

NOTICE OF SETTLEMENT OF CLASS ACTION

ISSUED BY ORDER OF THE SAN FRANCISCO SUPERIOR COURT

***** NOTICE *****

Records indicate that at some time between January 1, 2015, and March 31, 2021 (the “Class Period”), you worked in California for Kaiser Foundation Health Plan, Inc., Kaiser Foundation Hospitals, The Permanente Medical Group, Inc., and/or Southern California Permanente Medical Group (collectively “Defendants” or “Kaiser-related Entities”) in a job that is covered by a proposed class action settlement (“Settlement”).

PLEASE READ THIS NOTICE CAREFULLY AND FULLY.

This Notice describes the Settlement and related matters that will affect your legal rights. The full Settlement Agreement may be found at www.kaisersettlement.com.

1. INTRODUCTION

On April 22, 2021, Shelby Stewart, Charleta Dabrowski, Benedict Johnson, and Kenya Mayfield (the “Plaintiffs”) filed a class action lawsuit captioned *Stewart, et al. v. Kaiser Foundation Health Plan, Inc., et al.*, Case No. CGC-21-590966, against Defendants in the Superior Court of San Francisco County (the “Lawsuit”). **This is not a lawsuit against you, and you are not being sued.**

The Lawsuit is on behalf of the following “Class,” which the Court has provisionally certified: All Black employees who meet the following parameters at any time between January 1, 2015 and March 31, 2021, inclusive: (a) The following California Regions: Northern California (NCAL); Southern California (SCAL); California locations of the Program Offices Region; and California locations of the KP-IT Region; (b) The following California Entities: KFHP, KFH, TPMG and SCPMG; (c) Exempt and non-exempt Employees; (d) Full-time, non-union, Director-Level and below, and non-clinical jobs only; (e) The following two job families: Administrative Support and Consulting Services. The Class does not include individuals in Intern or Student Temporary jobs.

The Lawsuit makes claims for: (i) unequal pay based on race; (ii) disparate treatment and pattern and practice discrimination based on race with respect to all forms of compensation (including but not limited to hourly pay, overtime, premium pay, salary, bonus, and salary grades), raises, job assignments, job code placement, demotions, and denial of promotions; and (iii) disparate impact discrimination based on race with respect to all forms of compensation (including but not limited to hourly pay, overtime, premium pay, salary, bonus, and salary grades), raises, job assignments, job code placement, demotions, and denial of promotions. The Lawsuit alleges that these practices violated the following laws:

- Title VII of the Civil Rights Act, 42 U.S.C. § 2000e et seq. (“Title VII”) and Executive Order 11246
- 42 U.S.C. § 1981 (“Section 1981”)
- California Fair Employment and Housing Act, Cal. Gov. Code § 12940 et seq. (“FEHA”)
- California Equal Pay Act, as amended, Cal. Labor Code § 1197.5 (“California EPA”)
- California Unfair Competition Law, Cal. Bus. & Prof. Code section 17200, et seq. (“UCL”)
- California Private Attorneys General Act of 2004, Cal. Lab. Code section 2698, et seq. (“PAGA”)

The Kaiser-Related Entities deny all of the allegations in the Lawsuit and maintain that they have fully complied with all applicable laws, rules and regulations at all times. The Court has not ruled on the merits of these claims, has made no findings of fault, and has not awarded damages. The Settlement is a compromise of disputed claims

and is not an admission of liability on the part of the Kaiser-Related Entities or anyone else. The Parties have reached this Settlement in order to avoid the expense, risk, and uncertainty of further litigation.

The Court has granted preliminary approval of the Settlement. Payments (as described in Section 5) will be made only if the Court grants final approval of the Settlement and any appeals are resolved.

