

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 MEDINA ORTHWEIN LLP
5 230 Grand Avenue, Suite 201
Oakland, CA 94610
6 Telephone: (510) 823-2040
7 Facsimile: (510) 217-3580

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

14 *Attorneys for Plaintiffs and the Proposed Class*

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

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

20 **Plaintiffs,**

21 v.

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

26 **Defendants.**

Case No. CGC-21-590966

**DECLARATION OF FELICIA M. MEDINA
IN SUPPORT OF PLAINTIFFS' MOTION
FOR ATTORNEYS' FEES AND COSTS
AND CLASS REPRESENTATIVE
SERVICE AWARDS**

1 I, Felicia M. Medina, hereby declare as follows:

2 1. I make this Declaration based on personal knowledge. If called and sworn as a witness, I
3 would testify competently as to the facts in this Declaration.

4 2. I am an attorney admitted to practice law in the State of California and I represent Plaintiffs
5 Shelby Stewart, Charleta Dabrowski, Benedict Johnson, Kenya Mayfield (“Plaintiffs”) and the class in
6 this action against Defendants Kaiser Foundation Health Plan, Inc., Kaiser Foundation Hospitals, The
7 Permanente Medical Group, Inc., and Southern California Permanente Medical Group (“Kaiser related
8 entities” or “Defendants”).

9 3. In my capacity as Class Counsel, I make this declaration in support of Plaintiffs’ Notice of
10 Motion and Motion for Attorneys’ Fees and Costs and Class Representative Service Awards.

11 **FACTUAL AND PROCEDURAL BACKGROUND**

12 4. Plaintiffs brought this case on behalf of themselves and a class of approximately 2,225
13 Black employees who allege to have been discriminated against by Defendants due to Defendants’
14 common policies and practices. Plaintiffs allege Defendants have violated the California Equal Pay Act,
15 the Fair Employment and Housing Act, and additional federal and state laws by systematically
16 underpaying and underpromoting their Black employees as compared to their non-Black peers.

17 5. The settlement class Plaintiffs seek to represent consists of current and former, full-time,
18 non-union, non-clinical Black employees employed by Defendants at any time between January 1, 2015
19 and March 31, 2021, at the Director level and below in the Administrative Support or Consulting Services
20 job families in the California locations of the Program Offices Region, Northern California Region,
21 Southern California region, and the KP-IT region. Plaintiffs’ Complaint alleges that they, like the
22 settlement class they seek to represent have suffered from years of lower pay and lower rates of promotion
23 throughout their employment and seek to remedy these disparities by means of the Settlement negotiated
24 and preliminarily approved by the Court.

25 6. In October 2018, my firm, Medina Orthwein LLP (“Medina Orthwein”) began
26 investigating claims on behalf of a potential class action of African American Employee of Kaiser-Related

1 Entities. Specifically, in November 2018, Shelby Stewart, lead named plaintiff in the *Stewart* matter, filed
2 class charges with the Equal Employment Opportunity Commission on behalf of herself and similarly
3 situated employees. Ms. Stewart, along with assistance from her fellow class representatives, remained
4 integral throughout the settlement process, fielding many calls from counsel and supplying much needed
5 investigation assistance.

6 7. We took this case on contingency (and investigated and settled it over the span of three
7 years), with no guarantee of recovery. We also turned down cases in order to fully devote the time and
8 resources needed to investigate and settle this case, knowing that payment if any, would not be immediate.

9 8. Since October 2018, Medina Orthwein, along with and Lieff, Cabraser, Heimann &
10 Bernstein LLP (“LCHB”), conducted an extensive pre-filing investigation and engaged in substantial
11 informal data, document, and witness discovery with Defendants. Following extensive negotiations, we
12 obtained multiple rounds of class-wide data and retained an expert labor economist, Alex Vekker, PhD,
13 to conduct a statistical analysis of pay and promotion disparities across the proposed Class and to
14 determine the scope and scale of potential Class exposure and risk.

