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15 *Attorneys for Plaintiffs and the Class*

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

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

21 **Plaintiffs,**

22 v.

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

27 **Defendants.**

Case No. CGC-21-590966

**[PROPOSED] ORDER AND JUDGMENT  
OF FINAL APPROVAL, CERTIFYING  
THE SETTLEMENT CLASS, GRANTING  
FINAL APPROVAL OF CLASS  
SETTLEMENT**

Complaint filed: April 22, 2021

1 Plaintiffs SHELBY STEWART, CHARLETA DABROWSKI, BENEDICT JOHNSON, and  
2 KENYA MAYFIELD (“Plaintiffs”) in the above-captioned action have alleged, on behalf of themselves  
3 and a putative class of similarly situated individuals, unequal pay and race and national origin-based pay  
4 and promotion discrimination by Defendants KAISER FOUNDATION HEALTH PLAN, INC.,  
5 KAISER FOUNDATION HOSPITALS, THE PERMANENTE MEDICAL GROUP, INC., and  
6 SOUTHERN CALIFORNIA PERMANENTE MEDICAL GROUP (“Defendants”) against a certain  
7 group of their California-based Black employees. The Complaint makes these claims for alleged: (1)  
8 violation of Fair Employment and Housing Act (“FEHA,” Section 12940) and violation of Title VII, 42  
9 U.S.C. section 1981 – race discrimination (2) violation of California Fair Pay Act (“CFPA,” Cal. Lab.  
10 Code. 1197.5, et seq.), (3) violation of FEHA section 12940(k) – failure to prevent discrimination, (4)  
11 violation of California Unfair Competition Law, Cal. Bus. & Prof. Code sec. 17200 et seq., and (5)  
12 violation of Private Attorney General Act (“PAGA” Cal Lab. Cod. Sec. 2698 et seq.). Defendants have  
13 denied these allegations. The Parties entered into negotiations for the purpose of settling their disputes  
14 underlying the Action. Those negotiations have been successful. Plaintiffs and Defendants (“Parties”)  
15 have agreed to the entry of a proposed Class and PAGA Settlement Agreement and Release (the  
16 “Settlement”) as a full settlement of those disputes and this legal action, subject to this Court’s final  
17 approval thereof. Notwithstanding Defendants’ stipulation to “Settlement Classes” in this case and to the  
18 proposed Settlement, Defendants continue to deny all allegations of unlawful conduct contained in  
19 Plaintiffs’ Complaint, and do not admit or concede that they have, in any manner, violated federal or  
20 California laws prohibiting discrimination and or retaliation, or committed any other unlawful action  
21 that would entitle Plaintiffs or any class to any recovery. Plaintiffs and Defendants have agreed that, for  
22 purposes of settling this case only, it should proceed as a class action as described below in order that  
23 this Settlement will constitute a final and complete adjudication of the Parties’ and Class Members’  
24 rights, liabilities and obligations as set forth in the Settlement.

25 The Court has jurisdiction over the claims of the members of the Class asserted in this  
26 proceeding, personal jurisdiction over the Plaintiff and Defendant, and the members of the Class, as  
27 defined in the Settlement Agreements. On December 1, 2021, the Court granted preliminary approval to  
28

1 this settlement.

2 Notice given to the class fully and accurately informed Class Members of all material elements  
3 of the proposed settlement and of their opportunity to exclude themselves from, object  
4 to, or comment on the settlement, and to appear at the final approval hearing. The notice was reasonable  
5 and the best notice practicable under the circumstances. Accordingly, this Court finds that the notice  
6 program described in the Settlement and completed by the Settlement Administrator complied fully with  
7 the requirements of due process, Rule 3.766 of the California Rules of Court, and all other applicable  
8 laws.

