vouchers. (See, e.g., *Nordstrom Commission Cases* (2010) 186  
2 Cal.App.4th 576,590 [affirming final approval of wage and hour class action settlement where 20% of the  
3 fund allocated to the class was merchandise vouchers].)

4 **A. The Settlement Was Negotiated at Arm’s Length after Plaintiffs and their Counsel**  
5 **Developed the Claims and Their Supporting Factual Bases in Extensive Discovery**

6 The Parties have participated in extensive discovery concerning Kaiser’s policies and practices  
7 related to pay and promotion. In December 2018, Plaintiffs and their Counsel served Defendants with  
8 informal discovery requests for class data, documents related to Kaiser’s compensation and promotion  
9 policies, and policies and surveys concerning diversity and inclusion, among other requests. Over the  
10 course of the following two years, Defendants produced multiple rounds of class pay data, job  
11 descriptions, policy documents, handbooks, and guidelines related to Plaintiffs’ allegations. Plaintiffs’  
12 then engaged an expert, Dr. Alex Vekker, to perform statistical analyses of the class pay data, and  
13 Plaintiffs’ Counsel analyzed the various policy documents Kaiser produced and conducted interviews with  
14 four Kaiser managers in relation to those documents. (Medina Decl., ¶ 24.)

15 With this extensive discovery as background, the Parties agreed to private mediation of the class  
16 claims with David Rotman, a highly regarded mediator. (Medina Decl., ¶ 25.) During a full day of arm’s-  
17 length negotiations with Mediator Rotman, the Parties strenuously advanced their respective positions  
18 while carefully crafting a fair resolution of the claims in the form of the monetary and non-monetary relief  
19 described in more detail above. When the Parties were unable to reach agreement at the first mediation,  
20 they continued negotiations. Kaiser produced additional data and the Parties participated in a second  
21 mediation on December 6, 2019, in which Class monetary terms were resolved and the parties created a  
22 framework for negotiating business practice changes. The Parties were therefore well-equipped to mediate  
23 the claims with “an understanding of the amount that is in controversy and the realistic range of outcomes  
24 of the litigation.” (*Clark*, 175 Cal.App.4th at 801.) The Settlement was thus the product of these arm’s-  
25 length negotiations, aided by Mediator Rotman as a neutral third-party facilitator, based on thorough  
26 evaluation of the factual and legal issues. (*Kullar*, 168 Cal.App.4th at p. 118.)

1 **B. The Settlement Amount is Fair and Reasonable in View of the Strengths and Weaknesses**  
2 **of the Claims Asserted and Risks of Continued Litigation**

3 The Settlement achieves the goals of litigation—ensuring that Kaiser makes long-lasting changes  
4 towards equity and inclusion and providing monetary relief to those who have been allegedly affected by  
5 discrimination. The Settlement reflects the strengths of Plaintiffs’ case on the merits: Plaintiffs remain  
6 confident that, if this case were to proceed in litigation, they would obtain class certification, defeat  
7 decertification, and prove their claims at trial. Nevertheless, Plaintiffs recognize the considerable risks of  
8 litigation, making compromise of claims in exchange for the Settlement’s immediate relief a reasonable  
9 outcome. First, if this case were to proceed to litigation, there is a substantial risk that Plaintiffs’ recovery  
10 would be significantly limited. While Plaintiffs’ Counsel has estimated the maximum wage differential  
11 between Black and non-Black employees in the Class to be approximately \$31.7 million, Kaiser disagrees  
12 with Plaintiffs’ approach and contends that, when controlling for variables such as grade and time in job,  
13 there is little to no wage differential.

14 It would take significant resources and delay in litigating over the particular control variables that  
15 should be used to determine whether Black employees are performing “substantially similar jobs” with  
16 “mostly similar in skill, effort, responsibility, and performed under similar working conditions” as non-  
17 Black employees. Cal. Lab. Code section 1197.5. Second, Kaiser has asserted that the pay and promotion  
18 differentials between Black and non-Black employees are due to other bona fide non-race-related factors.  
19 Finally, Defendants have asserted a number of arguments that, if litigated on the merits, may make class  
20 certification uncertain, including that: pay and promotion decisions are decentralized, compensation  
21 policies and procedures vary by market and within and across the organizations, and Kaiser’s pay and  
22 promotion policies give lower-level managers substantial discretion in making compensation decisions.