15 9. Dr. Vekker was asked to process the personnel data set produced by Defendants and to
16 create a statistical model to determine whether there was a statistically-quantifiable race effect on pay or
17 promotion. The data set provided by Defendants included over 1,377MB of personnel data containing 72
18 variables with information unique to each employee in a covered position, including (*e.g.*, “Rate” or
19 “salary plan”), role/level (*e.g.*, “Job group” and “Job Function”), department (“Org Unit”), performance
20 (“Ratings”), seniority (“Hire date”), tenure/time in position (“Department Entry Date”), job family, age at
21 hire (as a proxy for lateral experience), promotions (“Grade”), and geographic location (“GL Location”).
22 Dr. Vekker analyzed the data and isolated the data variables that could explain pay and promotion
23 outcomes. He did this to run a regression analysis to determine if Black employees are under-paid and
24 under-promoted compared to similarly situated non-Black employees.

25 10. Defendants’ document production included hundreds of pages of challenged policies in
26 this action, including, but not limited to; manuals; guidelines; handbooks; tools; and training materials

1 concerning compensation, job analysis, promotions, career progressions and management development;
2 performance reviews; discrimination complaint processes and investigations; workforce surveys; and
3 personnel action changes.

4 11. After reviewing these policies, Medina Orthwein and LCHB conducted in-depth interviews
5 with four Kaiser-Related Entities managers regarding the Company's compensation policies, promotion
6 policies, and performance reviews.

7 12. In September and December 2019, Medina Orthwein and LCHB met with Defendants
8 under the supervision of David Rotman, a highly regarded mediator with more than 25 years of experience
9 handling complex class and collective action negotiations.

10 13. During meetings and two mediations, the Parties discussed the parameters of a settlement
11 with business practice changes that would, in the Plaintiffs' view, address disparate outcomes that surfaced
12 in the investigation.

13 14. Based on the risks of litigation and the protracted nature of class litigation, it was prudent
14 to settle the matter and recover a large percentage of the damages in a settlement to exposure ratio that
15 has been approved by courts. The risks were cognizable, particularly considering the legal standard for
16 proving pay and promotion discrimination on a class wide basis.

17 15. Another factor that weighed heavily in the calculus to settle the matter was the substantial
18 programmatic relief the Plaintiffs were able to secure. This relief includes: validated job analysis and job
19 grouping, monitoring pay equity, remediation for pay equity, enhanced selection processes, monitoring
20 promotion data for disparate impact, identify career tracks and develop career guides, create
21 developmental resource guides, leadership development and assessment, review of mentorship programs
22 for African American Managers, personnel processes training, diversity, equity, and inclusion trainings,
23 public statements from senior leadership, increasing and maintaining an internal EEO investigation unit,
24 complaint audit, and compliance. The programmatic relief was negotiated with assistance from the
25 Plaintiffs. Additionally, both my firm and LCHB have extensive experience securing programmatic
26 changes to corporate policies, as well as monitoring compliance with class settlements.

1 2016);

2 h. *Dickerson et al. v. Novartis Corp. et al.*, No. 1:15-cv-01980 (S.D.N.Y., 2015);

3 i. *Wellens et al v. Daiichi Sankyo, Inc.*, No. 3:13-cv-00581 (N.D. Cal., 2013);¹

4 j. *Peterson et al. v. Alaska Communications Systems Group Inc.*, No. 3:12-cv-00090
5 (D. Alaska, 2012);

6 k. *Sandquist et al. v. Lebo Automotive et al.*, No. BC476523 (Cal. Super. Ct., Los
7 Angeles, 2012); and

8 l. *Velez v. Novartis*, No. 04-civ-09194 (S.D.N.Y., 2004).

9 19. Notably, for purposes of the instant Motion and Petition, I have obtained pre-suit class
10 settlements in discrimination class actions on three separate occasions. *See Branner et al. v. Covenant*
11 *Services Worldwide, LLC et al.*, No. 20-CIV-03164 (Cal. Super. Ct., San Mateo, 2020); *Chen v. Western*
12 *Digital*, No. 8:19-cv-00909 (C.D. Cal, 2019); *Pan, et al. v. Qualcomm Incorporated, et al.*, No. 3:16-cv-
13 01885 (S.D. Cal, 2016).