9 The Parties now return to the Court seeking final approval of the settlement after completion of  
10 the notice process. Specifically, Plaintiffs have presented to the Court an unopposed Motion for Final  
11 Approval of the Settlement. The Court has considered this Motion, the arguments of counsel, and the  
12 pleadings and filings in this Action. Based on this consideration and in the interest of justice, the Court  
13 hereby FINDS, CONCLUDES, and ORDERS as follows:

14 **I. CERTIFICATION OF SETTLEMENT CLASS**

15 For settlement purposes only, the Parties have proposed certification of the following Settlement  
16 Class: African-American/Black individuals who meet the following parameters at any time between  
17 January 1, 2015 and March 31, 2021 (the “Settlement Class” and the “Class Period”):

- 18 a) Employed in any of the following California Regions – Northern California (NCAL),  
19 Southern California (SCAL), California locations of Program Offices, and California  
20 locations of the KP-IT Region:
- 21 b) Employed full-time by any of the following Defendants - Kaiser Foundation Hospitals,  
22 Kaiser Foundation Health Plan, The Permanente Medical Group, and Southern California  
23 Permanente Medical Group;
- 24 c) Employed as exempt or non-exempt employees’;
- 25 d) Employed in full-time occupied operative, non-union, Director-level and below, and  
26 nonclinical jobs only; and
- 27 e) Employed in either the administrative support or consulting services job families in any of

1 the “Covered Positions” listed in Appendix 1 to the Settlement Agreement

2 Having considered the proposed Settlement Class pursuant to California Code of Civil  
3 Procedures § 382, this Court hereby FINDS and CONCLUDES that the proposed Settlement Class  
4 satisfies the requirements of California law for class certification for purposes of settlement only.

5 a) A class is “ascertainable if it identifies a group of unnamed plaintiffs by describing a set of  
6 common characteristics sufficient to allow a member of that group to identify himself as  
7 having a right to recover.” *Harper v. 24 Hour Fitness, Inc.* (2008) 167 Cal. App. 4th 966,  
8 977. Here, based on the Parties’ agreement that, for purposes of settling this case only, it  
9 should proceed as a class action, as well as the materials provided with the unopposed  
10 Motion, the Settlement Class definition precisely defines who is entitled to class relief based  
11 on their employer, dates of work, organizations assignment, exempt/non-exempt status, and  
12 demographics. The proposed Settlement Class consist of over 2,217 individuals in total.  
13 Thus, the Settlement Class is sufficiently numerous.

14 b) The commonality requirement is met if there are questions of law or fact common to the  
15 class. *Williams v. Sup. Ct.* (2013) 221 Cal. App.4th 1353, 1369 (a single common question  
16 can create commonality). When determining commonality, “the focus must be on the policy  
17 the plaintiffs are challenging and whether the legality of that policy can be resolved on a  
18 class-wide basis.” *ABM Indus. Overtime Cases* (2017) 19 Cal.App.5th 277. Here, based on  
19 Parties’ agreement that, for purposes of settling this case only, it should proceed as a class  
20 action, as well as the materials provided with the unopposed motion, the Court finds that  
21 there are questions of law or fact that are common to the Settlement Class, and that these  
22 common issues predominate over any individualized questions of law or fact, including  
23 whether Defendants maintained polices depriving their Black employees equal pay,  
24 discriminating against them on the basis of race and or national origin with regard to pay and  
25 or promotions, and other claims in the Complaint. The injunctive and monetary relief in the  
26 settlement resolves these common issues on a class-wide basis.

27 c) To satisfy the typicality requirement, the claims of the representative plaintiff(s) must show  
28

1 “that the class representative has claims or defenses typical of the class.” *See, e.g., Fireside*  
2 *Bank v. Superior Court*, 40 Cal.4th 1069 (2007). Based on the Parties’ agreement that, for  
3 purposes of settling this case only, it should proceed as a class action, as well as the materials  
4 provided with the unopposed Motion, the Court finds that the unequal pay and race  
5 discrimination claims along with the other claims raised in the Complaint are susceptible to  
6 common proof; that Plaintiffs were Black employees of the Defendants during the specified  
7 time and their claims arise out of the same policies, practices, and concerns alleged on behalf  
8 of all Class members; and that, accordingly, they are typical of the Settlement Class. *See*  
9 *Torchia v. W.W. Grainger, Inc.* (E.D. Cal. 2014) 304 F.R.D. 256.

