

1 Felicia Medina (SBN 255804)  
fmedina@medinaorthwein.com  
2 Jennifer Orthwein (SBN 255196)  
jorthwein@medinaorthwein.com  
3 Shauna Madison (SBN 299585)  
smadison@medinaorthwein.com  
4 Ashley Carter (SBN 340403)  
acarter@medinaorthwein.com  
5 MEDINA ORTHWEIN LLP  
230 Grand Avenue, Suite 201  
6 Oakland, CA 94610  
Telephone: (510) 823-2040  
7 Facsimile: (510) 217-3580

8 Kelly M. Dermody (SBN 171716)  
kdermody@lchb.com  
9 Jallé H. Dafa (SBN 290637)  
jdafa@lchb.com  
10 LIEFF CABRASER HEIMANN & BERNSTEIN, LLP  
275 Battery Street, 29th Floor  
11 San Francisco, CA 94111  
Telephone: (415) 956-1000  
12 Facsimile: (415) 956-1008

13 *Attorneys for Plaintiffs and the Class*

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

16 SHELBY STEWART, CHARLETA  
17 DABROWSKI, BENEDICT JOHNSON,  
and KENYA MAYFIELD, individually  
18 and on behalf of all others similarly situated,

19 Plaintiffs,

20 V.

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

25 Defendants.

Case No.: CGC-21-590966

**PLAINTIFFS' NOTICE OF MOTION AND  
MOTION FOR FINAL APPROVAL OF  
CLASS SETTLEMENT AND  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT THEREOF**

Hearing Date: February 9, 2022

Time: 9:00 am

Complaint filed: April 22, 2021

Department: 613

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1 **NOTICE OF MOTION**

2 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

3 PLEASE TAKE NOTICE that Plaintiffs Shelby Stewart, Charleta Dabrowski, Benedict Johnson,  
4 and Kenya Mayfield (collectively, "Plaintiffs"), on behalf of themselves and all others similarly situated  
5 ("Class Members"), hereby move for an order granting this Motion for Final Approval of the Class Action  
6 Settlement. Submitted herewith is Plaintiffs' Memorandum of Points and Authorities in Support of  
7 Motion for Final Approval of the Class Settlement; the Declaration of Felicia Medina; the Declaration of  
8 Kelly Dermody, the Declaration of Jennifer M. Keough [JND]; and a [Proposed] Order Granting  
9 Plaintiffs' Motion for Final Approval of the Class Settlement.

10 Dated: January 7, 2022

11 Respectfully submitted,

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



13 Felicia Medina  
14 Jennifer Orthwein  
15 Shauna Madison  
16 Ashley Carter  
17 MEDINA ORTHWEIN LLP  
18 230 Grand Avenue, Suite 201  
19 Oakland, CA 94610  
20 Telephone: (510) 823-2040  
21 Facsimile: (510) 217-3580

22 Kelly M. Dermody  
23 Jallé H. Dafa  
24 LIEFF CABRASER HEIMANN & BERNSTEIN, LLP  
25 275 Battery Street, 29th Floor  
26 San Francisco, CA 94111  
27 Telephone: (415) 956-1000  
28 Facsimile: (415) 956-1008

*Attorneys for Plaintiffs and the Class*

1 **MEMORANDUM OF POINTS AND AUTHORITIES<sup>1</sup>**

2 **I. INTRODUCTION**

3 Plaintiffs Shelby Stewart, Charleta Dabrowski, Benedict Johnson, and Kenya Mayfield  
4 (collectively, “Plaintiffs” or the “Class Representatives”), on behalf of themselves and the Class of  
5 approximately 2,217 similarly situated individuals, respectfully move for final approval of a \$11,504,659  
6 settlement of a race discrimination class action (the “Action”) against Defendant Kaiser Foundation Health  
7 Plan, Inc., Kaiser Foundation Hospitals, The Permanente Medical Group, Inc., and Southern California  
8 Permanente Group (together, “Kaiser-Related Entities” or “Defendants”) (together with Plaintiffs, the  
9 “Parties”).

10 After a rigorous investigation and exchange of information and documents, the Parties reached an  
11 informed agreement to settle the Action pursuant to the Stipulation of Settlement, fully executed on April  
12 21, 2021 (the “Settlement”). The complaint in this matter was filed on April 22, 2021. Before the  
13 complaint was filed, this Settlement was reached after the Parties exchanged substantial data and  
14 documentary information about the allegations and engaged in intense negotiations for more than two  
15 years with the assistance of a mediator and expert labor statisticians. The Settlement is the result of  
16 multiple mediations and negotiations related to alleged racial inequities.

17 The Settlement Class consists of current and former, full-time, non-union, non-clinical Black  
18 employees, employed by the Company from January 1, 2015 until March 31, 2021 (the “Class Period”)  
19 at the Director level and below in the Administrative Support or Consulting Services job families in the  
20 California locations of the Program Offices Region, Northern California Region, Southern California  
21 Region, and the KP-IT region. The finalized Class totals approximately 2,217 members.<sup>2</sup> The Class meets  
22 all the requirements for certification under Section 382 of the California Code of Civil Procedure, and  
23 Defendants have stipulated to certification for settlement purposes.

24  
25  
26 <sup>1</sup> Defendants have informed Plaintiffs that while Defendants do not oppose Plaintiffs’ Motion for Final  
27 Approval of Class Settlement (“Motion”) and agree that the Court should grant Final Approval of the  
28 Settlement and approve final certification of the Class for settlement purposes, Defendants do not admit  
the facts or allegations stated in the Motion and supporting declarations.

<sup>2</sup> As of January 6, 2022, JND has received 2 opt-outs.