14 20. In my early years as a plaintiff-side employment litigator, I served as class counsel and
15 trial counsel with my former firm Sanford, Heisler Sharp LLP (“SHS”), in *Velez v. Novartis*, No. 04-civ-
16 09194 (S.D.N.Y., 2004), which resulted in the largest verdict in a Title VII discrimination class action in
17 U.S. history. The presiding federal judge described the case as having been “brilliantly tried.” After the
18 seven-week trial and historic \$250 million verdict, we obtained a court-approved settlement of \$175
19 million on behalf of 6,000 women with pay, promotion, and caregiver claims.

20 21. After serving on the *Velez* trial team, I opened an office in San Francisco, California, for
21 SHS and became that office’s Managing Partner.

22 22. I am a 2006 graduate of Yale Law School.

23 23. I have been honored as a 2018 San Francisco Business Times OUTstanding Voices
24 recipient; 2017 Daily Journal Leading Labor and Employment Attorneys in California; 2016 National

25 _____
26 ¹ This case is believed to be the first post *Dukes v. Walmart* case to be conditionally certified under the
27 EPA in the Ninth Circuit.

1 LGBT Bar Association Best LGBT Lawyer Under 40; 2016 SuperLawyers Northern California Rising
2 Star; 2015 National Diversity Council Most Powerful and Influential Woman; 2015 Law360 Rising Star;
3 and 2014 Law360 Minority Power Broker. I am also a board member of Public Justice PC, the Chicana
4 Latina Foundation, and previously served as co-Board Chair for the National Center for Lesbian Rights.

5 24. I am the past co-chair of the board of directors for the National Center for Lesbian Rights
6 (NCLR) and remain on that board after hiring a successor Executive Director. I am also a board member
7 of Public Justice, the Foundation for Advocacy Inclusion and Resources (FAIR), and the Chicana Latina
8 Foundation (CLF), and a former board member of the Bar Association of San Francisco's Justice and
9 Diversity Center (JDC), Legal Aid at Work (LAAW), and Bay Area Lawyers for Individual Freedom
10 (BALIF).

11 25. My staff was also integral to the settlement of this case. Managing Partner Shauna
12 Madison, who recently joined Medina Orthwein, has served as counsel on behalf of underrepresented and
13 underserved communities, achieving noteworthy results through pretrial negotiations, mediations,
14 preliminary hearings, and trials. She was formerly a public defender in the Contra Costa and Alameda
15 County Offices—where a large percentage of the class members reside. As a public defender she amassed
16 extensive trial experience, litigating over a dozen trials and a dozen preliminary hearings, while obtaining
17 hundreds of favorable resolutions and dismissals. Prior to her public defense work, Ms. Madison was also
18 an Associate at Cotchett, Pitre and McCarthy, LLP, where she focused on consumer class actions, elder
19 abuse, and qui tam cases.

20 26. As the Managing Partner of Medina Orthwein, she has successfully represented clients
21 with individual and class employment claims, as well as clients with individual and class civil rights
22 claims. Ms. Madison is also deeply involved in supporting the local Bay Area community. She is currently
23 a Director of two prominent LGBTQ Boards—the National Center for Lesbian Rights and the Oakland
24 LGBTQ Community Center. She also sat on the Boards of the University of San Francisco School of
25 Law's Public Interest Law Foundation and Bay Area Lawyers for Individual Freedom. She has been
26 recognized as one of the 2021 National Black Lawyers Top 40 under 40, received many meaningful

1 awards, and provides mentorship to local Bay Area community groups, including but not limited to, being
2 a Founding Member of the Women of Color Defender Networking Group and Mentor for the Point
3 Foundation: The National LGBT Scholarship Fund. Ms. Madison was also selected as a delegate for the
4 2011 White House Back LGBT Emerging Leaders Conference where she received advanced policy
5 briefing on upcoming LGBT legislation and provided feedback to White House officials.

6 27. Kevin Love Hubbard, a former Partner at Medina Orthwein, was on the Kaiser-Related
7 Entities matter and recently joined the Biden-Harris administration in the U.S. Attorney's office. Mr.
8 Hubbard is a trial attorney who has litigated racial justice, employment, and 42 U.S.C. 1983 cases. He
9 has served as counsel in numerous individual, collective, and class actions throughout the United States.
10 Prior to being a plaintiff side attorney, Mr. Hubbard was an Associate at Morrison & Foerster LLP and he
11 clerked for Judge Neil Wake in the United States District Court for the District of Arizona. He devoted a
12 substantial amount of time and effort into obtaining the settlement in the *Stewart* class matter. Mr.
13 Hubbard is a 2012 graduate of Yale Law School.