23 Further, absent a settlement, Class Members would not receive any recovery until after years of  
24 litigation, including appeals. (See *Nat’l Rural Telecommunications Coop. v. DIRECTV, Inc.* (C.D. Cal.  
25 2004) 221 F.R.D. 523, 2004 WL 1157739, 526 [“In most situations, unless the settlement is clearly  
26 inadequate, its acceptance and approval are preferable to lengthy and expensive litigation with uncertain  
27 results.”] [internal quotation omitted].) Without the Settlement, there remains extensive, costly, and

1 complex litigation to follow. Even though Plaintiffs’ and Settlement Class Members’ total theoretical  
2 maximum recovery is greater than the \$11.5 million settlement amount, “the tangible, immediate benefits  
3 of . . . [s]ettlement outweigh continued litigation and the uncertainty of a trial.” (*Ebarle v. Lifelock, Inc.*  
4 (N.D. Cal., Jan. 20, 2016, No. 15 Civ. 258) 2016 WL 234364, at \*8 [internal quotation marks omitted]  
5 [citing *In re LinkedIn User Privacy Litig.* (N.D. Cal. 2015) 309 F.R.D. 573, 587 (“Immediate receipt of  
6 money through settlement, even if lower than what could potentially be achieved through ultimate success  
7 on the merits, has value to a class, especially when compared to risky and costly continued litigation.”)]).  
8 Given the risks of continued litigation, which include the risks of class certification being denied and  
9 Plaintiffs losing on the merits of their claims, the \$11.5 million settlement amount is substantial and falls  
10 well within the range of possible approval. Even if neither side pursued appeals, the length, expense, and  
11 uncertainty surrounding future litigation weigh in favor of approval of the Settlement. In light of these  
12 risks, the Settlement is a fair and reasonable outcome for Class Members.

13 **C. The Monetary Terms of the Settlement are Fair, Reasonable, and Adequate**

14 The total Settlement amount of \$11,504,759, in addition to meaningful non-monetary relief that  
15 will provide significant ongoing benefits to the Class, is an excellent outcome for the Settlement Class,  
16 particularly given the aforementioned risks and costs of litigation. “In the context of a settlement  
17 agreement, the test is not the maximum amount plaintiffs might have obtained at trial on the complaint,  
18 but rather whether the settlement is reasonable under all of the circumstances.” (*Wershba*, 91 Cal.App.4th  
19 at 250.) Settlements inherently involve compromise, so even settlements providing for substantially narrower  
20 relief than likely would be obtained if the suit were successfully litigated can be reasonable because “the  
21 public interest may indeed be served by a voluntary settlement in which each side gives ground in the  
22 interest of avoiding litigation.” (*Id.* [quoting *Air Line Stewards, etc., Local 550 v. Am. Airlines, Inc.* (7th  
23 Cir. 1972) 455 F.2d 101, 109].)

24 Under this Settlement, based on expert analysis of class data and using assumptions favorable to  
25 the Class, Plaintiffs believe that a realistic, best-case outcome after a victory in further litigation would  
26 result in a maximum total recovery of \$31.7 million, plus attorneys’ fees and costs. (Medina Decl., ¶ 46.)  
27

1 Class Members will recover approximately 36.3% of the estimated maximum exposure, in addition to  
2 programmatic relief estimated to be at least an additional \$2 million in value. (Medina Decl., ¶ 36.)  
3 Courts regularly approve settlements where the recovery is less than the potential exposure here. (*See*,  
4 *e.g.*, *Officers for Justice v. Civil Serv. Comm’n of City & Cty. Of San Francisco* (9th Cir. 1982) 688 F.2d  
5 615,628 [“it is well-settled law that a cash settlement amounting to only a fraction of the potential recovery  
6 will not per se render the settlement inadequate or unfair.”]; *In re Mego Fin. Corp. Sec. Litig.* (9th Cir.  
7 2000) 213 F.3d 454, 459, as amended (June 19, 2000) [approving a settlement roughly one-sixth of the  
8 potential recovery].) The monetary recovery in this Settlement is a good and reasonable outcome for the  
9 Class—it provides significant relief in comparison to the potential maximum exposure, and results in  
10 extensive programmatic relief that will benefit the Class Members going forward, all while allowing Class  
11 Members to avoid the potential risks of litigation.