1 The Settlement the Parties reached is fair and reasonable in light of the risks and costs of  
2 continued litigation and provides meaningful and prompt relief to the approximately 2,217 Class  
3 Members. The Class Settlement provides for a non-reversionary monetary fund of \$11,504,759. The  
4 Settlement represents an excellent value for the Class and provides Class Members approximately  
5 \$7,552,045.60 for Individual Settlement Awards to Settlement Class Members. Additionally, the  
6 Settlement provides for robust programmatic relief, including: professional job analyses recognizing  
7 employees performing substantially similar work, monitoring pay equity, enhancing the promotion  
8 selection process to incorporate validated qualifications and ensure managers are properly trained in  
9 using validated selection criteria, annual monitoring of promotion data for disparate impact, increasing  
10 EEO investigative resources, and auditing EEO logs to identify and elevate repetitive issues, if any. The  
11 internal cost of the programmatic relief that Defendants are paying in addition to the Settlement is  
12 estimated at \$2,000,000. Further, as referenced below, “Belong at KP” is an estimated \$7,000,000  
13 program that Defendants are implementing that Plaintiffs believe will improve company culture and  
14 racial equity. In all, Plaintiffs believe that the programmatic relief will help Kaiser become a more  
15 inclusive and equitable workplace. Furthermore, Kaiser’s implementation of programmatic relief will  
16 be monitored by Class Counsel for three years following the Final Approval.

17 The Settlement allocates \$86,285.70 (75% of the \$115,047.60 PAGA allocation) to be paid to  
18 the California Labor and Workforce Development Agency, and \$28,761.90 (25% of the \$115,047.60  
19 PAGA allocation) to be allocated to the Settlement Award Fund.

20 This motion for Final Approval is supported by the Class Members. As of the date of this filing,  
21 no Class Member has objected to the Settlement. The Class Settlement is fair, reasonable, and adequate;  
22 the monetary award is proportional to similar class actions; and the settlement provides meaningful  
23 prompt relief for the disputed violations without the risks of lengthy class action litigation, thus  
24 warranting final approval. Accordingly, and for the reasons detailed below, the Court should grant Final  
25 Approval of the Settlement and approve final certification of the Class.<sup>3</sup>

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26  
27 <sup>3</sup> As part of final Settlement approval, on December 23, 2021, Plaintiffs filed a separate Motion for  
28 approval of fees, reimbursement of costs, and payment of service awards to the Class Representatives. All  
arguments on such requests are set forth in that separate briefing.

1 **II. FACTUAL AND PROCEDURAL BACKGROUND**

2 **A. Case Background**

3 As detailed in the complaint, Plaintiffs allege that Kaiser maintains common, universal pay and  
4 promotion policies and procedures that cause Black employees to be underpaid and under-promoted as  
5 compared to their similarly-situated non-Black counterparts. Plaintiffs assert five causes of action under  
6 the California Fair Employment and Housing Act, Cal. Gov't. Code section 12940, *et seq.* ("FEHA"), the  
7 California Equal Pay Act, as amended, Cal. Labor Code § 1197.5 (AKA the California Fair Pay Act)  
8 ("California EPA"), the California Unfair Competition Law, Cal. Bus. & Prof. Code section 17200, *et*  
9 *seq.*, the California Private Attorneys General Act of 2004, Cal. Lab. Code section 2698, *et seq.*  
10 ("PAGA"), Title VII of the Civil Rights Act, 42 U.S.C. § 2000e *et seq.* ("Title VII"); 42 U.S.C. § 1981  
11 ("Section 1981"), and related statutes. (Complaint, ¶¶ 63-91.)

12 Plaintiffs' Counsel began investigating Plaintiffs' potential claims in October 2018. On August 8,  
13 2019, the Parties entered into a tolling agreement, pursuant to which Plaintiffs and Defendants were able  
14 to explore settlement and Plaintiffs were able to complete a substantial investigation without statute of  
15 limitations running. (See Medina Decl. ¶ 22; Dermody Decl. ¶ 2.) Over the course of more than two  
16 years, Plaintiffs conducted an extensive pre-filing investigation and engaged in substantial informal data,  
17 document, and witness discovery with Defendants. (Medina Decl. ¶¶ 20, 22-25; Dermody Decl. ¶¶ 3-4.)  
18 Following extensive negotiations, Plaintiffs obtained multiple rounds of class-wide data and retained an  
19 expert, Alex Vekker, Ph.D., to conduct a statistical analysis of pay and promotion disparities across the  
20 Class and to determine the scope and scale of potential Class exposure and risk. (Medina Decl. ¶ 23;  
21 Dermody Decl. ¶ 3.) The class data production included 72 variables that reflected Class Members'  
22 compensation and various job attributes, such as: job history, personnel actions, performance review  
23 ratings, job families, functions, departments, manager levels, EEO category, and salary grade. Plaintiffs'  
24 expert ran multiple sophisticated multivariate regression analyses to isolate the effect—in his opinion—of  
25 race on base pay and incentive compensation, and to demonstrate potential class-wide exposure.<sup>4</sup>

26 \_\_\_\_\_  
27 <sup>4</sup> Defendants have informed Plaintiffs that they do not agree with the methodologies that Dr. Vekker used  
28 to conduct his regression analyses but, for purposes of the proposed Settlement only, have agreed not to  
oppose Plaintiffs' characterization of and reliance on his analyses.

1 Defendants' document production included hundreds of pages of challenged policies in this action,  
2 including, but not limited to, manuals, guidelines, handbooks, tools, and training materials concerning  
3 compensation, job analysis, promotions, career progressions and management development, performance  
4 reviews, discrimination complaint processes and investigations, workforce surveys, and personnel action  
5 changes. (Medina Decl. ¶ 24; Dermody Decl. ¶ 4.) After reviewing these policies, Plaintiffs' Counsel  
6 conducted in-depth interviews with four Kaiser managers regarding the Company's compensation  
7 policies, promotion policies, and performance reviews. (Medina Decl. ¶ 25.)