14 **ATTORNEYS' FEES**

15 28. A fee award of 30% of the Settlement fund is reasonable and justified in consideration of
16 the risks Plaintiffs' Counsel have undertaken in pursuing this case on a contingency basis and the result
17 achieved on behalf of the Class.

18 29. My firm expended significant time and resources on this matter and will continue to do
19 so without additional compensation over the next three years as we prepare for the Final Approval
20 Hearing, continue to oversee successful implementation of the settlement upon final approval, and
21 oversee implementation of the programmatic relief.

22 30. Specifically, Medina Orthwein has invested approximately 1,250.40 hours bringing the
23 *Stewart* matter to resolution.

24 31. This time was necessary to investigate the case, analyze the damages, engage in two
25 mediations and several follow up calls, revising the long form settlement agreement with multiple
26 attachments, drafting the complaint, drafting the preliminary approval motion, securing a competitive bid

1 from class action administrators, speaking to class members, and overseeing the class website and class
2 notice functions facilitated by the class administrator.

3 32. The over \$11.5 million settlement reached in this case represents an excellent outcome for
4 the Class. This amount represents approximately 36.3% of the Classes' total theoretical maximum
5 recovery, excluding PAGA penalties and the programmatic relief estimated to be valued at a minimum of
6 \$2 million. Under the Settlement, the average award for Exempt Class Members will be approximately
7 \$6,170 and for Non-Exempt Class Members the average award will be approximately \$1,172.

8 33. Attached as **Exhibit A** are charts of each time billers' hours and hourly rates for billing in
9 this matter from inception to December 13, 2021.

10 34. These rates and comparable rates have been approved in the following class actions:
11 *Branner et al. v. Covenant Services Worldwide, LLC et al.*, No. 20-CIV-03164 (Cal. Super. Ct., San
12 Mateo, 2020); *Chen v. Western Digital Corporation et al.*, No. 8:19-cv-00909 (C.D. Cal. 2020); *Cuenca*
13 *et al. v. Kaiser Foundation Health Plan et al.*, No. RG20065123 (Cal. Super. Ct., Alameda, 2020);
14 *McNaulty et al. v. AC Transit*, No. RG18933966 (Cal. Super. Ct., Alameda, 2018); *Pan et al. v.*
15 *Qualcomm Incorporated et al.*, No. 3:16-cv-01885 (S.D. Cal., 2016); *Ha et al. v. Google Inc. et al.*, No.
16 1:16-cv-290847 (Cal. Super. Ct., Santa Clara, 2016); *Fretter et al. v. Boston Scientific Neuromodulation*
17 *Corp.*, No. 2:15-cv-01988 (C.D. Cal., 2015); *Dickerson et al. v. Novartis Corp. et al.*, No. 1:15-cv-
18 01980 (S.D.N.Y., 2015); *Wellens et al v. Daiichi Sankyo, Inc.*, No. 3:13-cv-00581 (N.D. Cal., 2013).

19 35. Thirty percent or more of the Settlement Fund in attorneys' fees has also been approved
20 in the following class actions I have worked on: *Cuenca et al. v. Kaiser Foundation Health Plan et al.*,
21 No. RG20065123 (Cal. Super. Ct., Alameda, 2020); *McNaulty et al. v. AC Transit*, No. RG18933966
22 (Cal. Super. Ct., Alameda, 2018); *Pan et al. v. Qualcomm Incorporated et al.*, No. 3:16-cv-01885 (S.D.
23 Cal., 2016); *Ha et al. v. Google Inc. et al.*, No. 1:16-cv-290847 (Cal. Super. Ct., Santa Clara, 2016);
24 *Wellens et al v. Daiichi Sankyo, Inc.*, No. 3:13-cv-00581 (N.D. Cal., 2013)

25 **OUT OF POCKETS COSTS INCURRED**

26 36. To advance this litigation, my firm fronted the costs and incurred costs totaling \$58,666.08

1 from inception to date. Those costs consisted of mediator fees, expert fees, and court costs, as well as
2 internal costs, such as for electronic legal research, mail and phone communications, document printing,
3 and messenger services. These expenses are summarized in a chart provided in **Exhibit B**. Medina
4 Orthwein incurred the costs described herein on behalf of Plaintiffs on a contingent basis.