12 Pursuant to the Settlement, the monetary benefits will be payable to Class Members who submit  
13 claims based on an objective formula to be administered by the Settlement Administrator, described in  
14 more detail below. While the exact award per Class Member will be dependent heavily on the respective  
15 demographics of the Class Members who participate, if 100% of the Class participated, the overall average  
16 award for Exempt Class Members would be approximately \$6,170 and for Non-Exempt Class Members,  
17 the overall average award would be approximately \$1,172.<sup>6</sup> (Medina Decl. ¶ 38.)

18 California’s policy favoring settlement in class actions and other complex cases applies with  
19 particular force here. (Medina Decl. ¶ 48.) Certainty of recovery is enhanced by an equitable and timely  
20 consummated settlement such as that under consideration in this case. (*Id.* ¶ 49.) Tensions created in the  
21 employment relationship in the litigation process are alleviated by such settlements, as opposed to a trial  
22 of the matter, and all parties are in a better position to move forward with their roles in the economy. (*Id.*  
23 ¶ 51.) The expense of protracted litigation in these cases is formidable.

24 *1. The Settlement Fairly, Reasonably, and Adequately Compensates Class Members Through a*  
25 *Fair Allocation Formula*

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26 <sup>6</sup> The numbers vary in part because of the differences in salary and tenure, but also due to the significant differences in the  
27 alleged losses between the groups.

1 Class Members will be automatically allocated awards based an objective formula that accounts  
2 for their Exempt or Non-Exempt status and total compensation received during the Class Period  
3 (calculated by multiplying weeks worked during the Class Period by annual salary during those weeks).  
4 (Settlement, ¶¶ X.C and X.D.) Class Members who include additional information about promotion denial  
5 on an enhancement claim forms will be eligible for an additional award to account for damages from  
6 claimed promotion discrimination, based on a percentage of their calculated individual pay differential.  
7 (*Id.* at ¶ X.D.3.) This allocation formula is fair, reasonable, and adequately compensates Class Members.  
8 It was the product of in-depth analysis and informed negotiations. (Medina Decl. ¶ 37.) Class Members  
9 who are more likely to have been subjected to more alleged violations, and who suffered greater pay  
10 disparity, will receive greater awards than those with fewer alleged violations and less damages. (*Id.* ¶  
11 38.)

12 First, the formula accounts for the difference in the coefficients of alleged pay disparity between  
13 Exempt and Non-Exempt Class Members, which Plaintiffs' expert found to be approximately 7.1% and  
14 0.9% respectively, by distributing the fund in a 7:1 ratio for Exempt and Non-Exempt Class Members.<sup>7</sup>  
15 Second, in addition to accounting for the alleged differential in pay disparity between Exempt and Non-  
16 Exempt Class Members, the allocation formula considers the particular wage differential each Class  
17 Member allegedly was subjected to and the duration of the Class Period they experienced this alleged  
18 differential. Finally, calculations of Class Members' promotion damages are based on their alleged  
19 individual pay disparities to ensure the resulting promotion award fairly compensates Class Members who  
20 claim those alleged damages. The Settlement also provides Class Members a process for challenging their  
21 individual allocation if they believe any part of the underlying data or calculation of their award was  
22 incorrect. (Settlement ¶ X.D.5.)

23 *2. The Proposed Award of Attorneys' Fees and Costs are Fair, Adequate, and Reasonable*

24 Plaintiffs' Counsel will request an award of attorneys' fees in the amount not to exceed 30% of  
25 the Settlement, i.e., \$3,451,427.70, plus accrued interest for attorneys' fees. (Settlement, ¶ X.A.(f).)

26 \_\_\_\_\_  
27 <sup>7</sup> Plaintiffs' expert found that maximum total compensation damages for Exempt Class Members were approximately seven  
times greater than base pay damages for Non-Exempt Class Members.