8 Following months of investigation and informal discovery, the Parties participated in a mediation  
9 on September 11, 2019 with David Rotman, a highly regarded mediator with more than 25 years of  
10 experience handling complex class and collective action negotiations. (Medina Decl. ¶ 26; Dermody Decl.  
11 ¶ 5.) When the Parties failed to reach agreement during the first mediation, the Parties continued to  
12 negotiate and participated in an additional mediation with Mediator Rotman on December 6, 2019, during  
13 which the Parties agreed on a preliminary monetary settlement. (Medina Decl. ¶¶ 26-27.) After agreeing  
14 on preliminary monetary terms, the Parties then participated in extensive negotiations regarding  
15 programmatic relief in the form of business practices changes that would address pay equity, promotional  
16 opportunities, and diversity, equity, and inclusion at Kaiser in the future.

17 After a delay caused by the COVID-19 pandemic, Kaiser produced additional pay data for 2020  
18 and for the first quarter of 2021, which the Parties analyzed for additional alleged exposure during the  
19 expanded class period. Following that analysis, the Parties agreed on an expanded non-reversionary  
20 settlement fund of \$11,504,759, the net to be distributed to the Class after fees, expenses, and settlement  
21 administration. This non-reversionary fund of \$11,504,759, along with substantial business practice  
22 changes, more than satisfy the standards for settlement approval of this Action. Plaintiffs now move for  
23 final approval, which Defendants do not oppose.

24 On July 16, 2021, Plaintiffs filed an Unopposed Motion for Preliminary Approval of Class  
25 Settlement. On October 14, 2021, Plaintiffs filed a Supplemental Memorandum in Support of Preliminary  
26 Approval of Class Settlement. The Court preliminarily approved the Settlement on December 1, 2021.  
27 In so doing, the Court provisionally certified the Class for settlement purposes, appointed Plaintiffs as  
28 Class Representatives, appointed Medina Orthwein LLP and Lieff, Cabraser, Heimann, Bernstein, LLP

1 as Class Counsel for the Settlement Class, approved the method and the manner of providing notice to the  
2 Class as set forth in the Order, and set a schedule for the Final Approval hearing and other remaining  
3 procedures.

4 The Settlement Administrator, JND Legal Administration (“JND”), distributed the Class Notice  
5 to all Class members on December 8, 2021 by first-class mail and disseminated electronic notice (“email  
6 notice”) to 1,718 class members who had an email address on file. (Keough Decl., ¶¶ 6, 9.) The deadline  
7 to submit an objection or request for exclusion is January 22, 2021. (*Id.* at ¶ 13) As of the date of this  
8 filing JND has received 2 requests for exclusions and 0 objections. (*Id.* at ¶¶ 14, 16.) As a result of  
9 preliminary calculations using the formula provided in the Settlement agreement, the average gross  
10 settlement benefit amount is \$3,406.43 (*Id.* at ¶ 21.)

### 11 **III. KEY TERMS OF SETTLEMENT**

#### 12 **A. Class Definition**

13 The Class is defined as:

14 African-American/Black individuals who meet the following parameters at any time between  
15 January 1, 2015, and March 31, 2021 (the “Settlement Class” and the “Class Period”):

- 16 a) Employed in any of the following California Regions – Norther California (NCAL), Southern  
17 California (SCAL), California locations of Program Offices, and California locations of the  
18 KP-IT Region;
- 19 b) Employed full time by any of the following Defendants – Kaiser Foundation Hospitals, Kaiser  
20 Foundation Health Plan, The Permanente Medical Group, and Southern California  
21 Permanente Medical Group;
- 22 c) Employed as exempt or non-exempt employees;
- 23 d) Employed in full-time occupied operative, non-union, Director-level and below, and  
24 nonclinical jobs only; and
- 25 e) Employed in either the Administrative Support or Consulting Services job families in any of  
26 the “Covered Positions” listed in Appendix 1 to the Settlement Agreement

1           **B.       Monetary Terms**

2           The Settlement establishes a Class Settlement Fund (“CSF”) of \$11,504,759, which, has been  
3 preliminarily approved by the Court and will be allocated as follows: 30% to attorneys’ fees, in addition  
4 to reasonably-incurred costs not to exceed \$65,000, \$86,285.70 to the state of California for settlement of  
5 the PAGA claims, Class Representative awards ranging from \$60,000 to \$75,000 for each Named  
6 Plaintiff, claims administration costs, which Plaintiffs estimate to be \$45,000, and a \$50,000 contingency  
7 fund to effectuate the purposes of the Settlement. (Settlement ¶ X.A.) The Settlement Award Fund  
8 (“SAF”) remaining after the foregoing costs are accounted will be distributed by the Claims Administrator  
9 to participating Settlement Class Members. (Settlement ¶ III.A.26.) The SAF is estimated to be  
10 \$7,552,045.60.