2. YOUR LEGAL RIGHTS AND OPTIONS

OPTION A	Do Nothing.	Stay in this Lawsuit, receive money under the Settlement automatically. <i>See</i> Sections 2(a) and 5 below. Receive no enhancement.
OPTION B	Submit an Enhancement Claim Form Online or Postmarked Before January 22, 2022, and Receive an Enhanced Individual Settlement Award.	Stay in this Lawsuit, receive money under the Settlement automatically, with 10% enhancement if you submit an Enhancement Claim Form. <i>See</i> Section 2(b) below.
OPTION C	Request to be Excluded from the Settlement Online or Postmarked by January 22, 2022.	Get out of the Lawsuit. Do not receive any money from the Settlement. Keep any rights you might have to file your own separate lawsuit for the same claims. <i>See</i> Section 2(c) below.
OPTION D	Object to the Terms of the Settlement Online or Postmarked by January 22, 2022.	Stay in the Lawsuit and object to it that the Settlement is unfair or inadequate. <i>See</i> Section 2(d) below.

OPTION A: DO NOTHING

You do not have to do anything to receive money under the Settlement. If you do nothing, you will stay in the Settlement and your award will be calculated automatically under the formula described in Section 5. You do not have to appear in court. You will release your covered claims against the Kaiser-Related Entities and the Released Parties. However, you will not receive an enhancement on your award unless you complete Option B.

OPTION B: SUBMIT AN ENHANCEMENT CLAIM FORM FOR AN ENHANCED AWARD **(SECURE.KAISERSETTLEMENT.COM)**

In addition to the automatic award, a 10% enhancement will be available to Settlement Class Members who elect to submit a Claim Form indicating their belief that they were denied a promotion due to their race. In order to be eligible to receive this enhancement, you must complete the Enhancement Claim Form either online (at www.kaisersettlement.com) or postmarked by mail using the form attached to this Notice (address on form), by **no later than January 22, 2022**. You will release your covered claims against the Kaiser-Related Entities and the Released Parties.

OPTION C: REQUEST TO BE EXCLUDED FROM THE SETTLEMENT

If you wish to be excluded from the money payments of the Settlement, you must mail or email a written, personally signed (in ink) statement that you are opting out (“Opt-Out request”) to the Settlement Administrator postmarked or emailed by **January 22, 2022**, at: Stewart v. Kaiser Permanente Settlement Administrator, c/o JND Legal Administration, P.O. Box 91344, Seattle, WA 98111, or info@kaisersettlement.com. The Opt-Out request must be physically signed by you, must contain your full name, address, and telephone number. It must also contain the words: “I elect to exclude myself from the Settlement in *Stewart v. Kaiser Entities*, Case No.

CGC-21-590966. I will, however, be covered and bound by the business changes provided by the Settlement if employed by Defendants.” If you do not complete a timely Opt-Out request, you will be bound by the release, and you will give up your rights to sue the Kaiser-Related Entities and the Released Parties regarding the legal claims in this Action. (In such case, you will still receive the automatic payment of Option A.)

Alternatively, if you submit an Opt-Out request, you will not receive any money from the Settlement, but you will retain the right to bring your own separate lawsuit. You then will not have the right to object (Option D). However, because the State of California was notified of the potential Labor Code violations in the *Stewart* matter and will receive \$86,286 as a result, you will not be able to bring claims for penalties under California’s Private Attorney General Act, Cal. Lab. Code §§2698 *et seq.* even if you opt out, if the Settlement is approved with the PAGA payment going to the State. At that point, a court could deem those claims for penalties litigated and resolved, and you will be equitably estopped from bringing duplicative claims.

OPTION D: OBJECT TO THE SETTLEMENT

If you believe the Settlement is unfair or inadequate, you may object, personally or through an attorney, by mailing or emailing a copy of your objection to the Settlement Administrator at the address set forth above in Section 2(c). You will be solely responsible for the fees and costs of your own attorney.

You cannot both object to the Settlement and request to exclude yourself from the Settlement. If you wish to object to the Settlement, you must mail or email a personally signed (in ink) written statement to the Settlement Administrator that contains your full name, address and telephone number. Your objection must be physically signed by you, must indicate that you “object to the Settlement in *Stewart v. Kaiser Entities*, Case No. CGC-21-590966” and must contain a written statement of the grounds for your objection. **To be effective, your objection must be postmarked or emailed no later than January 22, 2022.** Please do not telephone the Court or the Kaiser-Related Entities’ counsel about the substance of objections. If you do not serve written objections within the time provided above, you will be deemed to have waived such objections and will not be permitted to make any objections (by appeal or otherwise) to the Settlement, subject to the Court’s determination in the exercise of its discretion. If the Court rejects your objection, you will still be bound by the terms of the Settlement. **You are not required to appear in Court.**