1 California courts routinely conclude that an appropriate method for awarding attorney’s fees in class  
2 actions is to award a percentage of the “common fund” created as a result of the settlement. (*City &*  
3 *County of San Francisco v. Sweet* (1995) 12 Cal.4th 105, 110-11.) The attorneys’ fees in this Settlement,  
4 constituting 30% of the settlement fund, are below the standard 33% fee awards that are commonly  
5 approved by California Courts. (See, e.g., *Laffitte v. Robert Half Int’l Inc.* (2016) 1 Cal.5th 480, 503  
6 [affirming fee award of one-third of the common fund in a wage and hour class action and recognizing  
7 the following advantages in using the percentage method: “relative ease of calculation, alignment of  
8 incentives between counsel and the class, a better approximation of market conditions in a contingency  
9 case, and the encouragement it provides counsel to seek an early settlement and avoid unnecessarily  
10 prolonging the litigation.”] [internal quotation omitted]; *In re Consumer Privacy Cases* (2009) 175  
11 Cal.App.4th 545, 558 [“Empirical studies show that, regardless whether the percentage method or the  
12 lodestar method is used, fee awards in class actions average around one third of the recovery.”] [internal  
13 quotation omitted]; *Smith v. CRST Van Expedited, Inc.* (S.D. Cal. Jan. 14, 2013) 2013 WL 163293, at \*5  
14 [recognizing the California benchmark for fee awards in class actions as 33%.])

15 Plaintiffs’ Counsel will further request an additional amount for reasonably-incurred costs not to  
16 exceed \$65,000. (Settlement, ¶ X.A.(d).) The expense reimbursement is appropriate. (See, e.g., *Singh v.*  
17 *Roadrunner Intermodal Servs., LLC* (E.D. Cal., May 25, 2018, No. 1:15-cv-01497) 2015 WL 5728415, at  
18 \*7–8 [litigation expenses of \$90,000 in employment case]; *Graham v. Overland Solutions, Inc.* (S.D. Cal.,  
19 Sep. 12, 2012, No. 3:10-cv-00672) 2012 WL 4009547, at \*19 [litigation expenses of \$55,000].) The  
20 parties have also agreed to set aside \$50,000 of the Settlement Award Fund as a contingency fund to  
21 effectuate the purposes of the Settlement including, but not limited to, unforeseen errors or other issues  
22 arising in administration of the Settlement. (Settlement, ¶ X.A.(f).) Any residual amounts of that fund  
23 that remain will be either redistributed to class members or distributed to the *cy pres* recipient. (*Ibid.*)

24 The Court need not rule on Class Counsel’s fees and costs now; a formal application will be filed  
25 prior to the Final Approval Hearing. As will be explained in detail in the application, a fee award of 30%  
26 of the Settlement fund is reasonable and well-justified in consideration of the risks Class Counsel have  
27

1 undertaken in pursuing this case on a contingency basis and the result achieved on behalf of the Class.  
2 Plaintiffs' Counsel expended significant time and resources on this matter and will continue to do so  
3 without additional compensation over the next three years as they oversee implementation of the  
4 programmatic relief. (Medina Decl., ¶ 53.)

5 3. *The Proposed Service Awards to Plaintiffs are Appropriate and Fair*

6 Courts routinely approve service awards to compensate named plaintiffs for the services they  
7 provide and the risks they incur during class action litigation at similar amounts to that sought here. (See,  
8 e.g., *Bell v. Farmers Ins. Exchange* (2004) 115 Cal.App.4th 715, 726 [upholding "service payments" to  
9 named plaintiffs for their efforts in bringing the case]; *Van Vranken v. Atlantic Richfield Co.* (N.D. Cal.  
10 1995) 901 F.Supp. 294 [approving \$50,000 enhancement award].) Here, the Settlement provides that  
11 Class Counsel will seek, and Defendants will not dispute, service awards for each Named Plaintiff, in an  
12 amount ranging from \$60,000 to \$75,000. (Settlement, ¶ X.A.(c).) Considering the dedication and  
13 engagement Named Plaintiffs have demonstrated throughout protracted negotiations, these service awards  
14 are more than justified. Named Plaintiffs have attended multiple all-day mediations lasting well into the  
15 night, kept thoroughly involved in the investigation, spent hours on the phone with Class Counsel  
16 providing information about their experiences at Kaiser, devoted substantial time and effort in speaking  
17 with their colleagues about common issues, and risked being required to pay Defendants' costs if this  
18 action had been unsuccessful. (Medina Decl., ¶ 56.) Importantly, unlike other types of class actions,  
19 employee plaintiffs, like those here, face significant risk that future employers will not want to employ  
20 them due to their participation in an employment discrimination class action lawsuit, a risk they willingly  
21 accepted to benefit others.