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

17           **C.       Nonmonetary Terms**

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

21           a.       Retention of an independent expert industrial organizational psychologist (“I/O  
22 Psychologist”), chosen by both parties and paid for by Defendants, to:

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

26                   ii.      Within 18 months of the Effective Date of the Settlement,  
27 incorporate the validated qualifications and competencies from the job analysis work into job descriptions  
28 and promotion selection criteria; develop training for managers in the use of validated selection criteria for

1 selection decisions; and provide, or guide the development of, improved tools/templates for use in making  
2 selection decisions (e.g., structured interview guides);

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

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

13                   v.       Based on the job analysis output and relevant leadership needs,  
14 assist Defendants in determining whether and how to develop and implement leadership assessment(s)  
15 focused on modeling the capabilities and competencies (including DEI) that are needed for particular  
16 management-level and above jobs;

17                   vi.       Based on the job analysis output, provide guidance on training  
18 managers on their accountability to established decision-making criteria;

19                   vii.       Review existing mentorship programs designed to support  
20 managers from historically underrepresented groups, including Black employees, and provide feedback  
21 for how they can be improved; and

22                   viii.       Inform the model for the statistical work conducted on an annual  
23 basis by an independent expert monitoring pay equity

24                   b.       The retention of an independent expert statistician paid for by Kaiser to:

25                   i.       Conduct an annual pay analysis for three annual cycles (beginning  
26 one year from the Effective Date of the Settlement) to review base pay, incentive pay, and promotion  
27 outcomes throughout the covered entities;

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

6                   iii.       To remediate pay disparities, if any, identified in the annual  
7 pay equity monitoring within three months, both addressing any gap in the pay and curing the gap going  
8 forward;

9                   iv.       Training for employees and management on racial bias and  
10 equity, including Upstander Intervention training, equity training, implicit bias, and debiasing programs  
11 for those engaged in enforcing company policy on equal employment opportunity, as well as significant  
12 investment of DEI resources to the Belong@KP initiative;

13                   v.       Training on pay practices and on candidate selection;

14                   vi.       Leadership statements on racial equity matters;

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

19                   viii.     The results of the analyses and progress of implementation efforts  
20 will be shared in the semi-annual meetings between Kaiser and Class Counsel for a period of three years  
21 to ensure compliance of the Settlement; and

22                   ix.       The appointment of an internal Compliance Officer to  
23 oversee the implementation of these policies and procedures and continued compliance with the  
24 Settlement.

25           Kaiser estimates the implementation of the programmatic relief will cost at least \$2 million,  
26 beyond the monetary relief going directly to the Class. Plaintiffs believe these measures put racial equity  
27 front and center within the Company and will help to advance a culture inclusive and positive for Black  
28 employees. In addition, Kaiser’s culture change training program, Belong@KP, will cost an additional

1 estimated \$7 million over the three years of the Settlement monitoring period. Plaintiffs believe that this  
2 programmatic relief, which implements systems enhancements to ensure that Black employees earn and  
3 advance at the same rate as their non-Black peers and that racial equity remains a focus, provides  
4 significant value to Class Members and other employees that would not have been possible without the  
5 Settlement.

6 **D. Reasonable Scope of Released Claims**

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

12 **E. Tax Treatment**

13 For tax purposes, 33% of Claimants' Awards will be attributable to lost wages in connection with  
14 the claims alleged during the Class Period and will be subject to all applicable tax deductions and  
15 withholdings. This portion will be reported on an IRS Form W2. (Settlement ¶ X.G.2.) The remaining  
16 67% of Claimants' Awards will be allocated as non-wage income, and an IRS Form 1099 will be issued  
17 for this amount. (*Ibid.*)

18 **IV. ARGUMENT**

19 **A. Plaintiffs Have Satisfied the Requirements for Final Certification of the Class for**  
20 **Settlement Purposes**

21 Under Section 382 of the Code of Civil Procedure, a class may be certified if: (1) it is ascertainable  
22 and its members are too numerous for joinder to be practical; (2) the representative and absent class  
23 members share a community of interest and questions of law and fact common to the class predominate  
24 over questions unique to individual class members; (3) the representative's claims are typical of the class'  
25 claims; and (4) the representative will fairly and adequately represent the class' interests. (See, e.g.,  
26 *Richmond v. Dart Industries, Inc.* (1981) 29 Cal.3d 462, 470.) As set forth in Plaintiffs' Motion for  
27 Preliminary Approval and Certification of the Settlement Class, Plaintiffs here maintain that they readily  
28 meet all these requirements.



1                   **1.       The Class Is Objectively Ascertainable**

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

11                   **2.       The Class Is Sufficiently Numerous**

12           Given that there are approximately 2,217 Class Members, including Named Plaintiffs, the Class is  
13 more than sufficiently numerous. (See *Daar v. Yellow Cab Co.* (1967) 67 Cal.2d 695.)

14                   **3.       Common Questions Predominate Over Individual Questions**

15           The commonality requirement is met if there are questions of law or fact common to the class.  
16 (*Williams v. Sup. Ct.* (2013) 221 Cal.App.4th 1353, 1369 [a single common question can create  
17 commonality].) A question of law or fact is common to the members of a class if it may be resolved  
18 through common proof. (See, e.g., *Jaimez v. Daijhs USA, Inc.* (2010) 181 Cal.App.4th 1286, 1305.) As  
19 for predominance, it “is a comparative concept, and ‘the necessity for class members to individually  
20 establish eligibility and damages does not mean individual fact questions predominate.” (*Sav-On Drug*  
21 *Stores, Inc. v. Super. Ct.*, 34 Cal.4th 319, 334 [quoting *Reyes v. San Diego County Bd. of Supervisors*  
22 (1979) 196 Cal.App.3d 1263, 1278].) In evaluating predominance, “the ultimate question ... is whether  
23 the issues which may be jointly tried, when compared with those requiring separate adjudication, are so  
24 numerous or substantial that the maintenance of a class action would be advantageous to the judicial  
25 process and to the litigants.” (*Brinker Rest. Corp. v. Super. Ct.* (2012) 53 Cal.4th 1004, 1021 [internal  
26 quotation marks omitted].)