3. BACKGROUND OF THE CLASS SETTLEMENT

The Plaintiffs and their counsel believe that the claims asserted in the Lawsuit have merit. However, they also recognize the expense and length of continued proceedings, the uncertainty of the outcome, and the risk of litigation. Thus, they engaged in intensive, adversarial settlement negotiations with Kaiser-Related Entities, including in mediations overseen by a respected independent mediator. They believe that the Settlement is fair, reasonable, and adequate and in the best interests of the Class.

As described above, the Kaiser-Related Entities believe that they support racial equity and disagree that the claims asserted in the Lawsuit have any merit. They deny wrongdoing and liability. The Kaiser-Related Entities believe that they have valid defenses to Plaintiffs’ and Class Members’ claims. However, the Kaiser-Related Entities prefer to use their financial resources to advance equity than to pay legal fees. There has been no determination by any court as to the truth or validity of the factual or legal allegations made against the Kaiser-Related Entities in the Lawsuit.

4. THE PROPOSED CLASS SETTLEMENT

The proposed Settlement includes money and business practice changes to resolve pay and promotion race discrimination claims for the Class. The monetary fund is Eleven Million Five Hundred Four Thousand Seven Hundred Fifty-Nine Dollars (\$11,504,759) to be allocated as: approximately \$45,000 in costs of independent

settlement administration; \$86,286 in recovery of penalties to the State of California; up to thirty percent (or \$3,451,427.70) in attorneys' fees to Class Counsel, Medina Orthwein LLP and Lief, Cabraser, Heimann & Bernstein, LLP; up to \$65,000 in reimbursement of costs incurred to litigate this case; service awards totaling \$255,000 to the Plaintiffs (representing \$75,000 for originating Plaintiff Stewart and \$60,000 for Plaintiffs Dabrowski, Johnson, and Mayfield, in recognition of the time, effort, and risks these individual Plaintiffs took to come forward and prosecute the case); a \$50,000 contingency fund, to resolve Class payment issues (if any) which arise after the monetary fund is paid out; and \$7,552,045.60 for Individual Settlement Awards. The Court will determine the propriety of all payments allocated from the Settlement at final settlement approval. No money will revert to Defendants.

The business practices are summarized below. A comprehensive list of these practices can be found in Exhibit B to the Settlement Agreement, which is available at the following website: www.kaisersettlement.com. These will encompass, but are not limited to:

- The retention of an independent expert, chosen by all of the Parties, to conduct a validated job analysis of the jobs within the Class. This review will be completed within one year after the Effective Date of the Settlement. The intention of this project is to ensure pay equity in jobs in which the work performed is substantially similar and to help clarify career ladders and job progression in jobs within the Class. This career development work includes using job analysis output to identify career tracks and develop career guides and developmental resource guides within 18 months of the date of the Effective Date of the Settlement;
- The retention of an independent expert to conduct an annual equity analysis of base pay, incentive pay, and merit increases for three years to ensure persons who perform substantially similar work are being paid equitably and that persons who receive the same performance ratings receive equitable awards. Pay will be remediated within three months of completion of the equity analysis if inequities are found;
- The retention of an independent expert to conduct annual statistical analyses of promotion data for disparate impact for three years;
- The retention of an independent Human Resources expert to review and guide programs on leadership development and building a diverse bench, as well as evaluating existing mentorship programs designed to support managers from historically underrepresented groups in the Administrative Support and Consulting Services job families;
- The development and implementation of revised mandatory training programs, which will be informed in part by information developed through the job analyses project, on relevant topics such as anti-harassment, equal employment opportunity, and unconscious bias. Upstander Intervention training will be made available to all of the Kaiser-Related Entities' California non-union employees and required for all NEID employees and HR VPs, Director HRBPs, HRBPs, and HR Consultants in California not on an approved leave; and
- Defendant KFHP will increase and maintain the number of people who conduct EEO investigations to total at least fifteen (15) investigators. Investigators in the EEO unit also will participate in a more in-depth de-biasing training (to be agreed to by the parties) than is offered generally to the organization. The Settlement also includes monitoring of complaint logs for trends and potential repeat issues with certain managers or within certain parts of the organization.