10 d) The adequacy requirement is met where (1) the class representative is represented by counsel  
11 qualified to conduct the litigation and (2) the named plaintiff’s interest in the litigation is not  
12 antagonistic to the class’s interests. *McGhee v. Bank of America*, 60 Cal.App.3d 442, 451  
13 (1976). Named Plaintiffs retained counsel experienced in class litigation, who have shown  
14 their commitment to litigating the case vigorously on behalf of the Settlement Class. Second,  
15 based on the Parties’ agreement that, for purposes of settling this case only, it should proceed  
16 as a class action, as well as the materials provided with the unopposed Motion, the Court  
17 finds that the Named Plaintiffs are adequate, having been informed and accepted the  
18 responsibility of performing the fiduciary duties which class representatives owe the  
19 members of the class, and that Plaintiffs have no apparent conflicts with the Settlement Class  
20 Members. *See Richmond v. Dart Indus. Inc.* (1981) 29 Cal. 3d 462, 470.

21 e) In evaluating predominance, “the ultimate question ... is whether the issues which may be  
22 jointly tried, when compared with those requiring separate adjudication, are so numerous or  
23 substantial that the maintenance of a class action would be advantageous to the judicial  
24 process and to the litigants.” (*Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal.4th 1004,  
25 1021 [internal quotation marks omitted].) Based on the Parties’ agreement that, for purposes  
26 of settling this case only, it should proceed as a class action, as well as the materials provided  
27 with the unopposed Motion, the Court finds that the proposed Settlement Class is cohesive  
28

1 because Class Members share a common nucleus of facts and potential legal remedies.

2 f) Further, the class resolution is superior to other methods of adjudication. *See Dunk v. Ford*  
3 *Motor Co.* (1996) 48 Cal. App.4th 1794, 1807 n.19. Here based on the Parties' agreement  
4 that, for purposes of settling this case only, it should proceed as a class action, as well as the  
5 materials provided with the unopposed Motion, resolving the common liability and damages  
6 issues in a single action would be more efficient than litigating thousands of individual  
7 claims in separate actions in separate courts. *See Sav-On Drug Stores, Inc. v. Sup. Ct.* (2004)  
8 34 Cal. 4th 319, 340. In addition, the risks, expenses, and complexities of litigation make  
9 settlement a superior method of adjudication.

10 Accordingly, and based on these findings and the Parties' agreement that, for purposes of settling  
11 this case only, it should proceed as a class action, the Court hereby CERTIFIES the Settlement Class  
12 and appoints Shelby Stewart, Charleta Dabrowski, Benedict Johnson, and Kenya Mayfield as Class  
13 Representatives. The Settlement Agreement is not an admission by Defendants or by any other Released  
14 Parties nor is this Order a finding of the validity of any allegations or of any wrongdoing by Defendants  
15 or any other Released Parties. Neither this Order, the Settlement Agreement, nor any document referred  
16 to herein, nor any action taken to carry out the Settlement Agreement, may be construed as, or may be  
17 used as, an admission of any fault, wrongdoing, omission, concession, or liability whatsoever by or  
18 against Defendants or any of the Released Parties. The final approval of the Parties' Settlement will not  
19 constitute any opinion, position, or determination of this Court, one way or the other, as to the merits of  
20 the claims or defenses of any party. Should any reviewing court on appeal refuse to approve this  
21 Settlement or require modifications to this Settlement, the Settlement and the Parties' agreements on  
22 which it is based shall be null and void, inadmissible, and unusable in any future proceeding and shall  
23 not be considered a binding settlement agreement, unless Plaintiffs and Defendants each expressly and  
24 voluntarily approve in writing any such modification by this Court or the reviewing court.

25 **II. APPOINTMENT OF CLASS COUNSEL**

26 The Court finds that Medina Orthwein LLP and Lieff, Cabraser, Heimann, & Bernstein LLP,  
27 have extensive experience in litigating employment discrimination class actions and employment

1 discrimination cases. The Court appoints these firms as Class Counsel.