27           Here, Plaintiffs maintain that common questions include, but are not limited to: (1) whether Kaiser  
28 paid Black employees less than non-Black employees performing substantially similar work; (2) whether

1 Kaiser’s compensation and/or promotion policies and procedures have an adverse impact on its Black  
2 employees; and (3) whether Kaiser intentionally discriminated against Black employees in terms of pay  
3 and promotion. Plaintiffs further maintain that these questions can be resolved through common proof  
4 concerning Kaiser’s uniform pay and promotion policies and its common workforce data which may be  
5 analyzed for statistical trends. Plaintiffs allege that these are exactly the types of common evidence  
6 approved by California courts. (See *Brinker Rest. Corp.*, 53 Cal.4th at 1033 [“Claims alleging that a  
7 uniform policy consistently applied to a group of employees is in violation of the wage and hour laws are  
8 of the sort routinely, and properly, found suitable for class treatment.”]; *Bradley v. Networkers Int’l, LLC*  
9 (2012) 211 Cal.App.4th 1129, 1143 [same]; *Jaimez v. Daiogas USA, Inc.* (2010) 181 Cal.App.4th 1286,  
10 1298 [“California courts consider ‘pattern and practice evidence, statistical evidence, sampling evidence,  
11 expert testimony, and other indicators of a defendant’s centralized practices in order to evaluate whether  
12 common behavior towards similarly situated plaintiffs makes class certification appropriate.’”].)

13 Plaintiffs allege common facts for each challenged practice,<sup>5</sup> including that all Class Members are  
14 subject to the same compensation guidelines and practices; decisions related to increasing pay formulas  
15 are centralized within Kaiser’s Human Resources Compensation Team and senior leadership team;  
16 Kaiser’s regional branches in California have a uniform structure for setting base pay and merit increases;  
17 Kaiser’s promotion policies are collectively developed and revised during a monthly “HR Roundtable”  
18 involving representatives across regions and job functions; Kaiser applies a common policy to determining  
19 the salary increase at promotion; and Black employees have not been promoted in the same manner as  
20 non-Black employees in Kaiser’s common promotion system despite receiving comparable performance  
21 evaluations. (Compl. ¶¶ 16-18, 25-27.) Plaintiffs’ expert found pay gaps to exist at statistically significant  
22 levels across the Class, after controlling for age, tenure with Kaiser, job family, job function, salary plan,  
23 department, year, and performance. (Medina Decl. ¶ 23.) Plaintiffs’ expert found that Exempt Class  
24 Members were, on average, paid approximately 7.1% less than their non-Black counterparts in base pay  
25 and 6.51% in incentive pay, and Non-Exempt Class Members were, on average, paid approximately 0.9%

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27  
28 <sup>5</sup> In stipulating to certification for settlement purposes, Defendants have informed Plaintiffs that they  
dispute Plaintiffs’ allegations but, for purposes of the Settlement only, do not oppose this Motion.

1 less than their non-Black counterparts in base pay and 1.36% less in incentive pay.<sup>6</sup> (*Ibid.*) The Class  
2 monetary relief formula reflects the relative difference in these numbers.

3 Plaintiffs maintain that commonality is satisfied.

4 **4. Plaintiffs Are Typical and Adequate**

5 Typicality “requires a showing that the class representative has claims or defenses typical of the  
6 class.” (See, e.g., *Fireside Bank v. Superior Court* (2007), 40 Cal.4th 1069.) The adequacy requirement  
7 is met where the class representative is represented by counsel qualified to conduct the litigation and the  
8 plaintiff’s interest in the litigation is not antagonistic to the class’s interests. (*McGhee v. Bank of America*  
9 (1976) 60 Cal.App.3d 442, 451.) Plaintiffs maintain that both requirements are satisfied here. Plaintiffs  
10 allege that they are members of the Class they seek to represent, with the same claims as the Class, and  
11 with no conflicts between themselves and Class members. (See Dermody Decl. Exs. A-D; Stewart Decl.  
12 ¶¶ 2-4; Dabrowski Decl. ¶¶ 2-4; Johnson Decl. ¶¶ 2-4; Mayfield Decl. ¶¶ 2-4). Plaintiffs have more than  
13 demonstrated that they are capable of “vigorously and tenaciously protect[ing] the interests of the class.”  
14 (*Simons v. Horowitz* (1984) 151 Cal.App.3d 834, 846.)<sup>7</sup>

15 Plaintiffs’ Counsel is likewise adequate to represent the Class. Plaintiffs’ attorneys collectively  
16 have extensive experience in employment litigation, including numerous class action matters. (See  
17 Medina Decl. ¶ 8-9 [Felicia Medina has served as Lead or Co-Lead Counsel in twelve employment class  
18 and collective actions]; Dermody Decl., ¶ 6 [Kelly Dermody has served as Class Counsel in seven class  
19 employment discrimination actions].)

20 **5. A Class Action Is Superior to Other Alternatives**

21 A class action is vastly superior to the alternative of each Class Member bringing individual claims  
22 challenging Kaiser’s alleged common policies and procedures. “Generally, a class suit is appropriate  
23

24  
25 <sup>6</sup> Where there are common questions of liability across the class, individualized issues regarding the  
26 amount of damages do not defeat a class action. (See, e.g., *Faulkinbury v. Boyd & Associates, Inc.* 216  
27 Cal.App.4th 220, 232-340; *Jones v. Farmers Ins. Exchange* (2013) 221 Cal.App.4th 986, 997; *Benton v.*  
28 *Telecom Network Specialist, Inc.* (2013) 220 Cal.App.4th 701, 726.)

<sup>7</sup> The Named Plaintiffs’ extraordinary commitment to this case has been described more fully in the  
separate Motion for Attorneys’ Fees, Reimbursement of Costs, and Payment of Service Awards filed on  
December 23, 2021.

1 when numerous parties suffer injury of insufficient size to warrant individual action and when denial of  
2 class relief would result in unjust advantage to the wrongdoer.” (*Linder v. Thrifty Oil Co.* (2000) 23  
3 Cal.4th 446, 447.) Plaintiffs maintain that a class action is superior here because the Class Members’  
4 claims have significant overlapping factual issues, and if Class Members did bring individual claims, it  
5 would increase the delay and expense to all parties and multiply the burden on the judicial system.