The following is a summary of other important Settlement terms.

5. INDIVIDUAL SETTLEMENT AWARDS

All Settlement Class Members will automatically receive an Individual Settlement Award unless they opt out.

In addition, those Settlement Class Members who believe they were denied a promotion due to their race may seek a 10% (enhancement) of their Settlement award by submitting an “Enhancement Claim Form.” You must complete the Enhancement Claim Form **by January 22, 2022**, either online (at www.kaisersettlement.com) or postmarked by mail to the Settlement Administrator with the form attached to this Notice (address on form).

Class Members who opt out of the Settlement by following the procedure described below will not receive an Individual Settlement Award. See Section 2(c), above.

Individual Settlement Awards will be allocated to each Settlement Class Member based on an objective formula approved by the Court. This formula calculates each Settlement Class Member’s share of the Settlement Award Fund based on: *the Settlement Class Member’s weeks worked in a job covered by the Settlement during the 325-week Class Period (i.e., January 1, 2015 through March 31, 2021), the Settlement Class Member’s annual base salary rate for each of those weeks worked, whether the Settlement Class Member was classified as exempt or non-exempt during those weeks, and whether the Settlement Class Member submits the Enhancement Claim Form, seeking an enhanced award based on alleged denial(s) of promotion.*

Based on information in Defendants’ records, between January 1, 2015, and March 31, 2021, inclusive, you worked [] weeks in an exempt covered position and/or [] weeks in a non-exempt covered position. If you believe this information is not accurate, please contact the Settlement Administrator at 1-844-975-1785 by **January 22, 2022**. There will be a response within 14 days based on Defendants’ payroll records regarding weeks worked in Class positions. Settlement Class Members will also be invited to submit documentation if they wish, although it will not be required.

After finalizing this data, the Settlement Administrator will determine a point value for each Settlement Class Member consisting of the total Individual Pay Variable + the Individual Enhancement Promotion Variable (if any) to get your Total Individual Variable, as described below:

Calculating Individual Settlement Class Member Variable		
Automatic Individual Pay Variable (no claim form needed)		Optional Individual Promotion Enhancement Variable (only if Enhancement Claim Form submitted)
For Non-Exempt Weeks (if any):	For Exempt Weeks (if any):	For Both Exempt and Non-Exempt Weeks:
Multiply your annual base salary in non-exempt jobs by the number of non-exempt weeks worked in jobs covered by the Settlement Class definition (see Section 1 above) from January 1, 2015, through March 31, 2021, inclusive.	Multiply your annual base salary in exempt jobs by the number of exempt weeks worked in jobs covered by the Settlement Class definition (see Section 1 above) from January 1, 2015, through March 31, 2021, inclusive, and multiply this number by seven (7).	You will be eligible to have your Individual Settlement Award enhanced by 10% if you complete and check the “Yes” box on the Enhancement Claim Form.

On average, Class awards (after all other amounts are deducted from the Settlement for such things as administration, fees, and costs) will be approximately \$5,690/person for Exempt Settlement Class Members and

approximately \$476 for Non-Exempt Settlement Class Members. However, the exact award you receive will depend on the number of weeks you worked in a Class position during the Class period, your base pay, whether you were in an exempt or non-exempt position, and whether you also submit a claim for a promotion claim enhancement.

6. TAX INFORMATION

Please note that one-third (33.33) percent of your Individual Settlement Award will be reported as wages on an IRS Form W-2 with all appropriate wage taxes withheld. The remaining two-thirds (66.67) percent of your Individual Settlement Award will be reported as non-wage income on an IRS Form 1099. You are responsible for your own taxes and should consult a tax professional for more information about your own specific situation. Class Counsel are not tax advisors and cannot give you advice on any tax matters.