5 **MEDINA ORTHWEIN’S WORK FOR THE CLASS WILL CONTINUE**

6 37. After this fee submission is completed, the casework will not be over. Medina Orthwein
7 will continue to invest time and incur costs for more than three years further, as Class Counsel continue
8 to assist Class members and conduct post-settlement monitoring. Class counsel must also file the Motion
9 for Final Approval and prepare for that hearing, speak to class members about the settlement, and
10 communicate with the Class Action administrator to ensure compliance with the agreement and court
11 orders. Accordingly, the final lodestar and cost amounts will be significantly higher than reported in this
12 declaration. There will be no further payment for this significant additional work.

13 **NAMED PLAINTIFFS’ CONTRIBUTION**

14 38. Named Plaintiffs Shelby Stewart, Charleta Dabrowski, Benedict Johnson, and Kenya
15 Mayfield were extraordinarily engaged and active in the investigation, strategy, and resolution of this
16 action. I personally spoke with all the Plaintiffs together and each one separately on numerous occasions,
17 and I know that members of the LCHB team had similar contacts. Named Plaintiffs provided information
18 and evidence, reviewed and commented on draft documents, participated fully in mediation and settlement
19 talks, responded to questions from Class members, and helped to shape the settlement relief. The Plaintiffs
20 more than executed their duties to the Class at great expense to themselves. Ms. Stewart and I had regular
21 check ins about settlement developments and she also participated in meetings with defense counsel
22 outside of the mediations.

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

25 Executed on this 23rd day of December, 2021, in [REDACTED].

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Dated: December 23, 2021



Felicia Medina
MEDINA ORTHWEIN LLP

Attorney for Plaintiffs Shelby Stewart, Charleta Dabrowski, Benedict Johnson, Kenya Mayfield, and the Class

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Case No. CGC-21-590966

EXHIBIT A TO DECLARATION OF
FELICIA M. MEDINA IN SUPPORT OF
PLAINTIFFS' MOTION FOR ATTORNEYS'
FEES AND COSTS AND CLASS
REPRESENTATIVE SERVICE AWARDS

27 EXHIBIT A TO DECLARATION OF FELICIA M. MEDINA IN SUPPORT OF PLAINTIFFS'
28 NOTICE OF MOTION AND MOTION FOR ATTORNEYS' FEES AND COSTS AND CLASS
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Medina Orthwein's Lodestar for Stewart, et al. v. Kaiser – Class Claims

Name	Title	Rate	Hours	Total
Felicia Medina	Partner	\$850.00	300.00	\$255,000.00
Jennifer Orthwein	Partner	\$850.00	32.10	\$20,865.00
Shauna Madison	Partner	\$650.00	17.50	\$11,375.00
Kevin Love Hubbard	Partner	\$575.00	318.20	\$182,965.00
Daniel Gallindo	Associate	\$425.00	18.10	\$7,692.50
Ashley Carter	Associate	\$425.00	2.00	\$850.00
Elizabeth Connely	Apprentice	\$325.00	97.80	\$31,709.00
Sarah Wolfish	Law Student Intern	\$275.00	341.30	\$93,857.50
Alijah Futterman	Sr. Legal Assistant	\$275.00	112.20	\$30,841.25
Frances Paulino	Legal Assistant	\$275.00	9.30	\$2,543.75
Danielle Miles-Languigne	Legal Assistant	\$275.00	2.00	\$550.00
			1,250.40	\$638,249.00

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EXHIBIT B TO DECLARATION OF
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1 **Medina Orthwein's Out of Pocket Costs**

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<u>DESCRIPTION</u>	<u>AMOUNT</u>
Filing Fees	\$2,829.59
Expert Fees	\$30,168.00
Mailing Expenses	\$27.09
Mediation Expenses	\$16,607.68
Travel Expenses	\$6,775.72
Computer Research	\$992.86
Printing	\$1,265.14
TOTAL	\$58,666.08

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