6 In addition, certifying the Class for Settlement purposes is manageable. Third party administrator,  
7 JND Legal Administration, has already provided Notice of the Settlement to the Class Members and can  
8 distribute settlement funds based on a common formula. (Keough Decl. ¶¶ 6-9, 21; see also *Six Mexican*  
9 *Workers v. Arizona Citrus Growers* (9th Cir. 1990) 904 F.2d 1301, 1304.)

10 This case meets all requirements for settlement certification.

11 **B. The Settlement Meets the Requirements for Final Approval**

12 The Settlement in this case meets all the relevant criteria for final approval of a class action  
13 settlement. “A trial court may approve only a settlement of a class action that is fair, adequate, and  
14 reasonable.” (*Roos v. Honeywell Int’l, Inc.* (2015) 241 Cal.App.4th 1472, 1482, *disapproved of on*  
15 *another ground by Hernandez v. Restoration Hardware, Inc.*, (2018) 4 Cal.5th 260.) A settlement is  
16 presumptively fair where it is reached through arm’s length bargaining, based on enough discovery and  
17 investigation to allow counsel and the court to act intelligently, counsel is experienced in similar  
18 litigation, and the percentage of objectors is small. (See *Dunk v. Ford Motor Co.* (1996) 48  
19 Cal.App.4th 1794, 1802.) The well-recognized factors that the trial court should consider in evaluating  
20 the reasonableness of a class action settlement agreement include (1) the strength of plaintiffs’ case, (2)  
21 the risk, expense, complexity and likely duration of further litigation, (3) the risk of maintaining class  
22 action status through trial, (4) the amount offered in settlement, (5) the extent of discovery completed  
23 and stage of the proceedings, (6) the experience and views of counsel, (7) the presence of a  
24 governmental participant, and (8) the reaction of the class members to the proposed settlement.” (*Kullar*  
25 *v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128 (2008) [*quoting Dunk v. Ford Motor Co.*,  
26 (1996) 48 Cal. App. 4th 1794, 1801], (1)-(7) numbers added (hereinafter, the “*Dunk Factors*”).)

1                   **1.       The Strength of Plaintiffs’ Case**

2                   “The proposed settlement cannot be judged without reference to the strength of plaintiffs’  
3 claims. The most important factor is the strength of the case for plaintiffs on the merits, balanced against  
4 the amount offered in settlement.” (*Kullar*, 168 Cal.App.4th at 130, internal citations and quotation  
5 marks omitted.) Plaintiffs’ Counsel believe Plaintiffs have a strong case; however, they also recognize  
6 the risks involved in continuing litigation, including the risk of losing on the merits of their claims at trial.  
7 (Medina Decl. ¶ 28; Dermody Decl. ¶ 10.) Plaintiffs remain confident that, if this case were to proceed  
8 in litigation, they would obtain class certification and prove their claims at trial. After reviewing the  
9 documents Defendants produced through informal discovery, Plaintiffs believe that at trial, they would be  
10 able to show that Kaiser maintains common policies and practices that discriminate against Black  
11 employees and lead to them being systematically underpaid and underpromoted as compared to their non-  
12 Black peers. Despite these strengths, Plaintiffs recognize that there are considerable risks in continuing  
13 litigation especially considering the legal standard for proving pay and promotion discrimination on a  
14 class wide basis. (Medina Decl. ¶ 28.) Defendants dispute that Kaiser maintains a company-wide policy  
15 or practice of failing to promote Black employees and they deny a policy or practice of underpaying Black  
16 employees. Absent this Settlement, Defendants can be expected to vigorously defend this Action on these  
17 grounds, among others, and contest the propriety of class treatment in response to a motion for certification  
18 and through trial. In light of the risks that Plaintiffs face on the merits of their claims, this factor weighs  
19 in favor of granting final approval of the Settlement.

20                   **2.       Risk, Expense, Complexity and Likely Duration of Further Litigation**

21                   Plaintiffs’ Counsel began investigating Plaintiffs’ potential claims in October 2018. The proposed  
22 settlement confers a substantial, immediate benefit on Settlement Class Members, while further litigation  
23 would create significant risks of lesser or no relief at all with additional expense and delay, including  
24 appeals. A settlement is preferable to lengthy and expensive litigation. (See *Nat’l Rural Telecomms.*  
25 *Coop. v. DIRECTV, Inc.*, (C.D. Cal. 2004) 221 F.R.D. 523, 526 [“In most situations, unless the settlement  
26 is clearly inadequate, its acceptance and approval are preferable to lengthy and expensive litigation with  
27 uncertain results.”], internal citation omitted.)  
28

1 Class Counsel expects that continued litigation would require significant resources expended on  
2 ESI discovery, numerous depositions of Kaiser administrators and Class Representatives, as well as  
3 extensive expert discovery. If Plaintiffs obtained class certification, Plaintiffs still face potential motions  
4 for decertification and summary judgment, adverse evidentiary rulings, and would need to win at trial,  
5 which collectively could take years to complete. A trial would also consume tremendous time and  
6 resources for all Parties and the Court, and might result in no relief at all, or inferior relief to what has  
7 been achieved here. (Medina Decl. ¶ 37; Dermody Decl. ¶ 10.)

8 The length, expense, and uncertainty surrounding future litigation weigh in favor of approval of  
9 the settlement. Considering these risks, the Settlement provides meaningful, prompt relief for the disputed  
10 violations and is well within the range of reasonableness.