22 While Plaintiffs seek a \$60,000 service award for Named Plaintiffs Charleta Dabrowski, Benedict  
23 Johnson, and Kenya Mayfield, they respectfully submit that an additional amount is warranted for Shelby  
24 Stewart. She performed all of the important and time-consuming tasks of the other Named Plaintiffs, but  
25 also served as a leader among the group. Ms. Stewart also provided significant insight and expertise with  
26 regard to programmatic relief that was rooted in her own professional knowledge of diversity and inclusion

1 programs and racial equity work. In light of her unique additional contributions to the Class for nearly  
2 two years, an award of \$75,000 is warranted for Ms. Stewart.

3 **G. The Settlement’s Programmatic Non-Monetary Terms Are Significant and Will Benefit the**  
4 **Class**

5 The Settlement also contemplates significant programmatic relief, described above, which will  
6 provide ongoing benefits to the Class Members and to Kaiser employees for years to come. (Medina Decl.  
7 ¶ 35.) This programmatic relief will help to rectify alleged existing pay disparities that Plaintiffs maintain  
8 are driven by Kaiser’s compensation and promotion policies, protect Black employees from being paid  
9 less than their non-Black counterparts who perform substantially similar work, and facilitate a more  
10 inclusive and equitable work environment. (Settlement Ex. B, Business Practice Changes.)

11 **VI. THE PROPOSED NOTICE ADEQUATELY APPRISES CLASS MEMBERS OF THEIR**  
12 **RIGHTS UNDER THE SETTLEMENT AND SATISFIES DUE PROCESS**

13 Plaintiffs request that this Court approve the proposed notice and administration plan. The  
14 standard for determining the adequacy of notice is whether the notice has “a reasonable chance of reaching  
15 a substantial percentage of the class members.” (*Cartt v. Super. Ct.* (1975) 50 Cal.App.3d 960, 974.)  
16 Here, notice will be sent by first-class mail, and by email to those for whom Kaiser has an email address.  
17 (Settlement, ¶ V.B.3.) This meets the constitutional standards as well as the standards under California  
18 Rule of Court 3.766, subs. (d)–(e), and should be approved. (See *Cellphone Termination Fee Cases*  
19 (2010) 186 Cal.App.4th 1380, 1390.)

20 With respect to its content, “[The] notice given to the class must fairly apprise the class members  
21 of the terms of the proposed compromise and of the options open to dissenting class members.” (*Trotsky*  
22 *v. Los Angeles Fed. Sav. & Loan Assn.* (1975) 48 Cal.App.3d 134, 151–152.) Here, the Notice of the  
23 Settlement (Settlement, Ex. A) provides the Class with all pertinent information that they need to fully  
24 evaluate their options and exercise their rights under the Settlement. Specifically, it clearly and concisely  
25 explains, among other things: (1) what the Settlement is about; (2) who is a Class Member; (3) how to  
26 receive an Individual Settlement Payment; (4) how the Settlement will be allocated; (5) the Class



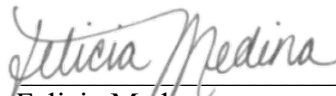
1 Member's estimated Individual Settlement Payment; (6) how Class Counsel will be paid; (7) how to opt  
2 out of the Class; and (6) how to object to the Settlement. Accordingly, the Notice should be approved.

3 **VII. CONCLUSION**

4 For the reasons set forth herein, this Court should certify the Class for settlement purposes only  
5 under Code of Civil Procedure section 382, preliminarily approve the Settlement, direct that Notice be  
6 disseminated to Class Members, schedule a final approval hearing, and adopt the [Proposed] Order  
7 submitted concurrently herewith.

8  
9  
10 DATED: July 16, 2021

Respectfully submitted,

11 

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16  
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19 *the Class*