7. CHECK CASHING AND CY PRES DONATION OF UNCASHED FUNDS

Checks will be issued if the Court finally approves the Settlement and there are no appeals. Any Individual Settlement Award checks not cashed after ninety (90) days from the date of their issuance shall be void. If more than \$100,000 of the Individual Settlement Awards remain uncashed 90 days after mailing, there will be a second distribution, only to those Settlement Class Members who cashed their initial Individual Settlement Award checks. If less than \$100,000 of the Individual Settlement Awards are uncashed, or any of the second Individual Settlement Award checks are uncashed, any Individual Settlement Award checks that remain uncashed after 90 days will be voided, and the funds from all uncashed checks shall be donated to the non-profit organization, Equal Justice Society. Settlement Class Members whose Individual Settlement Award check(s) are voided still remain bound by the Settlement.

8. NO EFFECT ON EMPLOYEE BENEFIT PLANS

Neither the Settlement nor any amounts paid under the Settlement will modify any previously credited hours of service under any employee benefit plan, policy, or program, nor will such amount form the basis for additional contributions to, benefits under, or any other monetary entitlement under any benefit plans, policies, or programs.

9. RELEASES

When the Court enters an Order granting Final Approval of the Class Settlement, every member of the Class who has not validly exercised their right to opt out of the Settlement will fully and forever release pay and promotion claims based on alleged race discrimination against African American employees by the Kaiser-Related Entities and all other Released Parties as described in the Agreement arising at any time from January 1, 2015 through March 31, 2021, inclusive. When claims are “released” it means that a person covered by the release cannot sue the Kaiser-Related Entities or the Released Parties for these claims.

Class Members who do not timely opt out will release all of the following claims upon the Effective Date of the Settlement Agreement: Except as to such rights or claims as may be created by this Agreement, each Member of the Settlement Class (including Plaintiffs) who does not properly and timely opt out of this Settlement will be deemed Settlement Class Members under the federal and state discrimination laws invoked in the Action, and will fully release and be deemed to have released and fully and finally resolved, waived, and discharged, for themselves and their attorneys, agents, spouses, heirs, executors, administrators, dependents, successors, and assignees (the “Class Member Releasers”), all claims, demands, causes of action, and liabilities, known and unknown, that they had, have, or may have at any time up through March 31, 2021, under any legal or equitable theory, whether contractual, common-law, or statutory, and whether under federal, state, local, or foreign law

against Defendants, any of the organizations participating in the Kaiser Permanente Medical Care Program (“The Program”) (including, but not limited to Kaiser Foundation Health Plan, Inc., Kaiser Foundation Hospitals, The Permanente Medical Group, Inc. and Southern California Permanente Medical Group), and each such entity’s respective affiliates, subsidiaries, parent companies, related companies, partners, officers, directors, managers, servants, agents, employees, former employees, representatives, attorneys, insurers, successors, and assigns, past or present, and all persons acting under, by, through, or in concert with any of them (collectively, the “Released Parties”), based on any facts alleged, or on claims or theories raised or that could have been raised based on facts alleged in this Action, the Complaint, and any prior version of the Complaint filed in this Action relating to race discrimination in pay or promotion, or any alleged denial of equal pay based on race. The rights and claims released (collectively, the “Released Claims”) include: (i) claims for unequal pay based on race, and (ii) claims for disparate treatment and pattern and practice discrimination based on race with respect to all forms of compensation (including but not limited to hourly pay, overtime, premium pay, salary, bonus, and salary grades), raises, job assignments, job code placement, demotions, and denial of promotions, and (iii) claims for disparate impact discrimination based on race with respect to all forms of compensation (including but not limited to hourly pay, overtime, premium pay, salary, bonus, and salary grades), raises, job assignments, job code placement, demotions, and denial of promotions. The Settlement Class shall release all claims and theories that could be pleaded for the facts alleged, including under the following laws and their implementing regulations: (i) Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§2000e, et seq., Executive Order 11246, and 42 U.S.C. § 1981; and (ii) the California Fair Employment and Housing Act, Cal. Gov. Code § 12940 et seq., the California Equal Pay Act, as amended, Cal. Lab. Code §1197.5, the California’s Business & Professions Code §17200, et seq., and the California Private Attorneys General Act of 2004, Cal. Lab. Code §§2698-2699.