### 11 **3. Risk of Maintaining Class Action Status Through Trial**

12 Although the Court has preliminarily certified the class, the certification was for settlement  
13 purposes only. (See Order Granting Mot. for Prelim. Approval of Class Action Settlement, at 2.) Without  
14 settlement, Plaintiffs would need to obtain class certification and although Plaintiffs believe their  
15 arguments in favor of class certification would be strong, Plaintiffs recognize Defendants might argue that  
16 individualized inquiries predominate on Plaintiffs' pay and promotion claims. If Plaintiffs did obtain class  
17 certification on some or all of their claims, Defendants would have been able to seek, and the Court could  
18 have granted, decertification in whole or in part at any point up through the trial. Given the risks that  
19 Plaintiffs may not have obtained class certification on some or all of their claims, and that they may have  
20 lost class treatment on some or all of the claims prior to trial, this factor weighs in favor of final approval.

### 21 **4. The Amount Offered in Settlement**

22 The proposed Settlement of \$11,504,759 offers substantial relief to Settlement Class Members.  
23 Based on data provided in informal discovery, Class Counsel estimates the settlement represents  
24 approximately 36.3% of the Class's total theoretical maximum recovery excluding PAGA penalties and  
25 the programmatic relief estimated to be valued at a minimum of \$2,000,000. (Medina Decl. ¶¶ 34, 39.)  
26 Based on the class size of 2,217 class members, under the Settlement, the average class member award  
27 will be approximately \$3,406.43 and for Non-Exempt Class members the average award will be  
28 approximately \$1,172. (Keough Decl. ¶ 21.)

1 “The law favors settlement of cases and quieting of litigation, particularly in complex class  
2 actions.” (*In re Xoma Corp. Sec. Litigation* (N.D.Cal. July 10, 1992) 1992 U.S. Dist. LEXIS 10502, at \*4;  
3 see also *In re LinkedIn User Privacy Litig.* (N.D. Cal. 2015) 309 F.R.D. 573, 587 [“Immediate receipt of  
4 money through settlement, even if lower than what could potentially be achieved through ultimate success  
5 on the merits, has value to a class, especially when compared to risky and costly continued litigation.”].)  
6 Given the risks of continued litigation—which include potentially losing at the class certification stage,  
7 decertification, Class Members not receiving any recovery until after years of litigation or recovering less  
8 than the proposed Settlement or nothing at all—the risk of losing the \$11,504,759 settlement amount is  
9 substantial and falls well within the range of possible approval.

10 On a per class member basis, the Settlement and estimated average recovery per class  
11 member compares favorably to other class action settlements involving employment discrimination  
12 claims of which Plaintiffs’ Counsel are aware. (Medina Decl. ¶ 38; Dermody Decl. ¶ 10.) (See, e.g., *Chen*  
13 *v. Western Digital Corp.* (C.D. Cal. Jan. 5, 2021) 2021 U.S. Dist. Lexis 6728, at \*1-3, 13-15 [the court  
14 approved a settlement amount of \$7,750,000 for gender discrimination, pay discrimination, PAGA  
15 violations, and violating California’s unfair competition law. The average class member award was  
16 \$3,615, representing between 10.8% and 15.9% of defendant’s maximum exposure]; *K.H. v. Sec’y of*  
17 *Dep’t of Homeland Sec.* (N.D. Cal. Dec. 17, 2018) 2018 U.S. DIST. LEXIS. 212125, at \*10-13 [approving  
18 a \$1500 per class member settlement of class claims involving a violation of the Age Discrimination in  
19 Employment Act. Although the settlement represented about 1.5-2% of total recovery the settlement was  
20 warranted in light of “significant issues in proving liability.”]; see also *Boyd v. Bechtel Corp.* (N.D. Cal  
21 Aug. 22 1979) 485 F.Supp. 610, 615-23 [approving a settlement in a race discrimination class action of  
22 \$120,000 settlement – 16% of total exposure – and plaintiffs estimated that no more than 18% of class  
23 members were likely to be successful in the damages phase of trial].)

24 Additionally, the per-class member recovery in this case is satisfactory when compared to  
25 employment law settlements that have been approved by other courts. (See, e.g., *Alcantar v. Hobart Serv.*  
26 (C.D. Cal. Aug. 13, 2018) 2018 U.S. Dist. LEXIS 221900, at \*12 [approval of settlement that constituted  
27 34 percent of the estimated total damages available]; *Brown v. CVS Pharm., Inc.* (C.D. Cal. April 24,  
28 2017) 2017 U.S. Dist. Lexis 182309, at \*10 [approval of settlement that represented approximately 27

1 percent of the possible recovery; *Ogbuehi v. Comcast of California/Colorado/Florida/Oregon, Inc.* (E.D.  
2 Cal. June 8, 2015) 2015 U.S. Dist. Lexis 74548, at \*16 [approval of average class member award of  
3 \$531.67]; *Gardner v. GC Servs., LP* (S.D. Cal. Apr. 2, 2012) 2012 U.S. Dist. LEXIS 47034, at \*12  
4 [average settlement award “around several hundred dollars” – “a good result for the class and eliminates  
5 the risks, expenses, and delay associated with continued litigation”].)

6 Due to the certainty the settlement provides considering the uncertainties of litigation, the fact  
7 that the settlement amount was reached through compromise of both sides and arm’s length negotiation,  
8 and the substantial recovery to each Settlement Class Member relative to their theoretical maximum  
9 recovery, this factor weighs heavily in favor of final approval.