2 **III. FINAL APPROVAL OF CLASS AND PAGA REPRESENTATIVE ACTION**  
3 **SETTLEMENT**

4 The Court has reviewed the terms of the proposed Settlement Agreement, including specifically  
5 the injunctive and monetary relief provisions. The Court also reviewed the Motion papers and  
6 declarations of counsel, which describe Class Counsel’s legal and factual investigation, and the  
7 settlement process. Based on review of those papers, the Court concludes that the settlement is the result  
8 of extensive, arm’s length negotiations among the Parties after Class Counsel investigated the class  
9 claims and became familiar with the strengths and weaknesses of the case. The Court finds that the  
10 settlement process was non-collusive and that it meets all of the factors set forth in *Dunk v. Ford Motor*  
11 *Co.*, (1996) 48 Cal. App. 4th 1794, 1802. The Court concludes that the settlement agreement is fair,  
12 adequate, and reasonable. *Roos v. Honeywell Int’l, Inc.* (2015) 241 Cal. App. 4th 1472, 1482,  
13 *disapproved of on another ground by Hernandez v. Restoration Hardware, Inc.*, (2018) 4 Cal. 5th 260.<sup>1</sup>

14 Class Members were given a full opportunity to participate in the Final Approval hearing, and all  
15 Class Members and other persons wishing to be heard have been heard. All Class Members, except for  
16 those who submitted a valid Opt-Out Statement, are bound by this Order, including releases provided for  
17 in the Settlement and this Final Approval Order. As of the Effective Date of Settlement, by operation of  
18 the entry of this Final Approval Order, each Settlement Class Member, including Plaintiffs, shall be  
19 deemed to have fully released, waived, relinquished and discharged, to the fullest extent permitted by  
20 law, all Released Claims that he or she may have against the Released Parties. Class Members are  
21 enjoined from prosecuting the Released Claims, and are enjoined from initiating or continuing other  
22 proceedings regarding the Released Claims, as provided in the Settlement Agreement. Plaintiffs are also  
23 bound by a complete and general release of all claims pursuant to California Civil Code § 1542.

24 Lastly, the Court finds and determines that payment to the California Labor and Workforce  
25

26 <sup>1</sup> The Court notes the overwhelmingly positive response to the settlement by the Settlement Class. There were no  
27 objections to the settlement. Only 2 individuals requested to be excluded from the damages portion of the  
28 Settlement Class. A list of these individuals is attached hereto as Exhibit 1.

1 Development Agency of \$115,047.60 as its share of the settlement of civil penalties in this case is fair,  
2 reasonable, and appropriate. The Court hereby orders that the payment of that amount be made as  
3 provided in the Settlement Agreement.

4 It is therefore ORDERED that:

- 5 a) The Settlement Class is Certified. The Court appoints Medina Orthwein LLP and Lieff,  
6 Cabraser, Heimann, & Bernstein LLP as Class Counsel and appoints Shelby Stewart, Charleta  
7 Dabrowski, Benedict Johnson, and Kenya Mayfield as Class Representatives.
- 8 b) The Settlement Agreement and the class action settlement it embodies is hereby APPROVED.
- 9 c) The Court ORDERS that \$86,285.70 (75% of \$115,047.60) be paid to the California Labor and  
10 Workforce Development Agency as required by the statute.
- 11 d) The Court ORDERS that \$28,761.90 (25% of \$115,047.60) be allocated to the Settlement  
12 Awards Fund.
- 13 e) The settlement administrator and the Parties are ORDERED to distribute settlement funds as  
14 detailed in the Settlement Agreement and Plaintiffs' submissions to the Court.
- 15 f) Pursuant to California Rule of Court 3.769(h), the Court retains jurisdiction over the Parties to  
16 enforce the terms of the judgement.

17  
18 JUDGMENT IS HEREBY ENTERED.

19  
20 \_\_\_\_\_  
21 DATED

\_\_\_\_\_

JUDGE OF SUPERIOR COURT



# **EXHIBIT 1**

***Stewart, et al., v. Kaiser Foundation Health Plan, Inc., et al.***

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

**Requests for Exclusion Received**

<b>ID</b>	<b>Name</b>	<b>Received On</b>
900479	TAMARA CHRISTINE LEWIS	12/16/2021
900859	REBECCA S DAVIS	12/21/2021