10. PAYMENT TO CALIFORNIA’S LABOR WORKFORCE DEVELOPMENT AGENCY

California’s Labor Code Private Attorneys General Act of 2004 (“PAGA”) allows private citizens to step into the state’s shoes and recover civil penalties for violations of California’s Labor Code. Seventy-five percent (75%) of any such PAGA recovery must be given to the state. In the present case, the Settlement provides that \$86,285.70 be paid to the state as its share of the alleged penalties recovered in this case. If the Court awards less than this amount, the difference will be placed in the Settlement Awards Fund, which may then be distributed to Settlement Class Members or to a cy pres beneficiary as described in Section 7, above.

11. CLASS COUNSEL AND ATTORNEYS’ FEES AND COSTS

Counsel for Plaintiffs and the Class (“Class Counsel”) are the firms Medina Orthwein LLP and Lieff Cabraser Heimann & Bernstein, LLP. As is routine in class action cases, Class Counsel will request to be paid attorneys’ fees and costs from the Class Settlement Fund, as described in Section 4 above. Class Counsel’s motion for approval of attorneys’ fees and reimbursement of costs **must be filed by December 23, 2021**. The Court will determine the actual amount of the fees and costs awarded. *Class Members are not personally liable for any fees and costs.*

Class Counsel are:

Medina Orthwein LLP
230 Grand Avenue, Suite 201
Oakland, California 94610
Telephone: (510) 823-2040
E: admin@medinaorthwein.com

Lieff, Cabraser Heimann & Bernstein LLP
275 Battery Street, 29th Floor
San Francisco, CA 94111
Telephone: (415) 956-1000
E: StewartSettlement@lchb.com

12. NOTICE OF HEARING ON FINAL APPROVAL OF SETTLEMENT AND ACCESS TO DOCKET

The Court will hold a final Settlement Approval (“Fairness”) Hearing before the Honorable Andrew Cheng on **February 9, 2022, at 9:00 a.m.** in Department 613 of the San Francisco County Superior Court, located at 400 McAllister Street, San Francisco, CA 94102. The Court will determine whether the proposed Settlement is fair, reasonable, and adequate, and should be finally approved. At that time, the Court will also decide, among other things, whether to approve Class Counsel’s request for attorneys’ fees and reimbursement of costs, and the Class Representative Service Awards.

It is not necessary for you to appear at this hearing.

If the Settlement is not approved, the Lawsuit will continue, including to trial, or other judicial resolution.

The Court may postpone the hearing without further notification to the Class. To view the official docket for this action, however, please use the online link:

<https://webapps.sftc.org/captcha/captcha.dll?referrer=https://webapps.sftc.org/ci/CaseInfo.dll?>

After using the link, click on “I’m not a robot,” insert the case number “CGC-21-590966” where there is a prompt for case number, and click “search” on the landing page.

You may wish to refer to the Court’s website for any instructions from the Court for the hearing due to COVID-19 at: <https://www.sfsuperiorcourt.org/general-info/Information-Regarding-Coronavirus-And-Court-Operations>

13. EXAMINATION OF PAPERS AND FREQUENTLY ASKED QUESTIONS

For more information about the Lawsuit and Settlement, you may refer to the Agreement and other papers filed in the Lawsuit. Key documents (including Complaint, Settlement documents, and Orders) may be located at www.kaisersettlement.com, or may be inspected at the Office of the Clerk of the San Francisco County Superior Court, located at 400 McAllister Street, San Francisco, CA 94102, during the Court’s regular business hours (8:30 a.m. to 12:30 p.m.). If judgment is entered, it will be posted at www.kaisersettlement.com.

All inquiries about the Settlement should be directed to Class Counsel (listed in Section 11), or to the Settlement Administrator at:

Stewart v. Kaiser Permanente Settlement Administrator
c/o JND Legal Administration
P.O. Box 91344
Seattle, WA 98111
Phone: 1-844-975-1785 or www.kaisersettlement.com

PLEASE DO NOT CONTACT THE COURT WITH INQUIRIES ABOUT THE SETTLEMENT.