#### 10 **5. Extent of Discovery Completed and Stage of the Proceedings**

11 The fifth *Dunk* factor examines “the extent of discovery the parties have completed and  
12 the current stage of the litigation to evaluate whether ‘the parties have sufficient information to make  
13 an informed decision about settlement.’” (*Betancourt v. Advantage Human Resourcing, Inc.* (N.D. Cal.  
14 Jan. 28, 2016) 2016 U.S. Dist. LEXIS 10361, at \*14 [quoting *Linner v. Cellular Alaska P’ship* (9th  
15 Cir. 1998) 151 F.3d 1234, 1239].) The informal discovery in this case was extensive. Over the course  
16 of two years, Plaintiffs sought and obtained comprehensive personnel and payroll data on all employees  
17 in class positions, Kaiser’s compensation and promotion policies, and policies and materials concerning  
18 diversity and inclusion. Plaintiffs worked with a statistical expert, Dr. Alex Vekker, who performed  
19 statistical analyses of the class pay data, and Plaintiffs’ Counsel analyzed the various policy documents  
20 Kaiser produced and conducted interviews with four Kaiser leaders in relation to those policies. (Medina  
21 Decl. ¶¶ 22, 23, 25; Dermody Decl. ¶ 3-4.)

22 Plaintiffs used the information obtained through informal discovery to negotiate the settlement  
23 with a highly regarded private mediator, David Rotman. Through a full day of negotiations with Mediator  
24 Rotman, Plaintiffs advanced their positions while carefully crafting a fair resolution of the claims in the  
25 form of the monetary and non-monetary relief described in more detail above. When the Parties were  
26 unable to reach agreement at the first mediation, they continued negotiations. Kaiser produced additional  
27 data and the Parties participated in a second mediation on December 6, 2019, in which Class monetary  
28 terms were resolved and the parties created a framework for negotiating business practice changes.



1 The Settlement was thus the product of extensive informal discovery and adversarial negotiations,  
2 aided by Mediator Rotman as a neutral third-party facilitator, based on thorough evaluation of the factual  
3 and legal issues. (See *Kullar*, 168 Cal.App.4th at 118.) The extensive discovery completed in this case to  
4 date therefore strongly supports final approval.

#### 5 **6. The Experience and Views of Counsel**

6 The proposed Settlement was reached through vigorous arm's-length negotiation between lawyers  
7 with significant experience litigating employment discrimination class actions. (Dermody Decl. ¶¶ 5-6,  
8 12-15; Medina Decl. ¶¶ 8-10, 32-33.) And “[p]arties represented by competent counsel are better  
9 positioned than the courts to produce a settlement that fairly reflects each party’s expected outcome in  
10 litigation.” (See *In Re Pac. Enters. Sec. Litig.* (9<sup>th</sup> Cir. 1995) 47 F.3d 373, 378.)

11 Here, Class Counsel have extensive experience litigating and settling class actions and  
12 employment discrimination lawsuits. (Medina Decl. ¶¶ 7- 10; Dermody Decl. ¶¶ 14-16.) Class Counsel  
13 believe that the proposed settlement represents an appropriate monetary result for the Settlement Class,  
14 particularly in light of the risks of continued litigation. (Dermody Decl. ¶ 10; Medina Decl. ¶  
15 28.) Accordingly, this factor also supports final approval.

#### 16 **7. Presence of a Governmental Participant**

17 Here, the proposed Settlement did not involve the presence of a governmental  
18 participant. (Medina Decl. ¶ 31; Dermody Decl. ¶ 11.) Therefore, this factor is neutral and does not weigh  
19 in favor of or against final approval.

#### 20 **8. Reaction of Class Members to the Proposed Settlement**

21 Finally, the reaction of Settlement Class Members provides strong support for final approval of  
22 the settlement. “[T]he absence of a large number of objections to a proposed class action settlement  
23 raises a strong presumption that the terms of a proposed class settlement action are favorable to the  
24 class members.” (*Nat’l Rural Telecomms. Coop., supra*, 221 F.R.D. at 529.) In this case, no  
25 Class Members have objected to the monetary relief achieved, including the amounts set aside for  
26 attorneys’ fees, costs, and class representative service awards. (Keough Decl. ¶ 16.) Two Class Members  
27 have opted out of the settlement. (Keough Decl. ¶ 14.) The complete lack of objections by Settlement  
28 Class Members indicates a positive reaction by the Settlement Class to the Settlement, and a lack of

1 objections would be a factor weighing in favor of final approval. (See *Alcantar v. Hobart Serv.* (C.D. Cal  
2 Aug. 13, 2018) 2018 U.S. Dist. LEXIS 221900, at \*16.) A low proportion of opt outs similarly “indicates  
3 that the class generally approves of the settlement.” (See *Jimenez v. Allstate Ins. Co.* (C.D. Cal. Sep. 16,  
4 2021) 2021 U.S DIST. LEXIS 176767, at \*20-21 [quoting *In re Toys R US* (C.D. Cal. 2014) 295 F.R.D.  
5 438, 456, citations omitted] [finding that when 3 of 1460 class members objected to the settlement, that  
6 reaction did not weigh against final approval of the settlement].)

7 Because all the *Dunk* factors support or, with Factor 7, are neutral as to finding that the Settlement  
8 is fair, adequate, and reasonable, the Court should grant final approval of the Settlement.

9 **V. CONCLUSION**

10 For the reasons set forth above and in the accompanying papers, Class Counsel respectfully request  
11 that the Court grant Plaintiffs’ Motion for Final Approval of the Class Settlement and Final Certification  
12 of the Class for Settlement Purposes.

13 Dated: January 7, 2022

Respectfully submitted,

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

15 Felicia Medina  
16 Jennifer Orthwein  
17 Shauna Madison  
18 Ashley Carter  
19 MEDINA ORTHWEIN LLP  
20 230 Grand Avenue, Suite 201  
21 Oakland, CA 94610  
22 Telephone: (510) 823-2040  
23 Facsimile: (510) 217-3580

24 Kelly M. Dermody  
25 Jallé H. Dafa  
26 LIEFF CABRASER HEIMANN & BERNSTEIN, LLP  
27 275 Battery Street, 29th Floor  
28 San Francisco, CA 94111  
Telephone: (415) 956-1000  
Facsimile: (415) 956-1008

*Attorneys for Plaintiffs and the Class*